



CITY MANAGER'S OFFICE

MAIN 209.831.6000  
FAX 209.831.6120  
www.ci.tracy.ca.us

## Memorandum

Date: October 18, 2011  
 To: Mayor & Council Members  
 From: Leon Churchill, City Manager   
 Subject: Additional Information on Umpire Services Contract

The following information is being provided at your request concerning the Request for Proposals (RFP) for City umpire services and our recommendation to enter into a contract with the Greater San Joaquin ASA to provide these services for the 2012-13 seasons.

An RFP to obtain umpire services for the City's softball program was issued on August 25, 2011. Staff also sent copies directly to the local representatives of Amateur Softball Association of American (ASA), the United States Specialty Sports Association (USSSA) and National Softball Association (NSA). These organizations are the most popular and largest softball associations operating in Northern California.

On the September 15<sup>th</sup> deadline for submitting proposals, the City only received one proposal, from the local ASA association, the Greater San Joaquin ASA (GSJASA). In view of the fact that the GSJASA has been providing satisfactory umpiring services to the City for the past four years, proposed only a modest increase in fees, and proposed to provide the City with an ASA Field Owners Liability insurance policy at no cost to the City, staff recommended awarding the contract to the GSJASA.

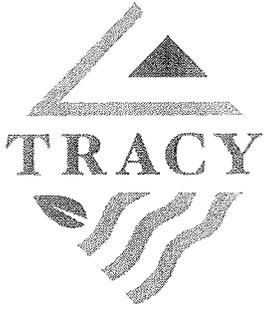
In the years since the City has been contracting for these services, we have received few proposals, as indicated below.

2004-05	1 proposal received
2006-07	2 acceptable proposals received
2008-09	2 proposals (Agreement extended through 2010-11)

Staff contacted the representatives of both USSSA and NSA to ask for their reasons for not submitting a proposal. USSSA did not submit a proposal due to the fact that the City program was too small in terms of the number of teams participating in our leagues. NSA stated issue was that they just ran out of time to prepare a proposal.

If you have any questions, please let me know.

cc: Rod Buchanan, Director of Parks and Community Services



City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

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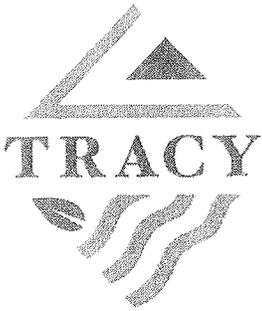
Date: October 18, 2011  
To: Mayor & Council Members  
From: Leon Churchill, City Manager   
Subject: Council Agenda Item 1-J  
Award of Construction Contract to Barth Roofing

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The following is additional information pertaining to the agenda item referenced above:

The existing Fire Station 96 roof has deteriorated and has been leaking for the last couple of years. The project was initially inspected by maintenance crews and an amount of \$38,000 was budgeted for repairs for estimation purposes. During preparation of the project plans and specifications by the Engineering Division, it was noticed that there was additional work needed involving parapets, flashing and repairs to the existing structural system.

As a result, additional funding was needed to complete this work. However, the exact amount would be known only after opening the competitive construction bids. Instead of amending the budget earlier to reflect the new cost estimate through Council action and update it again at the time of award of the contract, it was advantageous to wait and appropriate additional funds at one time.



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Date: October 18, 2011  
To: Mayor & Council Members  
From: Leon Churchill, City Manager   
Subject: City Council Agenda Item 1-E  
PSA for Additional Services for Fire Station 92

The following is additional information pertaining to the agenda item referenced above:

The design of the prototype Fire Station building was started approximately two years ago to fast track the design process. This would provide standard superstructure (building) design of the Fire Station buildings throughout the City. The foundations were designed for typical soil conditions (with conservative assumptions) in and around the City. However, the foundation design would need to be verified for local soil conditions at each individual site selected due to the abrupt variance of soils.

Generally, the Fire Station site is selected prior to starting design of the facility and completion of soil investigations. The site for Fire Station 92 was selected during the latter part of the design phase. The prototype foundation design already completed holds good for Fire Station 96, which will be located east of Corral Hollow shopping center south of Grant Line Road.

After selection of the Fire Station 92 site, staff started negotiations with the property owner who wanted approximately \$310,000 for that site. After council direction from the closed session meeting and further negotiations by staff, the property owners agreed to the sale price of \$265,000. This cost includes all improvements required to the existing Pescadero Irrigation District system to ensure uninterrupted service to the remaining and adjoining neighboring properties. After negotiating the cost and harvesting of the crop, staff was able to complete the soil investigation.

Even if staff had obtained these soil investigation results earlier, it was in the City's best interest to complete two separate designs for foundations, one for Fire Station 96 and other locations in the City, and another for the Station 92 due to local soil conditions, since the construction cost for Station 92 foundations are much higher (approximately \$150,000 more than Fire Station 96). This would result in an amendment to the PSA with an increase in the scope of work.

Ellis Aquatics  
October 18, 2011

# Proposal for

**Joe Wilson Pool**

## SUMMARY

Ellis Aquatics shall provide instruction and training of individuals to develop and improve their capabilities in the sport of swimming. Ellis Aquatics shall promote swimming for the benefit of swimmers of all ages and abilities, in accordance with the standards, rules, regulations, policies and procedures of FINA, USA Swimming, and Pacific Swimming.

- Ellis Aquatics is a year round swim team that incorporates Ellis Water Polo, and Ellis Eels Master's Swim team.
- Ellis Aquatics needs a home pool that is available 12 months a year.
- Ellis Aquatics will provide the community with much needed services in the form of aquatics programs. They would include, but not limited to; life guard classes, water safety instructor classes, rentals for the schools and Boys and Girls Clubs, and community nights. Also working with the Stockton YMCA to provide classes for the community, such as swim lessons, water aerobics, parent and child swim lessons.
- Relieve the City of Tracy of \$39,000 yearly fee to run the pool.

This is a situation where the City is out very little, but could make a huge impact on the quality of life in Tracy. Ellis would like to have a chance to make Joe Wilson pool a community pool and home to one of the best USA Swim Clubs in the central valley, along with Water polo and a Master's team.

We currently have over 120 swimmers, with the ages from 4 years old to 17 years old. Our swimmers are competing at International events, such as the Santa Clara International Invitational. We have high school swimmers that are in line for a swimming scholarship to major universities. We have over 15 swimmers under the age of 14 that will be competing in the Under 14 Junior Olympics in December. That is the first step on their way to international swimming. We have two swimmers traveling to Austin Texas in Jan to try and qualify for the Olympic Trials. All of these athletes represent Tracy in a positive way. All of our swimmer are either swimming or will be swimming for the local high schools. We are building a program that will support Tracy and the local high schools in swimming and water polo.

To have sole responsibility of running the aquatic schedule.

## Plan

Ellis Aquatics would take over the day to day operation of Joe Wilson pool.

Including but not limited to:

- \*Keeping all chemicals at the correct levels,
- \*Maintaining the grounds inside the fence,
- \*Maintaining the bathroom/locker rooms/office
- \*Paying the electricity bill.

Ellis Aquatics would have control over the Aquatic Schedule and would work with any outside groups such as, but not limited to, Stockton YMCA, Boys and Girls Club, and Tracy Triton's.

Ellis would pay for all or part of the cost to upgrade the pump/heater/and all systems to keep the pool working. The City and Ellis would agree on a plan where the City would pay a small percentage of the improvements if need be.

Ellis would relieve the City of the expenses that at last count was \$39,000 per year to keep the pool at a bare minimum.

## Timetable

Currently Ellis has no home pool and we are currently driving to Livermore to swim three nights a week. We have been out of the water for two weeks before securing a pool in Livermore. Not only is this a hard ship for our families, but they will then be doing their shopping and eating meals in Livermore. There by taking tax dollars to another city. And with the Holiday season approaching this would mean those families will be doing holiday shopping while their children swim.

We would like to be in a pool by November 2011.



## Memorandum

Date: October 18, 2011  
To: Mayor & Council Members  
From: Rod Buchanan, Director of Parks & Community Services *RB*  
Via: Leon Churchill, City Manager *LC*  
Subject: Summary of Background Findings Regarding Steve Stuhmer  
Fuel Services Operator

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**Fuel Services Operator** On July 11, 2011, Mr. Stuhmer submitted a proposal to the City in response to a Request for Proposals (RFP) issued by the City for a Fuel Services Operator (FSO). Below is a summary of the City's background check on Mr. Stuhmer and JetAway Aviation, LLC. The full report will be available in your Council mailbox.

Montrose, CO: Mr. Stuhmer provided information in the proposal regarding pending litigation in Montrose, CO as required by the RFP. Staff has examined information regarding this case, including an Internet and media review, and has made the determination that the case has no relation to the FSO proposal from Mr. Stuhmer. The primary litigation, initiated by Mr. Stuhmer, had to do with Through-the-Fence operations<sup>1</sup> and disallowing free trade despite a previous agreement by assignment. Through-the-Fence operations and disallowing free trade is not a factor in the proposed FSO Agreement. (Attachment 1 and 2)

US District Court for the District of Colorado Complaint: In September 2007, JetAway Aviation, LLC (controlled by Mr. Stuhmer) filed an action against Montrose, CO for disallowing free trade despite a previous agreement by assignment. (Attachment 3)

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<sup>1</sup> The FAA defines Through-the-Fence as access granted to a federally-obligated, public airfield from private property. (The term, Through-the-Fence, is used because most airports have a fence enclosing the entire property that users on adjacent private property will have to pass through.) Through-the-fence operations include businesses or individuals that have access to the airport infrastructure from outside airport property, or that utilize airport property to conduct a business but do not rent business space at the airport. More common types of through-the-fence agreements are for aircraft maintenance organizations and aircraft hangars.

State of Colorado Agency Decision: In May 2009, a complaint was made against Mr. Stuhmer for alleged campaign and political finance violations. The Agency found that Mr. Stuhmer had not filed reports correctly and he was assessed a fine of \$6,550. A campaign and political finance violation is not relevant to the proposed FSO agreement. (Attachment 4)

Claim under the Colorado Consumer Protection Act: In May 2011, it was found that JetAway Aviation's actions did not harm the public resulting in JetAway Aviation prevailing against a Claim under the Colorado Consumer Protection Act. (Attachment 5)

Letters of Reference: Mr. Stuhmer provided letters of recommendation with his proposal. Staff reviewed letters of reference for applicability and found them to be satisfactory. (Attachment 6)

California Business References: Mr. Stuhmer has other businesses in operations at two other airports in California (Turlock and Merced). Mr. Stuhmer operates fuel services in Turlock and a restaurant in Merced. Both Airports were contacted regarding their business relationship with Mr. Stuhmer. Both Airports indicated that Mr. Stuhmer pays his bills on time and has met the terms of their respective contracts.

The Turlock Airport Manager indicated that Mr. Stuhmer had gone above and beyond his performance responsibilities and would enter into a contract with Mr. Stuhmer again. Mr. Stuhmer made agreed upon improvements to the airport in a timely manner. One billing dispute arose (based on contract language) and that dispute was resolved satisfactorily. The Turlock Airport Manager stated that Mr. Stuhmer was good to work with and generally agreeable to suggestions.

Although not a related business enterprise, the Airport Manager in Merced had similar comments regarding Mr. Stuhmer and also indicated that Mr. Stuhmer is very intent on getting projects done quickly, sometimes too intensely, and that Mr. Stuhmer has a "hands on" approach to projects.

If you have any additional questions, please let me know.

Attachment 1: Information Regarding Legal Proceedings in Montrose County Colorado

Attachment 2: Proceedings of the Board of Montrose County Commissioners

Attachment 3: US District Court for the District of Colorado Complaint and Jury Demand from JetAway Aviation, LLC

Attachment 4: State of Colorado Agency Decision re: Stephen Stuhmer

Attachment 5: Claim under the Colorado Consumer Protection Act

Attachment 6: Letters of Reference

AGREN BLANDO COURT REPORTING & VIDEO INC

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. 1:07-CV-02563-RPM

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DEPOSITION OF DAVID WHITE

August 17, 2010

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JETAWAY AVIATION, LLC, a Colorado Limited Liability  
Company,

Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
MONTROSE, COLORADO; MONTROSE COUNTY BUILDING  
AUTHORITY, a Colorado Nonprofit Corporation; JET  
CENTER PARTNERS, LLC, a Colorado Limited Liability  
Company; BLACK CANYON JET CENTER LLC, a Colorado  
Limited Liability Company; WILLIAM PATTERSON; KEVIN  
EGAN; and JAMES RUMBLE,

Defendants.

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EXHIBIT

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1 CONFIDENTIAL

2 A Yeah, he was the only Jim we talked about  
3 as far as I can recall.

4 Q Okay. Jetaway great field location, "best  
5 spot on the airport." Do you recall if he elaborated  
6 on that at all?

7 A No, he just made that comment. And,  
8 again, you know, he's making a comment. Either he's  
9 asked a question or he's just making general  
10 comments. Based on whatever comments he's making are  
11 his comment, his perception or his opinion.

12 Q Right.

13 A But you need to ask him why he would say  
14 that.

15 Q Okay. Now, there are quotation marks  
16 around "best spot on the airport." So does that mean  
17 you were recording a verbatim quote of that phrase?

18 A Um-hum. If I put quotes around it,  
19 that's, again, how I -- what I heard him say to me.

20 Q Okay.

21 A Or to us.

22 Q The next one is, Part of the landscape,  
23 Jetaway, knew they were open and operating but had  
24 inside help.

25 Now, what he told you is that his group

1 CONFIDENTIAL

2 minimum" and that means "standards"?

3 A Yes.

4 Q And there's quote marks, so that means  
5 that's a quote, correct?

6 A Right.

7 Q Before the lease was signed, meaning  
8 before the JCP lease was signed?

9 MR. YOULE: Objection to form.

10 MS. MUSGRAVE: Objection to form.

11 Q (BY MR. HAYNES) What does that mean?

12 A Well, the question becomes which lease.  
13 There are eight of them. So I don't -- they signed a  
14 lease with the county but they signed eight leases  
15 with the county. So I'm -- when he's talking about a  
16 lease, he's talking about, in my opinion, was talking  
17 about the reason that they're there.

18 Q The FBO lease? You have to answer. You  
19 can't shake your head.

20 A Oh, well, again, I don't know if it's the  
21 FBO lease or if it's one of the other leases.

22 Q Okay. And door height an example. So he  
23 told you that one of the things that was changed in  
24 the minimum standards was door height and that means  
25 of a hangar, correct?

1 CONFIDENTIAL

2 MR. YOULE: Objection to form.

3 A You know, I think it's talked about in  
4 here a little bit further.

5 Q (BY MR. HAYNES) Okay. We'll get to that.

6 A Since we're going to be going by.

7 Q And he says, "We changed the minimum  
8 standards." What understanding did you have, if any,  
9 about who we is?

10 A Like I said, he used the word we. He  
11 didn't identify who we was.

12 Q Did you understand that whoever the we is  
13 included Kevin Scott?

14 A Well, let's get a dictionary out or a  
15 thesaurus and figure out what the definition of we  
16 is.

17 Q I'm just asking about your understanding.  
18 I don't care what the dictionary says.

19 A Well, using the word we, I believe that he  
20 was including himself in the we.

21 Q Okay. And let's see, the next note is,  
22 changes made to make the competitive advantage Black  
23 Canyon's. And that's what Mr. Scott told you, or at  
24 least that's what you heard him say, correct?

25 A Well, that's what I wrote down. So --

1 CONFIDENTIAL

2 Q Okay. You don't have any reason to think  
3 that note wasn't accurate, right?

4 MS. MUSGRAVE: Object to the form.

5 MR. YOULE: Also objection for lack of  
6 foundation.

7 Q (BY MR. HAYNES) You don't have any reason  
8 as you sit here today to think that your note was  
9 inaccurate, do you?

10 A No.

11 Q Let's see. Next is KS, that's Kevin  
12 Scott, correct?

13 A Yes.

14 Q Provided the lease to Montrose County, has  
15 over 50 in his file. Drafted lease to their  
16 advantage after many strategy meetings with -- BP  
17 means Bill Patterson?

18 A Yes.

19 Q JR means Jim Rumble?

20 A Yes.

21 Q And KE means Kevin Egan?

22 A Yes.

23 Q Okay. So Mr. Scott told you that he  
24 provided at least one of CCP leases to the county;  
25 that's what he told you?

1 CONFIDENTIAL

2 that's what JCP was paying.

3 Q So was Mr. Scott telling you that that  
4 concession fee was put in place because Jetaway had a  
5 bigger hangar and therefore would have to pay a  
6 higher fee if they got an FBO?

7 MR. YOULE: Objection to form.

8 Q (BY MR. HAYNES) You can go ahead and  
9 answer.

10 A Every time somebody objects, I'm waiting  
11 for somebody else to object to figure out if I'm --  
12 okay. Read the next -- that's what he said.

13 Q Okay. And then he says, Didn't have a  
14 hangar for two years. Is that a reference to the  
15 fact that when JCP first got -- first opened as a  
16 FBO, they didn't have a hangar, at least that still  
17 had to be built?

18 A Right.

19 Q Okay. And then the next one is, Did this  
20 because JA had a very -- and that means Jetaway  
21 Aviation?

22 A Yes.

23 Q -- had a very large hangar. Penalized  
24 them with the fee. Needed a fee structure that would  
25 negatively impact, again, Jetaway Aviation?

Friday  
7/24/09

Kevin Scott  
3:07 PM 512-608-9081

6:20 PM 2001 - series of meetings w/ Commissioners

Letters in 2002 & 2003 followed

(Betsy, Leo, Dave U)

- ✓ Rumble & Scott - friends - Santa Fe BP & Air BP / became
- ✓ Mike Delk - Valley Partners - merged w/ Airlines
- ✓ Bains supplied ~~WPA~~ fuel to 200 - 200 FBO
- knew Rumble via Santa Fe - hangared a plane in Santa Fe
- ✓ Rumble knew Egan from Santa Fe
- ✓ Rumble brought Egan to the table -
- ✓ Egan - no connection to the FBO business
- ✓ loaned money to Rice Labs, WI
- FBO - took ~~not~~ not in the fuel business - only maintenance - interest + 10% of what they sold
- ✓ 2001 - lots of discussions about privatizing FBO - nothing happened -
- ✓ letters in 2002 & 2003 had no results
- ✓ Kevin stayed on for a year after Valley oil sold
- ✓ Kevin retired / Delk still CEO - Air BP
- ✓ Rumble wanted the ~~privitized~~ privatized
- ✓ Jim Felt there needed to be a political change to make this happen
- ✓ Shortly after that, Rumble said that he would run for Boce

EXHIBIT  
2

EX 11

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- 2 -

- ✓ Rumble - moved back to Montrose -  
run an electric bike shop, ATM, etc.
- ✓ Decided not to run for BCC, but got Patterson interested
- ✓ Agreement on the sale - KS will not  
say anything disparaging about KE. -  
Rumble & Scott were buying out KE &  
also KS & KE were buying out JR -  
not the same story twice
- ✓ KS - worked w/ a lot of municipalities,  
counties, port authorities, etc. but has  
"never seen where a private entity has  
received so much help from a public  
entity"
- ✓ Almost lost self interest of the county  
because of how far the county went to help th
- ✓ the Board changed - Bill & Allan - elected
- ✓ FBO chances changed - Bill huge supporter
- ✓ shortly B&A they took office, B&A met  
w/ KS, KE & JR - Run
- ✓ Rumble helped pushed Patterson over the top
- ✓ KE - agreement was an investor only -  
operating agreement didn't provide for him  
to be involved on a day-to-day basis.
- ✓ Promises made - yes / (won't comment)  
but deliverables addressed
- ✓ Interviewed / Q&A session
- ✓ Rumble & KS - met - nothing for KE to  
invest in until RFP was let & awarded

- 3 -

- ✓ clearly thought that they were favored -
- ✓ firm arranged for the meetings w/ the commissioners
- ✓ Jetaway - great field location - best spot on the airport
- ✓ part of the landscape - Jetaway - knew they were open & operating, but had inside help
- ✓ KS didn't meet Stuhmer until just Bt he left
- ✓ didn't meet w/ Al & Sandy Head until they were a year into this
- ✓ partners - not fond of talking to Al & Sandy spoke to them once near time before he left Montrose
- ✓ We changed the minimum stds. before the lease was signed - door height an example
- ✓ changes made to make the competitive advantage Black Canyon's
- ✓ KS. - provided the lease to Montrose County - has over 50 in his file - drafted lease to their advantage after many strategy mts w/ B.P. JR, KE
- ✓ Given the opportunity to write a lease that was in his best interest - knew he had the advantage & that county was not in the best position as this was new territory for them
- ✓ talking and working w/ Bill Patterson during this time
- ✓ lease - designed to disqualify his competitor

- 4 -

- ✓ Been working w/ Bill for a number of months
- ✓ Allan Belt had no part of this other than MTS after the election in 2004
- ✓ NOT going to find terms like those in their lease anywhere else for any FBO - he can guarantee that
- ✓ Reality - receiving \$250K a yr. -  
receiving a contingent liability of \$100K -  
will come out of the future revenue stream of the airport
- ✓ Put in a bid - F.A. - 330K - BCFC = \$250K
- ✓ Remedied it - came up w/ a recoupment formula that "loaned" MTS \$100K a yr. via a Fuel Storage Fee - repayable after an est. 7-9 yrs.
- ✓ 1990 - 300K gallons sold of fuel -  
can extrapolate data over 20 yrs  
a little math can determine how long you're going to ~~get~~ need to get a repayment on your loan
- ✓ 7-9 yrs. - overpayment then becomes a contingent liability  
actuarial models will show how & when this will happen
- ✓ accumulating a debt  
\$100K = a debit against future revenue  
when volume hits 2.5M gal a yr. - need to carry this on our books.
- ✓ should have a conting. liab. on our balance sheet

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- ✓ MTF getting 7 yr. interest free loan - and then will have to pay back - 30 yrs. + 10
- ✓ \$5,000 hangar concession fee - no such thing in the FBO world! - didn't even have a hangar for 2yrs!
- ✓ Did this because J.A. had a very large hangar - penalized them w/ the fee needed a fee structure that would negatively impact J.A.  
50-30-150 (FAA Advisory Circular) - grant assurances / min. stds.
- ✓ Kevin S. worked w/ these leases, etc. - 20-25yrs.
- ✓ lot of language - favored nation status, was written in - Hill never questioned it!
- ✓ worked primarily w/ Bill P. who then took things to <sup>staff</sup> <sub>back</sub>
- ✓ Bill was trying to get things done quickly - Mead & J.A. pushing hard at the same time - slowed down scrutiny & let thing slide <sub>through</sub>
- ✓ Bill P. intimately involved in the lease - just B4 the lease was signed, Bill was pushing it through
- ✓ KE. is concerned w/ liability, ownership, control, etc.
- ✓ very different philosophies between KS & KE

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Autry

- ✓ desire to separate liability & compartmentalize himself & partners from future liability
- ✓ helicopter logging, fire fighting businesses - KE involved in these prior to FBO fuel - used to the liability & told KE to not be too concerned
- ✓ KE - oriented toward a more complex governing organization - very different approach than K.S.
- ✓ Chris Cuneo - KE personal attorney - became so involved - KE personal interests - became apparent that C.C. was working in KE's best interests vs. the partnership
- ✓ Normally, a business this size doesn't need lawyers like KE wanted - C.C. fired by K.S. because of conflict of interest
- ✓ Gordon Autry - longtime friend of Bill Patterson - has street cred w/ FAA - Bill felt he could tap into FAA via Gordon
- ✓ There was interest by KE to bring others on board (in Montrose) to solidify their position
- ✓ KE fired FR - KE wanted to fire FR too - FR is the local guy who can deliver the political goods via Bill P.
- ✓ Pure speculation that G.A. would be a better partner than FR

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- ✓ K.E. hired a PR. firm - Denver - watched blogs, articles, etc. - would write letters formula letters to sway the political climate through the newspaper
  - ✓ K.S. fired them - (PR firm) - didn't want to operate that way - unethical
  - ✓ Bill P. & G.A. worked very closely w/ each other -
  - ✓ K.E. wanted a close relationship w/ G.A. - ill advised to lobby FAA internally, but K.E. didn't recognize that reality & tried to push G.A. to make his connections in FAA work
  - ✓ Did Bill P. gain financially? G.E. asked K.S. - not that K.S. saw - wouldn't know if there was - but doesn't know if profit was there
  - ✓ The guy who put Bill P. in office by 100 votes. tries to take care of his friends - was J.R. knows who his friends & enemies are -
- 
- ✓ J.R. made a deal w/ the airport years ago & didn't keep the promises made - got thrown off Airport Board
  - ✓ Bill had a heavy interest - can't say there wasn't a lot of impropriety there. - w/c
  - ✓ Doesn't think there wasn't a financial payoff to B.P.
  - ✓ Kase, min. Stds, knew what went on all the time, mediation included - Bill reported everything to them (K.E.K & J.R.)

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✓ County's interest vs. JCPs — entirely different approach by Bill P. — was looking out for JCP on County

✓ Joe Kerby —

① Would we be better off w/ out privatization —

"Should County have privatized?" —

K.S. — NO!

private business will have list rates that will drive airlines out (eventually)

② What happened @ the last minute w/ K.E. & K.S.?

a. County had refinanced the airport to the tune of a \$1m ramp — never should have been done that way

b. FAA would have eventually paid for the ramp — better to have not had the county pay for it, but plan was to have county take on the project directly

a. FBO — not there to help the county

Fet Away donation — JCP went to the county & promised not to sue the county IF they became a part of the process wanted to influence the outcome in their favor

clear benefit to the county to have Fet Away as a FBO

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- ✓ going to give F.R. the best advantage through the process - had the intelligence <sup>- call from</sup>
- ✓ KS - not willing to sue the county because of all they have done for us - KE had totally opposite point of view
- ✓ the day KS left, KE said he would sue the county if they negotiated w/ F.A.
- ✓ Expected the county to make a deal w/ Fether
- ✓ KS wanted to make a deal w/ the county

✓ F.A. deal overwhelmingly in the county's favor

✓ Would have been paying 250k each for a total of 500k <sup>current</sup>

✓ KE proke the back - to K.S. noway <sup>advice would</sup>

✓ KE has \$2m investment w/ F.A. <sup>worth</sup>

✓ Monopoly bus. - worth \$10-12 million <sup>2.4m</sup>

✓ Rifle, CO - sold to Atlantic for \$14m

- KS still cannot see how we could turn down the deal F.A. offered - it was in the best interest of the county
- ✓ Bill P. very much wanted KS to leave
- ✓ KE & F.R. to stay

(K.E.)

-10-

- ✓ thought that Scott Brownlee should be fired — Brian Mageon <sup>of county</sup> too!
- ✓ Discussion of mediation between K.E. & K.S. county went way overboard in trying to help them & F.S. said he would not sue Montrose County, but K.E. wouldn't go along w/ K.S. direction.
- ✓ Charlie Ferraire was gen. mgr. — Bill told in general terms, what was going on — mediation, etc. — Charlie would tell if asked.
- ✓ The smaller the town, the bigger "the enemies"
- ✓ At Head — big Bill P. Roe — longtime bad blood between them
- ✓ K.E. — if Steve Stahmer goes into bus., then they're going to sue the county for a breach
- ✓ Fundamental disagreement w/ how we work together with the county — led to the dissolution of the partnership
- ✓ Feels that Bob Hill knew that the ramp deal, hangar fee, etc. were all to FCP's advantage
- ✓ traded parcels to break up all available on airport parcels so that they could never put \$50M in place to make a FEO desirable

- 11 -

- ✓ Aspen solution — make a junk piece of property available that would cost millions to develop / if ever (Aspen site is a toxic dump)
- ✓ 9.62 acres — "you know you're gaming them" — hostile neighbors, no taxiways, no infrastructure, poor dirt, no access to activity on West side
- ✓ Gary — ramp vote: — shouldn't have done it
- ✓ K.S. — Gary got played — deliberate attempt to take advantage of Gary on ramp vote. Had a pile of momentum — Denver lawyers had spent time (a year) putting this together couldn't stop the inertia. — Bob H. called
- ✓ Bill wanted to get rid of Scott B. — Scott was an impediment to Bill P. — had to get rid of him
- ✓ MEDC — was pushing very hard for Get-Away — Al Head & Sandy — long time political bad blood — Bill P. — almost a hatred for each other
- ✓ No ignorance on Bill's part  
Aspen solution — Bill, K.S., KE JR. — dreamed up — Superfund site @ Aspen — could never develop — yet FAA did as well
- ✓ Michael Hodges — a friend of Jim Rumble — Rumble went to Patterson & then to Booc
- ✓ worked on the Aspen Solution way before he left (K.S.) — 9.62 acres was planned as the Aspen solution site @ MTF

(12)

- ✓ People on a gut level feel that something didn't smell right
- ✓ controversial — not above board — general sense that the whole deal didn't pass the "smell test"
- ✓ Wrong to ask the county to do things that aren't in their best interest — that's where K.S. & K.E. went off the tracks w/ each other
- Tucker Troutman — spent a lot of time working w/ Magon & Hill → co-opted them & they worked for him via collaborative effort
- Strategy → keep picking Steve Stuhmer — get the County to keep picking him (J&J) to keep having over-reaction & do stupid things to irritate matters
- ~~Bill~~ — told Bill, Alan & Gary that if there was an outcome, that he wouldn't sue
- Can't sue based on someone's damages — only yours
- If B.C. & C. had bought a lot in the Aerospace Research Park, then they'd be damaged if they changed the covenants to favor J&J
- At the end of the day — we must do what is in the best interests of the county.
- Fundamentally, Steve Stuhmer was at a disadvantage — could never overcome
- Unholy effort made on County's part to make Stuhmer's life difficult;

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- ✓ OFA - K.S. doesn't believe that the Jetway bldg. is in it - TERPS manual - 800 pgs. long - UNLESS you have reclassified the taxiway, the bldg. shouldn't be in the OFA
- ✓ Taxiway reclassification was discussed by K.S., KE, JR, BP in order to put bldg in the OFA - No correlation between runway category & taxiway centerline offset affects the OFA - <sup>way</sup>
- ✓ Ask Bob Hill if you've done any changes to the A.L.P. in the last 3 yrs. - When was the A.L.P. changed? Hill knows.
- KS: ✓ Category of the taxiway isn't related to Runway classification - a runway handling a 747 doesn't mean that the 747 was a taxiway or it
- ✓ KE/JR taxiway isn't categorized for 757, 747, etc. - lower category would apply
- ✓ Looked @ every way to keep Jet Away from competing - nothing was overlooked during frequent meetings
- ✓ When was the A.L.P. last changed, who changed it & why? Ask Bob Hill \$100 - bet lawyers changed the A.L.P. - Hill & Inagoon - a legal maneuver to keep F.A. from competing
- ✓ Everything originated w/ Bill P.
- ✓ If you want to keep him out of business, then we

- ✓ Scott Braintree - person of character; thoughtful guy - knew he couldn't keep Jetaway out - tried to anticipate what would happen - Bill knew
- ✓ Large conflict w/ Kevin's - commitment in lease - no encumbrance w/ the FBO terminal bldg.
- ✓ Egan wanted to borrow the money to do the FBO terminal on a loan so that leverage would be in his favor using the bank's leverage - if the county went out & let Jetaway on the airport Egan could default (or threaten) in order to get Logan & Gibson (Montrose Bank) to put heat on the BOCC to block Jetaway - blackmail tactics.
- ✓ Tried to use a U.S. Senator to influence the Part 66 outcome - Egan stops @ nothing to win
- ✓ Deal w/ Steve Woody to financially benefit from the JEP controversy - wouldn't say how much
- ✓ Millions of dollars at stake here -
- ✓ Noelle Hagan - big player - spent a lot of time on this - Egan
- ✓ Bill was going to recruit people to run for City Council - put \$1M
- ✓ Substantial amount of support for Steve Woody - her camp
- ✓ entree - Woody angry w/ Allan Belt - who worked hard on this
- ✓ Bob worked for Bill - very influential w/ Egan - Bob in unenviable position - took a beating

Sunday, 7/26/09, 7:00PM his time  
 Called Kevin Scott - got answering machine  
 Called back @ 7:32 - spoke until 12:43AM MDT  
 returned call @ 8:35AM

QUESTIONS

- ① BCPC > separate corps - why? violated lease, etc.
- ② Bob Hill - involvement?
- ③ Steve Woody - how was he to benefit?
- ④ Current plans - how will they be discredited w/ us?

Bob Hill

- ✓ early on more cautions - Bob didn't want to do things, but Bill P. pushed him & ultimately Bob did things he shouldn't have
- ✓ didn't know extent that Bill was feeding info to BCPC until they were into the contract more
- ✓ Bill would tell Jim R. & Gordon A. things <sup>directly</sup> ~~secretly~~
- ✓ left the JCP relationship when Bill had totally & continuously crossed the line
- ✓ Bob had a lot of pressure to do the lease from Bill P.



✓ Bill wanted Bob to get the lease done & done  
straight away - put an enormous amount of  
pressure on him

✓ Min Sids. - knew that they could control  
situation if they could write them to their benefit

Land Reg'd  
How big a building } discussed w/ Bill  
Height of doors  
Fuel flows

✓ Bill didn't want to own lease & min. sids  
together - had to break them up to make  
them appear to be totally separate

✓ Ends justified means - wanted F.R. & K.S. to  
be the only ones on the field

✓ Had a mindset that they were good guys &  
stunner the bad guys

✓ 1st idea (F.A.) against - how to force F.A. out  
- put out of bus based on safety issues

- threatened AV Fuel - (Edem did)

✓ KE - threatened many others working w/ stunner

✓ KE - tries to charm you - if he can't - turns  
on you - threatening you

- 3 -

- ✓ Bob knew what was going <sup>on</sup> but didn't want to upset his job
- ✓ Bill was always cordial, likeable, good politician - could bring you through
- ✓ Bill wasn't going to let anyone get in his way - Scott Brownlee is an example - intimidated (no doubt) Bob Hill - saw what happened to Scott
- ✓ Dennis Hunt - wanted to work through the merger but, Bill told K.S. after the election of BK the swearing in that Hunt would go away
- ✓ Hunt was a problem - wanted enough money to pay costs
- ✓ Dennis Hunt - was an obstacle to making the deal happen - Bill had to get rid of him
- ✓ Dennis wanted to see that there was going to be sufficient revenue to carry the airport through
- ✓ K.S., B.P. - had to have the financial advantage over PA, ultimately the county
- ✓ Scott B. was under a lot of pressure from Bill P. to do things his way including unethical stuff
- ✓ Goal - get the job, make yourself appear to be reasonable, but make Det. know the "bad" guys - full time job for these guys!

-4-

- ✓ obviously a lot of help getting the bid -
- ✓ B.C. knew everyone on the selection committee - knew how the vote was going to go - Bill orchestrated the committee & those who served on it & had info. Fed to him by committee members (behind the scenes info.)
- ✓ When Bill broke mediation (told Gordon & K.S.) what was going on - told K.S. at one point when to sue the county - "they're not scared enough" - a month later he left the FCP partnership.
- ✓ B.P. stopped talking to K.S. 2 mos. later he left (leaving B.P. & K.S. in a bind)
- ✓ Bill is smart - looks ahead: (2 or more steps) and always has a plan in place for how to handle trouble
- ✓ Bill has always aspired to bigger things - good @ fundraising, political animal - a good politician
- ✓ Bill P. - lost because of the smell test - doesn't believe Wallace or Henderson made B.P. lose
- ✓ Lease - never exposure because of no legal description - anytime Stuhmer expressed an interest, they would derail him because of the lease & say land was a part of BEFC lease
- ✓ Virtually every site was taken under the guise of the lease
- ✓ 2 separate FBO sites on Masterton - where FBO is now where hangar is now - tied both up w/ FCP



- 6 -

- ✓ Ramp was for the exclusive use of BOJC
- ✓ Should have been a leasehold improvement
- ✓ K.S. was very impressed that Bill got it through in record time
- ✓ G.E. - they were afraid of him - had to compromise him so he wouldn't catch on
- ✓ Could have done ramp in asphalt for 200K - wanted to get it done quickly - winter time - no choice but to use concrete
- ✓ Were trying to avoid questions - Bill got every resource in county involved
- Bid process probably didn't meet criteria
- ✓ Brought in County P&B crew before it went out to bid - almost impossible to get done in 2 mos.
- ✓ No bid deal - construction co. picked based on getting it done in winter all poured concrete ramp - no asphalt
- ✓ Paved part of Friedkins because they sent Tom Friedkin's lawyer over & wanted his ramp paved (flew in from Houston) (Keith Evans - head of flight dept., property manager, lawyer, etc.)
- ✓ Friedkin's lawyer, Bill P., K.S. sat down w/ Bill P. to discuss

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"A complete service job"

- ✓ said you're using public money to use for a private leasehold - Bill agreed & wanted to avoid a Fight
- ✓ Met in Airport conference room - agreed to a combination of things - paving ramp; deal made to keep them quiet by allowing Frieden to park on FCP property
- ✓ K.S. - took Tom's pilot to lunch; called Tom Frieden to ask him to keep quiet w/ paving of ramp - didn't want this to get out to public
- ✓ Steve Woody - benefited personally & businesswise - "had his kitchen remodeled" has gotten a lot of money out of this deal all the way around
- ✓ there is no ethical conflict - money is his motivator (S.W.)
- ✓ Egan & Woody & political operatives - has to keep paying them to keep beating <sup>Booc</sup> Stuhm
- ✓ Goal to make something look larger than it really is - done to offset the perception of something bigger than it is
- ✓ About 50 people in the entire county care about the airport - no one else!

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- ✓ Most people just want to buy an air line ticket & go somewhere, they don't care about GenAvid
- ✓ Job of writers & bloggers is to make the Bacc think that this is what the citizens believe & that the threat to them & the county is real - nothing but a scam
- ✓ Stummer - keep moving the goal posts - that's how they kept baiting Steve S.
- ✓ Bivi quoted IN Daily Press as saying hold take it for a while if they donated the land
- ✓ Steve gets wrapped around the axle because he played right into them - he overreacts & they know when they've got him
- ✓ A lot of this is pretty dirty - more dirty than he can say

Airport  
supp  
square  
bank

- ✓ No bid deal - bought equipment for NBTRW - Refused to sell to Stummer - not a part of the lease deal -
- ✓ They named the price - not county!
- ✓ KS - \$50K for GPU, 1000 bars (worth 20 fuelers) sold fueler for \$85K - how much?
- ✓ Bill made the deal - asked K.S. - Kevin -
- ✓ \$50K for truck - 10K for balance
- ✓ 6K GPU - bought for \$2K -
- ✓ Stummer objected - County said no we don't sell to you - not in RFP

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- ✓ County could have sold fuel for \$5-100K - in good shape
- ✓ County was happy to have Stuhmer's hangar B4 B.P. & FCP came along
- ✓ Good for County to use Stuhmer - shared equipment in spite of Stuhmer not providing fuel - he brought his equipment over for County to use - fueled out County - fueled planes on his ramp - had a working relationship.
- ✓ When Bill showed up - County shut Stuhmer down
- ✓ Charlie Ferrac - running FBO in San Diego - lives on a boat in San Diego harbor (at big airport) was old manager @ FCP
- ✓ Scott Brownlee - get him on the stand ~~there~~ he'll tell the whole truth - it won't be pretty for B.P. or County
- ✓ Doesn't think Stuhmer is a smart guy, but agrees he is pissed & has a right to operate under a FBO lease  
 County employees were working @ (get away)  
 Stuhmer did everything County didn't want to

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- ✓ ICS - deal could have been made - give Stuhmer a fuel truck & let him fuel his customers only - he didn't want fuel airliners
- ✓ No doubt county screwed Stuhmer"
- ✓ "You have to give land for free" then they changed & added items - always jerking him around.
- ✓ deal could have been made - <sup>air</sup> D.P. in Spring of 2006 - if F.A. agrees to come onto the airport - then we have no choice to bring them on as a FBO<sup>n</sup>.
- Bill Paterson said:
- ✓ How can a County deny him when he wants to donate the land & building
- ✓ No one ever told Steve what the rules & when they finally did they kept changing rules & requirements
- ✓ Kept jerking him around - job of the day - he has been poked a lot
- Stuhmer - not a good guy, but has never been treated fairly
- ✓ This whole thing is dirty
- ✓ If this goes to deposition, not good for the county
- ✓ work a deal out! Avoid depositions & court

-11-

- ✓ They bid #220K - J.A. Bid #350K - BCFC won
- ✓ Committee was stacked by B.P. in their (FCP's) favor
- ✓ Chance to rebid J.A.'s proposal - never saw it but got a lot of information fed to them - in essence they rebid the proposal to be the winner
- ✓ Irrational that he hasn't given up, but K.S. admires him for keeping on fighting
- ✓ driven by an emotional hurt & is not going to give up
- ✓ It was an unfair deal
- ✓ it was a corrupt process with a pre-ordained process laid out from the start
- ✓ J.A. had been working for the County for a full yr. - though he had a relationship for the hanging of planes & maybe an FBO
- ✓ Mid-field site Stehmer has TS by far the BEST site for an FBO - all big things jets use 17135 - you want to be mid-field at a high speed exit to get their business. Too much money to taxi a GS to current FBO



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- ✓ Egan has a lot on the books that he's not able to justify -
  - ✓ Steve Woody - payoffs
  - ✓ Denver Political Operatives - how much info,
  - ✓ Bob Connor & other locals
- ✓ Will try to sell us on the fact that he was invested much of his personal capital in this - bogus - kevine, isn't very wealthy at all
- ✓ Kevin will not lie to a judge if deposed he will tell all of this & more
- ✓ Rumsfeld would pay Steve Woody off w/ cash taken out of the bill!
- ✓ Egan wanted J.P. fired @ mos. into the deal!
- ✓ R. claimed to know KE for yrs. - not true - would see him while in Santa Fe, but never knew him until he put this deal together
- ✓ AZIO Goldsmith Hearn - investment counselor hired to reorganize ManPower Int'l - left board
- Got a job w/ AZIO - got a voice mailbox - where he was given a title - not an office
- ✓ Lazard Middlefield bought AZIO 2 yrs ago allowed Kevin to keep his job - he's to bring companies to them & he'd be paid

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- ✓ Kevin took over PrimerNet - bought a lot of businesses w/ leveraged money - bankrupt Jim & family
- ✓ Santa Fe case - a couple of guys w/ buzzwords creating buzzwords Synergy - looking for companies to buy
- ✓ Never managed Ficulake PBO - he lies!
- ✓ PrimerNet used his family's money - bankrupted them 2-3 yrs later
- ✓ S.P.A. - not a real business
- ✓ Kevin Egan & Chris Cuneo go way back - Cuneo is paid hourly - Egan thinks he is big league w/ Cuneo
- ✓ Regina (Egan) wife said one night @ dinner that she had to have the wall in his home office sound proofed so she wouldn't have to listen to him scream & yell @ people. K.S. thought it was a joke, but now knows she was serious!
- ✓ When K.S. joined P.R. firm KE hired, KE called K.S. @
- ✓ Said that he hopes we can reach a settlement in this case, because if not it could get very ugly
- ✓ told him that someone could go to jail - agreed - bribery, extortion, etc. have put plenty of people there!
- ✓ Said he had to get some sleep & said goodnight

July 13, 2006

John Suthers  
303 Old - 3557

8:40 AM

Alisa Babler

210 - 1497

9:22

10-12:00 apt.

7/27/06

Attn:

Scott Wagner

From:

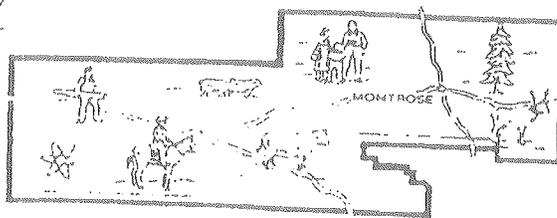
David White

24 pages

# MONTROSE COUNTY

BOARD OF MONTROSE  
COUNTY COMMISSIONERS

P.O. Box 1289  
Montrose, Colorado 81402  
Phone (303) 249-7755  
FAX (303) 249-0757



September 2, 1993

NEW RELEASE

The Montrose County Commissioners have removed Mr. William N. Petterson from his position on the Montrose County Airport Authority. Mr. Petterson was removed from the Authority for in the opinion of the Commissioners not serving the best interest of the community and the Montrose Regional Airport. Mr. Patterson's replacement will be appointed in due course.

Yours very truly,

MONTROSE COUNTY COMMISSIONERS

Robert D. Corey, Chairman



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. \_\_\_\_\_

JETAWAY AVIATION, LLC, a Colorado Limited Liability Company.

Plaintiff;

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MONTROSE,  
COLORADO; MONTROSE COUNTY BUILDING AUTHORITY; a Colorado Nonprofit  
Corporation; JET CENTER PARTNERS, LLC, A Colorado Limited Liability Company;  
BLACK CANYON JET CENTER LLC, a Colorado Limited Liability Company; WILLIAM  
PATTERSON; KEVIN EGAN; AND JAMES RUMBLE;

Defendants.

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COMPLAINT AND JURY DEMAND

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I. INTRODUCTION

Plaintiff, JetAway Aviation, LLC ("JetAway") alleges as follows:

1. This case arises from the improper and unlawful acts undertaken by the Defendants to establish a private monopoly fixed base operator ("FBO") at the Montrose Regional Airport ("Airport") and to prevent JetAway from having a fair opportunity to compete for the business of general aviation using the services of an FBO at the Airport originating from both within and without the State of Colorado. This conspiracy to restrain competition was entered into by and among Montrose County ("County"), the operator of the Airport, Montrose County Building Authority ("MCBA"), the owner of the Airport, William Patterson ("Patterson"), a member of the Board of County Commissioners of the County of Montrose ("BOCC") and President of MCBA, Jet Center Partners, LLC ("JCP") the holder of the present

monopoly FBO by contract with the County, Black Canyon Jet Center LLC ("Black Canyon") which operates the present monopoly FBO, Kevin Egan, principal owner of JCP and Black Canyon and James Rumble, a member of the Board of Planning Commissioners of the City of Montrose and a principal owner of JCP and Black Canyon. Among the acts in furtherance of this attempt to monopolize and conspiracy to restrain trade are the grant of a defacto monopoly FBO franchise by the County to JCP/Black Canyon in part at the instigation of Patterson, the illegal funding by MCBA and the County of improvements to benefit JCP and Black Canyon without adequate consideration in return, also at the instigation of Patterson, a pattern of litigation and administrative proceedings intended to prevent JetAway from competing against JCP/Black Canyon as an FBO, a refusal to consummate a settlement agreement to permit competition reached in FAA mediation and the use of the County's regulatory powers to put JetAway out of business. As a result of the improper and unlawful acts of the Defendants and co-conspirators, JetAway has been deprived of an opportunity to compete freely and fairly for FBO business, and has lost millions of dollars worth of business. By this action, JetAway seeks both injunctive relief, to stop the improper and unlawful conduct from occurring in the future, and damages to redress the injuries which have already been caused.

#### I. JURISDICTION AND VENUE

2. This action arises under Sections 4 and 15 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for violations of the antitrust laws of the United States. This action also arises under 42 U.S.C. 1983 for the deprivation of rights guaranteed by the Equal Protection Clause and Commerce Clause of the U.S. Constitution and by federal statutes. The jurisdiction of this court is founded on those sections and on 28 U.S.C. § 1331, which provides this Court with original

jurisdiction over actions arising under the laws of the United States, and 28 U.S.C. § 1337, which provides original jurisdiction over any action arising under federal laws regulating commerce or protecting commerce against restraints and monopolies.

3. Venue in this judicial district is proper under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, and Section 1391 (b) and (c) of Title 28 in that all defendants transact business or reside in this judicial district and are subject to personal jurisdiction in this district under 28 U.S.C. §§ 1391(b) and (c); 15 U.S.C. §§ 15 and 22.

4. The Defendants are engaged in, and their activities substantially affect, interstate and foreign commerce through their activities at the Airport, including its operation and maintenance by the County and the FBO operation of JCP/Black Canyon. In addition, Defendants have solicited business through the United States mail and other instrumentalities of interstate commerce.

## II. PARTIES

5. Plaintiff JetAway is a Colorado limited liability company whose principal place of business is located at 1 Creative Place, Montrose, Colorado 81401. JetAway operates Montrose Jet Center, providing aeronautical services to general aviation at the Airport.

6. Defendant The Board of County Commissioners of the County of Montrose, Colorado ("BOCC") is the governing body for the County, which is a governmental entity located in the state of Colorado. County leases the Airport from MCBA and operates the Airport.

7. Defendant MCBA is a Colorado nonprofit corporation, whose principal place of business is located at 161 South Townsend, Montrose, CO 81401. MCBA owns the Airport and

leases it to the County. MCBA also finances improvements for the Airport and JCP/Black Canyon.

8. Defendant JCP is a Colorado limited liability company with its principal office in Albuquerque, New Mexico, doing business at the Airport as Black Canyon Jet Center, providing FBO services to general aviation, pursuant to a contract with the County.

9. Defendant Black Canyon is a Colorado limited liability company with its principal office in Albuquerque, New Mexico, and its principal place of business located at the Airport. Black Canyon provides FBO services to general aviation at the Airport, pursuant to a contract with the County.

10. Defendant Patterson is a resident of Montrose, Colorado who is a member of the BOCC and President of MCBA. At times pertinent to material allegations of this Complaint, Patterson was Chairman of the BOCC. Patterson's involvement in the affairs of the Montrose Airport date back to the early 1990's when he was Treasurer of the Montrose County Airport Authority. In undertaking the actions described in this Complaint, Patterson has been acting outside scope and authority of his duties as a public official.

11. Defendant Egan is a resident of Santa Fe, New Mexico and directly or indirectly is the principal owner of JCP and Black Canyon.

12. Defendant Rumble is a resident of Montrose, Colorado, is directly or indirectly also a principal owner of JCP and Black Canyon and a member of the Board of Planning Commissioners of the City of Montrose. Rumble's involvement in the affairs of the Montrose Airport also date back to the early 1990's when he was the principal owner of a previous, now defunct, FBO at the Airport called V.I.P. Flyers, Inc.

#### IV. GENERAL ALLEGATIONS

13. The County controls and operates the Airport. The Airport serves both scheduled airlines and general aviation. The County provides most Airport functions, including scheduled airline services, but general aviation facilities or services in support of general aviation are outsourced, provided by a fixed base operator ("FBO").

14. At one time the Airport FBO was a company known as VIP Flyers, Inc. ("VIP Flyers") whose principal owner was Rumble. In 1991, the former Montrose County Airport Authority sued VIP Flyers in connection with its FBO operation at the Airport for violations of the Airport's Standards and Regulations for Commercial Aeronautical Services and Activities, United States Department of Transportation, Federal Aviation Administration, Airport Compliance Requirements. Order 5190.6A, Montrose County Airport Certification Manual Standards, and United States Department of Transportation, Federal Aviation Regulation, Part 139. An Order of the Montrose County District Court dated May 16, 1991 upheld the termination of VIP Flyers' contract to sell fuel and permanently enjoined and restrained VIP Flyers from the storage, dispensation and/or sale of aviation fuels and oils at the Airport.

15. After VIP Flyers was terminated as the Airport FBO, those functions were taken over by the County.

16. In the early 1990's Patterson was Treasurer of the Montrose County Airport Authority, which at the time operated the Airport. Patterson was removed September 2, 1993, from his position by the BOCC for "not serving in the best interest of the community and the Montrose Regional Airport."

17. In 1994 MCBA was incorporated. Montrose County transferred title to the

Airport to MCBA and then entered into a twenty (20) year lease of the Airport from the MCBA. Montrose County continues to operate the Airport pursuant to this lease. The County pays rent to the MCBA out of the County general fund.

18. JetAway acquired its facility adjacent to the Airport in 2004. JetAway has a "through the fence" agreement giving it and its customers direct access to Airport taxiways and runways, acquired by assignment from a previous owner of its facility. Montrose County inserted language in the assignment prohibiting JetAway from selling aviation fuel when the assignment was approved by the County in a public meeting of the BOCC. At the time this "through the fence" agreement was originally entered into the County was the exclusive supplier of fuel at the Airport and remained the exclusive supplier when the agreement was assigned to JetAway. The County was the exclusive fuel supplier until the FBO was privatized.

19. JetAway operates a 75,000 square foot climate controlled hangar and a 25,000 square foot well-furnished FBO terminal building. At the time JetAway began operations in 2004, the County provided only limited general aviation services, primarily the sale of aviation fuels out of a doublewide trailer, which JCP/Black Canyon continues to operate out of to this day. JetAway provided virtually all other aeronautical services to general aviation at the Airport in 2004 and 2005, and still does. JetAway's business was lucrative and profitable, before the events described below occurred.

20. In early 2005 the County agreed to lease land to JetAway to build an additional aircraft parking apron, or "ramp," adjacent to the taxiway in front of JetAway's hangar. This land lease Agreement (the "Land Lease"), finally executed November 7, 2005, was for 272,508 sq. ft. of undeveloped land, and required JetAway to build an aircraft parking apron on the land

at its own expense.

21. In early 2005 the County decided to "privatize" the FBO operation at the Airport.

22. jetCenters, Inc., which operates four FBO's in Colorado and the largest FBO at the Arapahoe County Airport, declined to bid for the Montrose FBO, stating in a letter to the BOCC the reason was: "because we believe JetAway's existing facility, infrastructure and location on the airport is one of the finest facilities in all of Colorado, and in fact, one of the best we have seen in the country."

23. At the time bids were being considered, JetAway had been in business providing general aviation services on the Montrose County Airport for over a year, JCP was a newly formed start-up company that had never operated an FBO, had no hangar for aircraft, and no FBO terminal facilities from which to do business.

24. As part of its bid package, JetAway offered to sell the County the land under its existing facility on very favorable terms, financed by JetAway with no down payment, and an immediate positive cash flow to the County as a result of the corresponding lease agreement JetAway agreed to enter into for the conveyed property. The land JetAway offered to sell the County would have put all of JetAway's FBO operations on Airport property. The property JetAway offered was not just any ordinary property, but was land already identified in the Airport's master plan as a potential FBO location and land specifically identified in the Airport's master plan for future acquisition by the County.

25. In August 2005, The County nevertheless awarded the FBO contract to JCP despite the clearly superior bid from JetAway, despite the fact JCP/Black Canyon had no hangar or FBO terminal facilities to conduct business from, and despite the fact Rumble's previous FBO

was permanently enjoined and restrained from the storage, dispensation and/or sale of aviation fuels and oils at the Airport. The County and JCP subsequently entered into the FBO agreement dated December 5, 2005 (the "Agreement"). The JetAway bid was superior in the following respects:

- a. Larger minimum annual payment;
- b. Guaranteed minimum annual payment adjustment (JCP's adjustment was dependent on fuel sales and gross receipts);
- c. Larger lease payments;
- d. Existing terminal building with 25,000 sq. ft. versus proposed future building of 4,000 sq. ft.
- e. Existing 75,000 sq. ft. heated hangar versus proposed 25,000 sq. ft. hangar;
- f. Total capital investment of \$9 million;
- g. Deployment of over \$1 million in moveable equipment, most already in operation;
- h. An existing operation versus a start up;
- i. Major aircraft maintenance and repair facility in place versus no maintenance and repair facility.

26. In May 2005, before it was awarded the FBO, JCP was told in writing by the County's Director of Aviation that "In the event of privatization of the FBO, the County would be obligated to allow additional FBO operators." JCP responded, in writing, that "Additional FBOs at Montrose would not necessarily change the viability of this opportunity provided the County maintained a level playing field for all operators."

27. Patterson was head of the committee that evaluated the FBO proposals and at the time was Chairman of the BOCC.

28. On information and belief Patterson received political support from Rumble in exchange for Patterson's support of the JCP/Black Canyon bid. Patterson is also motivated by personal animus, later telling JetAway's principal, "I'm gonna take this property from you," meaning JetAway's hangar, and "you will never pump fuel at this airport."

29. On December 5, 2005, just two weeks after the JetAway Land Lease Agreement was entered into, the BOCC entered into the FBO Agreement with JCP. The very next item on the BOCC public meeting agenda December 5, 2005 was an amendment of the Airport's "minimum standards" for FBO operations, changing the minimum leased land requirement from 125,000 sq. ft. to 350,000 sq. ft., which meant JetAway's recently leased land, which was more than sufficient to meet the old minimum standards, was no longer sufficient to meet the new Airport minimum standards. On information and belief this was a deliberate, planned and calculated attempt by Patterson and Rumble to render JetAway's recently approved and executed Land Lease insufficient to meet minimum standards required for FBO operations.

30. On December 9, 2005, JetAway made another FBO proposal to the BOCC. Since the County had balked at the opportunity to purchase JetAway's property, the property under JetAway's existing hangar and terminal facility, with no out of pocket expense, no down payment and an immediate positive cash flow, the December 9, 2005 proposal offered to donate an adjacent undeveloped parcel of land to the Airport, also at no cost to the County. JetAway further offered in this proposal to build a new hangar, FBO terminal and fuel farm on the donated parcel, all at no cost to the County, enter into an FBO agreement that was substantially identical

to the JCP Agreement, and convey all the new improvements constructed on the donated property to the County at the end of the lease term. On December 16, 2005, JetAway sweetened this offer by increasing the guaranteed minimum annual payment. In both proposals JetAway proposed, and requested a lease on an additional 191,080 sq. ft. of Airport land adjacent to JetAway's existing Land Lease, known as the South Tract, to meet the newly amended minimum standards.

31. The County responded to this proposal with vague statements about having to do "due diligence" regarding the land to be donated.

32. To eliminate any grounds for objection, JetAway made yet another proposal on December 17, 2005, this time to lease County land and build entirely new FBO facilities on the South Tract, which was County owned undeveloped Airport land located immediately adjacent to JetAway's existing Land Lease. The County's response was no response.

33. In a public meeting held March 20, 2006, the BOCC admitted on public record the JetAway proposal met all Airport minimum standards. The County, however, did not accept the proposal, but it never formally rejected the proposal either, and instead came forward with various excuses for inaction and has continued this course of inaction for nearly two years now. During this time the County was building infrastructure for JCP/Black Canyon, funded initially by MCBA and ultimately paid out of County general funds, at the taxpayer's expense, and doing everything possible to put JetAway out of business.

34. Initially, the County said it needed time to evaluate JetAway's through the fence agreement and have the agreement evaluated by the FAA. That was a red herring because JetAway's proposal was not to operate from off airport, but to move its operation to an entirely

new facility JetAway would construct on County owned Airport land. Every objection raised by the County has eventually been addressed and resolved by JetAway, but the Defendants still refuse to allow JetAway to compete as an FBO.

35. As it was required to do by the Land Lease, JetAway began site preparation to build its aircraft parking ramp. The County threw JetAway's contractor off the Airport and to this day refuses to allow JetAway to build on the specious grounds that if the ramp is built JetAway would somehow use it in a way that would violate the Land Lease.

36. The County sued JetAway in February 2006, seeking an injunction that would prevent JetAway from providing any aeronautical services of any kind. On February 17, 2006, the Montrose County District Court entered an injunction permitting JetAway to continue to operate in the same manner it had been acting previously.

37. The grant of an exclusive right to use an air navigation facility on which United States Government money has been expended is illegal under Federal law, 49 U.S.C. § 40103(e), with an exception not relevant here. Federal law also requires a recipient of Federal aid to give the Department of Transportation assurances not to grant exclusive rights to use the airport and to make the airport available to all kinds of aeronautical activities on reasonable terms and without unjust discrimination. 49 U.S.C. §47107(a). Since 1982, the Airport has been awarded federal grants of approximately \$36.7 million.

38. FAA Advisory Circular 150/5190-5 states that "[a]n exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity." The County by its actions and inaction has established JCP/Black Canyon as a defacto illegal monopoly private FBO at the Airport.

39. In 2006 the County gave up its right to appoint MCBA directors and is no longer in control of MCBA. Two of MCBA's three directors are not public officials. At the time the third director was appointed Patterson was the President and a director of MCBA, giving him effective veto power over the selection of the third director. The County has in effect privatized MCBA and allowed it to fall under Patterson's control and influence.

40. The MCBA and Montrose County issued the Official Statement dated June 28, 2006 (the "Prospectus") describing approximately a \$3.7 million bond issue, referred to as the issuance of "certificates of participation" (the "Bond Issue" or "Bonds"). The proceeds of the Bond Issue were used to refinance certain debt incurred in relation to the Airport and to fund two (2) projects.

41. The first project was "to construct a new general aviation access road" to "provide primary access for the new Fixed Base Operator ("FBO") facility." The construction of this Road was expected to cost approximately \$476,000.

42. The second project funded by the Bond Issue was to "construct an aircraft parking apron for the FBO" ("the Ramp"). The Ramp was expected to incur construction costs of approximately \$870,000. Thus, not only has the County resorted to litigation to prevent JetAway from building its own ramp, County funds were used to build a ramp for JCP/Black Canyon despite no legal obligation to do so.

43. Had Montrose County selected JetAway's competing FBO bid, it would have incurred neither of these expenses. The JCP Agreement does not require the County provide the improvements being built by these projects and does not provide the County will receive any additional fees and rentals over and above those specified in the Agreement to be paid by JCP

than it would have received had these facilities not been built.

44. In addition, the County leased JCP/Black Canyon a fuel tank farm at a considerable discount and well below market value, despite JetAway's offer to buy the existing fuel farm for fair market value and to build a new farm at its own expense on the other side of the airport to alleviate the need for refueling trucks to cross active runways, as is the case with JCP/Black Canyon now.

45. According to the Prospectus the County will pay rent to MCBA to service the debt incurred to build these projects for JCP/Black Canyon, which debt service will be paid out of general fund revenues, taxpayer funds.

46. This expenditure of taxpayer funds to benefit a private corporation without adequate consideration in return to the County is illegal and violative of the Colorado Constitution, Art. XI, sec. 2.

47. The County has assigned its UNICOM frequency to JCP/Black Canyon. This is a special radio frequency for air to ground communications at airports, for disseminating aeronautical data, such as weather, wind direction and runway information. JCP/Black Canyon uses this control to steer business to its facility and away from JetAway. Because of the potential for this kind of abuse, the FAA strongly recommends against allowing any single private entity to control a UNICOM. The FAA has advised the County in this case to "take action to change its UNICOM arrangement with JCP when it awards a second FBO contract at the Airport." In response, the County has neither awarded a second FBO contract nor changed its UNICOM arrangement.

48. Many lawsuits have been filed among the County, JCP/Black Canyon and

JetAway. Indeed, the County, in part under Patterson's direction, and JCP/Black Canyon, under the control and direction of Egan and Rumble, have undertaken a campaign of lawsuits and administrative proceedings to prevent JetAway from competing as an FBO. On information and belief, the County, at Patterson's direction, also attempted to stop the construction of a fuel tank farm being built by JetAway on private land by sending a fire marshal to attempt to halt construction.

49. In contrast to Defendants' efforts to enforce the letter of existing agreements against JetAway, regardless of their legality, the County has not required JCP to adhere to its Agreement or the Airport minimum standards. For example, the County allowed JCP to delay construction of a hangar, FBO terminal and self-serve fueling station well beyond the contractual deadline. Open records requests have revealed noncompliance with the contractual obligations of JCP to demonstrate periodically it is meeting the Airport's minimum standards for operations.

50. On January 3, 2006, JetAway filed an administrative complaint with the Federal Aviation Administration (the "Part 16 Complaint"). The FAA evaluated the case on the facts as they existed on January 10, 2006, the date it received the Part 16 Complaint, and declined to consider actions of the County after that date. The FAA could not find the County in violation as of that early date. The FAA did, however, make the following finding:

Additionally, the Director believes that all of the issues in this case can be resolved informally in a manner consistent with the County's Federal obligations. Since both the County and JCP have stated that an additional FBO at the Airport is feasible, that it appears that sufficient airport property is available to accommodate a second FBO, and the County appears to have concluded on March 20, 2006 that JetAway's proposal meets all Minimum Standards, successful resolution appears to be possible. Therefore, if the parties concur, the FAA is willing to assist in dispute resolution through mediation and, to this end, the FAA stands ready. Director's Determination dated November 6, 2006.

51. Because the Director's Determination referred to "when" the County awarded a second FBO, not "if," and other statements, it was clear to the parties that the "County's Federal obligations" meant awarding a second FBO so as not to violate its grant assurances and the prohibition against exclusive rights. JetAway and the County then began a lengthy mediation process conducted by the FAA's Associate Chief Counsel for ADR.

52. In March 2007, during a three-day settlement conference that included representatives from JetAway, the County, and the FAA's Associate Chief Counsel for ADR from Washington D.C., the parties reached an agreement to settle this controversy. A copy of the Settlement Agreement Reached Through Mediation dated March 8, 2007, is attached as Exhibit A (the "Settlement Agreement"). The Settlement Agreement provided for a land swap, the parcel of land on which the existing JetAway facility is located would be transferred to County ownership (except the building, which would remain in fee simple ownership) in exchange for a parcel of undeveloped Airport land known as the South Tract. JetAway would build an additional 25,000 sq. ft. hangar, which would become the property of the County at the end of the lease term. The County would enter into an FBO agreement with JetAway. JetAway would end all off-Airport aeronautical operations. The County would revoke JCP's right to operate the UNICOM. When the Settlement Agreement would be consummated, JetAway would be authorized to operate a full service FBO from its facilities, now on County land and part of the Airport.

53. The County has refused to prepare and approve the documents needed to implement this settlement, ignoring several FAA deadlines to do so, the latest of which was November 19, 2007. The County reverted to its former tactics of raising objections and when

each objection is resolved raising more. The FAA brought the mediation to a halt November 19, 2007, after the County, BOCC and Patterson's last failure to complete the settlement. It now appears this administrative proceeding is incapable of stopping Defendants' illegal activities and that this lawsuit is JetAway's only adequate remedy.

54. On November 20, 2007, the County delivered a letter to JetAway, attached as Exhibit B. Although purporting to be even-handed, in practical effect the letter's requirements are intended to drive JetAway out of business by limiting access to its hangar, limiting its customer parking and severely restricting its customers' ability to refuel. Contrary to County statements, JetAway was not consulted about this letter and agreed to nothing in it, which was written in collaboration with JCP/Black Canyon for the purpose of putting JetAway out of business.

55. JetAway's response is attached as Exhibit C. JetAway notifies the County in this letter that its actions have effectively put it out of business. For example, refueling an aircraft from the one point now permitted by the County blocks access to and from the runway to JetAway. Another example is the County will now not allow airplanes to park at JetAway for more than one hour, and any aircraft remaining on JetAway's ramp after one hour are required by the County, to reposition and "park" (on JetAway's competitor's ramp), at JCP/Black Canyon's FBO.

56. Most of the County's objections were related to the land swap, despite the fact it agreed to the land swap in writing in the Settlement Agreement. In a last ditch effort to settle on November 28, 2007, JetAway gave the County a proposal once again to cease all FBO

operations in its existing off airport facility, and build entirely new FBO facilities on the South Tract, County owned Airport land.

57. On December 5, 2007, JetAway's counsel received the County's terse response to its latest offer. Noting that "[t]he FAA mediation ended November 19, 2007," the response was: "Settlement negotiations are terminated." It is now crystal clear, two years after the County signed an FBO agreement with JCP, that the County intends to establish JCP/Black Canyon as a monopoly FBO, contrary to law, does not intend to fulfill the "County's Federal obligations," and never intended to settle with JetAway. Relief under the antitrust laws and Section 1983 appear to be JetAway's only remedies.

## V. CLAIMS FOR RELIEF

### PLAINTIFF'S FIRST CLAIM FOR RELIEF (Unlawful Restraint Of Trade in Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1 Against All Defendants)

58. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

59. General aviation using the Airport is engaged in or affects interstate commerce. A substantial portion of the general aviation traffic at the Airport originates or is destined out of the State of Colorado. Both JetAway and JCP/Black Canyon are engaged in interstate commerce.

60. Defendants, through concerted action, knowingly conspired to prohibit competition to sell and provide the aeronautical products and services customarily provided by FBO's to general aviation using the Airport, including without limitation the ability to sell aviation fuels. In furtherance of this conspiracy, the County, with Patterson's participation and

encouragement, has entered into only one FBO agreement, with JCP, and has stonewalled entering into an FBO agreement with JetAway; MCBA, effectively under Patterson's control, illegally funded over one million dollars in improvements to benefit JCP/Black Canyon despite no contractual obligation to do so and without adequate consideration flowing to the County in return; the County has transferred equipment to JCP/Black Canyon at discounts; the County, at Patterson's instigation and with Patterson's participation and encouragement, and JCP/Black Canyon, under Egan and Rumble's domination and influence, engaged in a concerted campaign of litigation and administrative proceedings to block JetAway from competing with JCP/Black Canyon, including their refusal to implement the agreement reached in FAA mediation to allow JetAway to compete offering full FBO services, flagrantly ignoring FAA deadlines to do so, and finally using the County's authority to declare restrictions that will effectively put JetAway out of business.

61. Defendants' actions had an anti-competitive effect on the market for aeronautical services to general aviation using the Airport. For example, prices charged by JCP/Black Canyon for aviation fuels are now significantly higher than those generally charged at comparable airports in the region, such as Gunnison-Crested Butte only 45 miles away, which has substantially reduced the overall volume of fuel sales at the Montrose airport. Therefore, the purpose and effect of Defendants' actions was an unreasonable restraint on trade, which has had a substantial effect on interstate commerce.

62. As a direct and proximate result of Defendants' actions, JetAway has been injured in its business and property.

63. Plaintiff suffered an injury that was of the type that the antitrust laws were

intended to redress.

64. The Defendants have violated Section 1 of the Sherman Act, 15 U.S.C. §1, which makes all contracts, combinations and conspiracies in restraint of trade unlawful. JetAway is entitled to injunctive relief against the BOCC and County, damages against all other defendants and from all defendants its attorneys' fees.

65. JetAway is threatened with further loss and damage unless the Court grants it injunctive relief. The public welfare will be served by entry of an injunction leading to competition in the market for FBO services at the Airport, including the sale of aviation fuels.

**PLAINTIFF'S SECOND CLAIM FOR RELIEF**

**(Attempted Monopolization Of the Market for Aeronautical Services to General Aviation Users of Montrose Regional Airport and Conspiracy to Monopolize in Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2, Against All Defendants)**

66. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

67. There is a combination or conspiracy among the Defendants to obtain for JCP/Black Canyon a monopoly in the market for the sale of aeronautical services to general aviation users of the Airport, and in particular, aviation fuel.

68. Defendants have willfully engaged, and are engaging, in a course of anti-competitive conduct, in order to obtain a monopoly for JCP/Black Canyon in the market for aeronautical services to general aviation users of the Airport, and there is a dangerous probability that, unless restrained, it will succeed, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

69. Defendants have acted in concert, with a specific intent to monopolize, to destroy

effective competition in, the market for FBO services to general aviation at the Airport.

70. General aviation using the Airport is engaged in or affects interstate commerce. A substantial portion of the general aviation traffic at the Airport originates or is destined out of the State of Colorado. Both JetAway and JCP/Black Canyon are engaged in interstate commerce.

71. Defendants, through concerted action, knowingly conspired to prohibit competition and to create a monopoly to sell and provide the aeronautical products and services customarily provided by FBO's to general aviation using the Airport, including without limitation the ability to sell aviation fuels. In furtherance of this conspiracy, the County, with Patterson's participation; and encouragement, has entered into only one FBO agreement, with JCP, and has stonewalled entering into an FBO agreement with JetAway; MCBA, effectively under Patterson's control, illegally funded over one million dollars in improvements to benefit JCP/Black Canyon despite no contractual obligation to do so and no adequate consideration flowing to the County in return; the County has transferred equipment to JCP/Black Canyon at discounts; the County, at Patterson's instigation and with Patterson's participation and encouragement, and JCP/Black Canyon, under Egan and Rumble's domination and influence, engaged in a concerted campaign of litigation and administrative proceedings to block JetAway from competing with JCP/Black Canyon, including their refusal to implement the agreement in principle reached in FAA mediation to allow JetAway to compete offering full FBO services, flagrantly ignoring FAA deadlines to do so, and finally using the County's authority to declare restrictions that will effectively put JetAway out of business.

72. Defendants' actions had an anti-competitive effect on the market for aeronautical

services to general aviation using the Airport. For example, prices charged by JCP/Black Canyon for aviation fuels are now higher than those generally charged at comparable airports in the region. Therefore, the purpose and effect of Defendants' actions was an unreasonable restraint of trade, which has had a substantial effect on interstate commerce.

73. As a direct and proximate result of Defendants' actions, JetAway has been injured in its business and property.

74. Plaintiff suffered an injury that was of the type that the antitrust laws were intended to redress.

75. The Defendants have violated Section 2 of the Sherman Act. 15 U.S.C. §2, which makes all monopolies and attempts to monopolize or conspiracy to monopolize any part of the trade or commerce among the States unlawful. JetAway is entitled to injunctive relief against the County and Patterson, treble damages against all other defendants and from all defendants its attorneys' fees.

76. JetAway is threatened with further loss and damage unless the Court grants it injunctive relief. The public welfare will be served by entry of an injunction leading to competition in the market for aeronautical services at the Airport, including the sale of aviation fuels.

### **PLAINTIFF'S THIRD CLAIM FOR RELIEF**

#### **(42 U.S.C. §1983 – Deprivation of Rights Under Equal Protection Clause Against All Defendants)**

77. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

78. At all times pertinent to this claim the County and Patterson ("Governmental

Defendants") acted under color of law and/or a statute, ordinance, regulation, policy, custom or usage. Patterson has taken particular interest in Airport affairs for many years and has influenced his fellow members of the BOCC to have the County engage in the course of conduct alleged in this Complaint out of a desire to harass JetAway and injure its business and property and to benefit the business and property of JCP/Black Canyon and its principals, one of which, Rumble, is a member of the Board of Planning Commissioners of the City of Montrose. Patterson is sued both in his official and personal capacities.

79. The Governmental Defendants have enforced certain regulations, policies, customs or usages against JetAway and not against JCP/Black Canyon. JCP is required by its FBO and Transition Agreements to comply with the Airport's "minimum standards" for operations, to construct and provide self-service fueling, and to make substantial safety upgrades to the County owned fuel farm it leases. The Agreements require that such compliance be documented; however an Open Records requests showed this has not been required of JCP/Black Canyon, Black Canyon has not constructed the required self serve fuel facility, has not made the required upgrades to the County owned fuel farm, and has not complied with the Airport's "minimum standards." In contrast, the primary excuse the County has used to fail to implement its FAA-brokered settlement with JetAway is its insistence JetAway prove it can meet the minimum standards in every detail before it is allowed to operate, which would be the surest way to demonstrate its ability to meet minimum standards, even though no such requirement was ever enforced against JCP before the County awarded JCP its FBO Agreement and allowed it to commence operations. The County has repeatedly overlooked breaches of the Agreements by JCP, such as failing to meet the contractual deadline to build a hangar, failing to meet the

contractual deadline to build a FBO terminal, failing to construct the self serve fuel facility required by the Transition Agreement, and failing to make the required upgrades to the County owned fuel farm.

80. JCP, Black Canyon, MCBA, Egan and Rumble ("Nongovernmental Defendants") have conspired with the Governmental Defendants in the manner described above in the Complaint as to harm competition for FBO services at the Airport to harass JetAway, injure its business and misappropriate its business and property.

81. This unequal administration of Airport agreements, regulations, policies, customs and usages is a result of intentional or purposeful discrimination against JetAway and deprives JetAway of its right to equal protection of the laws under the U.S. Constitution.

82. As a proximate result of these actions, JetAway has suffered and continues to suffer damages. All defendants are liable for resulting damages under 42 U.S.C. § 1983 and for JetAway's attorneys' fees pursuant to 42 U.S.C. § 1988.

#### **PLAINTIFF'S FOURTH CLAIM FOR RELIEF**

##### **(42 U.S.C. §1983 – Deprivation of Rights Under Commerce Clause Against All Defendants)**

83. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

84. There is no legitimate local interest in the County establishing a monopoly private FBO at the Airport. Even if there were, the burden on interstate commerce would be excessive in relation to any putative benefits.

85. The conduct by the Governmental Defendants taken under color of state law alleged in the preceding paragraphs of this Complaint in attempting to establish a monopoly

private FBO at the Airport is impermissible under the Commerce Clause of the U.S. Constitution and void, depriving JetAway of its right to participate in this market.

86. The Nongovernmental Defendants have conspired with the Governmental Defendants in the manner described above in the Complaint as to the conspiracy to harm competition for aeronautical services at the Airport to harass JetAway, injure its business and appropriate its business and property.

87. As a proximate result of these actions, JetAway has suffered and continues to suffer damages. All defendants are liable for resulting damages under 42 U.S.C. § 1983 and for JetAway's attorneys' fees pursuant to 42 U.S.C. § 1988.

**PLAINTIFF' FIFTH CLAIM FOR RELIEF**

**(42 U.S.C. §1983 – Deprivation of Rights Under Federal Statutes)**

88. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

89. The Federal Aviation Act of 1958 prohibits the grant of an exclusive right by only one FBO to provide services at an airport, with an exception not relevant to this case. 49 U.S.C. §40103(e).

90. Federal law provides a mechanism for airports to apply for Federal grants for various purposes. The Airport has received approximately \$36.7 million in grants since 1982. Federal law provides that anyone applying for a grant must provide the Secretary of Transportation with written assurances, which, among other things, prohibit unjust discrimination and the grant of exclusive rights to any private FBO. 49 U.S.C. §47107.

91. Despite these prohibitions, the Governmental Defendants, under color of statute,

ordinance, regulation, custom or usage, by their actions described in this Complaint, have granted JCP and Black Canyon a *de facto* exclusive FBO franchise at the Airport, in violation of JetAway's rights under Federal law.

92. The Nongovernmental Defendants have conspired with the Governmental Defendants to obtain an exclusive FBO franchise in violation of JetAway's rights under Federal law.

93. As a result, all Defendants are liable to JetAway for the resulting damages pursuant to 42 U.S.C. §1983, including, but not limited to, lost revenue, lost profits and the investment of JetAway in its business. All Defendants are also responsible for JetAway's attorneys' fees pursuant to 42 U.S.C. §1988.

#### VI. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAY FOR RELIEF AS FOLLOWS:

1. That the Court adjudge and decree as follows:
  - a. That Defendants' conduct in preventing JetAway from providing full aeronautical services as an FBO at the Airport prohibiting effective competition between JetAway and JCP/Black Canyon in such market violates Section 1 of the Sherman Antitrust Act, 15 U.S.C. §§ 1;
  - b. That Defendants have monopolized or attempted to monopolize the market for full aeronautical services as an FBO at the Airport in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2;
  - c. That Defendants have conspired to monopolize the market for full aeronautical services as an FBO at the Airport in violation of Section 2 of the Sherman Antitrust Act, 15

U.S.C. § 2; and

d. That acting under color of law Defendants have conspired to and have deprived JetAway of its right to equal protection under the law, have violated JetAway's rights under the Commerce Clause and have violated JetAway's rights under 49 U.S.C. §§40103(e) and 47107(a), all in violation of 42 U.S.C. §1983.

2. That Defendants and all persons acting on their behalf or under their direction or control, and all successors thereto, be preliminarily and permanently enjoined as follows:

a. From prohibiting the construction of the JetAway ramp area pursuant to the terms of the JetAway Land Lease.

b. From prohibiting the free movement, fueling and parking of aircraft on JetAway's ramp.

3. That the Court enter such other preliminary and permanent relief as is necessary and appropriate to restore competitive conditions in the markets affected by Defendants' unlawful conduct.

4. That Plaintiff is entitled to compensatory treble damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. §15 from Patterson and the Nongovernmental Defendants.

5. That Plaintiff is entitled to compensatory damages and attorneys fees for the violations of 42 U.S.C. §1983 from all Defendants

6. That Plaintiff may recover its attorneys' fees and costs of this action.

7. That the Court may enter such additional relief as it may find just and proper.

## **VII. JURY DEMAND**

Plaintiff demands a trial by jury of all claims so triable.

Respectfully submitted this 10th day of December, 2007.

IRELAND, STAPLETON, PRYOR & PASCOE, P.C.

By: /s/ Mark E. Haynes

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DISTRICT COURT, MONTROSE COUNTY, COLORADO

Case No. 91 CV 14

Filed in the Dist. Court  
Montrose, Colorado

MAY 16 1991

Shirley J. Jackson, Clerk

ORDER

THE MONTROSE COUNTY AIRPORT AUTHORITY,

Plaintiff,

v.

V.I.P. FLYERS, a Colorado corporation,

Defendant.

On February 28, 1991 this case was heard on Plaintiff's Motion for a Preliminary Injunction. Because the Plaintiff was unable to complete its evidence in the time allowed, it was agreed that the case would be continued until May 9th, 1991 as a final hearing on the merits. On May 9th, 1991 the Court heard the balance of the evidence and statements by counsel. The Court has now considered the evidence from both hearings, the statements by counsel, has reviewed the appropriate documentary evidence and now makes the following findings of fact, conclusions of law, and enters judgment in accordance therewith.

FINDINGS OF FACT

The Court received volumes of documentary evidence and heard testimony on various issues presented. However, it is

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quite clear that the thrust of the Plaintiff's claim deals with the "Addendum to Agreement Commercial Aeronautical Services and Activities' Lease Agreement" (Plaintiff's Exhibit 26) and more specifically as to Paragraphs I.H. and Paragraph I.I.e.

On July 14th, 1988 James Rumble and Donald Squirrel presented a written proposal (Plaintiff's Exhibit 15) to Plaintiff to use the old terminal building as a fixed base operation. On July 13th a further proposal (Plaintiff's Exhibit 16) by a corporation was presented. At its meeting on August 11th, 1988 the Plaintiff accepted the proposal submitted by Jim Rumble. Defendant V.I.P. Flyers Colorado corporation was then formed and entered into two agreements with Plaintiff for a fixed base operation on September 1st, 1988 (Plaintiff's Exhibits 18 and 19). These agreements did not provide for any fuel sales by Defendant. On May 11th, 1989 Defendant presented a proposal to Plaintiff whereby Defendant would be allowed to sell fuel (Plaintiff's Exhibits 21). At its meeting of June 8th, 1989 the board of directors of the Plaintiff corporation discussed Defendant's fuel proposal and expressed various concerns in regard to the bond requirements. Mr. Rumble and Defendant's attorney, Mr. Lynn French, were present and were accordingly aware of the concerns. A letter was circulated by Plaintiff's accounting firm, and Plaintiff's attorney John Brooks read a letter from Plaintiff's bond attorneys in regard

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to the proposal (Plaintiff's Exhibit 22). Ultimately, the proposal was rejected by Plaintiff. Subsequently, Defendant presented a new proposal (Plaintiff's Exhibit 23) which was slightly modified and re-presented (Plaintiff's Exhibit 24). This new proposal contained much of the language that eventually was incorporated into the addendum (Plaintiff's Exhibit 26) and specifically all of the language in Paragraph I is virtually identical with language in the proposal. It should also be noted that after paragraph i of Defendant's proposal, the following language appeared:

"The obvious benefit to the authority is that its necessary cash flow will be enhanced. In addition to other benefits are as follows:

"a...

"b...

"c, V.I.P. anticipates pumping an additional 100,000 gallons of 100LL and 150,000 gallons of Jet A which will result in many new customers coming to Montrose County Airport."

It should further be noted that Defendant's original proposal (Plaintiff's Exhibit 21) contained a somewhat complete analysis of Plaintiff's revenue and expenses with an analysis showing that if Defendant sold fuel, the net income to Plaintiff would be basically the same. When this original proposal was rejected by Plaintiff because of the bond requirements, the new proposals by Defendant (Plaintiff's Exhibits 23 and 24) set forth the language that if Defendant had not enhanced the net cash flow of Plaintiff by the generation of fuel sales within 60 days, the

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agreement would be null and void. The new proposal makes the further statement under paragraph

"1...The obvious benefit to the authority is that its net cash flow will be enhanced..."

In addition, as indicated above, the new proposal set forth that Defendant anticipated selling an additional 100,000 gallons of 100LL and 150,000 gallons of jet fuel. The Court finds that it was clearly the intent of Defendant to persuade Plaintiff to grant Defendant the right to sell fuel based upon a representation by Defendant that it would enhance Plaintiff's financial position and, therefore, would be beneficial to Plaintiff to enter into the agreement.

The minutes of Plaintiff's board on March 8th, 1990 indicated that there was a concern that the preliminary figures appeared to show that the total revenues had decreased since the parties had entered into the addendum. It was decided that the best solution might be to have an audit of both Plaintiff's and Defendant's books (Plaintiff's Exhibit 27). The minutes of Plaintiff's board meeting of November 27th, 1990 reflect that a review of its financial and operation responsibilities in conjunction with the construction of the new north-south runway was presented (Plaintiff's Exhibit 31). As part of this review, a "Statements of Operating Revenues and Expenses and Accountant's Compilation Report" prepared by Dalby Wendland and Company, Certified Public Accountants, was presented

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(Plaintiff's Exhibit 13). This report showed that Plaintiff had a net operating income from the sales of fuel in 1989 and that there was a projected loss from the sales of fuel in the amount of approximately \$61,000 for the year 1990. Mr. Lawrence Rowan of the CPA firm testified at the hearing on February 28th, 1991 that the projected loss from the sales of fuel would be in the neighborhood of \$75,000. Mr. Rowan also testified that the total expenses for 1990 would be approximately \$15,000 higher than in 1989. Plaintiff's Exhibit 13 also indicated that the total gallons of gasoline sold did not change significantly as they were approximately 295,000 gallons in 1989 and the projected amount was 300,000 for 1990. A written conclusion of the review was presented (Plaintiff's Exhibit 12). This document set forth certain requirements necessary in order for Plaintiff to meet its bond requirements. Paragraph 4 of the conclusions provided:

"that the authority, pursuant to its actual and projected operating results and in compliance with the specific contract provisions, shall terminate V.I.P.'s fuel concession amendment only, upon notice effective December 31st, 1990 and encourage its bidding upon the fuel concession."

A motion was made and carried at the November 27th, 1990 meeting of Plaintiff's board that the action called for in the written conclusions of review be carried out. On November 29th, 1990 Plaintiff's attorney sent a letter to Mr. Rumble, as president of Defendant corporation, advising that the addendum dated

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October 11th, 1989 was terminated effective December 31st, 1990 (Plaintiff's Exhibit 33). On December 28th, 1990 Plaintiff's manager also sent a letter to Mr. Rumble indicating how the termination would be physically handled (Plaintiff's Exhibit 34). The evidence further shows that Defendant chose to ignore the notice of termination and continued to sell fuel at the airport by various means of supply which continued through the date of the hearing on May 9th, 1991. The Court further finds that Defendant presented no evidence on the issue of "enhanced cash flow from the sale of fuel".

#### CONCLUSIONS

While the language set forth in Paragraph 1.1.e. of the addendum to the agreement (Plaintiff's Exhibit 26) is not defined in great detail, it is clearly Defendant's language. Defendant was well aware of Plaintiff's bond requirements, and its first proposal was rejected since it did not guarantee Plaintiff's position with relationship to its bond obligations, nor did it guarantee any benefit to Plaintiff. Defendant had Plaintiff's financial information and, with that information in mind and knowing the Plaintiff's obligations, made a further proposal which guaranteed to Plaintiff that its net cash flow from the sale of fuel would be enhanced by Plaintiff entering into the addendum agreement. The evidence shows that Defendant did not produce what it contracted to do. There was no net cash

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flow enhancement to the Plaintiff, nor was there any benefit to the Plaintiff by entering into this agreement. There was no showing by Defendant that Plaintiff unduly increased its expenses and operating costs, nor that it in any way restricted Defendant's fuel sales by price manipulation. The facts further show that rather than having its net cash flow from the sale of fuel enhanced by the addendum, that Plaintiff's net cash flow position was substantially decreased. The Court further concludes that the Defendant contracted for an enhancement to Plaintiff that Defendant was unable to produce, and under the clear language provided by Defendant, the addendum could be determined null and void by Plaintiff. Plaintiff made the appropriate declaration to terminate the addendum.

IT IS THEREFORE ORDERED that Plaintiff have judgment against the Defendant and that a permanent injunction is hereby entered restraining and enjoining Defendant from the storage, dispensing or selling of aviation fuels and oils on the Montrose County Airport premises. IT IS FURTHER ORDERED that Defendant take nothing by its counterclaim. Each party shall be responsible for their own costs and attorney's fees.

May 16, 1991

  
\_\_\_\_\_  
Judge Jerry D. Lincoln

JDL/dfc

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French

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## PROCEEDINGS OF THE BOARD OF MONTROSE COUNTY COMMISSIONERS

**DATE: November 19, 2008**

The Board of County Commissioners met in special session held at the County Administrative Office Board Room at 10:00 a.m. Those present: Gary Ellis, Chairman; Bill Patterson, Vice-Chairman; Allan Belt, Commissioner; Robert Hill, County Attorney; Joe Kerby, County Manager; Marie Simons, Deputy Clerk to the Board.

### **Pledge of Allegiance**

A. **MONTROSE REGIONAL AIRPORT DIRECTOR, Lloyd Arnold:**

### **PUBLIC HEARING 10:00 A.M.**

Public Hearing to take testimony and consider action to revoke through the fence access by One Creative Place LLC and all affiliated entities to the Montrose County Regional Airport as provided in that certain Agreement Authorizing Off-Airport Operations, dated August 23, 2001 and assignment agreement, dated November 30, 2004, for alleged violations of that Agreement by the failure to execute an access permit agreement and the failure to abide by Airport Rules and Regulations and other federal requirements for operations in aircraft movement areas on the Airport; all in violation of conditions of access to the Airport and violation of said Agreement and Assignment:

Commissioner Ellis opened the Public Hearing at 10:08 a.m. by reading the following statement: *"Everything we do here today will be done in civility and with respect. Speakers will not use inflammatory, overtly rude, or demeaning language calculated to incite another person or step across the line of acceptable behavior. If this is done, the speaker will be ruled out of order. You may comment on the issues and individuals as they relate to the issues but not to be confrontational. We're not trying to stifle your ability or opportunity to speak or comment on this matter here before the Board today, but we hope you understand our concern that this meeting remain civil. Procedure will be as normal for any kind of public hearing. The first thing we will do is have the County staff do their presentation on this matter. Secondly, will be representatives of, or someone from JetAway to speak to this matter as well. Thirdly, we'll have public comment, which is where you will come in, if you've signed up. After that, the public hearing will be closed; the Commissioners will have discussion and will then make an ultimate decision. And here's the issue with public comments: We will need to limit the time to some degree, and I think you can all understand why. We will permit at this time, each person three minutes to comment. If you are up to speak, (and this is where I would ask your cooperation and help in this) and your concerns have already been addressed by a prior speaker, we would ask that you simply reference your concern, whatever that may be, and simply state to us that someone prior to you has already spoken to that issue, and then you can go ahead and sit down, so we don't belabor this with the same point being hammered over and over and over. After we close the public hearing, we'll accept no further comments from the public and nor will they be allowed. At that point, the Commissioners then will begin discussion among ourselves. If necessary, we will go ahead and ask our staff or anyone else that we need to ask for some clarification. But again, the public input at that point will be closed, so you'll not be able to make any comments at that time. So, we'll begin in just a moment. We're really here today to receive information concerning the Agenda item I read to you so we have the information necessary in order to make a decision. This is not a Court hearing, we're not going to have cross-examination per say, it's a quasi judicial hearing, and at the end of the day we'll make a decision on the matter before the Board."*

At that time, Bob Hill, County Attorney began proceedings by explaining this Agenda item was not to consider the revocation of the access of Western Skyways, of HeliQwest or such other related corporate entity or business that

**PROCEEDINGS OF THE BOARD OF MONTROSE COUNTY COMMISSIONERS**

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may be operating out of the Aerospace Park. Mr. Hill listed related JetAway operations as One Creative Place, JetAway, and KMTJ Fuel. Steve Stuhmer, Paul Gerdner, Mike Gerdner and/or the Gerdner Family Trust own these three entities. Mr. Hill also explained that "related corporations" meant corporations that have that ownership interest as well as any other corporation that may be established subsequent to this hearing by JetAway, One Creative Place, the Gerdners, Mr. Stuhmer or the Gerdner Family Trust. JetAway's attorney, Mark Haynes in response to this hearing, submitted a written statement. Mr. Hill informed those present it was his intention to present witness testimony of Airport staff to the Board. He then asked Marie Simons, Deputy Clerk to the Board to swear in witnesses, Ron Forsberg and Lloyd Arnold.

Bob Hill: *"Sir, would you state your name for the record, please?"*

Lloyd Arnold: *"Lloyd Douglas Arnold."*

Bob Hill: *"What is your job with Montrose County?"*

Lloyd Arnold: *"I'm the Director of Aviation for Montrose County."*

Bob Hill: *"As Director of Aviation, what are the duties of your position?"*

Lloyd Arnold: *"The safe and efficient operation of the Airport including compliance with all operational issues."*

Bob Hill: *"Okay and thank you. Now, you recently testified in Court on Friday. Is that correct?"*

Lloyd Arnold: *"That is correct."*

Bob Hill: *"And that was on essentially the similar issue to what we have here today. Is that correct?"*

Lloyd Arnold: *"That is correct."*

Bob Hill: *"Okay. So, in your position as Director of Aviation, have you observed violations of Airport rules and regulations committed by JetAway Aviation or their employees?"*

Lloyd Arnold: *"Yes, I have."*

Bob Hill: *"And, what violations have you observed?"*

Lloyd Arnold: *"I've observed the parking of aircraft and vehicles in the taxiway and the taxiway Object Free Area. I've also observed non-compliance with safety issues on vehicles and non-compliance with having people driving those vehicles that are not appropriately trained to drive those vehicles on airport."*

Bob Hill: *"Okay. What essentially, just generally speaking, is the frequency of these violations you've observed?"*

Lloyd Arnold: *"Almost on a daily basis."*

Bob Hill: *"Okay. And since June 30, 2008 have you observed these violations?"*

Lloyd Arnold: *"Yes, I have, almost on a daily basis."*

Bob Hill: *"Okay. Are these violations, violations of Airport rules and FAA rules?"* Lloyd Arnold: *"Yes, they are."*

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Bob Hill: *"What rules are they violations of?"*

Lloyd Arnold: *"Well, under our grant assurances, which we signed for the receipt of Federal funding, we're obligated to apply by the Advisory Circulars, and as the Airport, we are required to have minimum standards and rules and regulations. And, these violate both the Federal Aviation regulations and the rules and regulations of the Airport."*

Bob Hill: *"Okay. Thank you. Can the failure of the Airport to enforce rules and regulations and requirements, such as no parking in taxiways, OFA's or access to the air operations area, can failure to enforce rules such as those, in your understanding, be a grant assurance violation?"*

Lloyd Arnold: *"Yes, they can be a grant assurance violation and therefore, we can lose the Federal money that we receive each year to operate the Airport. They can also terminate our Operating Agreement, and therefore, we cannot allow commercial service into the Airport at that time."*

Bob Hill: *"With respect to the parking of aircraft in a taxiway or in a taxiway OFA, what do the rules require?"*

Lloyd Arnold: *"Well, I think the name kind of says it all. It's an Object Free Area. The rules require that you do not park aircraft or vehicles in those areas. The only thing that can be within an Object Free Area are things required for navigational purposes such as taxiway lights."*

Bob Hill: *"What is required for operation of vehicles on the Airport?"*

Lloyd Arnold: *"Tenants are required to come in and read a pamphlet and take a test assuring that they know how to appropriately operate on the Airport. Then, they sign that agreement assuring the Airport that they will abide by our minimum standards and rules and regulations."*

Bob Hill: *"And, just to clarify, you've observed JetAway operations violating these parking requirements and vehicle operation requirements?"*

Lloyd Arnold: *"On many, many, many occasions."*

Bob Hill: *"Now, do the Advisory Circulars, and by Advisory Circulars, I mean FAA Advisory Circulars, first of all, that the word "advisory": Is that something of a misnomer?"*

Lloyd Arnold: *"It is. As an airport, when we sign the Grant Assurances, those Advisory Circulars are no longer advisory. We have to comply with those Advisory Circulars for any grants currently existing or any grants that may exist in the future."*

Bob Hill: *"Okay. And with respect to Through the Fence Operators, is there an Advisory Circular which addresses requirements for Through the Fence Operators?"*

Lloyd Arnold: *"There is an Advisory Circular that has requirements for Through the Fence Operators. It's really an Advisory Circular that explains how Through the Fence Operators will be treated so there is an even playing field on the Airport. And, it says that they have to comply with rules and regulations, that they have to appropriately compensate the Airport to put them on an even playing field with business that are on the Airport. And, it says that the Airport has the right to terminate their access if they don't comply with these things."*

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Bob Hill: *"And, essentially, it also, does it not, require that the Airport treat Through the Fence Operators on the same basis as similarly situated On Airport Operators?"*

Lloyd Arnold: *"Yes, that is correct. So that they don't have a competitive advantage Off Airport. It really limits the Airport's ability to attract businesses, and therefore revenue to allow the Airport to operate, because what is the incentive to be On Airport if you can't compete with those business that are Off Airport?"*

Bob Hill: *"So, an Off Airport Operator would have an advantage if he could operate without paying the same fees or in some cases, maybe even more than the same fees as an On Airport Operator. Is that correct?"*

Lloyd Arnold: *"Yes. In effect, it's like a subsidy to that operator. We collect the appropriate amount of revenues from the operators that are On Airport, and when you can't do that from the Off Airport Operators, it acts like a subsidy to them."*

Bob Hill: *"Now, I think you mentioned the Advisory Circular requires that the Airport had the right to terminate access of anyone who doesn't comply with those requirements."*

Lloyd Arnold: *"Yes, that is correct."*

Bob Hill: *"That's mandated by the Advisory Circular for Off Airport users?"*

Lloyd Arnold: *"That is correct."*

Bob Hill: *"In other words, the Airport's required to enforce those requirements against an Off Airport user?"*

Lloyd Arnold: *"Yes, that is correct."*

Bob Hill: *"And, does the Advisory Circular specify that this should be stated in a clear agreement with the Off Airport user?"*

Lloyd Arnold: *"Yes, it does. And we have that stated in our minimum standards and rules and regulations as to the effect of what those compliances should be."*

Bob Hill: *"I think you testified that failure to comply with Advisory Circulars can result in a Grant Assurance violation."*

Lloyd Arnold: *"Yes, that is correct."*

Bob Hill: *"And the Grant Assurance violation can result – if you would again state the possible penalties of Grant Assurance violations?"*

Lloyd Arnold: *"Well, violating Grant Assurances, they can start by taking your Federal money. And, the reason they can do that, is we sign Grant Assurances that obligate us to rules and regulations. And if we don't follow those rules and regulations, they'll first start by pulling Federal money and then, if that doesn't work, they will move to your Airport Operating Certificate. And the AOC is what allows us to bring commercial service here to Montrose."*

Bob Hill: *"An AOC, you mean Operating Certificate?"*

Lloyd Arnold: *"Airport Operating Certificate."*

**PROCEEDINGS OF THE BOARD OF MONTROSE COUNTY COMMISSIONERS**

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Bob Hill: "Okay. What does Federal money mean to this Airport, in particular?"

Lloyd Arnold: "Well, we wouldn't be able to operate the Airport without the receipt of Federal funding. Each year, currently, we are receiving approximately \$1.1 million worth of entitlement money. In the last twenty years, the Airport has received tens of millions of dollars, and we simply just couldn't operate the Airport as we are now, should we lose that Federal money."

Bob Hill: "Okay. And I'd mentioned the phrase, "Object Free Area". Could you explain what that is, please?"

Lloyd Arnold: "Well, and Object Free Area extends from the center line of either a runway or a taxiway and it's an area that you keep clear to ensure the ingress and egress of aircraft. You are unsure as a pilot if your front tire is on the yellow taxiway line that your wing tips are not going to hit anything within that Object Free Area. And so they designate a specified area and you keep that clear other than navigational purposes."

Bob Hill: "So, if a vehicle or a plane or anything is parked in an Object Free Area, that's a safety issue, isn't it?"

Lloyd Arnold: "Yes, it is a safety issue. Most importantly, a safety issue, but in addition to that it's, you're breaking Federal Aviation regulations and the minimum standards and rules and regulations of the Airport."

Bob Hill: "Okay. Thank you. What is an Airport Layout Plan, just generally speaking, because I know it's a rather complicated document?"

Lloyd Arnold: "An Airport Layout Plan is a planning document that sets forth guidelines, dimensional guidelines on the Airport."

Bob Hill: "Okay. Does Montrose Regional Airport have an Airport Layout Plan?"

Lloyd Arnold: "Yes, we have an Airport Layout Plan."

Bob Hill: "Has the plan been approved by both the FAA and the Board of County Commissioners?"

Lloyd Arnold: "Yes, it has."

Bob Hill: "And in fact, the FAA recently approved the Airport Layout Plan in September of this year. Is that correct?"

Lloyd Arnold: "Yes, they did."

Bob Hill: "Now, what does that ALP or Airport Layout Plan show for the area in front of JetAway on the Airport?"

Lloyd Arnold: "It shows that it is Taxiway "Echo"."

Bob Hill: "Okay. And by Taxiway "Echo", you mean "E"?"

Lloyd Arnold: "Excuse me, yes, Taxiway "E"."

Bob Hill: "Thank you. Now, what does that Airport Layout Plan show for the Object Free Area on Taxiway "Echo"?"

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Lloyd Arnold: *"Well, basically, the entire area in front of JetAway is a taxiway that includes an Object Free Area that extends out from the centerline of the taxiway."*

Bob Hill: *"Okay. Have you reviewed past AOP's for the Montrose Regional Airport?"*

Lloyd Arnold: *"Yes, I have."*

Bob Hill: *"In particular, did you review an AOP approved by both the FAA and the Board of County Commissioners in 1997?"*

Lloyd Arnold: *"Yes, I have."*

Bob Hill: *"And what does that AOP show for the, essentially the Object Free Area dimensions for the Taxiway "E"?"*

Lloyd Arnold: *"It shows the same dimensions as the currently approved AOP."*

Bob Hill: *"Okay. "And does it also show Taxiway "E" as a taxiway?"*

Lloyd Arnold: *"Yes, it shows Taxiway "E" as a taxiway."*

Bob Hill: *"Okay. And did you review an Airport Layout Plan from, dated in 2007?"*

Lloyd Arnold: *"Yes, I did."*

Bob Hill: *"And, does that Airport Layout Plan show Taxiway "E" as a taxiway?"*

Lloyd Arnold: *"Yes, it does."*

Bob Hill: *"And, does that Airport Layout Plan show the same Object Free Area dimensions as are shown in the 1997 ALP?"*

Lloyd Arnold: *"Yes, it does."*

Bob Hill: *"And, the same Object Free Area dimensions are shown in the recently approved 2008 Airport Layout Plan?"*

Lloyd Arnold: *"Yes, the dimensions have always remained the same."*

Bob Hill: *"And, with respect to the 2007 Airport Layout Plan, to your knowledge, was that ever approved by the Board of County Commissioners?"*

Lloyd Arnold: *"No, it was not."*

Bob Hill: *"In your understanding and experience as a Director of Aviation, are Airport Layout Plans required to be approved by the Airport's sponsor?"*

Lloyd Arnold: *"Yes, they are."*

Bob Hill: *"As well as FAA?"*

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Lloyd Arnold: *"That is correct."*

Bob Hill: *"And, who is the Airport's sponsor for Montrose Regional Airport?"*

Lloyd Arnold: *"Montrose County".*

Bob Hill: *"That would be Board of County Commissioners?"*

Lloyd Arnold: *"Correct. Board of County Commissioners, Montrose County."*

Bob Hill: *"Can you tell me what an airport, or movement area is on an airport?"*

Lloyd Arnold: *"A movement area encompasses all taxiways and runways and any other areas as designated by the Airport."*

Bob Hill: *"Okay. Is the area in front of JetAway a movement area?"*

Lloyd Arnold: *"It is a movement area. It is a taxiway."*

Bob Hill: *"That answered my question why it's an open area. Because it's a taxiway."*

Lloyd Arnold: *"That is correct, yes."*

Bob Hill: *"What is a ramp on an airport?"*

Lloyd Arnold: *"A ramp is used in the parking of aircraft."*

Bob Hill: *"Is the area in front of JetAway, when I say in front of JetAway, I mean on the Airport, does that ramp...."*

Lloyd Arnold: *"No it is not, it's Taxiway "E".*

Bob Hill: *"...is there any area in front of JetAway on the Airport which is ramp?"*

Lloyd Arnold: *"No, there is no area in front of JetAway which is ramp."*

Bob Hill: *"In fact, it is your understanding, is it not, that the Montrose County District Court terminated any lease rights that JetAway had on the Airport?"*

Lloyd Arnold: *"That is my understanding and Judge Schum's June 30<sup>th</sup> (2008) order."*

Bob Hill: *"Okay. Thank you. Have you reviewed a training manual for the vehicle operations on the Airport?"*

Lloyd Arnold: *"Yes, I have."*

Bob Hill: *"Is there some inconsistency in that manual?"*

Lloyd Arnold: *"Yes, there is some inconsistency in that manual." There's a diagram that shows movement and non-movement areas. The movement area is incorrectly marked, but if you read the document, it coincides with all of the other Federal documents that say the movement area encompasses the taxiway and runways and any other as designated by the Airport."*

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Bob Hill: *"In fact, it would be a ridiculous argument to say that a taxiway is not a movement area, isn't it?"*

Lloyd Arnold: *"Yes, that would kind of be a ridiculous argument."*

Bob Hill: *"I want to move on to one last topic. Has, to your knowledge, JetAway Aviation, (when I say JetAway, I'm referring to JetAway and One Creative Place and KMTJ Fuel), been sent an Access Permit Agreement?"*

Lloyd Arnold: *"Yes, they have."*

Bob Hill: *"Okay. And, was that sent to them in September?"*

Lloyd Arnold: *"Yes, it was."*

Bob Hill: *"Have they returned a signed copy of that agreement?"*

Lloyd Arnold: *"No, they have not."*

Bob Hill: *"Other than payment of a \$250 fee, has JetAway tendered any fee for access, for an Access Permit Agreement?"*

Lloyd Arnold: *"No, they have not."*

Bob Hill: *"Does the Access Permit Agreement that was sent to them in September require payment of fees above that \$250?"*

Lloyd Arnold: *"Yes, it does."*

Bob Hill: *"And, what is the purpose of those fees?"*

Lloyd Arnold: *"The purpose of those fees is to create an even playing field on the Airport, so they don't have a competitive advantage over those businesses that are 'on airport'."*

Bob Hill: *"Specifically, in this case, it would be Black Canyon Jet Center. Is that correct?"*

Lloyd Arnold: *"Well, it would be Black Canyon Jet Center, it would be Cimarron Aviation and it would be any future business that we might be able to attract to the Airport. Which this is limiting our ability to attract future businesses to the Airport."*

Bob Hill: *"So, the purpose...and you testified earlier that the Advisory Circulars, which are required by our Grant Assurances, require that we charge the same fee. Is that correct?"*

Lloyd Arnold: *"That is correct."*

Bob Hill: *"Now, did Mr. Stuhmer or anyone from JetAway ever contact you about the Access Permit Agreement we sent to them?"*

Lloyd Arnold: *"No, they did not."*

Bob Hill: *"Did they ever say, let's talk about the fees?"*

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Lloyd Arnold: *"No, he made no offer to talk about the fees."*

Bob Hill: *"You, as the Airport Director have any response whatsoever from JetAway Aviation regarding the Access Permit Agreement?"*

Lloyd Arnold: *"No, I have not."*

Bob Hill: *"Since sending JetAway the Access Permit Agreement, have you observed continued violations of the parking, the operation you previously testified to?"*

Lloyd Arnold: *"Yes, continual violations after that was sent and also after the Judge Schum's June 30<sup>th</sup> order for them not to violate."*

Bob Hill: *"And one of the provisions in the Access Permit Agreement requires compliance with these rules and regulations, is that not correct?"*

Lloyd Arnold: *"Yes, it does require compliance with the rules, regulations, minimum standards and, I assume, the Judge's order."*

Bob Hill: *"My last question is, is it your understanding that JetAway has refused to sign the Access Permit Agreement?"*

Lloyd Arnold: *"That is my understanding."*

Bob Hill: *"Did they take action in Court instead of returning an Access Permit Agreement, or have any discussion with us?"*

Lloyd Arnold: *"Yes, they did."*

Bob Hill: *"That was simply to issue an Access Permit Agreement. Is that correct?"*

Lloyd Arnold: *"Yes."*

Bob Hill: *"I have no more questions for Mr. Arnold. If the Board has any questions..."*

Commissioners Belt and Ellis indicated they had no questions for Mr. Arnold; however, Commissioner Patterson asked Mr. Arnold if the Airport operated in such a way that it was self sufficient, and that businesses that use the Airport needed to pay its fair share. Mr. Arnold affirmed this was correct and this was covered under Grant Assurance No. 24. This Grant Assurance was signed by the Airport in order to receive Federal funding.

Mr. Hill then began a line of questioning for Ron Forsberg, an Operations Technician for the Montrose Regional Airport.

Bob Hill: *"State your name for the record, please."*

Ron Forsberg: *"It's Ron A. Forsberg."*

Bob Hill: *"Would you spell it for the record?"*

Ron Forsberg: *"F-O-R-S-B-E-R-G."*

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Bob Hill: *"And, what is your job?"*

Ron Forsberg: *"I work in Airport Operations, I'm an Operations Technician."*

Bob Hill: *"What are the duties of that position, generally?"*

Ron Forsberg: *"It's pretty wide, anywhere from doing inspections for security sake around the perimeter to changing a light bulb on the rotating beacon."*

Bob Hill: *"And that's at Montrose Regional Airport. Is that correct?"*

Ron Forsberg: *"Correct. Montrose Regional Airport."*

Bob Hill: *"Did you testify on Friday in Court regarding the issues that have been discussed today?"*

Ron Forsberg: *"Yes, I did."*

Bob Hill: *"Does the Airport maintain video surveillance of JetAway?"*

Ron Forsberg: *"Yes, it does."*

Bob Hill: *"Does it operate this camera 24/7?"*

Ron Forsberg: *"Yes, it does."*

Bob Hill: *"Okay. Have you observed violations of Airport rules and regulations committed by JetAway?"*

Ron Forsberg: *"Yes, on many, many occasions."*

Bob Hill: *"Have you observed them since June 30, 2008?"*

Ron Forsberg: *"Yes, many, many times."*

Bob Hill: *"Have you observed them since the beginning of September, specifically September 8, 2008?"*

Ron Forsberg: *"Yes."*

Bob Hill: *"Okay. Thank you. What have you observed?"*

Ron Forsberg: *"I've observed unauthorized vehicles without lights and beacons driving all of the "Echo" taxiway. I've observed vehicles that should not normally have access onto the Airport, for instance, pickups pulling boats. I've viewed motorcycles driving on the taxiway. Many, many... I've observed aircraft being parked for hours and hours, up to 10, 12 hours on the taxiway."*

Bob Hill: *"And, have you observed vehicles parked on the taxiway?"*

Ron Forsberg: *"Yes. Many times, yes."*

Bob Hill: *"When you say you've observed boats, I assume you mean boats trailered by vehicles?"*

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Ron Forsberg: *"Right, being pulled by the pickup, or something."*

Bob Hill: *"Okay. Have you observed these events directly?"*

Ron Forsberg: *"I've observed them both directly and on video."*

Bob Hill: *"Okay. Have you observed JetAway using a GPU on the Airport?"*

Ron Forsberg: *"Not directly. I did observe it on the video. There was an aircraft that was out in front of JetAway on the taxiway, and then a GPU was brought out. I couldn't tell exactly, because it doesn't have enough detail to see where the chords go, but it was brought up next to the airplane, and then the airplane was started and left. So, my assumption would be that it was used to start the airplane."*

Bob Hill: *"Now, since June 30<sup>th</sup>, can you just generally testify as to the frequency of these violations that you've observed?"*

Ron Forsberg: *"Daily. Many times a day, oftentimes."*

Bob Hill: *"Okay. Now, you testified in Court, you mentioned on Friday, on this matter?"*

Ron Forsberg: *"Yes, I did."*

Bob Hill: *"And you essentially told the Court the same thing that you've said today. Is that correct?"*

Ron Forsberg: *"That is correct. Yes."*

Bob Hill: *"Okay. Now, did the Court enter an order on Friday?"*

Ron Forsberg: *"From what I understand, they denied access on the taxiway, or use of the taxiway for the kinds of things that JetAway was using, and they told them that they needed to use their own property, which would be the little ramp space they have on the north side as their ramp area, and to not park or park anything, or operate on the taxiway without lights and beacons, and kind of tell them to obey the rules and get the training that they were required."*

Bob Hill: *"To summarize, would you say the Court said that JetAway cannot use the Taxiway "E" and the Taxiway "E" OFA as a ramp to park anything?"*

Ron Forsberg: *"Absolutely. It's not a ramp space, and so yes, they were not allowed to use that as a ramp area."*

Bob Hill: *"Okay. Now, did you review video from the surveillance camera for November 17<sup>th</sup>, this past Monday for the period starting approximately 11:20 a.m.?"*

Ron Forsberg: *"Yes, I did."*

Bob Hill: *"What did you observe?"*

Ron Forsberg: *"There was a low-wing aircraft, a tail dragger, low-wing aircraft that was pushed out of the JetAway building and it was left on the taxiway for approximately fourteen minutes before people got in it and left."*

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Bob Hill: *"Okay. So, would you say they were using the taxiway as a ramp in that instance?"*

Ron Forsberg: *"Yes. Absolutely."*

Bob Hill: *"Would you say that was a violation of the Court's order from Friday?"*

Ron Forsberg: *"Yes, I do."*

Bob Hill: *"I want to hand you this thick stack of documents and ask if you can identify what that is?"*

Ron Forsberg: *"This is a log that we've been keeping since July of the different violations that we've observed at JetAway."*

Bob Hill: *"Okay. And was this log entered as an exhibit into the Court on Friday?"*

Ron Forsberg: *"Yes, it was."*

Bob Hill: *"Okay. Now, if you would look at the last, I believe it's the November 17<sup>th</sup> entry for that log."*

Ron Forsberg: *"Okay."*

Bob Hill: *"And, I would ask, has this log been updated since Friday when it was entered into Court?"*

Ron Forsberg: *"Yes, it has."*

Bob Hill: *"Okay. Now, looking at the entry of November 17<sup>th</sup>, you see the entry for approximately 11:20 a.m.?"*

Ron Forsberg: *"Yes."*

Bob Hill: *"Is that what you just testified to, that you reviewed on the camera?"*

Ron Forsberg: *"That is correct. Yes."*

Bob Hill: *"Did you also, could you look at the entry for 12:34 to 12:38 p.m., I guess it would be, on that same day?"*

Ron Forsberg: *"Okay."*

Bob Hill: *"Now, for this entry I'm asking about in the next one, did you observe them directly on the camera?"*

Ron Forsberg: *"On this second one here, I haven't observed on the camera..."*

Bob Hill: *"Specifically, the 12:34 to 12:38? I just want to know..."*

Ron Forsberg: *"Correct, I did not observe that one on the camera."*

Bob Hill: *"...that you've been involved in preparation of this log. Is that correct?"*

Ron Forsberg: *"Yes, I have."*

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Bob Hill: "So, by reading that entry, could you read that entry into the record and tell me what it means to you?"

Ron Forsberg: "Sure. It reads 'Aircraft tugged out onto the taxiway at 12:34:04 and at 12:35:09 the tug disconnected and at 12:38:20 the aircraft departed'."

Bob Hill: "Okay."

Ron Forsberg: "And, what that means is, there again, they are using that area as, instead of tugging it out to their ramp area which is on the north end of the building there that they have put in, they are using the area right in front of the, on the taxiway there as a ramp area."

Bob Hill: "Could you read the entry into the record from 12:50, approximately 12:53 to 12:55?"

Ron Forsberg: "Sure. That one is 'Tail dragger aircraft taxis to JetAway and parks on taxiway in front of JetAway. And then at 12:55:31, 'Aircraft is pulled into the JetAway hangar'."

Bob Hill: "Okay. And, again, you didn't observe these on the video, you're just interpreting from this log. Is that correct?"

Ron Forsberg: "Correct. I'm interpreting from this log. I did see the one from approximately 11:20, but this log was produced by somebody of the ARF staff. So, I did not physically see this one, but you know, this is, this would indicate that they, the tail dragger that probably went out on 11:20 was coming back and using that area again as a ramp area instead of a taxiway."

Bob Hill: "I have no further questions for Mr. Forsberg. If the Board has any..."

The Board indicated they had no questions for Mr. Forsberg.

At that time, Mr. Hill read into the record the following Order from Judge Schum dated November 14, 2008:

Before reading the Order, Mr. Hill noted that this was in the matter of in the District Court, Montrose County, State of Colorado, Case Numbers 2006CV18 and 2006CV25, 2006CV126. These were consolidated cases involving One Creative Place and JetAway Aviation vs. Board of County Commissioners of Montrose County, Colorado and Board of County Commissioners of Montrose, Colorado vs. One Creative Place, LLC, JetAway Aviation, KMTJ Fuel. Intervening in the action is Jet Center Partners, LLC. Mr. Hill explained that under Case Number 126, JetAway Aviation vs. Board of County Commissioners was also involved and were consolidated cases that were tried in May of 2008 and resulted in the Order dated June 30, 2008 (as testified to earlier by Mr. Arnold and Mr. Forsberg).

*"The Court: I am finding that the County is entitled to the relief requested. We have already dealt with the issue about procedurally whether the TRO can be issues at this juncture, and I believe it can, and so, the question is then whether a TRO should issue based on the facts and on the arguments of the county, and I think the County is correct on this one. The TRO should issue. It is really undisputed that there have been continuing safety violations. Violations of the Airport's Minimum Standards and the FAA Regulations and Directive, really, from the Airport to the JetAway facility and employees since the order in June of this year. JetAway is not here to dispute the alleged violations. Their argument is, basically, well, there is no threat under violations. This would, effectively, mean that there is no ramp space for JetAway to park in front of the facility. JetAway cannot be in compliance with the injunction as requested, and they need a reasonable time to get in to compliance, and I am just really not accepting JetAway's argument. There was one argument that carries a bit of weight from JetAway*

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is the idea that the OFA extends into the building and that is a problem. That has been a problem since the OFA was established. It was a problem that was acknowledged at trial. I understand that JetAway has made the claim that the Airport Layout Plan submitted at trial was somehow falsified or fabricated. But, JetAway withdrew that motion to reopen the evidence. It was essentially – then it becomes a moot point. JetAway is trying to hang its hat on that idea that somehow this OFA area in front of the JetAway facility is misdesignated or improperly designated on the Airport Layout Plan, and again, I am just not buying that argument. Because regardless of whether that Object Free Area is correctly designated, JetAway still has an obligation to comply with Minimum Standard Regulations on the Airport and so, this applies to all areas of the Airport. Whether it is an Object Free Area or not, and so, I think JetAway is missing the boat in that sense, because JetAway seems to be arguing that is it not an Object Free Area, then we can do whatever we want. For example, if the issue is any vehicle on the Airport has to have lights and a two way radio, it doesn't matter whether the vehicle is driving through an Object Free Area or driving across the prairie dog field, the vehicle has to have lights and a radio, and for JetAway to say well, it is not an Object Free Area. So, we don't have to comply with other regulations, I, again, think that is missing the point. JetAway has to comply with Airport Regulations period. Whatever they are. Wherever they apply, and so, the argument that well, this is a mis-marked Object Free Area is just a smoke screen in my mind, and it is not flying with me. The reason it carries a little bit of weight is, because again, we know there is this problem. That the Object Free Area extends into the building, and that is a problem, and I admit it is a problem. The County admits it is a problem and it is a problem that has to be addressed. But, what JetAway is doing is taking that issue, and then expanding that, and saying, therefore, since we cannot comply with that, literally, in our building, we, therefore, have the right to violate regulations all over the Airport anytime we want. That is effectively what JetAway's argument is, and again, I am not buying that. So, what the injunction is going to do is, essentially, say that it prohibits JetAway from parking vehicles or violating Minimum Standards or Airport Rules on Airport property. Whether it is an OFA or not. So, we are going to limit the temporary restraining order to the boundary line between the JetAway facility and the Airport, because I don't see any immediate threat of injury or irreparable harm if JetAway park a plane in their hangar even it happens to cross this theoretical line for an OFA. We will have to sort that issue out down the road somehow, either in this case, some future case with the FAA, with the Airport modifying its Airport Layout Plan. But, I agree that that is a problem that I am not prepared to address or prohibit JetAway from – well, it is a problem I am not prepared to address today, and it is an area – that strip of land in the front of their hangar that I am not prepared to restrict their usage of today, and I don't really even hear the County arguing for that. Although, a technical reading of your proposed injunction language could be interpreted that way, because you asked me to prohibit them from parking vehicles in the OFA, and you are admitting that the OFA extends into their building, and I am not going to prevent them from parking planes in their building. But, I am adopting the balance of the proposed TRO. Again, it is undisputed that there have been repeated violations and this is not really just ignorance or minor violations. These issues were fully and fairly litigated. There is not a ramp or parking area in front of JetAway period. There is no dispute about that now. If I get overturned on appeal, I get overturned. But, the Land Lease Agreement was terminated. I made it clear in my Order that JetAway can do GPU or Ground Power Units starting, but they have to tow the airplane onto their property, park it there and start it. It is pretty clear through the previous Order that they can't use that taxiway in front of their building for parking aircraft, golf carts, Hummers, nothing, and I thought the Order was pretty clear on that. The Land Lease Agreement was terminated. I directed that if they want to do GPU, they can, but they have to tow it over to their property, or on an on airport area approved by the County or by the Airport, and instead of complying with that pretty basic direction and clear language, the evidence is undisputed that JetAway is not just, basically, ignoring the Court's Order and the County's directives in that sense. JetAway is treating this taxiway as if it is still a ramp area, a parking area that they have complete control over, and again, that evidence is undisputed and it is creating a safety hazard. Not only are there vehicles, people, dogs, trucks that are unauthorized coming and going on that taxiway, parking on that taxiway, it also demonstrates that JetAway has this attitude that it doesn't matter really what the Court Order is, or what the County is requiring, JetAway is going to do what it wants to do.

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*One of the most difficult issues in this case, to me, is why the County is not terminating the access permit. Or asking for the County – asking for the Court to terminate the access permit or doing it on their own. I mean, maybe access permit is a bad phrase, because apparently, there is no permit right now, but access. Why isn't the County terminating access? And I think the County gave me a reasonable explanation here today. They are really bending over backwards, in my mind, to try to keep JetAway in business, accommodate JetAway, accommodate JetAway's request to do business, and yet, are becoming frustrated and almost at their wit's end with JetAway's refusal to comply with the Regulations and the Minimum Standards, and one of the most difficult issues for me is whether I should terminate access regardless of whether the County is requesting this or not, because I am not convinced that further injunctions are going to solve the problem. The Order in June, I thought was very clear about what JetAway could do and not do. It appears to me it is now just a flagrant violation of the Order, and the County is arguing here that well, we need now some further definitions of this, and I don't know that anything short of terminating access is going to accomplish this result. The only reason I am not terminating access, frankly, is because the County is not asking for it. Had they asked for it today, I would issue an injunction terminating access to the Airport.*

*It is my conclusion that the County does have a reasonable probability of success on the merits of this claim. That they are entitled to a injunction, and whether it is finally and fully and fairly litigated down the road or not, I think they have a probability of success demonstrating that they are entitled to this injunction, this Temporary Restraining Order, because there is continued violations of the Minimum Standards, and at this point, it is really undisputed. I guess technically, this is probably a preliminary injunction since there has been notice to JetAway and a chance to participate at this hearing.*

*There is a danger of real and immediate and irreparable injury and I think, again the danger of irreparable injury is the potential for – of a safety incident where someone is hurt, injured, killed, or there is a crash, or a conflict between an airplane and a golf cart, or an airplane and a dog, or an airplane and a car or a truck that is unauthorized to be on that taxiway, and the possibility for a death or serious injury is so serious that no other form of relief or legal remedy would be adequate to remedy that sort of potential problem.*

*This preliminary injunction serves the public interest because first and foremost the public interest is in having a safe Airport, and all of these issues go to the safety of the Airport, and I have to do something to try to ensure that the Airport is run in safe way, and I think this Preliminary Injunction serves the public interest for that reason.*

*The balance of the equities favors the injunction. I see no reason, no argument from JetAway, why this injunction should not enter in terms of trying to balance the equities. When I look at JetAway's arguments, they are saying, well we are skeptical. Look at the timing of this. Why didn't the County come back sooner? Well, I agree. Maybe the County should have come back sooner especially if it is a safety issue. But, in my mind, that doesn't depreciate the concerns about safety or eliminate those concerns. It shows to me again that the County is doing what they can to try to work and cooperate with JetAway, but they are not getting that cooperation in return. Perhaps the County is bending over backwards too much, in my opinion. Maybe they should have come here quicker, but that does not eliminate the immediate need to address the situation and address the safety violations. It doesn't prevent the County from asking for the relief now, just because they delayed in asking for the relief previously.*

*JetAway has argued, well, this effectively means that there is no ramp in front of the JetAway facility. That is correct from my take on the evidence at trial. There is no ramp in front of the JetAway facility. It is a taxiway and there cannot be vehicles parked on there. If that changes, and JetAway gets the authority to park vehicles there, then that changes. But, the current status is that there is no ramp. There is no parking in front of JetAway. It is a taxiway, and I thought that was made clear at trial and through my Order. Apparently, it hasn't been made clear. I think it was, and JetAway is just flaunting the Order, but nevertheless, now it is made absolutely clear. There is*

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no ramp. There is no parking in front of JetAway. They want to park vehicles, if they want to park airplanes and start them with GPU units, just as I said in the Order; it has to be done on JetAway property. The Land Lease Agreement has been terminated. JetAway say well, this shouldn't issue because JetAway can never be in compliance. Well, I agree and I have addressed that in the sense of the Off Airport Agreement – or excuse me, Object Free Area extending into the hangar. That is a problem, but this injunction is going to stop at the line of the Airport. JetAway can be in compliance. They can simply comply with Airport Regulations, Minimum Standards, Directives from the Airport Authority whenever they are on Airport property, wherever they are located. So, JetAway can still park airplanes, do what they want, generally, within terms of the previous Order in their facility, but when they are on Airport property, they have to comply with Airport Regulations and Standards and JetAway can do that. They are just refusing to do that.

JetAway is asking for a reasonable time to comply and get their people trained. JetAway can have the time they want to train their people, but they have to comply with the Order and the Regulation and the Standards in the meantime. Which means no one is on the Airport unless they are authorized, trained under the Standards of the Airport, and take all the time JetAway wants to get their people trained, but I cannot authorize violations of safety standards in the meantime. That is effectively what JetAway seems to be asking. Give us a brief period of time to continue to violate safety regulations while we get trained and I am saying no. JetAway has had plenty of time to know this issue was coming. To get their people trained and JetAway is completely ignoring their responsibility here. So, take all the time you want to get your people trained. But, in the meantime, comply with the regulations and the injunction.

I am going to issue the injunction as it's proposed in the Motion for Temporary Restraining Order or Preliminary Injunction and let me see if I can get the caption correct here. The Montrose County Board of County Commissioner's Motion for Temporary Restraining Order or Preliminary Injunction except that in the conclusion, paragraph D, where it says prohibiting JetAway from parking vehicles or aircraft on the taxiway or in the taxiway OFA, I am going to have to add some language about the OFA on Airport property, or the OFA in the AOA, which you have referred to as the, I think, Airport Operation Area – Air Operations Area. So, we need to make it clear in that injunction – that I need to make it clear in that injunction that JetAway can park vehicles or conduct activities inside their hangar on their side of the property line even if it is in the OFA without violating this Temporary Injunction.

And finally, it seems like all of this is somewhat redundant, because I thought this was all pretty well spelled out in the June 30<sup>th</sup> Order, but, especially, paragraph E seems redundant to me. You want me to order JetAway to operate its business off Airport in accordance with my Order of June 30, 2008 and it is like saying order JetAway, once again, to comply with the June 30<sup>th</sup> Order, and I don't know how many times I need to say that. Again, it just seems pointless to keep coming back and saying, tell JetAway to comply with your Order. It goes without saying. It is a Court Order. There is consequences for failure to comply. But, I don't want to have a hearing repeatedly just to order them to do again what they have already been ordered to do once. So, I think I am going to at least eliminate paragraph E from the proposed injunction. I think that is just implicit or goes without saying, the balance of the proposed language, I guess, because it is being a little bit more specific in modifying in some ways the injunctive relief previously issued. The County said they submitted a proposed form of order, but I don't remember seeing it and I can't find it. Do you have one today? Or did you previously submit it with the motion?"

Mr. Hill than explained the County submitted the proposed Order, the Judge signed the Order and Mr. Hill held a copy of that Order. In issuing that Order, it was the Judge's position that the County had "bent over backwards" trying to keep JetAway in business and to accommodate them. As an aside, Mr. Hill noted that JetAway was suing the County for anti-trust violations, for trying to put JetAway out of business. Judge Schum and the County have become frustrated with this case; therefore, the Judge issued a "no doubt" Order.

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At that time, Mr. Hill concluded the presentation of his evidence and asked the Board to discuss their findings and conclusions regarding their final decision. Mr. Hill also pointed out that the majority of those in attendance were related to Western Skyways and that this Order did not apply to Western Skyways; however, the Airport had submitted to Western Skyways an Access Permit Agreement and it was incumbent upon them to sign the agreement. This was a matter of protecting Federal funding for the Airport because the economic impact generated by the Airport for the County amounted to millions of dollars. To allow a rogue operator to jeopardize this economic impact was, in Mr. Hill's opinion, unacceptable.

Commissioner Patterson reported he flew to Denver from Montrose on the previous Monday and at that time he noted a NOTAM (Notice to Airman) limiting Taxiway E and E1 to aircraft with wingspan less than 78 ft and asked if this addressed the Judge's concern regarding the OFA extending into the building. Mr. Arnold responded that the reason the NOTAM was issued was to protect the Airport. It is required that a pilot receives NOTAM's prior to their point of destination. The Airport was aware the building extended into the Object Free Area; therefore, the NOTAM was created to inform pilots of this change.

Commissioner Ellis asked Mr. Arnold to inform the public (regarding the re-designation of category) what the aircraft restrictions were. Mr. Arnold explained that jets with a wingspan of 79 ft or less were allowed to use the taxiway.

Commissioner Ellis asked about a document that claimed the County's action was in retaliation against JetAway. Mr. Hill confirmed that JetAway's attorney, Mark Haynes submitted a letter to the County dated November 17, 2008 that stated JetAway's position regarding this public hearing. Mr. Hill reported that JetAway claimed the County was acting out of retaliation for Mr. Stuhmer's participation in the political process; however, it was his opinion this was not true.

Commissioner Ellis then read a portion of a letter dated September 8, 2008 from Lloyd Arnold, Airport Director, to JetAway as follows: *"If you do not submit by this date, the County will deem that it is your refusal to execute the agreement as required for condition of access to the Airport under Section 4B of the Off Airport Agreement. As a result pursuant to the provision of the Off Airport Agreement proceedings to revoke your access to the Airport will be initiated."* Commissioner Ellis pointed out this issue was being addressed and considered by the County long before the November election. Mr. Hill agreed and noted Mr. Arnold testified he had received no response from JetAway to this letter regarding the Access Permit Agreement.

At that time, Commissioner Ellis asked if any representative from JetAway wished to speak. There was no response to this inquiry. Mr. Hill informed the Board that JetAway had responded by the following letter dated November 17, 2008 addressed to Francine Tipton-Long, Montrose County Clerk and Recorder; Mr. Allan Belt, Board of County Commissioners; Mr. William N. Patterson, Board of County Commissioners; Mr. Gary Ellis, Chairman, Board of County Commissioners; Robert Hill, Attorney, Montrose County Attorney's Office:

*"Lady and Gentlemen:*

*We received notice from County Attorney Robert Hill of a hearing set for 10:00 a.m. on November 19, 2008 to consider revocation of the through the fence access of One Creative Place, LLC ("OCP") and JetAway Aviation, LLC ("JetAway"), to the Montrose Regional Airport (the "Airport"). In statements made by all Commissioners, including in published reports, it is apparent that the recent actions, including court actions, of the Board of County Commissioners of Montrose County ("BOCC") are being taken in direct retaliation against JetAway and OCP's Chief Executive Officer, Stephen S. Stuhmer, because of Mr. Stuhmer's opposition to the re-election of County Commissioner Bill Patterson who was recently defeated in the general election held on November 4, 2008. Simply because Mr. Stuhmer exercised his right to participate in the political process. members of the BOCC*

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*called Mr. Stuhmer a "disgrace" and his actions "filthy". It is obvious that Wednesday's hearing will be a sham as were the hearings held to consider the settlement proposal tendered by JetAway in August 2008, in that it is the publicly stated view of the Commissioners "that we don't need those kind of people around here," clearly expresses the intent of the present members of the BOCC not to allow JetAway to do business in Montrose County under any circumstances, and that they are willing to take whatever actions are necessary, justified or not, to put JetAway out of business.*

*The action contemplated by the BOCC on the 19<sup>th</sup> of November is being taken by the BOCC on the pretext that safety on the Airport is somehow endangered by JetAway's operations. Nothing could be further from the truth. JetAway has operated on the Airport for almost five years with a spotless safety record. JetAway has routinely passed all fire and safety inspections with flying colors and JetAway's personnel are all highly qualified individuals fully trained in airport and aircraft operational procedures, including those required by the Montrose County Airport utilizing published training course materials titled Montrose Regional Air Operations Area (AOA) Training Program. There has never been a single incident on or off the Airport related to JetAway's operations involving injury to person or damage to property. In contrast, operations of JetAway's competitor Black Canyon Jet Center have involved serious safety incidents such as a major fuel spill on the commercial airline ramp, and the towing of a multimillion dollar aircraft into the mud requiring Airport fire crews to respond with specialized inflation equipment to lift and remove the disabled aircraft from the accident site which subsequently required the aircraft to be taken out of service until inspections and repairs could be made.*

*As a last ditch attempt to shut down JetAway's operations prior to the departure of Commissioners Patterson and Belt from the BOCC, the BOCC is alleging sham violations of Airport rules and regulations as a pretext for revoking JetAway's access to the airport. This is without any legal justification, improvement to safety, and contrary to the way operations have been conducted for years in front of JetAway's hangar, without incident, in a designated, "Non-Movement" area of the AOA (Airport Operations Area) as depicted on page (2) of the attached AOA training manual. This manual has been used to train personnel working at the Airport as late as last Friday and clearly shows the space in front of JetAway's hangar as non-movement area, available for aircraft and vehicular parking.*

*The BOCC, County attorney and Airport personnel have engaged in this pattern of behavior to protect the de facto monopoly the BOCC has created for Jet Center Partners LLC dba Black Canyon Jet Center to exclusively provide fixed base operator services at the Montrose Regional Airport contrary to federal law.*

*JetAway respectfully requests no action be taken by the present BOCC at this time involving JetAway, One Creative Place or JetAway's access to the Airport and that any further action be tabled until the new County Commissioners have taken office in January 2009.*

*Please place this letter in the record as JetAway's written statement.*

*Very truly yours,*

*Mark E. Haynes"*

Mr. Hill note this letter was dated November 17, 2008, three days after the Court's Order (dated November 14, 2008) that disputed some statements made in this letter.

Commissioner Ellis asked, regarding reference in the letter pertaining to the training program for personnel, if the Airport had documentation that proved JetAway's compliance with training requirements. Mr. Arnold reported the Airport had no record of JetAway's compliance. Pertaining to Mr. Hayne's comment regarding "the BOCC is

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*alleging sham violations of Airport rules and regulations as a pretext for revoking JetAway's access to the airport*<sup>o</sup>, Commissioner Ellis commented that the Judge's Order clearly disagreed with this assertion, and that the Judge's Order gave legal justification for the County's decision to consider revoking JetAway's Access Permit Agreement. Commissioner Ellis also informed those present that the current Board of County Commissioners had notified the newly elected Commissioners they would continue to do business until the current Board was replaced.

Commissioner Ellis asked if the Board objected to allowing representatives from Western Skyways to address the Board before public comment and without the three-minute time limitation. The Board had no objection.

John Head, an Attorney from Denver representing Western Skyways, thanked the Board for allowing him to speak without the three-minute limitation. John Head informed the Board he represented the interest of Western Skyways Turbine, Inc. and Western Skyways, Inc. that were located next to and with access to the Airport. John Head asserted that both companies were affected by the action the Board would take that day because Western Skyways Turbine was under a lease agreement with JetAway. John Head admitted that although he had heard about the issues between JetAway and Montrose County, he did not fully understand them. In his opinion, the situation had turned personal between JetAway and Montrose County and he expressed concern that his client, Al Head was caught in the middle of competing interests. Western Skyways has 89 employees with a \$49 million annual payroll, which translated into a \$6 million impact to Montrose. It was Western Skyways' wish for the government to leave them alone to conduct business. John Head also pointed out that Western Skyways Turbine's rights were derivative of that access and noted he had supporting documents. John Head then articulated that substantial funds were being spent in Montrose County for economic development to encourage companies to come to this town and to the Airport to invest and establish businesses. He also noted that the Airport Director had been sent to Orlando to recruit business to come to Montrose. John Head then conveyed his conviction that Montrose County was considering governmental action that would interfere with Western Skyways, and would affect the employment of their employees. The State of Colorado gave \$400,000 in grant money to Montrose for economic development, and John Head expressed his belief that Colorado would doubt whether they had invested their money wisely if Western Skyways was put out of business. John Head's concern was whether Montrose County was acting in an arbitrary or capricious fashion and that the Court would decide this question for whoever lost the argument being made at this hearing. He also asked the Board to remember that Western Skyways has a lease, which was a right of access derivative of JetAway through the fence to the JetAway property with access to the Airport. It was also John Head's opinion that the County had an obligation not to interfere with the use of that easement. An unreasonable interference of that easement amounted to trespassing. John Head also emphasized that if Western Skyways Turbine and Western Skyways, Inc. were put out of business by Montrose County's actions, they would have a claim against the County for inverse combination. John Head explained that inverse combination meant that when a governmental agency puts a company out of business by governmental action, the government bought the business, and in this case, these businesses were worth millions of dollars. At that time, John Head offered to submit documents showing that Western Skyways Turbine had leasehold rights to this property. Mr. Hill commented that the County should have these documents and asked if this was part of the Access Permit Agreement that was initially submitted to the County. However, he did not object to Western Skyways presenting the documents in proof of lease. The County had an application from Western Skyways that did not specify that access was being sought through the JetAway facility, it only referenced parcel 2.

Commissioner Belt pointed out that JetAway was in violation, and that a Judge ordered the County to take action. Commissioner Belt asserted this was the reason for this hearing and asked why Western Skyways was not putting pressure on JetAway to come into compliance. John Head admitted that although he had been aware of the litigation between JetAway and Western Skyways he did not realize how extensive the situation was between the County and JetAway. He chose initially to not be involved with the situation. It was his opinion that JetAway only had customer's park airplanes in their hangar along with the Western Skyways Turbine operation. Western

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Skyways Turbine consists of airplanes that have an engine that needs to be repaired and will need to stop in front of Western Skyways building. It was his understanding that the County had characterized the area as ramp space and had convinced Judge Schum the area was a taxiway. John Head disagreed with the fact the area was a taxiway and declared there were issues that needed to be resolved. John Head also asserted that Western Skyways could not get into the building unless they park an airplane in front of it. Commissioner Ellis expressed his disagreement with his assertion that the County convinced Judge Schum the area was a taxiway and commented that Judge Schum concluded this fact on his own. Mr. Hill interjected this conclusion was determined from the evidence that was presented to the Judge in a nine-day trial in May of 2008. In addition, Taxiway E had been part of the Airport Layout Plan since 1997. Commissioner Ellis observed that John Head was representing Western Skyways and advised him not to begin defending JetAway. Commissioner Ellis then asked Al Head what size aircraft his property would be able to accommodate and offload, hook up a tug and tow. Al Head responded his property could accommodate a King Air or Citation. Commissioner Ellis then asked why Western Skyways was not able to accommodate an aircraft in this manner. Al Head informed the Board the document by which Western Skyways was trained showed a non-movement area and a movement area. John Head interjected that the document Al Head referred to was the Montrose Regional Airport Air Operations Area (AOA) Training Program. The Board acknowledged they had a copy of this document; however, John Head submitted his copy to the Board for the record. John Head added that Al Head was referring to the Air Operations portion on Page 2. Al Head then noted that the previous evening was the first time he had seen that portion of the Airport Layout Plan that showed the Object Free Area next to JetAway. Commissioner Ellis then informed him that this hearing was being held to consider action to revoke JetAway's through the fence access, and that the Board would consider Western Skyways concerns as part of this decision. Al Head then suggested installing a "No Aircraft Parking" sign on the eastern end of JetAways' parking because this would signal the pilot to continue taxiing to Western Skyways where aircraft were already parked. He added this would remedy the need to park in front of JetAway on what is deemed a taxiway. Commissioner Ellis asked Al Head if he agreed with the County's and the Court's position the area was neither a ramp nor a taxiway. He also added that the County's position has always been that it was acceptable for an aircraft to taxi to Western Skyways in order to be hooked up and towed. Commissioner Ellis then asked Al Head if it was Western Skyways desire to receive an airplane into their hangar to repair and/or rebuild the engine. Al Head affirmed this was correct. Commissioner Ellis asked Al Head if Western Skyways would be agreeable if the County created a plan to allow Western Skyways to operate with continued access. John Head responded that it was Western Skyways desire to stay out of the dispute with JetAway and keep their rights in tact. Commissioner Patterson commented that in his opinion, Western Skyways was asking the County to overlook JetAway's safety violations. He then emphasized the County could not ignore the safety violations. John Head countered that he did not excuse safety violations. Commissioner Patterson responded that it was his belief John Head alleged the County would put Western Skyways out of business because they were going to enforce the Court's action.

Regarding the Access Permit, John Head accused Mr. Hill of not returning his telephone calls. Mr. Hill objected to this accusation by clarifying that he received one phone call from John Head. He returned this phone call and left a message on John Head's answering machine. Mr. Hill noted that John Head had not returned his telephone call. Mr. Hill also noted that he had responded to John Head's written correspondence, as well. John Head then informed the Board he had drafted an Access Permit Agreement that complied with Judge Schum's Order and that referenced the rights set forth in the Off Airport Access Agreement. John Head added that it was his desire that Western Skyways sign the Off Airport Access Agreement. Mr. Hill noted that the County's agreement competed with Western Skyways' version of an agreement. John Head countered the County was attempting to add requirements that was not in the Off Airport Access Agreement. Mr. Hill then declared this subject was beyond the scope of this hearing and that the contents of the agreement were justified and mandated by FAA Advisory Circulars. Commissioner Ellis then notified John Head the Board was intent on creating a solution to deal with Western Skyways concerns.

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John Head again asked the Board to receive the Montrose Regional Airport Air Operations Area (AOA) Training Program into the record and referenced it as "Exhibit A". Commissioner Patterson commented that Exhibit A was out of date because the improvements on Taxiway B were not shown, nor the current Black Canyon. John Head responded that this was the document given to them. Commissioner Patterson then countered that subsequent to that, there had been discussion regarding the Movement Free Area. Mr. Arnold added at that time, the document specified the specifics regarding runways and taxiways, and that Western Skyways was notified in the early part of 2006 of this same language. This language appeared in many documents, two of which were in memos sent to Western Skyways from the Airport. Mr. Arnold pointed out that Western Skyways was relying on one diagram, when the Airport had notified them many times what was needed to comply. John Head explained that Exhibit A defined the Airport Operations Area into two areas: movement area and non-movement area. The area in front of the buildings was the non-movement area that was described as consisting of Aircraft Ramp Area. John Head again asserted that Western Skyways was entitled to rely upon the document (Exhibit A) because this was the document given to Western Skyways by the Airport. Commissioner Ellis expressed his uncertainty how this affected Western Skyways ability to operate. John Head explained that Exhibit A did not describe the area as a movement area. Commissioner Ellis acknowledged the County understood this was a discrepancy. Al Head interjected that he was willing to abide by the rules of the Airport; however, it was his desire that the County recognize Western Skyways was operating legally. At that time, Mr. Hill, for the record, reiterated the purpose of this hearing was to address the issue with JetAway and that no one alleged that Western Skyways operated in violation of the Airport's Rules and Regulations. John Head responded he was not familiar with JetAway's operation, but it was his belief JetAway had nothing in their area except tenants. Commissioner Ellis then directed the discussion back to the issue before the Board and acknowledged the Board would take into consideration Western Skyways concerns. John Head then submitted Western Skyways version of the Access Permit Agreement to the Board.

At that time, Commissioner Ellis opened the hearing to the public.

Richard Williams, of Western Skyways informed the Board he had been employed with Western Skyways for four years. Mr. Williams declared that Western Skyways was concerned about safety and compliance with the Airport's Rules and Regulations. It was his desire that there be resolution between the parties, which may require changing the Airport Layout Plan. He also voiced his concern about the future economic status of Western Skyways employees.

Commissioner Ellis asked Mr. Williams if he acknowledged the importance of the Judge's Order. Mr. Williams responded he did not know the details of the Order.

At that time, Commissioner Ellis noted that Mr. Williams had expressed his concern about the future employment of Western Skyways employees. He asked those who agreed with this sentiment (who had signed up to speak), to raise their hand. Nine individuals raised their hands. Commissioner Ellis asked if any of these individuals would be willing to be taken from the list to speak. Jim Lehman and Jeff Gay agreed to be taken from the list. Paul Bannister expressed his belief this issue was regarding JetAway and not Western Skyways. He was interested in this matter because he flies out of Montrose and owns an airplane that consumed approximately a third of his income. It was his desire that all businesses be treated equally and that there be competition between businesses. Western Skyways operated a FBO that did not comply with the regulations and should be required to pay additional costs in support of the Airport instead of the \$250.00 access fee they were paying at this time. It was his opinion Western Skyways was somewhat culpable in the problems JetAway was experiencing. He also expressed his belief that JetAway should be restricted and that Western Skyways should be agreeable to comply with being treated equally regarding their FBO maintenance business.

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Margie Nutter, informed the Board she had been an employee of Western Skyways for 12 years and that she agreed with Mr. Williams' comments. Due to her position as Controller with Western Skyways, she was familiar with their financial situation. Ms. Nutter expressed her disagreement with Mr. Bannister's comment regarding Western Skyways culpability in this matter. Western Skyways needed the access and had always complied with Airport regulations; however, she acknowledged Western Skyways had difficulty getting correct information. Commissioner Ellis reminded her the issue had already been discussed. Ms. Nutter pointed out that there would not be as many safety concerns in the area if it had been designated a non-movement area. Regarding the issue of business being treated equally, Ms. Nutter reported that Western Skyways paid hefty property taxes and fees that on-airport businesses do not have to pay. Ms. Nutter asked the County not to deny access to Western Skyways.

Commissioner Patterson asked Ms. Nutter if it was her intent to imply that Western Skyways could not afford to pay their share of their expenses to the Airport. Ms. Nutter acknowledged she was unsure what the County considered what Western Skyways should pay as their share. She asserted that Western Skyways paid more than other businesses that were involved with the Airport. Commissioner Patterson responded that Western Skyways should pay what the other businesses were required to pay. Ms. Nutter asked if Western Skyways would be required to pay property taxes. Commissioner Patterson countered that businesses on the Airport were required to possessory interest; therefore all paid equally. He maintained that in order to continue the Airport's Grant Assurances, the Airport must operate in a fair and equitable manner. Ms. Nutter asked how much an equitable amount would be. Commissioner Patterson responded the amount would be equal to the amount other business located on the Airport were required to pay (15 cents per square foot). Ms. Nutter noted that Western Skyways already pays fees. Mr. Arnold interjected that the fee was typically calculated on a percentage of the business's gross or interest. Mr. Kerby interrupted this discussion at that time and asserted the subject was straying from the Agenda item. Commissioner Ellis agreed, but added he had not wished to interrupt a fellow Commissioner prematurely.

Adrian Combs an employee of Western Skyways commended Commissioner Ellis for staying on point. Mr. Combs pointed out that Western Skyways was an independent operator and not a FBO. Western Skyways' concern was to be able to get airplanes that fly into the Airport to a hangar where the engine could be overhauled. Mr. Combs asked the Board to make a decision regarding JetAway's access that did not deny Western Skyways the ability to bring aircraft to be overhauled. Commissioner Ellis reiterated this it was the Board's desire to allow Western Skyways to operate.

Blake Freeland of Cimarron Air informed the Board it was not the County's responsibility or obligation to be agents for tenants of JetAway. The Board was contemplating shutting down JetAway's access. The last two paragraphs of the Access Permit Agreement stated that it was a property right and not the right of a business. Page 9, Section 8 of the Access Permit Agreement stated it was a covenant running with the land; therefore, it was his belief it was not the desire of the Airport to allow one business access to a property and give Access Permits to individual businesses without the businesses having ownership of the land. Mr. Freeland also noted that the Minimum Standards stated the Airport was not allowed to give new Through the Fence operations after 2001. It was Mr. Freeland's opinion the only way to deal with JetAway was to close their access. Mr. Freeland then advised the Board to assure that every dollar spent on the County's legal fees was voluntarily returned to the County before further discussions with JetAway took place.

Bill Ramsey informed the Board that it was strange that although this hearing was regarding issues with JetAway, no one from JetAway was at this hearing to represent their side of the issues. However, it was his belief JetAway sent their tenant, Western Skyways to argue their point. It was his belief this was a landlord/tenant problem.

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Ed Tracey of HeliQwest International reported that he disagreed with Bill Ramsey and Blake Freeland's observations. Mr. Tracey informed the Board that HeliQwest had been at the Airport for three years, and it was his belief they were caught in the middle of an issue that they had no control over and that should not be happening. Mr. Tracey explained that HeliQwest's business was utility construction with Government contracts, and a large portion of their business was conducting search and rescues in the Black Canyon. Mr. Tracey notified the Board that HeliQwest needed access as well because their helicopters are started up outside on the taxiway. Mr. Tracey suggested that HeliQwest be allowed to tow their helicopters to the pad to be started then flown away.

Commissioner Ellis asked Mr. Tracey if his helicopters currently take off from the dirt portion outside their doors. Mr. Tracey responded the helicopters take off from the asphalt pad next to the fuel tanks. Commissioner Ellis asked if HeliQwest needed access to the Airport. Mr. Tracey informed him that HeliQwest buys fuel on the Airport. Mr. Tracey reiterated that if access to JetAway is denied, HeliQwest would be required to remove their equipment from the hangar to the back; however, this would create a hardship for them.

Mr. Kerby asked Mr. Tracey how many helicopters HeliQwest currently had. Mr. Tracey responded that four helicopters were kept at HeliQwest; however, HeliQwest owned nine helicopters.

Mr. Hill asked Mr. Tracey where HeliQwest would need access. Mr. Tracey responded that helicopters would need to be towed from the heated hangar around the corner to the concrete pad.

Commissioner Patterson pointed out that HeliQwest did not pay the Airport for the access. Mr. Tracey asserted that HeliQwest leases the property from JetAway; therefore, JetAway paid the fee for access. Commissioner Patterson noted the fee was \$250, which had not been paid by JetAway. Mr. Tracey affirmed he did not know this; however, HeliQwest pays property taxes to the County along with payroll taxes to the State.

Dee Laird, whose name was on the list to speak, informed the Board that the points he wished to make had previously been made; therefore, he chose not to speak to the Board at that time.

Rene' Medina informed the Board he had been employed with Western Skyways for fourteen years. Mr. Medina noted that he was concerned that the public were not informed about the meaning of FAA or FAR terms. He suggested the Airport give background information regarding these meanings during these hearings. He also clarified that Advisory Circulars were only meant to advise how to safely operate and that the FAA would not issue a violation if an advisory were violated; however, the FAA would issue a violation if a regulation were violated under the transportation portion of CFR part 49. Regarding access to the hangar, Mr. Medina explained it was important for Western Skyways to have access to the front of the building because expensive aircraft taxi in front of Western Skyways building that can taxi in front of JetAways building. Mr. Medina also asserted that issuing a violation for an aircraft parking until it can be pulled into the hangar was going too far. He noted that FAR specified a requirement regarding the distance a taxiway should be from a building and that the Airport Layout Plan needed to be corrected. Regarding AOA operations, Mr. Medina informed the Board it was his responsibility to assure Western Skyways complied with FAA rules and regulations and expressed his disappointment that Western Skyways receives telephone calls instead of a visit to address issues. Mr. Medina urged the Board to consider that Western Skyways was now required to comply with TSA agreements. Security violations needed to be considered when closing JetAway's access to the Airport, as well.

In response to Mr. Medina's comments, Mr. Arnold informed the Board that Grant Assurance Number 34 required the Airport to abide by the Advisory Circulars.

Speaking to Mr. Tracey of HeliQwest, Mr. Arnold noted that Mr. Tracey received Government contracts and because of this, HeliQwest was obligated to comply with the Airport's Grant Assurances.

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Regarding John Head's comment that Airport was active in attempting to attract businesses to the Airport, Mr. Arnold asserted this was true; however, the Airport wished to attract businesses that desire to compete fairly.

Glen Davis, Vice Chairman of the Montrose Economic Development Corporation (MEDC), expressed his belief that any agreement brought before the public should require a meeting with the City of Montrose and Montrose County. Mr. Davis noted there had been only one meeting between the City and County thus far.

Mr. Davis admonished the Board that this issue had been ongoing for three years and expressed his belief that eighty percent of Montrose citizens were tired of the issue. Mr. Davis commented that although the County's position was right, he was confident the County had bypassed economic development because the agreement MEDC had with the County regarding the Airport could not operate under the Board's proposal. Mr. Davis accused the Board of becoming too emotionally involved in the issue with JetAway and therefore was incapable of settling the issue. Mr. Davis recommended an arbitration board to settle the issue or tabling it until a new Board of County Commissioners was in office. He blamed the Board for costing the County millions of dollars in economic development that did not include money spent on lawsuits. Mr. Davis admitted he had an emotional interest in this issue because he had been in Montrose for 35 years, helped build the Airport, dam and the Pavilion.

In response, Commissioner Patterson reminded Mr. Davis that JetAway sued the County and that JetAway caused all litigation. Commissioner Patterson agreed that everyone was tired of dealing with this issue and asserted the Board did what they believed was right by privatizing the FBO. Commissioner Ellis added that public meetings were held to bring the issues to the citizens of Montrose and that the overwhelming response from the public seemed to be in support of the County's position. Commissioner Ellis allowed that while this issue might involve economic development, the issue was actually an Airport issue.

Commissioner Ellis then asked Mr. Davis to clarify whether MEDC had a roll in bringing JetAway to Montrose. Mr. Davis explained that a Montrose area real estate agent and his son bought a building at the Airport. This property included a Through the Fence agreement with the Airport. It was Mr. Davis's belief that meetings between MEDC and the County needed to occur in order to change this Through the Fence agreement. MEDC asked the County to support the Through the Fence agreement with JetAway due to the value of the business and the revenue it could bring to Montrose. Mr. Davis then addressed Commissioner Patterson and agreed that the County did not start litigation with JetAway; however, the issue needed to end, and if the Board was incapable of doing this, they should allow someone else to do so. Mr. Davis also asserted that MEDC would take whatever action necessary regarding the property they paid for because, in his opinion, if the agreement was no longer valid, the State grants received for the property needed to be reimbursed. Commissioner-elect Ron Henderson asked Mr. Davis if this was a threat. Mr. Davis responded it was not a threat but a fact.

Tom Cheney informed the Board that he was a pilot, had lived in Montrose for forty-three years, and had served on a previous Airport Board. Mr. Cheney reported he had been a pilot for fifty years and had flown many types of aircraft. He remarked that a pilot relies on the information in the Airport Layout Plan and there should not be any surprises or objects on a taxiway. Most regulations originate from safety issues due to accidents that have occurred. Mr. Cheney noted there had been no collisions at the Airport; however, regulations should be obeyed. He complimented the Board for exercising great restraint and forbearance in attempting to resolve the issues with JetAway; however, he urged the Board to deny JetAway's access to the Airport in order to make the Airport safer for the flying public.

Cyndi Williams expressed her appreciation to Commissioner Ellis for clarifying that name-calling and disrespectful behavior was not acceptable. Ms. Williams conveyed her belief that if JetAway's access were denied, most businesses utilizing the area for aircraft traffic would not be able to use that building. Because the diagram in the

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manual did not match what pilots were instructed to do by the Airport; there was much confusion. Ms. Williams suggested that everyone involved meet to discuss the issues for a resolution because it had cost the community a lot of money. If Montrose County denied access to JetAway, Western Skyways would be forced out of business, which would result in a non-aircraft business coming into that location.

Commissioner Ellis asked Brent Wallace, a JetAway employee, (regarding JetAway's option to have access for parking on Lot 3) whether JetAway had a separate frequency for aircraft to contact JetAway. Mr. Wallace responded that JetAway had a separate frequency. Commissioner Ellis asked Mr. Wallace whether a customer (aircraft) could contact JetAway so that JetAway could direct the aircraft to Lot 3 for de-planting. Mr. Wallace explained that Black Canyon Jet Center operated the Montrose Unicom; therefore, JetAway relied on them to direct aircraft to JetAway. Commissioner Ellis then asked whether JetAway had the capability for aircraft to contact JetAway for fuel or other services. Mr. Wallace affirmed that JetAway had this capability. Commissioner Ellis then commented this would address Ms. Williams' concern, because JetAway had a mechanism to instruct aircraft the route to take. Mr. Wallace countered that this was correct as long as the aircraft was preplanned to go to JetAway.

Commissioner Belt declared his amazement that the County was taking the blame for JetAway's flagrant violations of every rule imaginable. The County was performing their duty prescribed by the law. Commissioner Belt expressed his understanding that Western Skyways employees wished to keep their jobs; however, he asked them to consider that the County had been dealing with a renegade operator for a very long time. JetAway had flouted the Court Orders, the County's regulations, and FAA regulations; therefore, putting the County in the position they were in today. The County did not conspire against Western Skyways and their employees in order to antagonize them. Commissioner Ellis affirmed his agreement. Mr. Kerby interjected at that time in relation to comments made earlier by Western Skyways employees that everyone involved should sit down in a room to discuss the issues. He informed those present that this had already been attempted on several occasions in the past two years, along with FAA mediation. The meetings mediated by the FAA lasted several days, but unfortunately was met with no success. Mr. Kerby asked Mr. Hill for clarification regarding how many meetings the FAA mediated. Mr. Hill responded that mediation by the FAA took place in March 2007 (3-days in length), September 2007 (2-days in length), along with numerous telephone conferences between the FAA mediator, JetAway and the County.

Mr. Arnold then addressed Ms. Williams by noting he agreed with some of her comments; however, the FAA does not give the Airport the flexibility to choose which FAA regulation to follow. The Airport must abide by all FAA regulations because the Airport signed Grant Assurances in order to receive Federal funds. The Airport was attempting to follow the FAA regulations. Ms. Williams responded she understood it was important to follow FAA regulations; however, it was her opinion the fact that aircraft would be using the small area of taxiway in question should have been considered when the Airport Layout Plan was made. Mr. Arnold countered that the rules and regulations were not the Airport's and the Airport Layout Plan designated that this taxiway would eventually connect to Taxiway A.

Tim Heavers, a private pilot, informed the Board he became involved with JetAway June of 2008 when he purchased an aircraft and was searching for hangar space. He was unsuccessful finding hangar space until space was found on JetAway's property. Mr. Heavers noted that because his aircraft was stored on JetAway property, he would be adversely affected if the County denied JetAway's access. He also lamented the difficulty in finding hangar space in Montrose for many years and that in 1998 he wrote letters to Dave Miller, Dennis Hunt, a past Airport Director, along with every Montrose Airport Director since that time addressing this concern. Nineteen other pilots also were concerned about this issue. Mr. Heavers asserted that the Airport's response to his concerns were that Montrose County was developing a Master Plan that would address this problem. It was Mr. Heaver's belief that blocking all of JetAway's access significantly affected the businesses and private pilots using the hangar. He also asserted that there was an alternate method for dealing with access issues and

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suggested the County levy fines against JetAway for violations; which would provide revenue for the County. Commissioner Belt responded that if the County could get JetAway to comply with regulations by levying fines, they would do it; however, the problem was not that easily resolved. Mr. Heavers countered that anyone committing security violations should be fined.

Alice Carpenter informed the Board she was not a JetAway or Western Skyways employee; however, she was a voter and related to Sandy Head, wife of Al Head of Western Skyways. Ms. Carpenter expressed her understanding a Judge had made a recommendation to the Board and to JetAway; however, it was her belief that the Judge's "recommendation" was not set in stone. Ms. Carpenter admonished the Board that they were responsible for the livelihood of Western Skyways employees and asked them to do whatever was necessary to keep Western Skyways in business.

Commissioner Ellis closed the Public Hearing at 12:32 p.m. and reminded those present that once the Public Hearing was closed there would be no further comments.

Commissioner Patterson emphasized that JetAway needed to comply with the Airport regulations and the Judge's Order.

Commissioner Belt asked how much more patience should the County have with JetAway who had pulled the County into Court for the past three years and who had not complied with FAA regulations. The County could help Western Skyways and HeliQwest with access issues; however, it was the County's responsibility to deny JetAway's access to the Airport.

Mr. Hill then clarified (in response to Ms. Carpenter's comments), that Judges do not make recommendations, they issue Orders. There are grave consequences when these Orders are not followed.

Mr. Hill then reminded those present that the purpose of this hearing was to consider JetAway's access, not the access of Western Skyways or HeliQwest. He acknowledged Western Skyways and HeliQwest's concerns regarding actions against JetAway; however, because they were connected with JetAway, it was inevitable that they would experience some repercussions. Mr. Hill asserted however, it was his belief there was a solution to preserving Western Skyways and HeliQwest's access and this could be accomplished through an Access Permit Agreement. This Access Permit Agreement had already been prepared by the County and approved by the FAA. Mr. Hill recommended the Board decide the issue regarding JetAway's access. He also recommended that Western Skyways and HeliQwest's access be executed pursuant an Access Permit Agreement as is contemplated in the Off Airport Agreement. Commissioner Ellis asked Mr. Hill if this related to that particular property and not the original property. Mr. Hill clarified there were two corporations involved that operated on different locations of the property. The Access Permit Agreement application he was familiar with only addressed the area of the Western Skyways building and not its leasehold space in JetAway. Commissioner Ellis expressed his agreement with Commissioners Patterson and Belt that the County should take action against JetAway; however, he was not interested in injuring Western Skyways employees. He agreed that Mr. Hill's recommendations would allow Western Skyways access during the time JetAway was denied access.

Commissioner Ellis then asked Mr. Hill what motion the Board should make to deny JetAway's access that would also accommodate Western Skyways concerns. Mr. Hill responded that the Board could both deny JetAway's access and install an aircraft gate that could be locked with a key provided to those parties authorized to have access. Another option available was for the Board to deny access to JetAway temporarily, which would give JetAway a chance to demonstrate compliance and reapply for an Access Permit Agreement after a specified date. At that time, the Board could hold another hearing to determine whether JetAway had complied with the FAA regulations, had abided by the revocation of access, and had shown a willingness to adhere to the rules.

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The Board could then determine if JetAway's access should be reinstated. Commissioner Belt interjected that he was against using a gate method and that the Board should deny JetAway's access for a period to allow JetAway time to become compliant. In the interim, the County could produce a resolution for Western Skyways and HeliQwest's access issues. He was not certain this would be a comforting solution for Western Skyways; however, the Board was committed to working with Western Skyways and HeliQwest for a resolution for access because the County had no desire to punish them for JetAway's noncompliance. In response, Al Head informed the Board they would abide by the rules of the Airport provided they had a clear indication of what those rules were. He explained the documents Western Skyways had access to do not show that Taxiway E6 encroached on the JetAway hangar. Commissioner Belt acknowledged that Western Skyways was entitled to know what was expected and promised this would be provided to them. Al Head asked the Board if Western Skyways was responsible for a privately owned aircraft that was parked in unauthorized area. Commissioner Belt responded it was not Western Skyways responsibility; however, Commissioner Ellis asserted it was Western Skyways responsibility if they were working on the aircraft and assumed liability for the aircraft. Al Head asked who was responsible for the private aircraft in the hangar, and if the aircraft was allowed to preflight the aircraft in front of the hangar. Mr. Hill asked if an airplane could be preflighted in a taxiway. Al Head acknowledged that it has been done in the past and that some latitude should be allowed regarding private aircraft because not all preflight preparations could be conducted inside the hangar. Mr. Hill asked where the boundary should be drawn regarding how much time an aircraft was allowed to do preflight preparations. Commissioner Belt interjected that this issue could not be resolved at this meeting and that a separate meeting should be scheduled to resolve the issues. Al Head agreed, but asserted he should not be responsible for private owners of aircraft. Commissioner Ellis countered that the County did not require that Western Skyways be responsible for them.

At that time, Mr. Kerby asked the Board to direct staff how to work with Western Skyways so that expectations could be put in writing. Al Head agreed. Mr. Tracey asked if this planning meeting included HeliQwest, as well. The Board affirmed that it did. Commissioner Patterson asserted his belief that when denying JetAway's access, the Board should assure that any Through the Fence agreements contain equal Access Permit Agreements. Mr. Hill responded that the Access Permit Agreement already prepared specified how to operate and what regulations should be complied with. Certain details regarding those operations might need to be resolved. Commissioner Patterson commented that all parties involved should be a part of the Access Permit Agreement. Commissioner Ellis added that all parties should understand the specifics of the plan and what was expected of Western Skyways and HeliQwest. Commissioner Ellis then directed staff to resolve the details quickly with Western Skyways and HeliQwest.

Mr. Kerby suggested that if the Board denied JetAways access that they specify a definite date when to meet to review compliance.

At that time, Commissioner Ellis read the proposed motion and asked for discussion by the Board.

Mr. Heavers asked the Board for details regarding the difference between leases held by Western Skyways, HeliQwest and the private pilots lease with JetAway. Commissioner Ellis asked Mr. Hill if the private pilots would have the opportunity to enter into separate lease agreements. Mr. Hill acknowledged this was a difficult situation because JetAway would then enter into new lease agreements with their customers, which would effectively eviscerate any Board action. Commissioner Ellis asked if Mr. Hill recommended that private aircraft should be required to vacate the hangar or remain in the hangar until the issue was resolved. Mr. Hill affirmed there was no other solution.

John Head noted that the Board's proposed motion did not exclude Western Skyways Turbine from the revocation of access. Commissioner Ellis responded that he specifically referenced JetAways access. Mr. Hill then suggested adding that the access being revoked pertained to JetAway, One Creative Place, KMTJ Fuel and any

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other JetAway related corporation. John Head informed the Board they were creating a mess for tenants of JetAway because it seemed they would not have a right of access due to its derivative or tenant of JetAways access. Commissioner Ellis countered that Western Skyways would have a separate Access Permit Agreement with the County. If JetAway applied for, and received their Access Permit Agreement a provision could be made to make all other access null and void. Mr. Kerby asked that the Board clarify what the access agreement meant. Mr. Hill interjected that this specific document had been created and sent to JetAway and Western Skyways. John Head asked what the Access Permit Agreement required from JetAway, noting it was his belief that JetAway was being charged a \$60,000 fee. Mr. Hill informed him that it had been established at trial that JetAway operated a commercial hangar/storage operation. Black Canyon Jet Center also operates a hangar/storage operation; therefore, they pay \$1.00 per square foot for a hangar concession fee. Western Skyways did not have a commercial hangar/storage operation; therefore, there was not a similar fee in Western Skyways document. JetAway and Black Canyon Jet Center are charged this fee because the FAA required the Airport to treat all Airport operators equally. John Head asserted this fee would then be passed on to Western Skyways. Commissioner Ellis responded this issue did not pertain to the access revocation. Commissioner Belt asked for a vote at that time.

A member of the public asked how much time Mr. Heavers and other private pilots had to remove their aircraft from JetAways hangar. Mr. Hill responded that the County would work reasonably with those involved to assure the aircraft were moved. Mr. Arnold added the Airport would allow the owners of the aircraft to leave at any time.

At that time, Mr. Kerby suggested JetAway's access revocation to begin at a future date. The Board disagreed.

**COMMISSIONER ELLIS MOVED TO REVOKE JETAWAY'S, (SPECIFICALLY JETAWAY, ONE CREATIVE PLACE, KMTJ FUEL AND ANY OTHER JETAWAY RELATED CORPORATION) ACCESS TO THE AIRPORT EFFECTIVE IMMEDIATELY UNTIL FRIDAY, DECEMBER 19, 2008. IF, DURING THAT PERIOD JETAWAY CERTIFIES THEIR EMPLOYEES RELATIVE TO OPERATING ON THE AIRPORT, EQUIPS THEIR VEHICLES WITH AMBER ROTATING BEACONS AND HAS ON THEIR VEHICLES AN OPERATING TWO-WAY RADIO TO COMMUNICATE WITH THE FBO AND AIRCRAFT. ALSO, DURING THIS TIME PERIOD, IF THERE ARE NO VIOLATIONS RELATIVE TO PARKING AIRCRAFT ON THE TAXIWAY OR OBJECT FREE AREA OR ANY OTHER FAA, STATE, OR LOCAL RULES OR VIOLATIONS AS SET FORTH IN THE ACCESS PERMIT AGREEMENT SUBMITTED TO JETAWAY, THEN THE COUNTY WOULD ACCEPT AN ACCESS PERMIT APPLICATION AND EXECUTE ACCESS PERMIT AGREEMENT FROM JETAWAY AND THE COUNTY WILL SCHEDULE A HEARING AS QUICKLY AS FEASIBLE TO CONSIDER THAT APPLICATION. COMMISSIONER BELT SECONDED. MOTION CARRIED UNANIMOUSLY.**

**PROCEEDINGS OF THE BOARD OF MONTROSE COUNTY COMMISSIONERS**

**DATE: November 19, 2008**

With no further business coming before the Board, the Board of County Commissioners adjourned at 1:01 p.m.

ATTEST:

BOARD OF MONTROSE COUNTY COMMISSIONERS

\_\_\_\_\_  
Francine Tipton-Long, County Clerk & Recorder

\_\_\_\_\_  
Gary J. Ellis, Chairman

By: \_\_\_\_\_  
Marie Simons  
Deputy Clerk of the Board

\_\_\_\_\_  
William N. Patterson, Vice Chairman

\_\_\_\_\_  
Allan J. Belt, Commissioner

Verbatim tapes of the Commissioners' Proceedings of November 19, 2008 are on file in the Montrose County Administration office.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. \_\_\_\_\_

JETAWAY AVIATION, LLC, a Colorado Limited Liability Company.

Plaintiff;

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MONTROSE,  
COLORADO; MONTROSE COUNTY BUILDING AUTHORITY; a Colorado Nonprofit  
Corporation; JET CENTER PARTNERS, LLC, A Colorado Limited Liability Company;  
BLACK CANYON JET CENTER LLC, a Colorado Limited Liability Company; WILLIAM  
PATTERSON; KEVIN EGAN; AND JAMES RUMBLE;

Defendants.

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**COMPLAINT AND JURY DEMAND**

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**I. INTRODUCTION**

Plaintiff, JetAway Aviation, LLC ("Jet.Away") alleges as follows:

1. This case arises from the improper and unlawful acts undertaken by the Defendants to establish a private monopoly fixed base operator ("FBO") at the Montrose Regional Airport ("Airport") and to prevent Jet.Away from having a fair opportunity to compete for the business of general aviation using the services of an FBO at the Airport originating from both within and without the State of Colorado. This conspiracy to restrain competition was entered into by and among Montrose County ("County"), the operator of the Airport, Montrose County Building Authority ("MCBA"), the owner of the Airport, William Patterson ("Patterson"), a member of the Board of County Commissioners of the County of Montrose ("BOCC") and President of MCBA, Jet Center Partners, LLC ("JCP") the holder of the present

monopoly FBO by contract with the County, Black Canyon Jet Center LLC ("Black Canyon") which operates the present monopoly FBO, Kevin Egan, principal owner of JCP and Black Canyon and James Rumble, a member of the Board of Planning Commissioners of the City of Montrose and a principal owner of JCP and Black Canyon. Among the acts in furtherance of this attempt to monopolize and conspiracy to restrain trade are the grant of a defacto monopoly FBO franchise by the County to JCP/Black Canyon in part at the instigation of Patterson, the illegal funding by MCBA and the County of improvements to benefit JCP and Black Canyon without adequate consideration in return, also at the instigation of Patterson, a pattern of litigation and administrative proceedings intended to prevent JetAway from competing against JCP/Black Canyon as an FBO, a refusal to consummate a settlement agreement to permit competition reached in FAA mediation and the use of the County's regulatory powers to put JetAway out of business. As a result of the improper and unlawful acts of the Defendants and co-conspirators, JetAway has been deprived of an opportunity to compete freely and fairly for FBO business, and has lost millions of dollars worth of business. By this action, JetAway seeks both injunctive relief, to stop the improper and unlawful conduct from occurring in the future, and damages to redress the injuries which have already been caused.

#### I. JURISDICTION AND VENUE

2. This action arises under Sections 4 and 15 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for violations of the antitrust laws of the United States. This action also arises under 42 U.S.C. 1983 for the deprivation of rights guaranteed by the Equal Protection Clause and Commerce Clause of the U.S. Constitution and by federal statutes. The jurisdiction of this court is founded on those sections and on 28 U.S.C. § 1331, which provides this Court with original

jurisdiction over actions arising under the laws of the United States, and 28 U.S.C. § 1337, which provides original jurisdiction over any action arising under federal laws regulating commerce or protecting commerce against restraints and monopolies.

3. Venue in this judicial district is proper under Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, and Section 1391 (b) and (c) of Title 28 in that all defendants transact business or reside in this judicial district and are subject to personal jurisdiction in this district under 28 U.S.C. §§ 1391(b) and (c); 15 U.S.C. §§ 15 and 22.

4. The Defendants are engaged in, and their activities substantially affect, interstate and foreign commerce through their activities at the Airport, including its operation and maintenance by the County and the FBO operation of JCP/Black Canyon. In addition, Defendants have solicited business through the United States mail and other instrumentalities of interstate commerce.

## II. PARTIES

5. Plaintiff JetAway is a Colorado limited liability company whose principal place of business is located at 1 Creative Place, Montrose, Colorado 81401. JetAway operates Montrose Jet Center, providing aeronautical services to general aviation at the Airport.

6. Defendant The Board of County Commissioners of the County of Montrose, Colorado ("BOCC") is the governing body for the County, which is a governmental entity located in the state of Colorado. County leases the Airport from MCBA and operates the Airport.

7. Defendant MCBA is a Colorado nonprofit corporation, whose principal place of business is located at 161 South Townsend, Montrose, CO 81401. MCBA owns the Airport and

leases it to the County. MCBA also finances improvements for the Airport and JCP Black Canyon.

8. Defendant JCP is a Colorado limited liability company with its principal office in Albuquerque, New Mexico, doing business at the Airport as Black Canyon Jet Center, providing FBO services to general aviation, pursuant to a contract with the County.

9. Defendant Black Canyon is a Colorado limited liability company with its principal office in Albuquerque, New Mexico, and its principal place of business located at the Airport. Black Canyon provides FBO services to general aviation at the Airport, pursuant to a contract with the County.

10. Defendant Patterson is a resident of Montrose, Colorado who is a member of the BOCC and President of MCBA. At times pertinent to material allegations of this Complaint, Patterson was Chairman of the BOCC. Patterson's involvement in the affairs of the Montrose Airport date back to the early 1990's when he was Treasurer of the Montrose County Airport Authority. In undertaking the actions described in this Complaint, Patterson has been acting outside scope and authority of his duties as a public official.

11. Defendant Egan is a resident of Santa Fe, New Mexico and directly or indirectly is the principal owner of JCP and Black Canyon.

12. Defendant Rumble is a resident of Montrose, Colorado, is directly or indirectly also a principal owner of JCP and Black Canyon and a member of the Board of Planning Commissioners of the City of Montrose. Rumble's involvement in the affairs of the Montrose Airport also date back to the early 1990's when he was the principal owner of a previous, now defunct, FBO at the Airport called V.I.P. Flyers, Inc.

#### IV. GENERAL ALLEGATIONS

13. The County controls and operates the Airport. The Airport serves both scheduled airlines and general aviation. The County provides most Airport functions, including scheduled airline services, but general aviation facilities or services in support of general aviation are outsourced, provided by a fixed base operator ("FBO").

14. At one time the Airport FBO was a company known as VIP Flyers, Inc. ("VIP Flyers") whose principal owner was Rumble. In 1991, the former Montrose County Airport Authority sued VIP Flyers in connection with its FBO operation at the Airport for violations of the Airport's Standards and Regulations for Commercial Aeronautical Services and Activities, United States Department of Transportation, Federal Aviation Administration, Airport Compliance Requirements, Order 5190.6A, Montrose County Airport Certification Manual Standards, and United States Department of Transportation, Federal Aviation Regulation, Part 139. An Order of the Montrose County District Court dated May 16, 1991 upheld the termination of VIP Flyers' contract to sell fuel and permanently enjoined and restrained VIP Flyers from the storage, dispensation and/or sale of aviation fuels and oils at the Airport.

15. After VIP Flyers was terminated as the Airport FBO, those functions were taken over by the County.

16. In the early 1990's Patterson was Treasurer of the Montrose County Airport Authority, which at the time operated the Airport. Patterson was removed September 2, 1993, from his position by the BOCC for "not serving in the best interest of the community and the Montrose Regional Airport."

17. In 1994 MCBA was incorporated. Montrose County transferred title to the

Airport to MCBA and then entered into a twenty (20) year lease of the Airport from the MCBA. Montrose County continues to operate the Airport pursuant to this lease. The County pays rent to the MCBA out of the County general fund.

18. JetAway acquired its facility adjacent to the Airport in 2004. JetAway has a "through the fence" agreement giving it and its customers direct access to Airport taxiways and runways, acquired by assignment from a previous owner of its facility. Montrose County inserted language in the assignment prohibiting JetAway from selling aviation fuel when the assignment was approved by the County in a public meeting of the BOCC. At the time this "through the fence" agreement was originally entered into the County was the exclusive supplier of fuel at the Airport and remained the exclusive supplier when the agreement was assigned to JetAway. The County was the exclusive fuel supplier until the FBO was privatized.

19. JetAway operates a 75,000 square foot climate controlled hangar and a 25,000 square foot well-furnished FBO terminal building. At the time JetAway began operations in 2004, the County provided only limited general aviation services, primarily the sale of aviation fuels out of a doublewide trailer, which JCP Black Canyon continues to operate out of to this day. JetAway provided virtually all other aeronautical services to general aviation at the Airport in 2004 and 2005, and still does. JetAway's business was lucrative and profitable, before the events described below occurred.

20. In early 2005 the County agreed to lease land to JetAway to build an additional aircraft parking apron, or "ramp," adjacent to the taxiway in front of JetAway's hangar. This land lease Agreement (the "Land Lease"), finally executed November 7, 2005, was for 272,508 sq. ft. of undeveloped land, and required JetAway to build an aircraft parking apron on the land

at its own expense.

21. In early 2005 the County decided to "privatize" the FBO operation at the Airport.

22. jetCenters, Inc., which operates four FBO's in Colorado and the largest FBO at the Arapahoe County Airport, declined to bid for the Montrose FBO, stating in a letter to the BOCC the reason was: "because we believe JetAway's existing facility, infrastructure and location on the airport is one of the finest facilities in all of Colorado, and in fact, one of the best we have seen in the country."

23. At the time bids were being considered, JetAway had been in business providing general aviation services on the Montrose County Airport for over a year, JCP was a newly formed start-up company that had never operated an FBO, had no hangar for aircraft, and no FBO terminal facilities from which to do business.

24. As part of its bid package, JetAway offered to sell the County the land under its existing facility on very favorable terms, financed by JetAway with no down payment, and an immediate positive cash flow to the County as a result of the corresponding lease agreement JetAway agreed to enter into for the conveyed property. The land JetAway offered to sell the County would have put all of JetAway's FBO operations on Airport property. The property JetAway offered was not just any ordinary property, but was land already identified in the Airport's master plan as a potential FBO location and land specifically identified in the Airport's master plan for future acquisition by the County.

25. In August 2005, The County nevertheless awarded the FBO contract to JCP despite the clearly superior bid from JetAway, despite the fact JCP/Black Canyon had no hangar or FBO terminal facilities to conduct business from, and despite the fact Rumble's previous FBO

was permanently enjoined and restrained from the storage, dispensation and/or sale of aviation fuels and oils at the Airport. The County and JCP subsequently entered into the FBO agreement dated December 5, 2005 (the "Agreement"). The JetAway bid was superior in the following respects:

- a. Larger minimum annual payment;
- b. Guaranteed minimum annual payment adjustment (JCP's adjustment was dependent on fuel sales and gross receipts);
- c. Larger lease payments;
- d. Existing terminal building with 25,000 sq. ft. versus proposed future building of 4,000 sq. ft.
- e. Existing 75,000 sq. ft. heated hangar versus proposed 25,000 sq. ft. hangar;
- f. Total capital investment of \$9 million;
- g. Deployment of over \$1 million in moveable equipment, most already in operation;
- h. An existing operation versus a start up;
- i. Major aircraft maintenance and repair facility in place versus no maintenance and repair facility.

26. In May 2005, before it was awarded the FBO, JCP was told in writing by the County's Director of Aviation that "In the event of privatization of the FBO, the County would be obligated to allow additional FBO operators." JCP responded, in writing, that "Additional FBOs at Montrose would not necessarily change the viability of this opportunity provided the County maintained a level playing field for all operators."

27. Patterson was head of the committee that evaluated the FBO proposals and at the time was Chairman of the BOCC.

28. On information and belief Patterson received political support from Rumble in exchange for Patterson's support of the JCP/Black Canyon bid. Patterson is also motivated by personal animus, later telling JetAway's principal, "I'm gonna take this property from you," meaning JetAway's hangar, and "you will never pump fuel at this airport."

29. On December 5, 2005, just two weeks after the JetAway Land Lease Agreement was entered into, the BOCC entered into the FBO Agreement with JCP. The very next item on the BOCC public meeting agenda December 5, 2005 was an amendment of the Airport's "minimum standards" for FBO operations, changing the minimum leased land requirement from 125,000 sq. ft. to 350,000 sq. ft., which meant JetAway's recently leased land, which was more than sufficient to meet the old minimum standards, was no longer sufficient to meet the new Airport minimum standards. On information and belief this was a deliberate, planned and calculated attempt by Patterson and Rumble to render JetAway's recently approved and executed Land Lease insufficient to meet minimum standards required for FBO operations.

30. On December 9, 2005, JetAway made another FBO proposal to the BOCC. Since the County had balked at the opportunity to purchase JetAway's property, the property under JetAway's existing hangar and terminal facility, with no out of pocket expense, no down payment and an immediate positive cash flow, the December 9, 2005 proposal offered to donate an adjacent undeveloped parcel of land to the Airport, also at no cost to the County. JetAway further offered in this proposal to build a new hangar, FBO terminal and fuel farm on the donated parcel, all at no cost to the County, enter into an FBO agreement that was substantially identical

to the JCP Agreement, and convey all the new improvements constructed on the donated property to the County at the end of the lease term. On December 16, 2005, JetAway sweetened this offer by increasing the guaranteed minimum annual payment. In both proposals JetAway proposed, and requested a lease on an additional 191,080 sq. ft. of Airport land adjacent to JetAway's existing Land Lease, known as the South Tract, to meet the newly amended minimum standards.

31. The County responded to this proposal with vague statements about having to do "due diligence" regarding the land to be donated.

32. To eliminate any grounds for objection, JetAway made yet another proposal on December 17, 2005, this time to lease County land and build entirely new FBO facilities on the South Tract, which was County owned undeveloped Airport land located immediately adjacent to JetAway's existing Land Lease. The County's response was no response.

33. In a public meeting held March 20, 2006, the BOCC admitted on public record the JetAway proposal met all Airport minimum standards. The County, however, did not accept the proposal, but it never formally rejected the proposal either, and instead came forward with various excuses for inaction and has continued this course of inaction for nearly two years now. During this time the County was building infrastructure for JCP Black Canyon, funded initially by MCBA and ultimately paid out of County general funds, at the taxpayer's expense, and doing everything possible to put JetAway out of business.

34. Initially, the County said it needed time to evaluate JetAway's through the fence agreement and have the agreement evaluated by the FAA. That was a red herring because JetAway's proposal was not to operate from off airport, but to move its operation to an entirely

new facility JetAway would construct on County owned Airport land. Every objection raised by the County has eventually been addressed and resolved by JetAway, but the Defendants still refuse to allow JetAway to compete as an FBO.

35. As it was required to do by the Land Lease, JetAway began site preparation to build its aircraft parking ramp. The County threw JetAway's contractor off the Airport and to this day refuses to allow JetAway to build on the specious grounds that if the ramp is built JetAway would somehow use it in a way that would violate the Land Lease.

36. The County sued JetAway in February 2006, seeking an injunction that would prevent JetAway from providing any aeronautical services of any kind. On February 17, 2006, the Montrose County District Court entered an injunction permitting JetAway to continue to operate in the same manner it had been acting previously.

37. The grant of an exclusive right to use an air navigation facility on which United States Government money has been expended is illegal under Federal law, 49 U.S.C. § 40103(e), with an exception not relevant here. Federal law also requires a recipient of Federal aid to give the Department of Transportation assurances not to grant exclusive rights to use the airport and to make the airport available to all kinds of aeronautical activities on reasonable terms and without unjust discrimination. 49 U.S.C. §47107(a). Since 1982, the Airport has been awarded federal grants of approximately \$36.7 million.

38. FAA Advisory Circular 150/5190-5 states that "[a]n exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity." The County by its actions and inaction has established JCP/Black Canyon as a defacto illegal monopoly private FBO at the Airport.

39. In 2006 the County gave up its right to appoint MCBA directors and is no longer in control of MCBA. Two of MCBA's three directors are not public officials. At the time the third director was appointed Patterson was the President and a director of MCBA, giving him effective veto power over the selection of the third director. The County has in effect privatized MCBA and allowed it to fall under Patterson's control and influence.

40. The MCBA and Montrose County issued the Official Statement dated June 28, 2006 (the "Prospectus") describing approximately a \$3.7 million bond issue, referred to as the issuance of "certificates of participation" (the "Bond Issue" or "Bonds"). The proceeds of the Bond Issue were used to refinance certain debt incurred in relation to the Airport and to fund two (2) projects.

41. The first project was "to construct a new general aviation access road" to "provide primary access for the new Fixed Base Operator ("FBO") facility." The construction of this Road was expected to cost approximately \$476,000.

42. The second project funded by the Bond Issue was to "construct an aircraft parking apron for the FBO" ("the Ramp"). The Ramp was expected to incur construction costs of approximately \$870,000. Thus, not only has the County resorted to litigation to prevent JetAway from building its own ramp, County funds were used to build a ramp for JCP Black Canyon despite no legal obligation to do so.

43. Had Montrose County selected JetAway's competing FBO bid, it would have incurred neither of these expenses. The JCP Agreement does not require the County provide the improvements being built by these projects and does not provide the County will receive any additional fees and rentals over and above those specified in the Agreement to be paid by JCP

than it would have received had these facilities not been built.

44. In addition, the County leased JCP/Black Canyon a fuel tank farm at a considerable discount and well below market value, despite JetAway's offer to buy the existing fuel farm for fair market value and to build a new farm at its own expense on the other side of the airport to alleviate the need for refueling trucks to cross active runways, as is the case with JCP Black Canyon now.

45. According to the Prospectus the County will pay rent to MCBA to service the debt incurred to build these projects for JCP/Black Canyon, which debt service will be paid out of general fund revenues, taxpayer funds.

46. This expenditure of taxpayer funds to benefit a private corporation without adequate consideration in return to the County is illegal and violative of the Colorado Constitution, Art. XI, sec. 2.

47. The County has assigned its UNICOM frequency to JCP/Black Canyon. This is a special radio frequency for air to ground communications at airports, for disseminating aeronautical data, such as weather, wind direction and runway information. JCP/Black Canyon uses this control to steer business to its facility and away from JetAway. Because of the potential for this kind of abuse, the FAA strongly recommends against allowing any single private entity to control a UNICOM. The FAA has advised the County in this case to "take action to change its UNICOM arrangement with JCP when it awards a second FBO contract at the Airport." In response, the County has neither awarded a second FBO contract nor changed its UNICOM arrangement.

48. Many lawsuits have been filed among the County, JCP/Black Canyon and

JetAway. Indeed, the County, in part under Patterson's direction, and JCP/Black Canyon, under the control and direction of Egan and Rumble, have undertaken a campaign of lawsuits and administrative proceedings to prevent JetAway from competing as an FBO. On information and belief, the County, at Patterson's direction, also attempted to stop the construction of a fuel tank farm being built by JetAway on private land by sending a fire marshal to attempt to halt construction.

49. In contrast to Defendants' efforts to enforce the letter of existing agreements against JetAway, regardless of their legality, the County has not required JCP to adhere to its Agreement or the Airport minimum standards. For example, the County allowed JCP to delay construction of a hangar, FBO terminal and self-serve fueling station well beyond the contractual deadline. Open records requests have revealed noncompliance with the contractual obligations of JCP to demonstrate periodically it is meeting the Airport's minimum standards for operations.

50. On January 3, 2006, JetAway filed an administrative complaint with the Federal Aviation Administration (the "Part 16 Complaint"). The FAA evaluated the case on the facts as they existed on January 10, 2006, the date it received the Part 16 Complaint, and declined to consider actions of the County after that date. The FAA could not find the County in violation as of that early date. The FAA did, however, make the following finding:

Additionally, the Director believes that all of the issues in this case can be resolved informally in a manner consistent with the County's Federal obligations. Since both the County and JCP have stated that an additional FBO at the Airport is feasible, that it appears that sufficient airport property is available to accommodate a second FBO, and the County appears to have concluded on March 20, 2006 that JetAway's proposal meets all Minimum Standards, successful resolution appears to be possible. Therefore, if the parties concur, the FAA is willing to assist in dispute resolution through mediation and, to this end, the FAA stands ready. Director's Determination dated November 6, 2006

51. Because the Director's Determination referred to "when" the County awarded a second FBO, not "if," and other statements, it was clear to the parties that the "County's Federal obligations" meant awarding a second FBO so as not to violate its grant assurances and the prohibition against exclusive rights. JetAway and the County then began a lengthy mediation process conducted by the FAA's Associate Chief Counsel for ADR.

52. In March 2007, during a three-day settlement conference that included representatives from JetAway, the County, and the FAA's Associate Chief Counsel for ADR from Washington D.C., the parties reached an agreement to settle this controversy. A copy of the Settlement Agreement Reached Through Mediation dated March 8, 2007, is attached as Exhibit A (the "Settlement Agreement"). The Settlement Agreement provided for a land swap, the parcel of land on which the existing JetAway facility is located would be transferred to County ownership (except the building, which would remain in fee simple ownership) in exchange for a parcel of undeveloped Airport land known as the South Tract. JetAway would build an additional 25,000 sq. ft. hangar, which would become the property of the County at the end of the lease term. The County would enter into an FBO agreement with JetAway. JetAway would end all off-Airport aeronautical operations. The County would revoke JCP's right to operate the UNICOM. When the Settlement Agreement would be consummated, JetAway would be authorized to operate a full service FBO from its facilities, now on County land and part of the Airport.

53. The County has refused to prepare and approve the documents needed to implement this settlement, ignoring several FAA deadlines to do so, the latest of which was November 19, 2007. The County reverted to its former tactics of raising objections and when

each objection is resolved raising more. The FAA brought the mediation to a halt November 19, 2007, after the County, BOCC and Patterson's last failure to complete the settlement. It now appears this administrative proceeding is incapable of stopping Defendants' illegal activities and that this lawsuit is JetAway's only adequate remedy.

54. On November 20, 2007, the County delivered a letter to JetAway, attached as Exhibit B. Although purporting to be even-handed, in practical effect the letter's requirements are intended to drive JetAway out of business by limiting access to its hangar, limiting its customer parking and severely restricting its customers' ability to refuel. Contrary to County statements, JetAway was not consulted about this letter and agreed to nothing in it, which was written in collaboration with JCP/Black Canyon for the purpose of putting JetAway out of business.

55. JetAway's response is attached as Exhibit C. JetAway notifies the County in this letter that its actions have effectively put it out of business. For example, refueling an aircraft from the one point now permitted by the County blocks access to and from the runway to JetAway. Another example is the County will now not allow airplanes to park at JetAway for more than one hour, and any aircraft remaining on JetAway's ramp after one hour are required, by the County, to reposition and "park" (on JetAway's competitor's ramp), at JCP/Black Canyon's FBO.

56. Most of the County's objections were related to the land swap, despite the fact it agreed to the land swap in writing in the Settlement Agreement. In a last ditch effort to settle on November 28, 2007, JetAway gave the County a proposal once again to cease all FBO

operations in its existing off airport facility, and build entirely new FBO facilities on the South Tract, County owned Airport land.

57. On December 5, 2007, JetAway's counsel received the County's terse response to its latest offer. Noting that "[t]he FAA mediation ended November 19, 2007," the response was: "Settlement negotiations are terminated." It is now crystal clear, two years after the County signed an FBO agreement with JCP, that the County intends to establish JCP/Black Canyon as a monopoly FBO, contrary to law, does not intend to fulfill the "County's Federal obligations," and never intended to settle with JetAway. Relief under the antitrust laws and Section 1983 appear to be JetAway's only remedies.

#### V. CLAIMS FOR RELIEF

##### PLAINTIFF'S FIRST CLAIM FOR RELIEF (Unlawful Restraint Of Trade in Violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1 Against All Defendants)

58. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

59. General aviation using the Airport is engaged in or affects interstate commerce. A substantial portion of the general aviation traffic at the Airport originates or is destined out of the State of Colorado. Both JetAway and JCP/Black Canyon are engaged in interstate commerce.

60. Defendants, through concerted action, knowingly conspired to prohibit competition to sell and provide the aeronautical products and services customarily provided by FBO's to general aviation using the Airport, including without limitation the ability to sell aviation fuels. In furtherance of this conspiracy, the County, with Patterson's participation and

encouragement, has entered into only one FBO agreement, with JCP, and has stonewalled entering into an FBO agreement with JetAway; MCBA, effectively under Patterson's control, illegally funded over one million dollars in improvements to benefit JCP/Black Canyon despite no contractual obligation to do so and without adequate consideration flowing to the County in return; the County has transferred equipment to JCP/Black Canyon at discounts; the County, at Patterson's instigation and with Patterson's participation and encouragement, and JCP/Black Canyon, under Egan and Rumble's domination and influence, engaged in a concerted campaign of litigation and administrative proceedings to block JetAway from competing with JCP/Black Canyon, including their refusal to implement the agreement reached in FAA mediation to allow JetAway to compete offering full FBO services, flagrantly ignoring FAA deadlines to do so, and finally using the County's authority to declare restrictions that will effectively put JetAway out of business.

61. Defendants' actions had an anti-competitive effect on the market for aeronautical services to general aviation using the Airport. For example, prices charged by JCP/Black Canyon for aviation fuels are now significantly higher than those generally charged at comparable airports in the region, such as Gunnison-Crested Butte only 45 miles away, which has substantially reduced the overall volume of fuel sales at the Montrose airport. Therefore, the purpose and effect of Defendants' actions was an unreasonable restraint on trade, which has had a substantial effect on interstate commerce.

62. As a direct and proximate result of Defendants' actions, JetAway has been injured in its business and property.

63. Plaintiff suffered an injury that was of the type that the antitrust laws were

intended to redress.

64. The Defendants have violated Section 1 of the Sherman Act, 15 U.S.C. §1, which makes all contracts, combinations and conspiracies in restraint of trade unlawful. JetAway is entitled to injunctive relief against the BOCC and County, damages against all other defendants and from all defendants its attorneys' fees.

65. JetAway is threatened with further loss and damage unless the Court grants it injunctive relief. The public welfare will be served by entry of an injunction leading to competition in the market for FBO services at the Airport, including the sale of aviation fuels.

**PLAINTIFF'S SECOND CLAIM FOR RELIEF**

**(Attempted Monopolization Of the Market for Aeronautical Services to General Aviation Users of Montrose Regional Airport and Conspiracy to Monopolize in Violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. §2, Against All Defendants)**

66. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

67. There is a combination or conspiracy among the Defendants to obtain for JCP/Black Canyon a monopoly in the market for the sale of aeronautical services to general aviation users of the Airport, and in particular, aviation fuel.

68. Defendants have willfully engaged, and are engaging, in a course of anti-competitive conduct, in order to obtain a monopoly for JCP/Black Canyon in the market for aeronautical services to general aviation users of the Airport, and there is a dangerous probability that, unless restrained, it will succeed, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2

69. Defendants have acted in concert, with a specific intent to monopolize, to destroy

effective competition in the market for FBO services to general aviation at the Airport.

70. General aviation using the Airport is engaged in or affects interstate commerce. A substantial portion of the general aviation traffic at the Airport originates or is destined out of the State of Colorado. Both JetAway and JCP/Black Canyon are engaged in interstate commerce.

71. Defendants, through concerted action, knowingly conspired to prohibit competition and to create a monopoly to sell and provide the aeronautical products and services customarily provided by FBO's to general aviation using the Airport, including without limitation the ability to sell aviation fuels. In furtherance of this conspiracy, the County, with Patterson's participation; and encouragement, has entered into only one FBO agreement, with JCP, and has stonewalled entering into an FBO agreement with JetAway; MCBA, effectively under Patterson's control, illegally funded over one million dollars in improvements to benefit JCP/Black Canyon despite no contractual obligation to do so and no adequate consideration flowing to the County in return; the County has transferred equipment to JCP Black Canyon at discounts; the County, at Patterson's instigation and with Patterson's participation and encouragement, and JCP/Black Canyon, under Egan and Rumble's domination and influence, engaged in a concerted campaign of litigation and administrative proceedings to block JetAway from competing with JCP/Black Canyon, including their refusal to implement the agreement in principle reached in FAA mediation to allow JetAway to compete offering full FBO services, flagrantly ignoring FAA deadlines to do so, and finally using the County's authority to declare restrictions that will effectively put JetAway out of business.

72. Defendants' actions had an anti-competitive effect on the market for aeronautical

services to general aviation using the Airport. For example, prices charged by JCP/Black Canyon for aviation fuels are now higher than those generally charged at comparable airports in the region. Therefore, the purpose and effect of Defendants' actions was an unreasonable restraint of trade, which has had a substantial effect on interstate commerce.

73. As a direct and proximate result of Defendants' actions, JetAway has been injured in its business and property.

74. Plaintiff suffered an injury that was of the type that the antitrust laws were intended to redress.

75. The Defendants have violated Section 2 of the Sherman Act, 15 U.S.C. §2, which makes all monopolies and attempts to monopolize or conspiracy to monopolize any part of the trade or commerce among the States unlawful. JetAway is entitled to injunctive relief against the County and Patterson, treble damages against all other defendants and from all defendants its attorneys' fees.

76. JetAway is threatened with further loss and damage unless the Court grants it injunctive relief. The public welfare will be served by entry of an injunction leading to competition in the market for aeronautical services at the Airport, including the sale of aviation fuels.

### PLAINTIFF'S THIRD CLAIM FOR RELIEF

(42 U.S.C. §1983 – Deprivation of Rights Under Equal Protection Clause  
Against All Defendants)

77. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

78. At all times pertinent to this claim the County and Patterson ("Governmental

Defendants") acted under color of law and/or a statute, ordinance, regulation, policy, custom or usage. Patterson has taken particular interest in Airport affairs for many years and has influenced his fellow members of the BOCC to have the County engage in the course of conduct alleged in this Complaint out of a desire to harass JetAway and injure its business and property and to benefit the business and property of JCP/Black Canyon and its principals, one of which, Rumble, is a member of the Board of Planning Commissioners of the City of Montrose. Patterson is sued both in his official and personal capacities.

79. The Governmental Defendants have enforced certain regulations, policies, customs or usages against JetAway and not against JCP/Black Canyon. JCP is required by its FBO and Transition Agreements to comply with the Airport's "minimum standards" for operations, to construct and provide self-service fueling, and to make substantial safety upgrades to the County owned fuel farm it leases. The Agreements require that such compliance be documented; however an Open Records requests showed this has not been required of JCP/Black Canyon, Black Canyon has not constructed the required self serve fuel facility, has not made the required upgrades to the County owned fuel farm, and has not complied with the Airport's "minimum standards." In contrast, the primary excuse the County has used to fail to implement its FAA-brokered settlement with JetAway is its insistence JetAway prove it can meet the minimum standards in every detail before it is allowed to operate, which would be the surest way to demonstrate its ability to meet minimum standards, even though no such requirement was ever enforced against JCP before the County awarded JCP its FBO Agreement and allowed it to commence operations. The County has repeatedly overlooked breaches of the Agreements by JCP, such as failing to meet the contractual deadline to build a hangar, failing to meet the

contractual deadline to build a FBO terminal, failing to construct the self serve fuel facility required by the Transition Agreement, and failing to make the required upgrades to the County owned fuel farm.

80. JCP, Black Canyon, MCBA, Egan and Rumble ("Nongovernmental Defendants") have conspired with the Governmental Defendants in the manner described above in the Complaint as to harm competition for FBO services at the Airport to harass JetAway, injure its business and misappropriate its business and property.

81. This unequal administration of Airport agreements, regulations, policies, customs and usages is a result of intentional or purposeful discrimination against JetAway and deprives JetAway of its right to equal protection of the laws under the U.S. Constitution.

82. As a proximate result of these actions, JetAway has suffered and continues to suffer damages. All defendants are liable for resulting damages under 42 U.S.C. § 1983 and for JetAway's attorneys' fees pursuant to 42 U.S.C. § 1988.

**PLAINTIFF'S FOURTH CLAIM FOR RELIEF**

**(42 U.S.C. §1983 – Deprivation of Rights Under Commerce Clause  
Against All Defendants)**

83. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

84. There is no legitimate local interest in the County establishing a monopoly private FBO at the Airport. Even if there were, the burden on interstate commerce would be excessive in relation to any putative benefits.

85. The conduct by the Governmental Defendants taken under color of state law alleged in the preceding paragraphs of this Complaint in attempting to establish a monopoly

private FBO at the Airport is impermissible under the Commerce Clause of the U.S. Constitution and void, depriving JetAway of its right to participate in this market.

86. The Nongovernmental Defendants have conspired with the Governmental Defendants in the manner described above in the Complaint as to the conspiracy to harm competition for aeronautical services at the Airport to harass JetAway, injure its business and appropriate its business and property.

87. As a proximate result of these actions, JetAway has suffered and continues to suffer damages. All defendants are liable for resulting damages under 42 U.S.C. § 1983 and for JetAway's attorneys' fees pursuant to 42 U.S.C. § 1988.

**PLAINTIFF' FIFTH CLAIM FOR RELIEF**

**(42 U.S.C. §1983 – Deprivation of Rights Under Federal Statutes)**

88. Plaintiff incorporates by reference the preceding allegations of this Complaint as though fully set forth herein.

89. The Federal Aviation Act of 1958 prohibits the grant of an exclusive right by only one FBO to provide services at an airport, with an exception not relevant to this case. 49 U.S.C. §40103(e).

90. Federal law provides a mechanism for airports to apply for Federal grants for various purposes. The Airport has received approximately \$36.7 million in grants since 1982. Federal law provides that anyone applying for a grant must provide the Secretary of Transportation with written assurances, which, among other things, prohibit unjust discrimination and the grant of exclusive rights to any private FBO. 49 U.S.C. §47107.

91. Despite these prohibitions, the Governmental Defendants, under color of statute,

ordinance, regulation, custom or usage, by their actions described in this Complaint, have granted JCP and Black Canyon a *de facto* exclusive FBO franchise at the Airport, in violation of JetAway's rights under Federal law.

92. The Nongovernmental Defendants have conspired with the Governmental Defendants to obtain an exclusive FBO franchise in violation of JetAway's rights under Federal law.

93. As a result, all Defendants are liable to JetAway for the resulting damages pursuant to 42 U.S.C. §1983, including, but not limited to, lost revenue, lost profits and the investment of JetAway in its business. All Defendants are also responsible for JetAway's attorneys' fees pursuant to 42 U.S.C. §1988.

#### VI. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAY FOR RELIEF AS FOLLOWS:

1. That the Court adjudge and decree as follows:
  - a. That Defendants' conduct in preventing JetAway from providing full aeronautical services as an FBO at the Airport prohibiting effective competition between JetAway and JCP Black Canyon in such market violates Section 1 of the Sherman Antitrust Act, 15 U.S.C. §§ 1;
  - b. That Defendants have monopolized or attempted to monopolize the market for full aeronautical services as an FBO at the Airport in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2;
  - c. That Defendants have conspired to monopolize the market for full aeronautical services as an FBO at the Airport in violation of Section 2 of the Sherman Antitrust Act, 15

U.S.C. § 2; and

d. That acting under color of law Defendants have conspired to and have deprived JetAway of its right to equal protection under the law, have violated JetAway's rights under the Commerce Clause and have violated JetAway's rights under 49 U.S.C. §§40103(e) and 47107(a), all in violation of 42 U.S.C. §1983.

2. That Defendants and all persons acting on their behalf or under their direction or control, and all successors thereto, be preliminarily and permanently enjoined as follows:

a. From prohibiting the construction of the JetAway ramp area pursuant to the terms of the JetAway Land Lease.

b. From prohibiting the free movement, fueling and parking of aircraft on JetAway's ramp.

3. That the Court enter such other preliminary and permanent relief as is necessary and appropriate to restore competitive conditions in the markets affected by Defendants' unlawful conduct.

4. That Plaintiff is entitled to compensatory treble damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. §15 from Patterson and the Nongovernmental Defendants.

5. That Plaintiff is entitled to compensatory damages and attorneys fees for the violations of 42 U.S.C. §1983 from all Defendants

6. That Plaintiff may recover its attorneys' fees and costs of this action.

7. That the Court may enter such additional relief as it may find just and proper.

#### **VII. JURY DEMAND**

Plaintiff demands a trial by jury of all claims so triable.





BEFORE THE SECRETARY OF STATE  
STATE OF COLORADO

CASE NO. OS 20090003

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AGENCY DECISION

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IN THE MATTER OF THE COMPLAINT FILED BY WILLIAM N. PATTERSON  
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS BY  
STEPHEN S. STUHMER AND CITIZENS FOR RESPONSIVE GOVERNMENT.

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This matter is a Complaint pursuant to Colo. Const. art. XXVIII, sec. 9(2)(a) and the Fair Campaign Practices Act ("FCPA"), Section 1-45-101, C.R.S. *et seq.* Hearing was held May 14, 2009 at the Office of Administrative Courts ("OAC") before Administrative Law Judge ("ALJ") Matthew E. Norwood. D. Scott Martinez, Esq. appeared on behalf of the Complainant, William N. Patterson. Mark E. Haynes, Esq. appeared on behalf of the Defendants Stephen S. Stuhmer and Citizens for Responsive Government.

**Summary**

The Defendants failed to report to the Colorado Secretary of State the expenditure of \$1,000 or more per year on electioneering communications as required by Sections 1-45-108 and 109, C.R.S. of the FCPA. The election at issue was held November 2008, wherein the Complainant ran for the office of Montrose County Commissioner. The ALJ therefore assesses a fine of \$6,550 against both Defendants.

**Findings of Fact**

Based upon the evidence presented at the hearing, the ALJ finds as fact:

*The Election*

1. The Complainant William N. Patterson was a candidate for County Commissioner of Montrose County in the November 4, 2008 election. His opponent was Ron Henderson, who won the election.

*The Advertisement*

2. On November 2, 3 and 4, 2008 a full-page advertisement ran in the Montrose Daily Press. The advertisement contained the following features:

a. At the top it had the heading "Restore Integrity to Montrose Government."

b. At the bottom it said: "Elect Ron Henderson."

c. Mostly above the fold it had a picture of a mock newspaper with Mr. Patterson's picture and the title, Treasurer Montrose County Airport Authority.

d. The mock newspaper had the title "Extra! Extra!" and had the headline "Over 5,000 residents sign petition to recall Patterson!"

e. The mock newspaper also had a mock stamp saying "Missing: Honesty, Integrity & Judgement."

f. There was a quote attributed to Mr. Patterson: "I was fired from the board and accused of being dishonest and not having integrity or judgement."

g. The advertisement reprinted a copy of an unsigned letter dated September 2, 1993 on Board of Montrose County Commissioners stationery. The letter was titled "new (sic) release" and said:

The Montrose County Commissioners have removed Mr. William N. Petterson (sic) from his position on the Montrose County Airport Authority. Mr. Patterson was removed from the Authority for in the opinion (sic) of the Commissioners not serving the best interest of the community and the Montrose Regional Airport. Mr. Patterson's replacement will be appointed in due course.

The letter then had the signature block for Robert D. Corey, Chairman of the Montrose County Commissioners.

h. Most importantly for this case, the advertisement had the printing at the bottom "Not authorized by any candidate or candidate committee." And "Paid for by Citizens for Responsive Government."

3. There is no evidence that any of the factual assertions in the advertisement (as opposed to opinions about honesty, integrity and judgment) were inaccurate.

4. The ALJ finds as fact that the advertisement was an "electioneering communication," as defined in Colo. Const. art. XXVIII, sec. 2(7).

5. The ALJ also finds that the advertisement expressly advocated the election of Ron Henderson and the defeat of the Complainant.

6. Citizens for Responsive Government is a non-profit Colorado corporation. In his testimony Mr. Patterson characterized the corporation as "delinquent" regarding certain unidentified reports to the Secretary of State.

*Purchase of the Advertisement*

7. Tim Frates is the General Manager of the Daily Press in Montrose. Shortly before the November election, Stephen S. Stuhmer sent Mr. Frates an e-mail about placing an advertisement on page 2 of the newspaper on Sunday, November 2, 2008. Mr. Stuhmer's e-mail address was "steve@jetaway.com."

8. Mr. Frates then called Mr. Stuhmer to discuss the advertisement.

9. Mr. Stuhmer is the President of JetAway Aviation, L.L.C. in Montrose. JetAway Aviation has an advertising account with the Daily Press. Mr. Frates drew up a receipt for the advertisement. Mr. Frates initially put JetAway's name and account number on the receipt.

10. Mr. Stuhmer hand delivered to the Daily Press the completed advertisement and a check in the amount of \$3,081.50 to pay for three days of advertisements starting Sunday, November 2, 2008. The check is a "cashier's check" issued by Wells Fargo & Company. It is issued to the Daily Press and has the notation "re; Citizens for Responsive Government (sic)."

11. When Mr. Frates saw this reference he contacted Mr. Stuhmer to ask if the name and the account number on the receipt should be changed to that of Citizens for Responsive Government. Mr. Stuhmer said that would be fine. Mr. Frates's assistant Barb then crossed out the reference to JetAway and put in the name, address and account number for Citizens for Responsive Government.

*Compliance Efforts at Reporting*

12. In November 2008 Mr. Stuhmer contacted counsel because he had been told by Debbie Rudy of the Clerk and Recorder of Montrose County that the necessary campaign finance forms had not been filed.

13. Attorney Kelly Bergelt, who works with Defendants' counsel Mark E. Haynes, attempted to file reports electronically, but the relevant information was not available on the web site of the Colorado Secretary of State. Ms. Bergelt then contacted Ms. Rudy. Ms. Rudy told her, and the ALJ finds as fact, that the Clerk and Recorder had not submitted the necessary information to the Secretary of State so that electronic filings could be made.

14. Ms. Rudy told Ms. Bergelt to wait and the Clerk and Recorder would submit the necessary information. Ms. Bergelt learned by late December 2008 that Citizens for Responsive Government could make the electronic filing. She then contacted Ms. Rudy to learn precisely what needed to be submitted. Ms. Rudy told Ms. Bergelt that she would give Ms. Bergelt the name of a person at the Secretary of State's office who could answer her questions.

15. Ms. Bergelt did not hear back from Ms. Rudy and so called her again in mid-January 2009. Ms. Rudy said that she had a call in to the Secretary of State and would call Ms. Bergelt back.

16. Then in March 2009 Ms. Rudy sent an e-mail to another person that was then sent to Ms. Bergelt. In the e-mail, Ms. Rudy stated that no fines of any kind would be imposed if Citizens for Responsive Government filed a report.

17. Ms. Bergelt then called Ms. Rudy on the telephone. Ms. Rudy told Ms. Bergelt that she would try to get approval from the Clerk and Recorder to not charge any fines in relation to a late filing because she had been late in getting back to Ms. Bergelt. Ms. Rudy again stated that she would put Ms. Bergelt in touch with someone at the Secretary of State's office, but again, she did not do so.

18. Ms. Rudy likely believed that the Clerk and Recorder was the proper place to file and that the Clerk and Recorder was the "appropriate officer" for fining purposes under the "all other" language in Section 1-45-109(1). She likely did not know the expenditure in this case was more than \$1,000 or, if she did, was not aware of the language in Sections 1-45-108(1)(a)(III) and 109(1) directing the filing in the case of such an expenditure to the Secretary of State.

#### *The Complaint*

19. On April 28, 2009 the Complainant filed his Complaint with the Colorado Secretary of State. This was within the 180-day period set out at Section 9(2)(a) of article XXVIII. The office of the Secretary of State asked the Complainant to specifically identify who the Complaint was against and the Complainant identified Mr. Stuhmer and Citizens for Responsive Government. The Complainant alleged that the payment and source of funds for the advertising had not been disclosed as required by Section 1-45-108 and 109, C.R.S.

20. The Secretary of State referred the matter to the OAC on April 30, 2009 and on May 1, 2009 the OAC sent notice of the Complaint to Mr. Stuhmer and to Citizens for Responsive Government in care of its registered agent, Mr. Haynes.

21. Ms. Bergelt attempted to call Ms. Rudy again during the week of May 4, 2009 and learned that Ms. Rudy was on vacation.

#### *Other Findings of Fact*

22. Ms. Bergelt ultimately contacted a person at the Secretary of State's office. The evidence does not disclose if she obtained this person's name with the assistance of the Montrose Clerk and Recorder's office.

23. On May 12, 2009 Citizens for Responsive Government filed a report with the Secretary of State. Chiefly based on this filing the ALJ makes these specific findings of fact:

a. Citizens for Responsive Government is a "political committee," as defined in Colo. Const. art. XXVIII, sec. 2(12).

b. The only contribution related to the November 2008 election received by Citizens for Responsive Government was \$3,081.50 from Mr. Stuhmer on November 2, 2008.

c. The only expenditure related to the November 2008 election made by Citizens for Responsive Government was the purchase of the Daily Press advertisement in the amount of \$3,081.50.

24. In its filing with the Secretary of State, Citizens for Responsive Government gives its address as 1675 Broadway, Suite 2600 in Denver. However, when Mr. Frates had the receipt redone for the purchase of the advertisement, his assistant Barb listed Citizens for Responsive Government's address as 1 Creative Place in Montrose. That is the same address as JetAway Aviation, L.L.C., of which Mr. Stuhmer is the President. There is insufficient evidence whether that is the address Mr. Stuhmer gave for Citizens for Responsive Government, or whether Barb used the address of JetAway on her own initiative.

25. There is no evidence that Mr. Stuhmer is an officer, director or shareholder of Citizens for Responsive Government.

26. There is no evidence that the expenditure on the advertisement meets any of the exceptions to the definition of "expenditure" at Colo. Const. art. XXVIII, sec. 2(8)(b). In particular, there is no evidence that the expenditure by Mr. Stuhmer constituted spending in the regular course and scope of his business.

### **Conclusions of Law**

Based on the foregoing Findings of Fact, the ALJ enters the following Conclusions of Law:

1. Section 1-45-108(1)(a)(III) provides in pertinent part:

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. ....

2. In addition, Section 1-45-109(1) also provides: "persons expending one thousand dollars or more per calendar year on electioneering communications shall file with the secretary of state."

3. "Person" shall have the same meaning as set forth in section 2(11) of article XXVIII of the state constitution." Section 1-45-103(13), C.R.S. That Section 2(11) states: "Person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons."

4. "Electioneering communication" shall have the same meaning as set forth in section 2(7) of article XXVIII of the state constitution." Section 1-45-103(9). That Section 2(7) states:

"Electioneering communication" means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

(I) Unambiguously refers to any candidate; and

(II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and

(III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

5. Section 1-45-108(2)(a)(I) provides:

Except as provided in subsections (2.5)<sup>1</sup>, (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

...

(E) Thirty days after the major election in election years; ....

6. The Complainant's election for County Commissioner was a major election in an election year. Section 1-45-108(2)(a)(III).

7. Section 9 of article XXVIII is the process by which persons who believe there has been a violation of article XXVIII or the FCPA may file a written complaint with the Secretary of State. The Secretary of State is then required to refer the matter for a hearing before an ALJ. If the ALJ finds that a violation has occurred, the ALJ is to

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<sup>1</sup> Subsection (2.5) requires a political committee to report a contribution of \$1,000 or more within 24 hours of the contribution, not within 30 days of the election, as is more generally provided for in Section 1-45-108(2)(a)(I)(E). In opening statement counsel for the Complainant initially asked for the fine in this case to run from November 4, 2008 to May 12, 2009, but also said that that time period was 158 days. November 4, 2008 to May 12, 2009 is 189 days. In closing, Complainant's counsel said the time period was December 5, 2008 (30 days after the election) until May 12, 2009. This second time period is 158 days. The ALJ understands that the Complainant's claim is limited to the period starting 30 days after the election in Section 1-45-108(2)(a)(I)(E) and not for the separate report required to be filed 24 hours after the contribution as set out in Section 1-45-108(2.5). As the requirement to file this separate report was not specifically alleged in the Complaint or raised at hearing, the ALJ will calculate the fine from the later, December 5 date.

render a decision including “any appropriate order, sanction, or relief authorized by this article.” *Id.*

8. Section 10(2) of article XXVIII authorizes the following:

(2) (a) The appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of this article, or sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due. ....

9. Section 2(1) of article XXVIII identifies the “appropriate officer” as the individual with whom a political committee must file pursuant to section 1-45-109(1), C.R.S.

10. As set out above, Sections 1-45-108(1)(a)(III) and 109(1) require that the reports in this case be filed with the Secretary of State, making him the “appropriate officer.” The Montrose Clerk and Recorder had no authority to fine or waive a fine in this case.

11. The report of the \$3,061.50 expenditure was, by the authority of Section 1-45-108(2)(a)(I)(E), required by December 5, 2008. It was not provided until May 12, 2009, 158 days later. Fifty dollars times 158 is \$7,900.

12. Again, though, Section 9(2)(a) requires an “appropriate” sanction. Administrative Law Judges have discretion in imposing a penalty and are not required to strictly adhere to the \$50 per day formula. *See Patterson Recall Committee, Inc. v. Patterson*, No. 08CA0662 (Colo. App. April 16, 2009) (slip op. at 14.) Here the evidence was that the Montrose Clerk and Recorder initially failed to take the necessary actions to allow timely reporting until the end of December 2008. Therefore, the ALJ determines that the \$50 per day penalty should commence January 1, 2009 and end on the day of filing May 12, 2009, 131 days, for a total penalty of \$6,550.

13. The ALJ declines to reduce the fine any further because the Montrose Clerk and Recorder delayed in responding to Ms. Bergelt. The responsibility to file was that of the Defendants, not that of the Montrose Clerk and Recorder. Furthermore, the Defendants, who were assisted by counsel, were under an obligation to apprise themselves of their obligations and not simply to rely on the Clerk and Recorder to tell them what to do or whom they should contact. The evidence does not disclose whether Ms. Rudy had the information necessary to know that the reports in this case were to be made to the Secretary of State.

14. Colo. Const. art. XXVIII, sec. 1 provides in pertinent part:

[T]he interests of the public are best served by ... providing for full and timely disclosure of ... funding of electioneering communications, and strong enforcement of campaign finance requirements.

15. Counsel for the Complainant questioned why Ms. Bergelt could not have simply walked the report down to the Secretary of State's office, which is physically close to her own. However, the Secretary of State's rules at Rule 11 at 8 CCR 1505-6 prohibit such hand delivery.

16. The Complainant urges that the fine be imposed on the corporation Citizens for Responsive Government, and that the ALJ should also "pierce the corporate veil" to reach Mr. Stuhmer.

17. Generally, a corporation is treated as a separate legal entity from its officers, directors, and shareholders. *Micciche v. Billings*, 727 P.2d 367, 372 (Colo.1986). Corporations are formed for the purpose of insulating shareholders from liability. *Leonard v. McMorris*, 63 P.3d 323, 330 (Colo. 2003). Under extraordinary circumstances courts permit a claimant to "pierce the corporate veil" and impose liability on individual shareholders for the obligations of the corporation. *In re Phillips*, 139 P.3d 639, 643 (Colo. 2006).

18. However, a piercing inquiry is not appropriate in this case because there is no evidence that Mr. Stuhmer is an officer, director or shareholder of Citizens for Responsive Government. On the other hand, there is no evidence that the *protections* of the corporate form are available to Mr. Stuhmer either.

19. Both Mr. Stuhmer and Citizens for Responsive Government meet the "any person" definition of Section 1-45-108(1)(a)(III). Both have made a payment or "expended" money expressly advocating the election or defeat of a candidate. Colo. Const. art. XXVIII, sec. 2(8)(a) provides in pertinent part:

"Expenditure" means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question.

20. There is no evidence that the expenditure on the advertisement meets any of the exceptions to the definition of "expenditure" at Colo. Const. art. XXVIII, sec. 2(8)(b).

21. Also, Both Mr. Stuhmer and Citizens for Responsive Government "expended" money on an "electioneering communication."

### **Agency Decision**

It is therefore the Agency Decision that both Defendants Citizens for Responsive Government and Stephen S. Stuhmer are liable for the \$6,550 fine. The full amount of the fine may be satisfied from either Defendant, but in no event shall the total amount paid exceed \$6,550. The fine shall be deposited in the Department of State cash fund created in Section 24-21-104(3), C.R.S.

This Agency Decision is final and will be subject to review by the Court of Appeals, pursuant to Section 24-4-106(11), C.R.S.

**DONE AND SIGNED**

May 28, 2009

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MATTHEW E. NORWOOD  
Administrative Law Judge

Exhibits admitted:  
For the Complainant: exhibits A, B, C, D, E and F.  
For the Defendants: Exhibits 1 and 2.

**Certificate of Service**

I certify that a true and correct copy of the above **Agency Decision** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado to:

D. Scott Martinez, Esq.  
P.O. Box 8749  
Denver, CO 80201-8749

Mark Haynes, Esq.  
1675 Broadway, Suite 2600  
Denver, CO 80202-4675

and to:

William A. Hobbs  
Deputy Secretary of State  
Department of State  
1560 Broadway, Suite 200  
Denver, CO 80203

on this \_\_\_\_\_ day of May , 2009

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Office of Administrative Courts



COLORADO COURT OF APPEALS

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Court of Appeals No. 10CA1887  
Montrose County District Court No. 06CV18  
Honorable James W. Schum, Judge

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One Creative Place, LLC, a Colorado limited liability company, and JetAway  
Aviation, LLC, a Colorado limited liability company,

Plaintiffs-Appellees,

v.

Jet Center Partners, LLC,

Intervenor-Appellant.

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JUDGMENT AFFIRMED

Division IV  
Opinion by JUDGE BERNARD  
Graham and Fox, JJ., concur

Announced May 26, 2011

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Ireland Stapleton Pryor & Pascoe, P.C., Mark E. Haynes, Kelley A. Bergelt,  
Denver, Colorado, for Plaintiffs-Appellees

Jacobs Chase, LLC, Kathryn A. Reilly, Denver, Colorado, for Intervenor-  
Appellant



To establish a claim under the Colorado Consumer Protection Act (CCPA), a private citizen must prove five elements: (1) the defendant engaged in an unfair or deceptive trade practice; (2) the deceptive trade practice occurred in the course of the defendant's business; (3) the deceptive trade practice significantly impacted the public as actual or potential customers of the defendant's business; (4) the plaintiff suffered an injury to a legally protected interest; and (5) the deceptive trade practice caused the plaintiff's injury. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 146-47 (Colo. 2003).

This appeal concerns the third element. It asks us to decide whether the third element is an issue of law, to be resolved by the court, or a question of fact, to be resolved by the trier of fact. We hold that it is a question of fact.

As a result, our review here is limited to determining whether the trial court committed clear error by finding that the intervenor, Jet Center Partners, LLC (JCP), had not proved this element. Because we conclude that the trial court did not commit clear error, we affirm the trial court's judgment in favor of plaintiffs, One



Creative Place, LLC, and JetAway Aviation, LLC (collectively, JetAway).

## I. Background

This appeal arises from litigation involving the provision of services for aircraft at Montrose Regional Airport in Montrose, Colorado. In 2005, JCP successfully outbid JetAway to become the fixed based operator and exclusive fuel supplier at the airport. A fixed based operator provides goods and services, such as fuel, maintenance, and storage, for aircraft and pilots.

A dispute arose as to whether JetAway's activities on its property adjacent to the airport continued to be limited by the terms of a preexisting agreement between JetAway and defendant, the Board of County Commissioners of Montrose County (the Board). Contrary to the Board's direction, JetAway began selling fuel and other services typically provided by a fixed based operator, and launched an extensive campaign advertising these services.

JetAway and the Board each filed suit, JetAway for declaratory judgment regarding its interpretation of the agreement, and the Board for injunctive relief. The trial court entered a temporary restraining order against JetAway, enjoining it from fueling aircraft



owned by others without the consent of the Board, and from operating an air charter service.

JCP was granted leave to intervene and asserted claims against JetAway for violation of the agreement, and, as relevant here, for violation of the CCPA. JCP contended that JetAway had advertised services that it was prohibited from providing, that these advertisements misled the public, and that the advertisements had harmed JCP.

After a lengthy bench trial, the trial court found that JCP had not established its CCPA claim because it failed to prove that it had suffered an injury to its legally protected interest. On appeal, a division of this court reversed that part of the judgment and remanded to the trial court to determine whether JCP established the other elements of its CCPA claim. *One Creative Place, LLC v. Bd. of Cty Comm'rs*, (Colo. App. No. 08CA2341, Nov. 25, 2009)(not published pursuant to C.A.R. 35(f)).

On remand, the trial court found that JetAway's conduct amounted to a deceptive trade practice, but concluded that JCP had not proved a significant public impact as required to support its CCPA claim.



## II. Analysis

### A. Standard of Review

Where the controlling facts are undisputed, the existence or lack of public impact may be determined as a matter of law. See, e.g., *Colorado Coffee Bean, LLC v. Peaberry Coffee, Inc.*, \_\_\_ P.3d \_\_\_, \_\_\_ (Colo. App. No. 09CA0130, Feb. 18, 2010); *Coors v. Security Life of Denver Insurance Co.*, 91 P.3d 393, 399 (Colo. App. 2003), *aff'd in part and rev'd in part on other grounds*, 112 P.3d 59 (Colo. 2005); *Curragh Queensland Mining Ltd. v. Dresser Industries, Inc.*, 55 P.3d 235, 241 (Colo. App. 2002). De novo review is appropriate in such cases. See *Colorado Coffee Bean*, \_\_\_ P.3d at \_\_\_; see also *Hicks v. Londre*, 125 P.3d 452, 455 (Colo. 2005).

This does not mean, however, that the question whether a deceptive trade practice had a public impact is necessarily one of law. See *Colorado Coffee Bean*, \_\_\_ P.3d at \_\_\_ (Connelly, J., concurring)(discussing whether public impact determination should be reviewed as a question of law or fact). To the contrary, the Colorado Supreme Court Committee on Civil Jury Instructions has recognized that this question may be submitted to a jury as trier of fact. See CJI-Civ. 4th 29:4 (2010).



We are also guided by the practice of the State of Washington, which has consumer protection legislation similar to our own. See *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 825 P.2d 714, 719 (Wash. Ct. App. 1992)(outlining five criteria for determining whether party has violated Washington Consumer Protection Act); see also *Crowe v. Tull*, 126 P.3d 196, 203 (Colo. 2006)(recognizing Colorado’s previous reliance on Washington as a model of consumer protection law); *Showpiece Homes Corp. v. Assurance Co.*, 38 P.3d 47, 54 (Colo. 2001)(same); *Hall v. Walter*, 969 P.2d 224, 233 (Colo. 1998). Washington’s courts recognize that “[w]hether the public interest element has been demonstrated is an issue for the trier of fact.” *Sign-O-Lite Signs*, 825 P.2d at 719; see also *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 537 (Wash. 1986).

However, “[t]here apparently are ‘no Colorado cases determining when the question of “significant public impact” is a question of law for the judge or when it is a question of fact for the jury.’” *Colorado Coffee Bean*, \_\_\_ P.3d at \_\_\_ (Connelly, J., concurring)(quoting CJI-Civ. 4th 29:4 n.1). Although some appellate courts have previously reviewed the question as a matter



of law, the facts were undisputed or a grant of summary judgment was under review in those cases. *See, e.g., Martinez v. Lewis*, 969 P.2d 213, 222 (Colo. 1998); *Colorado Coffee Bean*, \_\_\_ P.3d at \_\_\_; *Coors*, 91 P.3d at 399; *Curragh*, 55 P.3d at 241. Thus, we write on a clean slate because, as described below, the facts concerning whether there was a significant public impact were disputed, and this case does not involve a grant of summary judgment, but, rather, a final judgment rendered after a trial.

We choose to follow *Sign-O-Lite Signs* and *Hangman Ridge Training Stables* to resolve this issue. This is so because (1) Washington's courts interpret a statute similar to ours; and (2) our supreme court has previously relied on authority from Washington's courts interpreting that statute. Under the circumstances present here, we conclude that the question whether there is a significant public impact in a CCPA case is one of fact.

Our conclusion is supported by two additional factors. First, we are persuaded by the reasoning in Judge Connelly's special concurring opinion in *Colorado Coffee Bean*. Second, our supreme court has held that the fifth element of a private CCPA claim — whether the deceptive trade practice caused injury to the plaintiff's



legally protected interest — is also a question of fact. *Crowe*, 126 P.3d at 210.

Our supreme court established guidelines for evaluating the public impact element of a CCPA claim in *Martinez*, 969 P.2d at 222:

Some of the considerations relevant to whether a challenged practice significantly impacts the public as consumers are the number of consumers directly affected by the challenged practice, the relative sophistication and bargaining power of the consumers affected by the challenged practice, and evidence that the challenged practice previously has impacted other consumers or has significant potential to do so in the future.

Here, the parties disputed material facts relevant to the issue of public impact, including:

- whether any consumer was directly affected by JetAway’s deceptive trade practice; and
- whether JetAway’s extensive print, broadcast, and Internet advertising had significant potential to mislead consumers, particularly pilots, to believe that it was authorized to sell fuel.

JCP did not produce admissible evidence at trial that any consumer was directly affected by JetAway’s deceptive trade



practice. However, this omission, in itself, is not fatal to JCP's claim as a matter of law. Although "the number of consumers directly affected by" a deceptive trade practice is one factor that may be considered in evaluating public impact, no single factor is determinative, nor does *Martinez* suggest that it provides an exhaustive list. See *Martinez*, 969 P.2d at 222 (identifying "[s]ome of the considerations relevant to" a determination of public impact); see also *Crowe*, 126 P.3d at 208 ("at least three factors to consider")(emphasis added); *Rhino Linings*, 62 P.3d at 149 ("[relevant] considerations . . . include"); cf. *Colorado Coffee Bean*, \_\_\_ P.3d at \_\_\_ ("Three factors *must* be considered . . . .") (emphasis added). *Martinez* and subsequent supreme court decisions describe an analysis more akin to a balancing test than a checklist.

Here, although there was no evidence of a direct effect on any actual consumer, JCP produced evidence tending to show that JetAway's extensive advertising campaign might have had significant potential to impact consumers in the future. Under these circumstances, we conclude that the question of public impact cannot be determined as a matter of law. We therefore review the trial court's determination as one of fact, and apply the



clear error standard. Accordingly, we must accept the trial court's finding unless it is "so clearly erroneous as not to find support in the record." *Page v. Clark*, 197 Colo. 306, 313, 592 P.2d 792, 796 (1979).

B. The Trial Court's Finding Was Not  
Clearly Erroneous

The trial court found that pilots "are not likely to be unsophisticated consumers with bargaining weaknesses" and that "no deception to actual purchasers or consumers [had] been shown." The record supports these findings. The trial court did not make specific findings regarding the potential future impact on consumers of JetAway's deceptive trade practice. It did, however, state that it had considered all three factors identified in *Martinez* in making its determination.

We therefore conclude that the record supports the trial court's determination that JetAway's deceptive trade practice did not have a significant public impact.

The judgment is affirmed.

JUDGE GRAHAM and JUDGE FOX concur.



September 14, 2007

Dear Commissioners Belt, Patterson and Ellis:

If you recall, in 2005 our company, JetCenters, Inc. was considering making a proposal in response to your RFP for the FBO at the Montrose Regional Airport. To give you a quick overview of our company JetCenters, Inc. owns and operates four FBO's including the Denver Jet Center which is among the largest FBOs in the world. We have 62% of the market share at Denver's Centennial Airport which is among the top ten busiest non-airline airports in the world. We lease or own over 250 acres of land and have over 600 based aircraft.

As part of our due diligence and consideration of Montrose as a new FBO location I and my associates have had an opportunity to visit the Montrose Airport, meet with Mr. Stuhmer and tour the JetAway Aviation facility adjacent to runway 17/35.

We believe JetAway's existing facility, infrastructure and location on the airport is one of the finest facilities in all of Colorado. The richest and most powerful people in the world travel by corporate jet. Their first impression of a community comes when they step off their aircraft and walk across the ramp. What they see sets the tone for all that follows. A first class, professional FBO is an asset to the community that cannot be quantified.

Over the past couple of years our senior management team has developed an excellent working relationship with Mr. Stuhmer and we are currently negotiating agreements with Mr. Stuhmer to oversee operations and brand JetAway as a JetCenter Inc. FBO. We feel Montrose would be a great addition to our current FBO locations in Denver, Fort Collins-Loveland, Salt Lake City and Colorado Springs. We know Mr. Stuhmer to be a man of integrity, high moral standards and substantial financial resources. We look forward to working with him to market the Montrose Airport to our network of clients.

Mr. Stuhmer has discussed with us the construction planned for parcel two of the JetAway Minor Subdivision, and we understand submissions have been made for FAA 7460 approval, State Oil & Gas permits have been obtained for the fuel farm, the SPCC plan has been completed, and plans for construction of the new FBO facility will be submitted to your local building department next week.

As potential operators on your airport we would like to see a good long term working relationship between JetAway and the County. In our experience, a long term lease is essential to justify the enormous investment JetAway will have in buildings and infrastructure. For example, at Centennial Airport we have a 55 year lease with nominal escalations every 20 years. Our latest acquisition of 70 acres has a 90 year lease. Such long term leases encourage and provide the foundation for major investments in first class facilities and service, and a long term approach to airport growth and prosperity.

JTWY019339  
07cv02563-RPM

Exhibit 34

We believe JetAway has a first-class facility, and their principals are both enthusiastic and committed to providing Montrose with a world-class FBO. JetAway's current facility and future development plans will be a great asset to the Montrose regional airport if they are permitted to provide full FBO services, and JetCenter Inc. would like to be a part of their team.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Randy Duncan", with a long horizontal flourish extending to the right.

Randy Duncan  
President, jetCenters Inc.

JTWY019340  
07cv02563-RPM



June 24, 2011  
Letter of Recommendation for Steve Stuhmer

City of Tracy  
Attn: Parks and Community Services Director  
City Clerk  
333 Civic Center Plaza  
Tracy, Ca 95376

To Whom It May Concern:

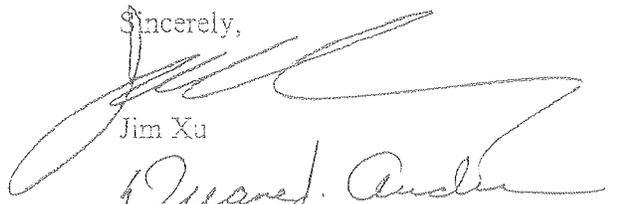
Golden Valley Engineering and Surveying, Inc has been providing Civil Engineering and Surveying services to Steve Stuhmer for some time now. His projects are real. Steve has been true to his word in all aspects of our working relationship. Steve is innovative and diligent in pursuit of developing airport projects. At the Merced Airport he is currently completing a restaurant and we are in the process of designing a Corporate Hangar Project for him at this time.

We are also looking forward to working for Steve on projects at the Oakdale Airport, a Restaurant at the Mariposa Airport and an expansion of his existing Fuel Facility at the Turlock Airport, adding a pilot lounge and corporate hanger/storage facility.

It is obvious to us that Steve is very familiar with all aspects of airport operations. His background in the aviation business is extensive. What we like most about working with him is he is true to his word and simply a very nice guy. We are certain you would be very pleased to have Steve as the operator at the Tracy Municipal Airport.

We highly recommend you choose Steve Stuhmer as your next airport operator. You can't go wrong!

Sincerely,



Jim Xu



Duane J. Andrews  
Golden Valley Engineering & Surveying





The Nation's Leading Independent Supplier of Aviation Fuels

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June 23, 2011

Letter of Recommendation for Steve Stumer & Turlock Air Center

City of Tracy  
Attn: Parks and Community Services Director  
City Clerk  
333 Civic Center Plaza  
Tracy, CA 95376

To Whom It May Concern:

Avfuel has done business with Steve Stumer and Turlock Air Center since May of 2009, and we continue to have a strong relationship. We currently supply fuel and equipment to Turlock Air Center, and have known Steve for many years prior to him taking over the Turlock Airport. They take very good care of their equipment and lease holds, and they have never had any problems paying their invoices within terms.

I feel the City of Tracy would be very pleased to have Steve as the operator at the Tracy Municipal airport. Steve has been associated with the aviation business for many years, and he certainly understands how to run a first class FBO that maintains a very competitive edge against his competition.

I hope you give Steve full consideration as your next operator at the airport. You will be very pleased with what he brings to airport

Sincerely

AVFUEL CORPORATION

A handwritten signature in black ink, appearing to read 'Mark Haynes', is written over the printed name.

Mark Haynes  
Vice President Sales



# CES Controlled Environmental Services

General Engineering & Construction

License #807330 A-Haz

PO Box 401, Oakley, CA 94561

Office (925) 625-1736 - Fax (925) 625-2518

June 27, 2010

City of Tracy  
Attn: Parks and Community Services Director  
City Clerk  
333 Civic Center Plaza  
Tracy, CA 95376

Re: Letter of Recommendation for Mr. Steve Stuhmer

To Whom It may Concern:

CES Controlled Environmental Services, Inc. (CES) has been providing General Engineering Contracting and Environmental Services to Mr. Steve Stuhmer for the past few years. We have worked with Mr. Steve Stuhmer (Steve) on his various projects in the central valley. Steve is very innovative and knowledgeable in airport operations. We worked with Steve on his Turlock airport project, where Steve took a non-operational / run down self-serve fueling island and made it a much needed success. CES performed the retrofit and refurbishment of the self-serve fueling island and the above ground fuel farm. Steve was hands on to every detail (from equipment location, paint markings on the surface, to the pilot's view of the self-serve as they approached. Every day during the work on this project, pilots stopped to ask when the self-serve would be open. The day that the system was operational, Steve had a plane fueling. It was obvious that Steve was diligent on developing this project. Steve was professional and a pleasure to work with throughout this project.

We have also had the pleasure of working with Steve on his Merced Airport project, the future expansion of the existing fueling facility at the Turlock airport, Mariposa Airport and now the Tracy Airport project. CES is excited in continuing our working relationship with Steve throughout California on these awesome airport projects.

In working with Steve, he has proven to be very experienced in successful business, innovative and familiar with all aspects of airport operations. This includes his own personal aviation experience, to the needs of a pilot operating a private plane, to the needs of plane owners and to the corporate and business aviation world which now includes the development of these smaller airports. CES has enjoyed our relationship with Steve because he is a true person, his projects happen and he is a pleasure to work with.

CES Controlled Environmental Services is excited and looking forward to working with Steve on this project at the Tracy Municipal Airport. If you have any questions or concerns, please feel free to call me at (925) 625-1736 or cell at 925-383-0563.

Respectfully yours,

CES Controlled Environmental Services

A California Corporation

*Mike J. Pedersen*

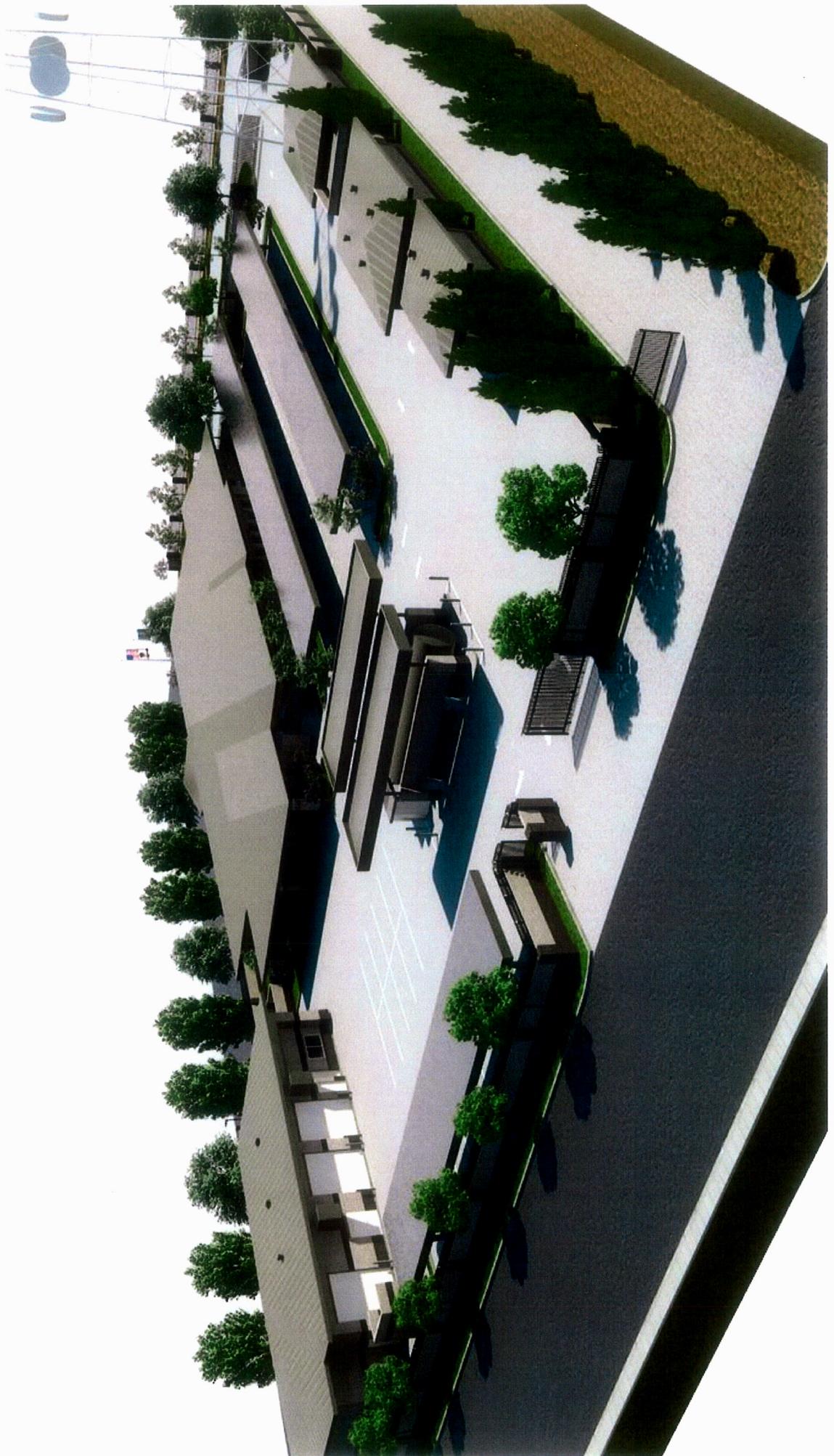
Mike J. Pedersen

President / CES





# Site Plan



**Tracy CHP Local Economic Impact**

**Design/Construction Local Impact**

Professional Services: Civil Engineer, Geotechnical Engineer, other design consultants		\$	68,000
Out of town workers staying in local accomodations Avg 6 supervisors	\$50/day	\$	78,000
Meals purchased by workers (lunch/snacks/dinner) Avg 35 workers	\$7/day	\$	64,925
Small tools, miscellaneous equipment, miscellaneous lumber, fuel and other consumables		\$	220,000
Concrete Materials		\$	225,000
Other subgrade materials (Rock, structural rock, soil treatments)		\$	175,000
Equipment Rentals, service		\$	200,000
Approx 85% of subcontracted work to local contractors, vendors & labor force		\$	2,113,950
<b>Construction/Design Total:</b>		\$	<b>3,144,875</b>

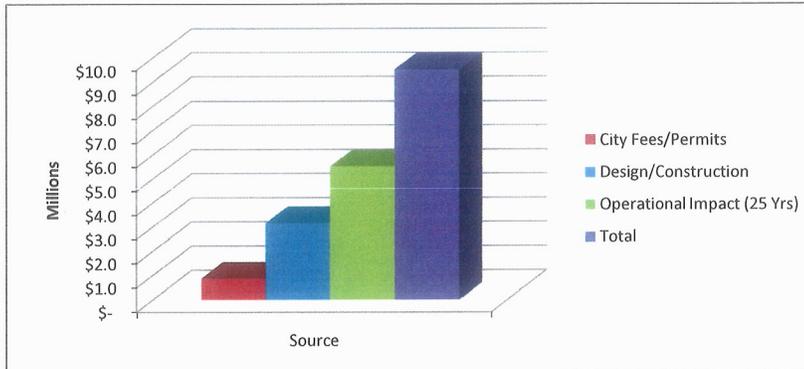
**City Fees, assesments and permits** \$ 850,000

**Operational Local Economic Impact**

	Annual	25 Year Lease
San Joaquin County Tax w/Mello Roos (estimated)	\$ 149,726	\$ 3,743,150
Landscape Maintenance	\$ 12,000	\$ 300,000
General Building Maintenance, Improvements, Replacements	\$ 20,000	\$ 500,000
City Utilities and Trash Removal	\$ 10,000	\$ 250,000
Daily Janitorial	\$ 28,500	\$ 712,500

**Operational Impact on Local economy (25 years):** \$ 220,226 \$ 5,505,650

**Local Impact Total:** \$ **9,500,525**



THERE'S MORE HERE

*Providing economic benefits  
to the Tri-Valley  
for more than 40 years,*

the Livermore Municipal Airport  
offers convenient facilities and  
aircraft amenities including:

- A home base for privately owned aircraft
- Flight training & private/commercial  
pilot certification programs
- Emergency medical evacuation services
- Aircraft maintenance services
- Aircraft sales & financing
- Charter & Air Taxi flights
- Aerial advertising services
- An automated fuel station

## Aircraft Noise Abatement

Federal law prevents the City from denying or limiting access to any aircraft that can safely use the airport on a 24-hour basis. Although the City cannot impose noise-related regulations, curfews or penalties, airport staff works actively with pilots and flight instructors to communicate noise abatement, quiet flying techniques, and the need to avoid residential area overflights whenever safely possible.

City staff encourages pilots to adhere to a "Voluntary Restraint from Night Flying" policy and avoid flying between 10 pm and 6 am to preserve quiet time. The City of Livermore and the airport staff take your complaints seriously! If you see an aircraft that seems to be operating unusually low or objectionably loud, the City wants to hear about it. Call the Noise Complaint Line at (925) 373-5050.

## Visit the Airport

To learn more, please stop by the airport and meet staff personally or visit LVK online at [www.ci.livermore.ca.us/airport](http://www.ci.livermore.ca.us/airport).



Livermore Municipal Airport (LVK)  
636 Terminal Circle  
Livermore, CA 94551

phone: (925) 373-5280

fax:

TDD: (925) 960-4104

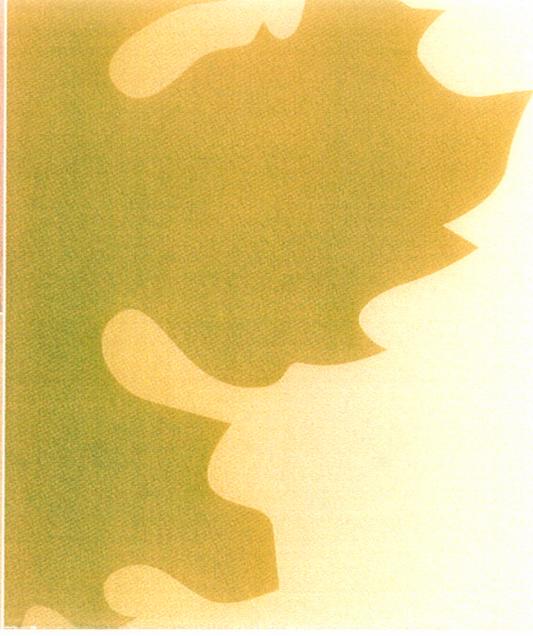
noise complaint line:

(925) 373-5050

[www.ci.livermore.ca.us/airport](http://www.ci.livermore.ca.us/airport)

05/07

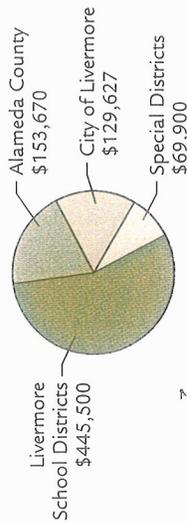
# Livermore Municipal Airport an overview



## LVK's Economic Benefits

Referred to by its international airport code letters "LVK", the Livermore Municipal Airport is owned & operated by the City of Livermore as a self-sustaining enterprise fund. Operating and capital budgets are entirely user-funded through land and facility leases and fuel sales. No General Fund or taxpayer monies support the airport. According to a 2001 study, the airport contributed over \$57 million to the local economy through direct & indirect spending and supported approximately 577 jobs.

Taxes paid by aircraft owners and LVK tenants for fiscal year 2002-03 resulted in nearly \$800,000 in direct payments to the Livermore Valley Joint Unified School District, the City of Livermore, Alameda County and various county-wide special districts as shown in the pie chart.



The airport continues to promote business growth by providing flexible, efficient and direct air transportation. Since one in seven jobs in the Bay Area is indirectly tied to aviation, economic benefits should escalate in conjunction with anticipated Tri-Valley population growth of 25% over the next 15 years. LVK will be called upon to serve the growing air transportation needs of local businesses and area residents well into the future.

# Gateway to the Tri-Valley

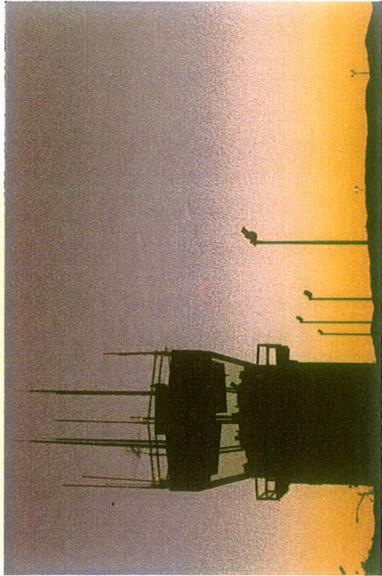
## Airport Operations

**Based Aircraft:** Home to approximately 650 privately owned aircraft, LVK's hangars are full to capacity with a waiting list for hangar vacancies. LVK can accommodate additional tie-down and transient aircraft.

**Aircraft Use:** A broad cross section of aircraft uses the airport (including single engine, twin-engine, turbo-prop, and jet aircraft) for an average of 200,000 annual aircraft operations. The airfield is accessible 24/7 and is attended during extended daily business hours. Flight operations are conducted under Federal Aviation Regulations (FAR) and governed and enforced by the Federal Aviation Administration (FAA). The FAA Tower is staffed daily from 7 am to 9 pm. When the Tower is not staffed, pilots operating in the airport vicinity are responsible for coordinating their own access to the field.

## Standard Traffic Patterns

LVK provides two parallel runways—one lighted and equipped with a precision instrument approach (ILS). Traffic patterns are well-defined, although their length and width can vary substantially and the prevailing wind dictates which runway must be used as aircraft always land and depart into the wind. At Livermore, the winds are frequently out of the west. Therefore, the majority of departures are to the west and arrivals from the east.



## Neighborhoods Affected by Airport Operations

If you are considering purchasing a home or a business in areas where you can view or hear aircraft using LVK, consider spending time in the vicinity first to make sure the air traffic and noise are acceptable to your lifestyle or work environment. This is especially advisable if you plan to locate your home or business in an area directly beneath the extended approach and immediate departure areas.

## Community Services & Disaster Relief

LVK is home base to the US Coast Guard Auxiliary Aviation Squadron 11N. The Auxiliary volunteers participate in lifesaving search & rescue missions over regional land and waterways. The airport also plays an important role in supporting various other emergency service providers such as the East Bay Regional Park District Police, CHP, and the California Department of Forestry with medical evacuation helicopters & fire-fighting aircraft. LVK is designated a key disaster relief air transportation hub in the event of a catastrophe such as a major earthquake.



# Why Your Community Needs Its Airport

Because once it's gone, it's gone forever.

By David Esler

**A** dearth of open space suitable for urban development has combined with the need for cash-strapped municipal governments to seek short-term tax revenues, creating a “perfect storm” in the ongoing assault on general aviation airports.

Last year, *B&CA* reported the targeting of general aviation airports by real estate

developers (see “How to Save Your Airport,” March 2005) in order to gain land for new housing, offices and stores as a growing trend. However, in the intervening months, it appears to have gained sufficient momentum to be reclassified as an accepted practice by the land-development industry. For financially beleaguered city and county governments — as well as politicians soliciting PAC campaign contributions — these proposals can appear extremely attractive.

According to Henry Ogrodzinski,

president and CEO of the National Association of State Aviation Officials (NASAO), these developers are “the enemy” when it comes to general aviation airports, “because they are looking for large plots of land to turn into housing and strip malls, anything that they can make a buck on. They very often convince the local politicians that the airport is a drag on the tax base, and ‘Boy, wouldn’t it be better if we could put up 1,500 condos or attract some industry to put on that land?’ So it is the developers who are often the ‘first

*Santa Monica Municipal Airport (SMO), from the air. Interstate 10 runs from the top center to the upper left; Clover Park is the green patch to the left of the airport. SMO's right (south) side is actually the border between Santa Monica and Los Angeles. Corbils/Douglas Stone*

movers' in this scenario." NASAO and its state aeronautics members devote much of their energies to defending airports, especially general aviation relievers.

The second mover is the politicians. "They may be convinced that it's better for the community's tax base," Ogrodzinski continued, "or they may, in their self-interest, be angling for a campaign contribution, so sometimes they are honestly convinced, and at other times, they're brought over by a slick developer with a nice rich PAC at his disposal."

### 'Aviation-Haters'

The third group of players in the airport endgame is an amalgamation of anti-noise advocates and "people in the community who either hate the airport or aviation in general — they are way beyond being just 'NIMBYs' ["not in my back yard"] — who agree with the developers and see them as saviors of sorts," Ogrodzinski observed. "They would rather have anything there than the airport."

On the other hand, as it did at Buchanan Field (CCR) in Concord, Calif., this constituency may realize the proposed construction replacing the airport "will screw up their lives in other ways, like creating unbearable congestion, and that the airport and its noise isn't such a bad idea after all," Ogrodzinski said. When a major West Coast developer proposed replacing CCR with 6,500 residences, a collection of malls and offices, and a college campus, anti-noise advocates in the already congested San Francisco Bay-area bedroom community were persuaded to become partisans for the airport. Described in our report last year, the proposal was ultimately rejected by the airport's operator, Contra Costa County, which had assumed its ownership as an obligated land-grant airport after World War II. An enhancement plan to improve the airport is currently under way.

"So you have a number of things going on there," Ogrodzinski continued, "some rational, some based on enlightened self interest, and some deriving from plain greed and irrational dislike of aviation. Nevertheless, I don't think most people get up in the morning with the idea that they're going to close the local airport."

But it's not just general aviation airports that are under a seemingly relentless chipping away throughout the country.

Steve Brown, the NBAA's vice president for operations and a former FAA deputy administrator, claimed that the state of U.S. general aviation fields "is only part of a slow deterioration that places pressure on all classes of airports across the country. In general, because the overall economy has been reasonably healthy, whether you're talking about an air carrier airport, a general aviation reliever, even a military field, all categories of airports are being subjected to huge pressures from real estate developers eying the land they occupy. And as local authorities make short-term decisions in the hope of gaining some tax revenues, this places all airports under more pressure than ever before."

Historically, more private-use airports succumb to the developers' bulldozers every year, but this doesn't relieve the pressure on public-use facilities. "The military would say the same thing, as would representatives of the airlines," Brown said. "They're all engaged, to the best of their abilities, in trying to protect the airport facilities they still have. There are some places where airports can be expanded, but they are typically not where the capacity is needed the most."

## Composing a 'Values Checklist' for Your Airport

A good way to get started with an airport-advocacy program is by composing a "values checklist" listing the strengths and weaknesses of the facility. Here are some areas to consider when getting started:

► Is the airport really serving the community or region in its present state? Using the guidelines stated in this report (both the main story and sidebars, especially those describing state aeronautical programs) justify all the reasons why the airport benefits your community. (See also next point.)

► In today's Darwinian economic paradigm, an airport has to be an "engine" for commerce. How is your airport generating or otherwise supporting commerce in your community or region? If not, why not? Are all the regionally based corporations and businesses in your area aware of the airport's potential value as a node in the national air transportation system? What about public-service agencies, e.g., police, fire and EMS operators?

► For that matter, is your airport truly part of the national transportation system? How easy is it to access the airport with surface transportation?

► What are the safety and noise issues connected with keeping the airport open? How is it situated in terms of residential development? If noise is a continuing issue, what is the airport management doing to allay residents' complaints? How clear, or otherwise unobstructed, are the approaches? What is the airport's safety record up to now? Has there been a pattern of accidents? If so, are there changes that could be made to reduce accidents and still retain the airport?

► What is the condition of the airport's facilities? FBO(s)? Other support businesses, e.g., repair stations, avionics shops, restaurant, etc.? Runway and ramp condition? Hangar space? Landing and nav aids? Control tower? Fire protection and security (a given, in the post-9/11 environment). Is it worth it to apply for FAA Airport Improvement Program (AIP) grants? How difficult would the process be in the individual case of your airport?

## Unprotected

Brown cited the late Meigs Field, arguably one of the most beautifully sited airports in the nation prior to Chicago Mayor Daly's midnight raid on the facility a few years back, as "clearly the most visible closure in recent memory. Beyond losing the field entirely, though, what was tragic about Meigs was the fact that its closure sent a terrible signal to other mayors and city councils around the country. Fortunately, so far, we haven't had any others that have come up like that."

Meigs fell under the plow because Chicago had no federal obligations to keep it open, the city's Department of Aviation having never accepted FAA Airport Improvement Program (AIP) grants on behalf of the field. At the time and as we reported last year, it was generally assumed that airports that had applied for and accepted AIP funding with its binding agreements were protected from closure for at least 20 years — per grant. And that's federal law. But since then, dangerous precedents have been set in which airport authorities in at least two states have used congressional intervention to essentially annul FAA requirements to either keep fields open or not restrict their operations

if they're encumbered with open obligations from AIP grants.

In the first instance Jackson Hole, Wyo., was successful in instituting noise restrictions at its airport (JAC) after the state's congressional delegation inserted language into an unrelated House bill stipulating that the airport could bar access to Stage 2 aircraft despite FAA nondiscrimination rules. This gives one pause to wonder if the move emboldened the city of Rialto, Calif., to employ the same tactic in order to close Art Scholl Memorial/Rialto Municipal Airport (L67) for real estate development.

"This one represents a really scary precedent," AOPA Vice President Bill Dunn told *B&CA*, "as local development interests were able to go over the FAA's head on an AIP obligation by appealing to their congressman, Representative Jerry Lewis [R-Calif.]. In the waning hours of the 2005 congressional session, he attached an amendment to the Federal Highway Transportation Bill allowing the city of Rialto to close the airport and sell the land to developers."

It seems FAA grants were originally used to purchase more than half of the 453-acre

facility's property. "And get this," Dunn said angrily, "although \$15 million in AIP funding has been invested in the airport, *the spoils of the sale don't go to the FAA* — 55 percent goes to the city and 45 percent to San Bernardino International Airport [a converted U.S. Air Force base]. So the FAA gets back the unamortized portion of the airport development grants, less the acquisition of the land . . . [or] about \$300,000 on the sale of property, which has been valued at more than \$4 million! The good news, if there is any, is that it literally took an act of Congress to close the airport. These vehicles don't come along that often. For them . . . a lot of things aligned at the right time to make this happen. There are 153 based aircraft at that airport which will now have to be relocated."

In their defense, Rialto officials claim Art Scholl Memorial is a "money pit" and that the city can no longer afford to operate it. However, the AOPA believes the municipality intentionally allowed the field to deteriorate to the state where it cannot support itself through traditional forms of revenue like ramp and hangar rents and fuel flowage fees.

"Most elected officials have never seen a

## ALL CATEGORIES OF AIRPORTS ARE BEING SUBJECTED TO HUGE PRESSURES FROM REAL ESTATE DEVELOPERS EYING THE LAND THEY OCCUPY.

development plan they don't like," Dunn said. "In many instances, what we're finding is the flat land of the airport is the last developable property in most communities. Instead of having to level a hilltop, all they have to do to make an airport into a shopping center is bulldoze what's there and start over."

### Clear Need for Capacity at Existing Airports

Looking at the bigger picture beyond the real-estate crunch and the threat it poses to the general aviation relievers in terms of potential closures, there is a clear need across the board for more capacity at the nation's busiest airports. With sales picking up, more than a thousand aircraft are being added to the overall fleet every year, and operators are flying more than ever before, increasing the pressure on airport infrastructures for more runways and runway extensions, better lighting and additional nav aids.

"In the places where that is needed, like Los Angeles, it is a virtual impossibility," the NBAA's Brown said. "In fact, what is normally happening is that there are proposals for enacting even more constraints, so it is going in the wrong direction in that respect, [and] that's largely a failure of local zoning."

The New York metropolitan area is a similar story. While the Port Authority of New York and New Jersey has brought some improvements to Teterboro (TEB) in the form of new taxi configurations, run-up areas and ramps, and revised approach procedures designed for more efficiency, Brown claimed "there is really no prospect of lengthening runways or adding additional ones there or at any of the primary air carrier airports."

Consequently, business aviation advocates must be alert to local initiatives limiting the usefulness of airports or restricting their operations, "because we can't afford to lose any of the access we have," Brown pointed out. "Any time there is an opportunity through technology or some limited airport

grants to improve the service, capacity or efficient use of the existing infrastructure, people need to get behind that and optimize what we have.”

Returning the spotlight to Los Angeles, Brown cited Van Nuys (VNY), ranked the world’s busiest general aviation airport and, with more than 450,000 operations annually, among the top 20 busiest U.S. facilities, as a prime example of the wrong-way trend to limit capacity. Of the 800 aircraft based at VNY, more than 120 are jets.

“Van Nuys was in the middle of orange groves in the 1940s and -50s, and now there isn’t buildable space within a seven-mile radius of the airport,” Brown said. So with no room for expansion and thousands of homes and businesses butted up to the fences, considerable pressure is being placed on the field’s operator, Los Angeles World Airports (LAWA), to limit operations.

This culminated in 2005 with the commission of an FAR Part 161 noise study. Ongoing, the study, required by the Airport Noise and Capacity Act (ANCA) when an airport operator desires to institute proprietary noise controls (i.e., a noise limit specific to the airport), is expected to continue for at least another year. “They are looking at the potential economic benefit and cost of limiting operations at Van Nuys,” Brown said.

“I was there [in June] to meet with the LAWA and city reps, their contractors doing the study, and our members based on the airport. Basically, we got a sense of where they are in the process, the kind of public outreach they will take and its schedule, and how they will gather the economic information on the costs and benefits. I was satisfied that the people engaged in performing the study are qualified and professional.”

On the other hand, Brown wasn’t satisfied that all the factors that should be considered in the VNY Part 161 study — the “impact points” — have been put on the table. “That will be the role of the NBAA and our members. At Van Nuys, a lot of the people we talked to say they regularly operate nonstop between the East and West Coasts, and one of the things under consideration is a reduction in the hours of operation of the airport. This measure, if adopted, would reduce the working day and limit the flexibility of those operators, thereby diminishing the usefulness of the airport.”

If the number of operations is lowered at VNY, Brown predicted, fewer tax revenues will flow to the city from the businesses that depend on the airport. Ironically, LAWA itself claims the airport contributes a whopping \$1.2 billion annually to the Southern California economy and that the facility “creates job, promotes business and

## The FAA's Position on Acts of Congress to Close Airports

B&CA asked the FAA's Airport Safety and Standards Division director, David Bennett, what the aviation authority's position was regarding the use of congressional legislation to override federal grant obligations so airports could either be restricted or shut down. Here's his response:

"We think the general laws relating to airport access are very clear and support the FAA's position in enforcing reasonable access to airports and keeping them open in accordance with federal obligations such as AIP funding and surplus property disposal," Bennett said. "I think the exceptions you cite [the Jackson Hole Stage 2 ban and Rialto airport closure] show that it takes a law to do that [i.e., discriminate against a class of aircraft or close an obligated airport]. Only two or three airports per decade are released from these obligations, so it's very rare. The acts of Congress show that that's what it takes. It would be of interest to us, however, if it became widespread."

Concerning encroachment outside the fence lines, Bennett admitted that this "can be a problem. Incompatible land use adjacent to the airport can act to restrict the utilization of the airport. We agree with NASAO [National Association of State Aviation Officials] that local governments should not condone land use that will ultimately restrict airports. We have put out model standards that we encourage local governments to adopt and assist them in a number of ways, all of it short of control by the federal government. But we do expect local jurisdictions to do all they can for their airports, communities and the NAS."

### Pressure Points

When a general aviation airport is closed, B&CA asked, is additional pressure placed on other airports in an area, particularly the commercial hubs? "If an airport is federally obligated," Bennett answered, "it is because we have found it to be an important part of the national airport system, both in terms of

access and, in many cases, to relieve commercial airports of GA traffic. But we also understand that they can be important just for access to the community as well as reducing congestion at the bigger airports."

Bennett cited the FAA's National Plan of Integrated Airport Systems as the linchpin of the U.S. airports system and the basis for identifying candidates eligible for AIP grants. In that regard, NPIAS currently recognizes more than 3,300 airports deemed significant to national air transportation and thus qualified to apply for the funding. It also includes estimates of the amount of AIP money needed to underwrite infrastructure development to raise airports to current design standards and add capacity to those considered congested. The FAA is required to provide Congress with a five-year estimate of AIP-eligible development every two years.

The current report, covering 2005-2009, states that 98 percent of the U.S. population resides within 20 miles of an NPIAS-funded airport, based on data from the 2000 census. Quoting from the report: "The NPIAS is comprised of all commercial service airports, all reliever airports and selected general aviation airports. It includes 3,344 of the 5,280 U.S. airports that are open to the public. . . ."

Concerning the density of NPIAS airports in terms of their accessibility by the general population, the report claims that "Commercial-service airports are within 20 miles of 66 percent of the population (77 percent when reliever airports are included). When general aviation airports are also included, 98 percent of the population is within 20 miles of a[n] NPIAS airport. Of the total U.S. population of 287 million people, all but 5.4 million live within 20 miles of a[n] NPIAS airport."

The full report can be found in the airports section of the FAA Web site at [www.faa.gov](http://www.faa.gov).

provides vital general aviation and emergency services."

### If You Can't Ban 'Em, Restrict 'Em

Meanwhile, at nearby Santa Monica Airport (SMO), local authorities, goaded by ongoing noise complaints, have been agitating for some time to shorten the field's single 5,000-foot runway (3/21). "The reality here, though," Brown pointed out, "is that they want to limit the size of aircraft that can access the airport to reduce both noise and the number of operations."

According to Brown, the need for more capacity among Los Angeles' airports also "reinforces the tragedy" of the loss of El Toro Marine Air Station in Orange County to aviation when the base was closed in 1999 and the space approved for mixed development. "There we had all the infrastructure we needed to expand in the Basin, and the elected officials just couldn't get it together to do it."

Still in the Golden State, Oceanside, just

north of San Diego, is framing its attack on its airport in an alternative land use study intended to decide "the highest and best use" of the property occupied by its airport (OKB). As in Rialto, the city claims it can't afford to operate the airport, but the AOPA believes the city government is determined to neglect the field.

"There was some discussion that one of the 'big box' stores wanted to build an outlet there," the AOPA's Dunn said. "Two of the five members of the Oceanside City Council support keeping the airport open, and three want to close it and reuse the land. [One council member also serves as mayor.] We're working closely with the Oceanside Airport Association, and I'm heading out there in a couple days and will spotlight these issues in the local media."

The airport has received AIP grants, but according to Dunn, the "party of three" thinks it can pay the FAA back. "It's an uphill battle. I think it's a winnable issue, though, as there's an election later this year for two of the council seats."

Another threat to airports of all stripes is incompatible land use around airfields, resulting in encroachment that creates all sorts of problems, ranging from potential safety risks to noise complaints and restricted operations. Some airport advocates believe that in cases where local governments have been unable to close airports outright, allowing incompatible land use (e.g., building homes and commercial structures along the fence lines), is evolving into a tactic to ultimately gain control of the land for development. As John Sibold, Washington state's director of aviation, pointed out to B&CA, permitting encroachment is often the first step in an orchestrated plan to close the airport.

This apparently is what's going on at still another Southern California airport, Jacqueline Cochran Regional in the desert community of Riverside, where the county that owns the field is considering a proposal by developers to modify the land-use compatibility agreement with the airport so

they can build 883 residences on 279 acres of buffer property.

"The expected impact, based on our experience in these issues," Dunn said, "will be complaints about safety and noise and attempts to enact curfews and limit aircraft types accessing the field. It's an obligated airport, but they will still try. Like so many local governments, [the entities that run these airports] are infatuated by the short-term money and lose sight of the value of the long-term airport."

### Creating Tension

Washington's Sibold observed that "allowing things in that don't sit well in an airport environment, you will create tension between the airport and the community." This then increases the likelihood of encouraging even more public opposition, stoking an adversarial climate, which is just the opposite of what the airport needs.

"If you allow a garbage facility next to a residential area, you will create tension," Sibold said. "So why do that when you can zone for compatible uses? In cases where it does happen [in Washington], then we say, 'OK, then you need to cluster it and provide open areas of green space.' We look at safety data, and where aircraft might lose an engine or have a problem in the pattern."

Ratcheting up the density of housing in the airport area is then guaranteed to produce more complaints from residents. And despite how quiet modern aircraft are under Stage 3 and 4 rules, noise then becomes a "perception issue." This can all be avoided with proper planning and zoning, Sibold believes from his own experience running Washington's DOT Aviation Division.

Despite the California examples cited here, Dunn and others interviewed for this report believe that the state has put together one of the best systems in the country for preventing inappropriate land use around its airports. (Sibold said Washington has patterned its successful airport-defense program after California's.) That's especially good since in 2004, California was host to 263 public-use airports, the third highest in the United States behind Texas (369) and Alaska (312). The California system requires every county in the state to have an airport land-use commission, or ALUC, and to maintain a comprehensive use plan for acreage within two miles of an airport that specifies what is or is not compatible with the facility.

"At Cochran Field, Riverside County is trying to get the land-use plan changed to allow higher [building] densities in response to the developer's plan," Dunn explained.

"It is NASA's position that inappropriate land use around airports hastens the

injury or demise of those airports," Ogradzinski said. "If you allow encroachment up to the fences or industry to erect a tower at the end of the runway, you are endangering your airport. Many times, I've gone to the FAA and pointed these things out, and they've responded that 'Zoning is not our business — it is the locality's business.' So I knew this would become a difficult row to hoe [as] . . . there

were limits to what both the federal government and the states could do."

So three years ago, NASA and the FAA began working together on a land-use initiative intended to create a national framework for protecting land around airports from inappropriate use. "Both organizations compiled a joint statement of agreement on the subject. It's not just about noise," Ogradzinski said, "it's about

compatibility. What could be built nearby that would detract from the airport's safety and usefulness? Remember, these are essential public facilities. You have to protect them as such."

#### Do You Really Need Your Airport?

With modern city governments being pulled in so many directions by ever-escalating — and often conflicting — demands for services from residents and business, with declining tax bases, unemployment issues, crime, educational needs and all the other problems that fill our nightly news reports, how can they be convinced of the importance of retaining a cash-neutral or cash-draining municipal airport when developers are telling them how much money they can rake

in by replacing it with condos and strip malls? How do you persuade a community that it needs its airport as a fully functional, unencumbered public asset?

First, as NASA's Ogrudzinski observed, "If the airport doesn't have a 'champion,' it's toast." He meant someone like Toyota Motors Gulfstream captain Pat Carey, who took on the leadership role in the late 1990s to save Hawthorne Airport (HHR) in Los Angeles. (In recognition of his efforts, Carey received a *B&CA* Vision Award in 2002.)

Then the champion — either an individual or a group — must begin an organized campaign to educate local officials, residents, and business and industry as to the value of the airport as a public asset. The first place to start is by compiling a

"values" checklist. Then a liaison must be established with the public to show how the airport and general aviation not only touch their lives personally but what it represents to the future growth of the area, that it's a long-term asset benefiting the overall economy and quality of life.

The AOPA has long described general aviation airports as portals to the larger world, and Ogrudzinski agrees. "I'm very often on the road, and when I'm talking about GA airports, I describe them as local gateways to the world — with your airport you can get anywhere in the world, you have access not only to the National Airspace System but the international airspace system. If you order something on line and don't live in a metropolitan area, you will in

### Practicing 'Airvangelism' in Oklahoma

Out in Oklahoma — the birthplace of business aviation, according to state aviation director Vic Bird — they practice what they call "airvangelism."

"Airvangelism is an awareness campaign, letting average citizens know just how important the aerospace industry is in our state," Bird told *B&CA*. "The second part of it involves telling them how important their GA airports are. I simply make people aware of something they take for granted."

Aerospace is one of Oklahoma's top three industries, providing more than 140,000 jobs, a \$5 billion payroll and industrial output of \$1.2 billion a year. "From the time of Clyde Cessna, who started in Oklahoma, aviation has been important here," Bird said, proudly. "We are recognized as one of the six major centers in the world for MRO, and accordingly, American Airlines has established its largest maintenance base in Tulsa. Additionally, we have the U.S. Air Force Logistics Center at Tinker Air Force Base, employing 26,000 people and providing a \$3.5 billion impact in the state."

But it was the 111 general aviation airports distributed throughout Oklahoma that Bird wanted to talk about, especially about their value in attracting both industry and business aviation to the state.

"For example, Idabel, Okla., in the southeast corner of the state, hosts significant Weyerhaeuser Forest Products and Tyson Foods operations, employing 2,300 people, and one of the reasons why both of these companies sited there is because of the presence of the airport [404] with its 5,000-foot runway. The town is not close to any commercial airport: It's at least 2.5 hours from DFW, at least three hours from Fort Smith, and four hours from Oklahoma City. Being able to get there in a business jet is important to those two companies.

#### Business Jets Replace Greyhounds

"And we have examples of that all over our state," he continued, "major corporations like Michelin and Dollar General, which have, respectively, a plant and a distribution center in Ardmore collectively employing 2,000. Ardmore has two jet-capable airports [ADM and 1FO], and both companies have identified those airports as reasons for being there. Business doesn't come calling in a Greyhound bus

today — it arrives in a business jet."

There was a time when Idabel had some concern about sponsor commitment at its airport, Bird said, "but 10 years ago there was a strong focus on what the airport could mean in terms of economic development in that community, and since then, it has been well protected. My predecessor assisted in that regard, but it was a grassroots recognition of the role the airport played that saved it. Those fields are truly a way to the world for communities like this, a real lifeline."

Oklahoma hasn't been greatly confronted by airport closure threats of late, but Bird did mention one field that he has concerns about. "The airport at Grand Lake [309], a major tourist attraction, has fallen into the hands of a private individual," he said, "and that has caused concern with us and the FAA, because together, we have about \$1.5 million invested there. We want to get it back under public control. There is massive development in that area, lots of home building, and we'd feel better if it's back in public hands because there are developers who'd like to get that land."

Grand Lake had been owned jointly by the county and a public trust. As part of a settlement following a series of lawsuits involving the trust, it wound up being conveyed to the airport manager. "He's said he intends to keep it public but has to make money from it," Bird said. "He wants to construct 'hangar-homes,' which the FAA adamantly opposes, and so we don't know what his next move might be. The AOPA has weighed in on it on behalf of us, as did the EAA [Experimental Aircraft Association], and the NBAA adopted a resolution supporting our efforts to get it back to a public facility. We are pursuing this in both federal and state courts."

Bird contends that the birthplace of business aviation was Oklahoma as a direct result of the oil boom centered in the Tulsa area in the early 20th century. "Companies like Phillips Petroleum chartered Wiley Post to fly their executives around," he said, "and they learned quickly that they could get there faster by aircraft. All of the refiners started flight departments here in the 1920s and 1930s. We have really deep aviation roots. It's a legacy we aim to protect."

all likelihood have to rely on a FedEx, UPS or DHL general aviation aircraft bringing your package to your local airport. So the airport is a hub of commerce and your community's front door to the world."

The public-service argument is even more compelling, especially in the wake of last year's hurricanes that devastated the Gulf Coast. "Look at the aftermath of those storms," Ogradzinski said. "General aviation airports became staging areas for the National Guard, the Red Cross and other NGOs [non-governmental organizations]. I spoke to several airport operators after Katrina and Rita, and those airports became places where people went because the airport had fuel, or it had large buildings still standing that could be used for shelter. So they gravitated naturally to the airport to find it not only a place of comfort and solace but their lifeline to emergency services, because there was nothing left in the community to fill that gap."

And since every airport is part of a larger network, "aviation alphabet organizations" were able to arrange critical resources and services to be transported from other unaffected airports to those requiring assistance.

"My point," Ogradzinski concluded, "is that clearly in terms of natural disasters, hurricanes, fires, flooding or heavy rains, these airports serve as lifelines. How are we going to get supplies in or evacuate people if we don't have airports?"

At the NBAA, the business aviation lobby is taking the approach in its airport-advocacy efforts of promoting the fact that airports exist for reasons other than just tax benefits and are part of essential infrastructure, serving a broad range of purposes. "It's a never-ending crusade as to why it's important to keep visible the full value of airports on a local and national basis," Brown said. "We are often seen as a small special interest as compared to the broader public and all of their issues, so we need to develop a public understanding of the value of airports to their lives in the same context as highway and rail infrastructure."

So what do you tell cash-poor municipal governments struggling to provide basic services to their communities? Why should they avoid the siren call of the developers who promise them a short-term financial solution to their problems in exchange for their airport's land?

"I try to find out what the community thinks of its airport and of itself," Ogradzinski said. "For example, some communities are tourist destinations interested in luring people to the area, or they often talk about tax breaks to attract business to the area. I will remind them that the CEO of that company they want to give the tax break to so it will put its plant there



Aurora/Getty Images  
Airplanes illuminate the night sky while coming and going from Van Nuys Airport, California.

will fly into the community's airport in a company aircraft. In other words, the airport is an important business asset to support sustainable local development.

"It's important to tell people who are not aviation oriented that we have a national system of airports," he continued, "and that if they are, for whatever their reasons, interested in closing their local airport, they need to know they are pulling an important brick out of their wall, that is, disconnecting themselves from a national transportation system."

Dunn at the AOPA added, "What we ask them is if they want to close the interstate off-ramps to their communities. We tell them the NAS is an interstate system in the sky, that one mile of asphalt on a road takes you one mile, while a mile of runway will take you anywhere in the world. The U.S. Department of Commerce recently updated the impact of GA airports in its 'RIMS-II' economic model and discovered that, for every dollar generated on an airport, another \$2.53 is generated in the community it serves, and that equates to jobs and payroll. Many businesses will locate a facility based on the presence of a GA airport.

"If they have a developer in their midst who's committed tens of millions of dollars to the city treasury, sure, it's an uphill battle," Dunn continued. "It's always a challenge. But the message we have got to get across is that whether your airport is a

## How Washington State Encourages Compatible Land-Use Planning Around Its Airports

It's not just the land within the airport boundaries, stupid. As ever more airports are saddled with noise and operational restrictions due to encroachment by homes and commercial properties, the importance of compatible land-use planning has never been more obvious.

As John Sibold, Washington state's aviation director, pointed out to *B&CA*, often allowing encroachment of inappropriate real-estate development signals the first step toward ultimately closing the field. Consequently, encouraging proper land-use planning is a major component in the Washington DOT's airport preservation program.

"The best way to describe our role is that we are tasked with preserving the state aviation system, with the understanding, of course, that the airports are controlled by local ownership," Sibold said. "Because of that fact, our job can be difficult, and we approach it several ways." In addition to providing money and resources to airports, especially smaller fields that can't qualify for federal grant money, the state vigorously pushes a compatible land-use program. "I'm the [airport] custodian here," Sibold explained. "I don't own the system, so I have to encourage local jurisdictions to protect their public assets."

Thus, Washington's airports program isn't as much about advocacy as it is a vehicle for presenting airports as transportation assets and providing assistance to local jurisdictions for proper land-use planning. "We try to convince them not to adopt land-use measures incompatible with the airport, often the first step to closure," Sibold continued. "So in the 1990s, the Washington DOT Aviation Division, following a model developed in California, was able to convince the state legislature to pass a law requiring local jurisdictions to protect airports as essential public facilities."

The second step was an amendment to that legislation recognizing that, for certain assets deemed to be essential public facilities, like airports, a higher standard of protection was needed. "The legislature accepted how difficult it is to [site new airports] . . . in these times, so it is essential to protect what you already have."

So the legislators gave the Aviation Division authority to provide technical assistance to land-use authorities, counties and cities. "It requires that when they are updating their comprehensive land-use plans and get to aviation, they are required to contact us so that we can come in and give them advice as to what has to be protected. We have done that in the majority of counties in the state — 60 of them."

In the case of airports and land use, the Aviation Division approaches local jurisdictions, and attempts to work with their officials and planners to develop policy and zoning that meets the intent of the law. "Different approaches are taken with each airport, as every situation is unique," Sibold said. "In urban environments, for example, it's more difficult because the land is more valuable. What we ask of them is to zone it for aviation and light industrial use so there won't be a negative impact by building the wrong structures close to the airport."

### Development Attracts Development

Being able to affect this process is essential for the long-term health of the airport because, as Sibold put it, when you allow certain development to occur, it will attract other development. "Since small airports are often unable to pay for themselves with the business that's generated on the field, municipalities don't see them as high in value, so they'd rather take that land and develop it. So it's important to get a head start at airports that don't yet have land-use problems so they can be zoned for protection and to keep their operators focused on that pro-airport philosophy. Where you have airports closing, it's where there is a lot of urban pressure." Although Washington recently lost privately owned Evergreen Airport in Vancouver, Sibold claimed the program has been generally successful in defending the state's other fields.

For cases where a jurisdiction disagrees with the state's airport land-use policies, a mechanism has been written into the law allowing airport users to file complaints with the state's Growth Management Hearings Board if they believe that the airport's policy doesn't follow the intent of the law. "The

Hearings Board takes cases from individuals from both sides of the argument as to whether or not the policies of the airport comply with the intent of the law," Sibold said. "In all of our cases where these complaints were filed, the jurisdiction was required to go back and revise its policies to do a better job of protecting the airport from incompatible land use."

"The state has the authority to file, as well," he continued, "but we rarely do, as we believe it's the public's responsibility. The legislature was clear — they don't want Big Brother in there, they want people to negotiate with each other [since] they recognize that every issue is different. Every jurisdiction has to get public comment from our agency on our plan. We're only addressing land-use outside the airport boundaries. All land use within the boundaries, if it's federal, is subject to approval through the master plan process."

The "problem" state aeronautical commissions face in these times of restricted municipal budgets boils down to this, Sibold said: "If you have an extreme urban environment and are running out of land, any property like the airport is an important tax base, maybe the only one. If you can't figure out the value of the airport in a way that makes sense, then there's pressure to close it."

But public assets don't always have a financial rate of return — there may be cost associated with them that must be absorbed or justified by the long-term value they return to the community, in the case of general aviation airports, as key components in the transportation infrastructure. "One big mistake that we [as a nation] made in the past was selling off our rail systems," Sibold pointed out, "and look what happens now when you want to build a light-rail system."

"When people argue with me on the money and jobs issues," he continued, "I tell them that it's not about the 'rich pilots with their toy airplanes,' it's about the transportation asset. You're supposed to be thinking about the future. There may be cases where there are multiple airports [in one location], but you have to think long and hard about giving even one of them up." In

Washington, the compatible land-use program is the primary tool in Sibold's toolbox for creating awareness of that present and future value.

### Get Involved in the Process

Sibold said airport backers can assist the state in protecting these public assets by getting involved carefully and intelligently in the political decision-making process — that is, not being adversarial but working with local jurisdictions as advocates for transportation. This can take the form of appointments to boards or even running for office. “When communities take away airports, where do they think these airplanes are going to go? You have to plan for the future, and if you're turning the landing fields into retail development, those facilities will never come back. The aviation opposition votes and gets onto city councils, so if you're worried about that, you'd better run for office.”

When Sibold and his people approach a community engaged in discussions to chuck the airport for strip malls and big box stores, “we find the pro-aviation council members who will sway the others. You have to find reasonable people who understand it, and you have to understand that it gets political.” So it's to the airport advocates' advantage to get involved in the master planning process and offer acceptable compromise solutions.

But again, the approach that airport advocates, especially pilots, take must be carefully considered to avoid polarizing the situation; i.e., it's a good idea to work with people, not against them, toward a compromise that preserves the airport and allays the reservations of the anti-aviation factions within the community. Yes, this is hard work and always tedious, but according to Sibold, you get more by being a positive force for the future of transportation in your area than by opposing the process.

Sibold, an active pilot who flies his own Cessna 180 on “slick” floats, occasionally gets frustrated with activist pilots who, just like the city councils that see only the short-term profits to be reaped from replacing the airport with development, fixate only on the airport and not on the future and the challenges facing the community.

“They don't look at the big picture,” he said. “You have to be involved in the modern-day issues, what needs to be done to allow airports to survive. In public parks, they're doing multiple-use activities, in one case up here combining a seaplane base with a lakeshore park. That's a good model for airport advocates to look at — that is, multiple use that is compatible with the airport. You gotta' be smart about this, and it takes work.”

Pilots must be sufficiently savvy to understand that “in today's environment, you have to be careful and politically sensitive — you don't want to create a problem that didn't exist before,” Sibold warned. “Pilots and operators and advocacy groups have to understand how to ‘work’ the community and be aware of the sensitivities around the airport. You can't all of a sudden raise enormous issues about the airport; you have to be in step with the community when you talk about further development of the airport, to work with them and have public meetings so people fully understand what you're doing. You can't do any of this in a vacuum any more.”

Sibold cited Blaine Airport (4W6) on the Canadian border, whose management put together a master plan to extend the runway, “and when the master plan went out for comment, people objected to all the money that was going to be dumped into [an] airport ‘with very little usefulness.’ What got published was what it was going to cost, and that's all people saw, not the arguments in favor of the airport and the future of aviation in the area. You can't look at the value of the airport today — you have to project the need, say, 20 years out. . . . The public should have been more involved along the way. You can't just go and raise major issues around the airport that will create consternation without first working hand in hand with the community.”

So Sibold urged airport supporters to “figure out the ways to make the airport valuable to your community. If the numbers don't support it, you have to show people the public asset value that the airport represents. It's about how the government has to provide certain public resources.”

large one or a small GA field, you have single-engine piston aircraft being delivered at a higher rate than ever per quarter, more people are flying, and we have to keep the airports open.”

### Maintaining the Status Quo

It being nearly impossible to expand an airport today, let alone site a new one, just retaining what we have is a full-time job for all stakeholders. “[It] requires vigilance and the willingness to step forward and be active with local officials and city councils to make it apparent how valuable airports are in terms of social values,” Brown at the NBAA said. “When you look at post-Katrina and the role those airports [on the Gulf Coast] played to help preserve the economic fabric of those areas, you see the value of the community airport.”

Brown cited a panoply of airport advocacy resources the NBAA makes available to its members to assist them in articulating those values to the government entities controlling the destiny of their airports. Listed on the organization's Web site ([www.nbaa.org](http://www.nbaa.org)), they include an airport advocacy CD that enumerates the aforementioned values airports provide the community and suggestions on how to develop airport support groups that can work with local government as well as citizen neighbors to develop broad-based support.

From the alphabet groups to state aeronautics departments vested with preserving their aviation assets to individuals engaged in the front lines of the ongoing fight, everyone *B&CA* talked with said community involvement is the key to success.

In his peregrinations around the country, Ogrodzinski said he's seen examples of airports getting “adopted” by local groups in exchange for having use of some of the facilities for their meetings. “Not only that, but they get exposed to aviation and learn about what it does for the community. Some airport managers will open their hangars for community affairs. This is true community outreach. You have to build a network of support and then engage the local media, which is always looking for newsworthy stories.”

This support can also counter news from the pro-development side explaining why the airport should be deep-sixed in favor of big-box stores and subdivisions. The more people get to know their airport — its expanses, its typically light activity, its relative quiet — the better they can appreciate its merits against its would-be successor. And just as the citizens of Concord discovered, in the end the airport looks like a pretty neighbor, just the way it is. **B&CA**

## DEPARTMENTAL OVERVIEW

In 1929, the California Highway Patrol (CHP) was established as the authority to enforce traffic laws on county and state highways — a responsibility that remains in effect today, along with numerous additional functions. The CHP's scope of operational responsibility has expanded dramatically over the years. Currently, the CHP has over 11,400 authorized positions: over 7,385 uniformed (or sworn), and over 3,375 civilian (nonsworn) positions.

Our mission is accomplished through four Organizational Values: Respect for Others, Fairness, Ethical Practices, Equitable Treatment for all

**Prevent Loss of Life, Injuries, and Property Damage** — To minimize the loss of life, personal injury, and property damage resulting from traffic collisions through enforcement, education, and engineering. To enforce the provisions of the California Vehicle Code and other laws to prevent crime.

**Maximize Service to the Public and Assistance to Allied Agencies** — To maximize service to the public in need of aid or information, and to assist other public agencies when appropriate.

**Manage Traffic and Emergency Incidents** — To promote the safe and efficient movement of people and goods throughout California, and to minimize exposure of the public to unsafe conditions resulting from emergency incidents and highway impediments.

**Protect Public and State Assets** — To protect the public, their property, state employees, and the state's infrastructure. To collaborate with local, state, and federal public safety agencies to protect California.

**Improve Departmental Efficiency** — To continuously look for ways to increase the efficiency and/or effectiveness of departmental operations.

Graphic Services Unit — CHP 091 Academy

## PROGRAMS

**Number of Traffic Collisions Investigated:** 682

**Number of Recovered Vehicles:** 125

**Number of DUI Arrests:** 490

**Local Area Programs:**

Start Smart  
Easy Method Driving School  
Every 15 minute  
Sober Grad Night  
Chips for Kids

**CHP Area Name:** Tracy

**Commander's Name:** Lieutenant Barry Koenig

**Address:** 385 W. Grant Line Road  
Tracy, CA 95376

**Phone Number:** (209) 835-8920

For more info on CHP programs, visit: [www.chp.ca.gov](http://www.chp.ca.gov)

**CALIFORNIA HIGHWAY PATROL**

P.O. Box 942898 - Sacramento, CA 94298-0001

(916) 843-3210 • (800) 735-2929 (TT/TDD) • (800) 735-2922 (Voice)

CHP 939 (New 12-09) OPI 015

# TRUCK

of the California Highway Patrol is to provide the highest level of safety, service, and security to the people of California



## TRAFFIC SAFETY PROGRAMS

Nearly 4,000 people are killed in traffic collisions each year in California with an additional 266,000 injured. Faced with this alarming number, the California Highway Patrol (CHP) employs state of the art equipment, aggressive safety campaigns, and comprehensive public education to make California roadways safe. The statistics drive CHP officers to focus enforcement efforts on three primary safety violations which are the factors in most traffic collisions:

### *Driving Under the Influence (DUI) Programs*

Among all traffic safety issues, impaired driving has perhaps the highest profile. In 2007, the CHP made over 84,000 arrests for DUI. DUI has been vigorously enforced for decades with aggressive campaigns in both the public and private sectors. DUI continues to be a major area of focus for the CHP. In 2007, there were 1,173 alcohol-involved fatal traffic collisions and 28,116 alcohol-involved injury collisions in California. To address this critical traffic safety concern, the CHP has used enforcement campaigns along with effective educational programs to reduce the number of DUI incidents on California's highways. In a collaborative effort to reduce holiday and weekend DUI-related traffic collisions, the CHP coordinates and participates in multi-agency DUI enforcement programs throughout the state. CHP DUI-related programs include:

- **Sobriety Checkpoint Operations**
- **Proactive DUI Enforcement Programs**
- **DUI Task Force Operations**
- **Drug Recognition Evaluator (DRE)**
- **Nonconsensual Chemical Testing**
- **Every 15 Minutes**
- **Sobriety Graduation**
- **Designated Driver Program**

### *Speed Enforcement Programs*

Reducing the number of traffic fatalities is a primary goal of the Department. In addition to traditional traffic enforcement, specialized traffic safety programs play a key role in the Department's efforts to achieve this goal. In 2007, the CHP issued over 1,100,000 citations for speeding alone. CHP Speed Enforcement Programs include:

**Radar-Speed Enforcement Program:** The Department has achieved the goal of equipping every departmental enforcement vehicle with mounted radar. Radar allows officers to measure speed using radio waves.

**Lidar Speed Enforcement Program:** The Department deployed 485 new lidar units to the field. Lidar allows officers to measure speed with laser light, which is more accurate and definitive than radar.

**Ongoing Evaluation of Enforcement and Speed Measurement Technology:** The Department continually evaluates new and emerging speed measurement and enforcement technology, including new developments in radar and lidar.

### *Occupant Restraint Compliance*

Considered to be one of our most important life saving laws, California instituted a primary safety belt law in 1993. The CHP used both education and enforcement of occupant restraint laws to reinforce that safety belts save lives. The national goal was 90 percent compliance by the year 2000. California achieved that level of compliance in June of 1998. Since then, the CHP has been vigorously involved in a statewide effort to enforce seat belt laws and conduct a statewide public awareness campaign to further increase safety belt compliance. As a result, California compliance rate rose from 90.4 percent in June 2004, to 94.6 percent in June 2007, significantly higher than the national average of 82 percent. In 2007, the CHP issued over 220,000 occupant restraint citations (child safety seat included).

## COMMERCIAL VEHICLE SAFETY PROGRAMS

California, along with the entire nation, relies heavily on the commercial vehicle transportation industry for the flow of goods. Nothing is as devastating and causes as much congestion as a commercial vehicle traffic collision. California has seen a reduction in commercial vehicle collisions over the last five years. Reductions can be attributed to the CHP's programs aimed at improving the commercial transportation industry and educational awareness campaigns for the public. CHP programs regulate commercial vehicles on the highway and at their place of business. In 2007, over 10,000,000 trucks were weighed at inspection facilities and over 525,000 were inspected. Additionally, officers across the state issued over 213,000 enforcement documents for commercial violations.

### VEHICLE THEFT PROGRAMS

On average, a vehicle is stolen every three minutes in California. In 2007, there were over 227,000 vehicle thefts costing Californians nearly 1.4 billion dollars. Despite these alarming numbers, 2007 saw an 8.3 percent reduction in vehicle thefts over 2006. Some of the ways in which the CHP has helped spur this reduction is through the following programs:

- **Cargo Theft Interdiction Program**
- **Foreign Export and Recovery Program**
- **Salvage Vehicle Inspection Program**
- **Vehicle Theft Task Forces**
- **BAIT Vehicles**
- **Mobile and Fixed License Plate Readers**
- **Insurance Fraud Task Force**

### DRUG ENFORCEMENT PROGRAMS

A majority of property crimes, domestic violence, and assault incidents have a nexus to illegal drug distribution and abuse. The CHP participates in task forces and employs various programs to fight this problem. Programs include:

- **Departmental Canine Program:** The CHP uses dual purpose canines, narcotic detection canines, and explosive detection canines.
- **Campaign Against Marijuana Planting (CAMP)**

### GANG ENFORCEMENT

**Regional Gang Task Forces:** CHP provides additional officers in specific high crime areas to assist local allied agencies.

- **CalGRIP:** A statewide campaign to combat gang activity.
- **Operation Safe Streets:** CHP assists allied agencies with focused enforcement in high crime areas.

### STATE SECURITY

**Protection of State Employees and Assets**

- **Security of State Appellate and Supreme Courts**
- **Governor's Protective Detail**
- **Capitol Protection-State Officials Threat Assessment Unit**

### COMMUNITY OUTREACH PROGRAMS

The educational component of the CHP's mission was established to prevent, deter, and reduce the tragic results of traffic related incidents. Our programs reach a broad range of individuals from different age groups and diverse backgrounds. Some of the programs used to reach Californians include:

- **Explorer Program:** Introduction to law enforcement for youth ages 15-20.
- **El Protector Program:** Outreach to the Spanish speaking community with traffic safety messages including child seat requirements.

- **Start Smart:** Educational program for new and soon-to-be licensed drivers aged 15-19 years and their parents/guardians
- **Child Passenger Safety Program:** CHP inspects approx. 1,900 car seats a month at over 133 car seat events annually.
- **Right Turn:** School based anti-drug and alcohol campaign for youth ages 11-14.
- **Designated Driver Program:** Designed to encourage adults to designate a sober driver.
- **Senior Volunteer Program:** Retired persons volunteer to assist CHP with various duties.
- **Impact Teen Driving:** CHP works with public schools to teach teens about the dangers of distracted driving.

### RECRUITMENT PROGRAM

Information on the Department's recruitment program for the Cadet or Public Safety Dispatcher classifications may be found at [www.chpcareers.com](http://www.chpcareers.com), or by calling 1(888) 4A CHP JOB. The minimum qualifications for Cadet are:

- 20-35 years of age
- High school diploma or equivalent
- No felony convictions
- United States Citizen

Information on non-uniformed classifications may be found at the California State Personnel Board website at [www.spb.ca.gov](http://www.spb.ca.gov).

### HOMELAND SECURITY-RELATED ACTIVITIES AND PROGRAMS

Since September 11, 2001, the protection of lives, critical infrastructure, and the economic well-being of the country from terrorist attacks, have challenged law enforcement as never before. The CHP has risen to the challenge to meet this need for vigilance, taking significant protective measures within the state. These measures include:

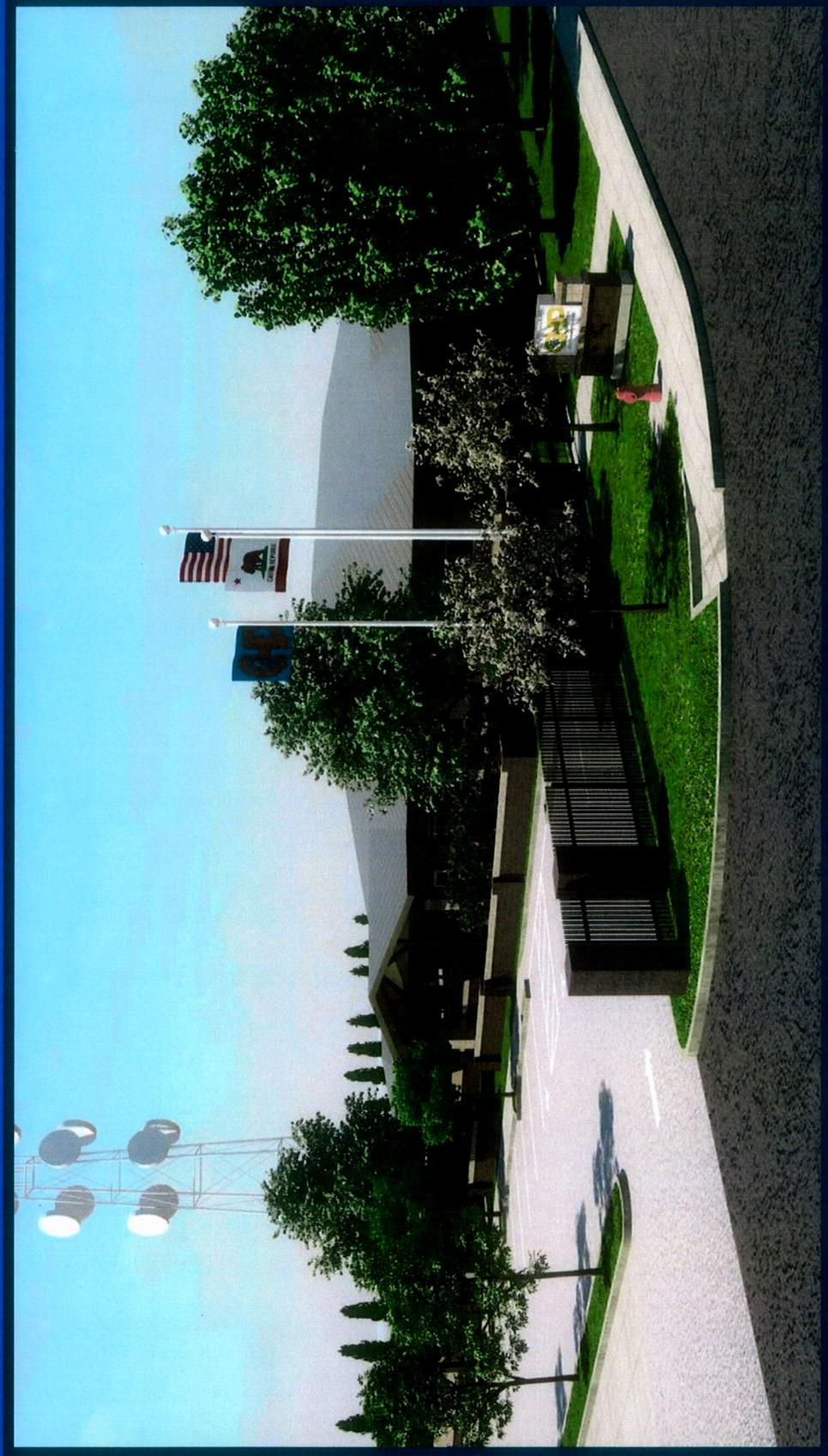
- **In-View Patrol and Traffic Enforcement**
- **Inter-Agency Mutual Aid Agreement:** All 58 counties are included.
- **Emergency Notification and Tactical Alert Center:** Emergency information and notification conduit including the statewide AMBER Network.
- **State Terrorism Threat Assessment Center:** A partnership with the State Cal-Emergency Management Agency facilitating the exchange of terrorism-related information with federal, state, and local law enforcement as well as the public sector and medical first responders.
- **FBI Joint Terrorism Task Force:** A combination of local, state, and federal law enforcement agencies working together to establish open lines of communication regarding possible terrorism activities in California.

### AIR OPERATIONS PROGRAMS

The Department's aircraft fleet provides an invaluable service to both officers and the public. The fleet includes:

- 16 Fixed Wing Airplanes
- 15 Helicopters

In 2007, the CHP flew over 8,100 search and rescue missions, 571 emergency medical missions, took over 31,000 enforcement related actions, assisted in the arrest of over 2,300 felons and misdemeanants, and saved 72 lives.



# CALIFORNIA HIGHWAY PATROL TRACY AREA OFFICE