



County of San Diego

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April 23, 2024

The Honorable Keith Blackburn, Mayor, City of Carlsbad
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

DISCUSSIONS REGARDING COUNTY OF SAN DIEGO MCCLELLAN-PALOMAR AIRPORT OPERATIONS

Dear Honorable Mayor Blackburn,

On February 27, 2024 (10), the Carlsbad City Council directed City of Carlsbad (City) staff to propose amendments to the City's Zoning Ordinance and General Plan regarding McClellan-Palomar Airport (Airport). The action was taken in response to a request from Citizens for a Friendly Airport (C4FA) by email dated January 3, 2024. As the owner and operator of the Airport, the County of San Diego (County) is providing this letter to address some of the statements made by C4FA and its legal counsel and to highlight that the County's limited authority was previously determined through litigation. It also responds to the City's request to initiate a meeting with the Federal Aviation Administration (FAA) dated March 27, 2024.

The County is committed to maintaining a strong working relationship with the City and continues to take steps to ensure the City and its residents have a voice regarding Airport matters. As C4FA notes, the County obtained CUP-172 from the City as a condition of the annexation of the Airport into the City. After the FAA rejected the County's application to establish noise restrictions at the Airport, the County implemented a Voluntary Noise Abatement Program (VNAP) for the Airport. The County Board of Supervisors has twice amended the Palomar Airport Advisory Committee (PAAC) Ordinance to increase City representation on the PAAC. County and City staff established a regular meeting schedule to ensure the City has a chance to provide early input on County Airport projects. Through these and other actions, the County has demonstrated its commitment to including the City and its residents in Airport matters.

Response to C4FA Comments

While we look forward to continuing to develop a positive relationship with the City and its residents, the County would like to address statements in C4FA's email and attached January 2, 2024 letter from C4FA's legal counsel. Specifically, C4FA's legal counsel argues that an

amendment of CUP-172 is required for any extension of the Airport runway because a runway extension was “specifically omitted” from the facilities allowed by right at Table I of CUP-172. C4FA’s legal counsel further argues that this interpretation is consistent with the definition of “airport expansion” in Public Utilities Code section 21664.5 which is applicable only to State-issued airport operating permits.

This argument was reviewed and rejected in the January 26, 2021 ruling of the San Diego Superior Court (Court) in *Citizens for a Friendly Airport v. County of San Diego, Case No. 37-2018-00057624-CU-TT-CTL* (hereinafter “Ruling”). The Ruling addressed a challenge brought to the County’s approval on October 10, 2018 of the McClellan Palomar Airport Master Plan Update (“Project”). The Project included approval of facilities changes such as the relocation of existing taxiways, installation of an Emergency Materials Arresting System (EMAS), and a runway extension located entirely within existing Airport property. The Court rejected the assertion that an amendment to CUP-172 is required for the proposed runway extension when it found, “the Court does agree with the County’s interpretation of the term “expansion” and that no amendment [of CUP-172] was required on the basis of the proposed changes set forth in the Project.”

This decision is consistent with long-standing understandings reached between the City and County through regular coordination stretching back decades. In February 1993, the County coordinated with City staff about proposed facilities changes regarding commercial aviation service. In response, by letter dated May 3, 1993, then City Attorney, Ron Ball, explained that improvement of facilities in accordance with Table I of CUP-172 entirely on Airport property would not require a use permit amendment. Table I of CUP-172 does not “specifically omit” runway extensions as claimed by C4FA’s legal counsel. Instead, Table 1 provides that, “Airport structures and facilities that are necessary to the operation of the airport and to the control of air traffic in relation thereto, include, but [are] not necessarily limited to, the following:...”

The omission of runways from the subsequent list in Table I of CUP-172 is neither specific nor limiting because the list is not exclusive. Moreover, the determination of the Court that the Project runway extension is included within Table 1 of CUP-172 is inherently reasonable as it avoids federal preemption issues that would otherwise arise. (See, for example, *Burbank-Glendale-Pasadena Airport Authority v. Los Angeles* (9th Cir., 1992) 979 F. 2d 1338 (City ordinance regulating taxiway and runway relocations preempted by federal law); *Twp of Tinicum v. City of Philadelphia* (E.D. PA, 2010) 737 F. Supp. 2d 367 (City ordinance limiting runway extension preempted by federal law).) It is, accordingly, clear that amending the City’s Zoning Ordinance and General Plan to include the definition of “airport expansion” set forth in Public Utilities Code section 21664.5 is not, as C4FA asserts, necessary to effectuate the “intent and meaning of CUP-172.” It is in fact contrary to the meaning of that term as used in CUP-172.

If the City were to nevertheless decide to amend the City’s Zoning Ordinances and General Plan to include the definition of “airport expansion” contained in Public Utilities Code Section 21664.5, these changes cannot properly be applied to the County. While the County was found in the Ruling to have waived its immunities under Government Code section 53090 when it obtained CUP-172, the Ruling did not find that the waiver extends to subsequently enacted City ordinances. Moreover, the Ruling does not address the County’s vested rights under CUP-172.

Amending the City Zoning Ordinance and the General Plan to include the definition of “airport expansion” set forth in Section 21664.5 is also not necessary, as C4FA asserts, to bring City requirements into compliance with State law. The term “airport expansion” used in Section 21664.5 is limited to the section in which it is contained, it does not establish a generally applicable definition. Section 21664.5 states in pertinent part that, “As used in this section, “airport expansion” includes...acquisition of runway protection zones...construction of a new runway...[and] extension or realignment of an existing runway....” (Emphasis added.) Since the definition of airport expansion as used in Section 21664.5 only applies to State-issued airport permits, the City is free to and has applied its own definition of the term as used in City Ordinance 21.53.015 and CUP-172.

Condition 8 of CUP-172 states that, “Approval of any uses not specifically listed in Table 1 and/or expansion of the airport facility shall require an amendment to the Conditional Use Permit.” City Ordinance 21.53.015 enacted by the City Council on August 12, 1980 in response to a voter initiative states in pertinent part that, “The city council shall not approve any zone change, general plan amendment or any other legislative enactment necessary to authorize expansion of any airport in the city nor shall the city commence any action or spend any funds preparatory to or in anticipation of such approvals without having been first authorized to do so by a majority vote of the qualified electors of the city voting at an election for such proposes.” Interpreting the term expansion used in both CUP-172 and Ordinance 21.53.015, the City Attorney concluded in a May 3, 1993 letter that acquisition of property for “clear zone” was not an expansion where it could be accomplished without the completion of facilities or structures or the redesignation or rezoning of land.

The May 3, 1993 letter was presented to the Court and was a basis for the Ruling agreeing with the County’s interpretation of the term expansion. The County appreciates that C4FA may be dissatisfied with this part of the Ruling, but no appeal was taken, and the decision is final. The County notes that under FAA Grant Assurance 5 it may “not take or permit any action which would operate to deprive it of any of the rights and powers [necessary to comply with its obligations as an airport sponsor] ... and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance....”

City Request for Meeting with FAA

Separately, the County is also acknowledging receipt of a letter from Mr. Chadwick and the City dated March 27, 2024 requesting that County Airports ask the FAA to convene a community roundtable “addressing the growing community concerns surrounding aircraft operations at McClellan-Palomar Airport in Carlsbad” and “a perceived increase in aircraft noise and deviations from the County’s recommended flight procedures.” To facilitate this request, the County will reach out to Senators Butler and Padilla and Representative Levin to address the request for a community roundtable with the FAA. The FAA maintains sole authority over flight safety, patterns, and air traffic control at the Airport. While the County is limited in its ability to enforce measures beyond the VNAP that are outlined for aircraft operations at the Airport, County staff would be happy to attend to speak to current airport operations within the County’s

jurisdiction. The County accepts federal grant funding from the FAA and is obligated to maintain the facility as a “public use airport.” The County has no authority over the quantity, type, or flight track of any aircraft arriving or departing from the Airport, which are under FAA jurisdiction.

However, the County recognizes the concerns of the Airport’s surrounding residents and communities from a practical standpoint. On December 29, 2021, the County sent a letter to the FAA outlining the Airport’s crucial contribution to the community and region as a transportation hub, an emergency services facility, and an economic driver that supports local jobs and generates millions of dollars in tax revenues and economic activity annually. While recognizing the contributions of the Airport, the County requested that the FAA respond to the County’s Board of Supervisors inquiry as to whether mandatory quiet hours could be established at the Airport or if additional fees could be imposed on aircraft operating during the voluntary quiet hours. In a letter dated February 4, 2022, the FAA responded that “imposition of a mandatory quiet hours restriction or additional fees on aircraft operations in an effort to discourage aircraft operations during a time of day would be inconsistent with the *Airport Noise and Capacity Act (ANCA)* of 1990, as amended, and its implementing regulations under 14 CR Part 161, *Notice and Approval of Airport Noise and Access Restrictions* and is therefore not allowable.”

The County thanks the City for its continued commitment to working together to maintain McClellan-Palomar Airport’s operations as a critical transportation and community hub, while being good neighbors to the community. Our staff are available to connect on any needed discussions or further inquiries. Tom Bosworth, Senior Deputy County Counsel can be reached at Thomas.Bosworth@sdcounty.ca.gov and Jamie Abbott, Director of Airports, can be reached at Jamie.Abbott@sdcounty.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dahvia Lynch", with a long horizontal flourish extending to the right.

DAHVIA LYNCH
Interim Deputy Chief Administrative Officer

cc: Supervisor Nora Vargas, Chairwoman
Supervisor Terra Lawson-Remer, Vice Chair
Supervisor Joel Anderson
Supervisor Monica Montgomery Steppe
Supervisor Jim Desmond
Bill Morgan, Interim Director of Public Works
Jamie Abbott, Director of County Airports
Sarah Aghassi, Interim Chief Administrative Officer
Caroline Smith, Director, Economic Development and Government Affairs
The Honorable Priya Bhat-Patel, Mayor Pro Tem, City of Carlsbad District, 3

McClellan-Palomar Airport Noise Concerns

April 23, 2024

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The Honorable Melanie Burkholder, Councilmember, City of Carlsbad, District 1

The Honorable Carolyn Luna, Councilmember, City of Carlsbad, District 2

The Honorable Teresa Acosta, Councilmember, City of Carlsbad, District 4

Scott Chadwick, City Manager, City of Carlsbad

Attachments:

Attachment A: February 27, 2024 Carlsbad City Council Agenda Item 10 Staff Report and C4FA Letter

Attachment B: March 27, 2024 City of Carlsbad Letter to County of San Diego Request for Community Roundtable Regarding Aircraft Operations at McClellan-Palomar Airport with FAA

Attachment C: December 29, 2021 County of San Diego Letter to FAA Regarding McClellan-Palomar Airport Noise Concerns