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All Receive - Agenda Item # 6
For the Information of the:
CITY COUNCIL
Date 5/6/19 CA ✓ CC ✓
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County of San Diego

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May 3, 2019

Carlsbad City Council
1200 Carlsbad Village Drive
Carlsbad, CA 92008
council@carlsbadca.gov

RE: Mutual Cooperation and Settlement Agreement by and between the City of Carlsbad and the County of San Diego executed on or about March 28, 2019; Letter from Cory Briggs dated April 23, 2019

Dear City of Carlsbad:

On March 28, 2019, the City and the County entered into a Mutual Cooperation and Settlement Agreement ("Agreement") regarding the City's lawsuit challenging the Final Program Environmental Impact Report ("EIR") for the McClellan-Palomar Airport Master Plan Update ("Master Plan"). On April 23, 2019, Cory Briggs, on behalf of Citizens for a Friendly Airport, sent you a letter claiming a violation of the Brown Act as follows: "Through the Settlement Agreement, the City took actions that can only take place in an open session, including but not limited to modifying CUP-172, withdrawing a zoning-ordinance amendment, and agreeing not to exercise land-use authority."

Mr. Briggs' claims do not have merit. First, the Agreement does not modify CUP-172. Rather, it states that the County will continue to voluntarily comply with CUP-172. Second, as acknowledged by the Agreement, the County has immunities from City building and zoning ordinances that currently exist or which may be subsequently adopted to regulate the use of the existing airport. Gov. Code §§ 53090, *et seq.* While the City retains land use authority regarding siting decisions for new airports, this has no bearing on anything contemplated by the Master Plan. The County's Master Plan ensures that all work will take place within the existing airport footprint. The only property acquisition contemplated by the Master Plan is for Runway Protection Zone (RPZ), and then only to the extent necessary to comply with FAA safety requirements.

Federal courts have repeatedly held that local regulations which attempt to prevent work, including the relocation and extension of runways and taxiways within existing airport boundaries, are preempted by federal law. *Tweed-New Haven Airport Auth. v. Town of East Haven*, 582 F. Supp. 2d 261 (2008). Federal courts have also held that local regulations related to airport safety, particularly when necessary to meet FAA safety standards, are preempted by federal law. *Burbank-Glendale-Pasadena Airport Authority v. City of Los Angeles*, 979 F.2d 1338 (9th Cir, 1992). The airfield changes and RPZ acquisition contemplated by the Master Plan fit within the scope of these preemption cases and the immunities provided to the County from City ordinances by State law.

Thus, the City could not "withdraw a zoning ordinance" or "agree not to exercise land-use authority" in the Agreement because the City, given the scope of the Master Plan, did not have any land-use authority over the County to begin with. It was from this vantage point that the language in the Settlement Agreement was developed, including the language in paragraph 6 related to the enactment of City zoning ordinances. The purpose of the language in paragraph 6 was not to restrict the City's ability to exercise its land use authority. Instead, it is meant to acknowledge that any action by the City to restrict the airfield changes and RPZ acquisition contemplated by the Master Plan would be preempted by federal law and ineffective to overcome the County's immunities.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By
JOSHUA M. HEINLEIN, Senior Deputy