



Kevin McKeown
Mayor

City Council
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VIA FACSIMILE AND U.S. MAIL

Representative Ted Lieu
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Los Angeles, California 90036
FAX: (323) 655-0502

Representative Karen Bass
4929 Wilshire Blvd., Suite 650
Los Angeles, California 90010
FAX: (323) 965-1113

Re: Santa Monica Airport

Dear Representatives Lieu and Bass:

Thank you for your letter of March 24, 2015 to me and my fellow City Council members regarding the continuing significant adverse impacts of the Santa Monica Airport ("Airport") on the health, safety and welfare of our community and our constituents. We appreciated that your aides, Lisa Pinto and Maral Karacussian, attended the Council hearing on March 24th and read your expression of support and offer of assistance into the record. We wholeheartedly share the concerns expressed in your letter.

As you know, these are not new concerns. For many years, the City of Santa Monica ("City") has been engaged in a series of initiatives with one purpose: to protect our residents from the substantial risks to our community from an Airport which increasingly impacts us. (Representative Lieu and I worked together on some of them as long ago as 2007, when he served in the California Assembly.) In the last decade, the Council invested extensive City resources in a fight to protect Airport neighbors by improving runway safety. The lack of any protection zones or runway safety areas at the Airport, together with the unique proximity of homes to the runway ends troubled us deeply, exacerbated further by the sharp increase in business jet operations. So, the City retained experts to study the options and provide legal and other advice.

After carefully considering its alternatives, Council approved an aircraft conformance program that simply would have conformed aircraft usage to the physical realities of the Airport and its designation on the approved Airport Layout Plan as a B-II facility by precluding larger, faster jets (Categories C & D) from using the Airport. Even before Council acted to approve the conformance program, the Federal Aviation Administration ("FAA") instituted an administrative enforcement proceeding against the City, claiming that the contemplated program violated the City's grant obligations. The City met with FAA representatives in an attempt to find solutions. Only after our efforts at collaborative problem solving failed did the Council implement the conformance program by adopting an Ordinance prohibiting C&D aircraft from using the Airport. When we adopted the ordinance, the FAA issued a Cease & Desist Order and obtained a federal court injunction prohibiting the exclusion of C&D jets. Later, contrary to its own Airport design regulations requiring far more extensive runway safety zones, the FAA issued a final administrative decision ruling that SMO is "safe" and that excluding C&D jets violated the City's grant assurance obligations. The City appealed, but the federal appellate court for the D.C. Circuit upheld the administrative ruling.

The FAA's opposition to the conformance program was disappointing, but not really surprising. Prior efforts by the City to address serious Airport impacts were also challenged by the FAA. For instance, the agency initiated legal proceedings against the City in the early 1980's, when the City attempted to curtail jet impacts. Thus, our experience gives us no reason to expect that the FAA will be receptive to future efforts to address adverse impacts by limiting Airport operations.

In addition to operational safety, we are also very concerned about the adverse impacts of noise and aircraft emissions on health, the environment, and neighbors' quality of life. And, we have done what we can. Among other things, we built a blast wall, tested aircraft mufflers, and worked to bring cleaner fuels to the Airport. However, federal law narrowly limits the City's options to deal with noise and emissions impacts. The Aircraft Noise & Capacity Act prohibits an airport proprietor from taking new action to limit airport noise unless the noise reaches a specified decibel level at a specified distance from the airport, and the noise from the Airport does not. The Clean Air Act expressly prohibits state and local regulation of emissions from aircraft engines. Thus, because federal law preempts our authority to regulate, establishing more protective terms in leases at the Airport within the City's authority seems to afford the best possibility for reducing the adverse impacts of noise and emissions; and the City is pursuing that possibility.

In addition to these concerns, the City has another major concern that you doubtless will appreciate: possible legal exposure for the activities of aviation interests at the Airport, which so far the City has been prevented from remedying. As you know, the City owns, operates and is legally responsible for the Airport. Beginning about 50 years ago, with the proliferation of jet aircraft, the City has faced almost constant legal challenges arising from the Airport. The FAA, private aviation interests, Airport businesses and Airport neighbors have all instituted legal proceedings against the City. At one time last year, the City was a party to no less than six legal actions related to the Airport.

The litigation of the early 1980's was resolved by a Settlement Agreement signed in 1984, which required the City to operate the Airport, but only up to mid-2015. Now that the City's contractual obligation to operate the Airport pursuant to the 1984 Settlement Agreement is expiring, the City has refocused its efforts on larger issues relating to control of the future use of the City's land currently used for the Airport. So far, the FAA has taken the position that the City bears all the responsibility for the Airport and all the risks and harms that may flow from the Airport, but has no authority to control Airport operations or the future use of the City's own land. The FAA's position is based upon its assertions about the City's contractual obligations, which the City believes are simply incorrect.

Two presently pending proceedings may well resolve questions about any remaining contractual obligations and the City's authority to control future use of its land presently occupied by the Airport. In October of 2013, the City filed a lawsuit against the FAA seeking to establish the City's right to control the use of the land. The City has owned the land, continuously and in fee, for about 90 years and merely leased to the federal government during World War II to aid in the war effort. After the war ended, the U. S. Government returned the leased property to the City, under an "Instrument of Transfer". The FAA claims that the 1948 Instrument of Transfer somehow transmuted the federal government's war-time leasehold interest into a right of perpetual control – an argument that conflicts with the most basic principles of real property law. The City's lawsuit against the FAA seeks to settle the question of the impact of the Instrument of Transfer upon the City's rights as land owner.

The other case is an administrative proceeding filed by aviation interests against the City seeking to force the City to grant "long term leases" to such interests (although they have not stated how "long term"). The City believes that proceeding should be dismissed, as improperly brought. However, assuming the case proceeds to a final FAA decision and through any court appeals, it should settle the question of whether the City's grant obligations expired last year, twenty years after the last federal grant was made to the City; or whether they will remain in effect until 2023, twenty years after the last grant was adjusted to cover actual construction costs, as the FAA claims.

The City has hired one of the top litigation firms in the country to represent us in the federal lawsuit and to advise us on the administrative proceeding. However, litigation takes time; decisions in these two cases will inevitably be appealed; and additional litigation may be filed. So, resolution of the legal issues will likely take at least three more years. So long as these cases remain pending, any attempt by the City to limit aviation interests' activities at the Airport, much less to close all or part of the Airport or to restrict Airport use through local legislation, seems virtually certain to result in an FAA demand to maintain the status quo. The FAA would likely issue an administrative order and seek a court injunction (as occurred in the case of the C&D jet restrictions). And, aviation interests already have threatened lawsuits under such circumstances.

However, this does not mean that the City is powerless to improve the situation while we await resolution of the legal issues. Indeed, as you know, the Council acted on March 24th to begin implementing the will of the voters as expressed in last year's ballot measures about the future of the Airport by converting some land, which even the FAA concedes has been totally released by the federal government, from aviation to recreational use. The Council also voted to take control of two subleases that have been very lucrative for one of the fixed base operators at the Airport, deny a longer term lease to a lessee on the western portion of the Airport (which is not subject to the Instrument of Transfer), limit other leases to terms expiring no later than June

30, 2018, and raise all rents to market rate. Additionally, Council directed staff to continue working to limit the demonstrably adverse impacts of the Airport through lease provisions and any other lawful means. And, Council will continue to closely monitor staff's work in this area and to seek out other opportunities to protect and promote residents' health, safety and welfare while the legal issues are being resolved.

In your letter, you graciously offered to facilitate a meeting in Washington, D.C. with FAA officials. Your offer is much appreciated. As you may know, similar meetings have previously occurred. In recent years, City representatives met with FAA officials many times to try to resolve our differences. On one occasion, former Congressman Waxman undertook to arrange a meeting with himself, two other members of Congress, FAA officials and City representatives. So far, however, none of those efforts has been productive. Nevertheless, we are always willing take action that may assist this community with the Airport's serious and deleterious impacts.

Therefore, on behalf of the City, thank you! We accept your offer, and I personally welcome the opportunity to meet, in Washington, with you and senior decision makers from the FAA. Alternatively, you may find it more efficient to host and attend a meeting with senior FAA officials here. In either case, I will gladly attend. I look forward to meeting as soon as possible.

Best regards,



Kevin McKeown
Mayor of Santa Monica

cc: Councilmembers
Interim City Manager
City Attorney