



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

Western-Pacific Region  
Office of Airports  
Safety and Standards Branch

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**OCT 21 2019**

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Anderson Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109

Mr. Jol Silversmith  
KMA Zuckert  
888 Seventeenth Street, NW, Suite 700  
Washington, DC 20006

Dear Mr. Lewis and Mr. Silversmith:

**NBAA/AOPA/GAMA**  
**vs.**  
**City of Santa Monica/Santa Monica Municipal Airport (SMO)**  
**Informal Determination**

This letter provides the informal determination in accordance with Title 14 Code of Federal Regulations Part 13.1, *Report of Violations*, in response to the complaint filed jointly by the National Business Aviation Association (NBAA), the Aircraft Owners and Pilots Association (AOPA), and the General Aviation Manufacturers Association (GAMA) (collectively, the "Trade Associations) against the City of Santa Monica (City) and the Santa Monica Municipal Airport (SMO). Anderson Kreiger LLP was retained by the City of Santa Monica to respond to the complaint. KMA Zurchert was retained by the Trade Associations to represent their interest. In its complaint, the Trade Associations challenged the use of airport revenue to, shorten the SMO runway; to pulverize/remove now unusable former taxiway and runway pavements; to grade the area beyond the east and west ends of the runway; and, to stabilize the soil in these areas through hydro-seeding. The Trade Associations argue that the use of airport revenue for these projects is inconsistent with the FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, (Revenue Use Policy; 64 FR 7696, February 16, 1999) and the 2017 Settlement Agreement between the Federal Aviation Administration (FAA) and the City.

The City completed the project to shorten the runway from its previous length of 4,973 feet to 3,500 feet on December 23, 2017. The City completed this project consistent with the Settlement Agreement/Consent Decree between the FAA and the City dated January 30, 2017. Section II.B of the Settlement Agreement stipulates: "*The cost to shorten the runway, including but not limited to the installation of EMAS, shall be borne by the City.*" The Settlement Agreement does not clarify the term "borne by the City" and it does not specifically exclude the use of airport revenue to complete the runway shortening or related projects. In a letter dated February 3, 2017, from the FAA Chief Counsel to the Acting City Attorney, the FAA stated: "*The City may use revenue derived from airport operations to cover the cost of shortening the runway.*" This is the FAA's official position on the matter;

therefore, the Western-Pacific Region considers the question of using airport revenue to shorten the runway as concluded.

For this reason, the remainder of this Part 13 informal determination and the supporting analysis focuses solely on the question of using airport revenue for the removal of former taxiway and runway pavements; to grade the areas to the east and west of the new runway ends; and, to stabilize the soil in these areas through hydro-seeding. In this context, airport revenue includes current surpluses in the airport enterprise fund and future revenues derived from both aeronautical and non-aeronautical uses of airport property.

Appendix A, to this letter, contains our analysis and discussion of the issues considered in reaching this determination. Appendix B lists the documents included in the Administrative Record.

The Runway Incursion and Surface Incident history at SMO reveals continuing pilot confusion and/or a failure of standard taxiway and runway closure markings to prevent pilot use of abandoned taxiway and runway pavements. Removal of unused pavements is a recognized and common approach to addressing problematic geometry at existing airports, especially when other less destructive methods have been less than fully effective. Appendix A, to this letter, shows several examples of similar projects. We recognize that some of the examples referenced in Appendix A involved older abandoned pavements and connecting taxiways for which alternate taxiways exist. However, these projects reveal a precedent of projects similar to the one completed at SMO.

The removal of pavements and soil stabilization project at SMO were completed in a manner consistent with FAA standards. SMO met all applicable standards prior to the pavement removal and the airfield remains compliant with all applicable standards following completion of the project.

Based on the facts and circumstances outlined above and in Attachment A, we conclude that airport revenue may be used to fund the pavement removal, pavement pulverization, and hydro-seeding project, including the work within the Runway Safety Area, at SMO. The removal of the subject pavements, pavement pulverization and reuse, and the soil stabilization at SMO appears justified as an airport operating cost. We understand that the City plans to use existing lease revenue surpluses to fund the subject projects and will not include the cost of the projects to calculate future aeronautical fuel and landing fee rates and charges. Please notify my office if this is not the case.

This conclusion notwithstanding, the City and the FAA must discuss and reach an agreement on a financial plan for the future collection and use of all airport revenue. The subject plan must provide for the proper use of airport revenue for the continued maintenance and safe operation of SMO, while avoiding the collection and use of airport revenue for community uses, non-aviation uses, and reuse of airport property should the City decide to close the Airport in 2028.

This constitutes a preliminary determination of the Airports Division, Western-Pacific Region that concludes our informal review of the reports of violations submitted by NBAA/AOPA/GAMA against the City of Santa Monica and the Santa Monica Airport.

We are aware that individual airport users and airport operators often view the airport's Federal obligations differently. At times, the FAA may be the final arbiter in such disputes when matters cannot be resolved locally. If there is disagreement with the preliminary conclusion, the complainants may file a formal complaint in accordance with the rules of practice prescribed in Title 14 Code of Federal Regulations Part 16. If availing yourself of this option, be mindful to ensure the filing requirements are followed, the complaint package is complete, and it is sent to the following address:

Office of Chief Counsel  
Attention: FAA Part 16 Airport Proceedings Docket, AGL-610  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

If you have any questions, you may contact me at 424-405-7303.

Sincerely,



Brian Armstrong  
Manager, Airport Safety & Standards  
Office of Airports, Western-Pacific Region

cc: National Business Aircraft Association (NBAA)  
Aircraft Owners and Pilots Association (AOPA)  
General Aviation Manufacturers Association (GAMA)  
Mr. Stelios Makrides, Airport Director, City of Santa Monica  
Airport Compliance Division, ACO-100  
Airport Safety and Operations Division, AAS-100  
Los Angeles Airports District Office, LAX-ADO

## **APPENDIX A - ANALYSIS & DISCUSSION**

### **FAA's REVENUE USE POLICY.**

Section V.A.1. of the FAA's Revenue Use Policy permits the use of airport revenue for: "*The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.*" Neither the Revenue Use Policy nor the 49 U.S.C. 47107(b) statute specifically define "capital" or "operating" costs other than to say that operating costs may be direct or indirect. Section VI.B.11 of the Revenue Use Policy prohibits the expenditure of airport funds for support of community-purpose uses of airport property except under certain circumstances.

### **POTENTIAL NON-AIRPORT USE**

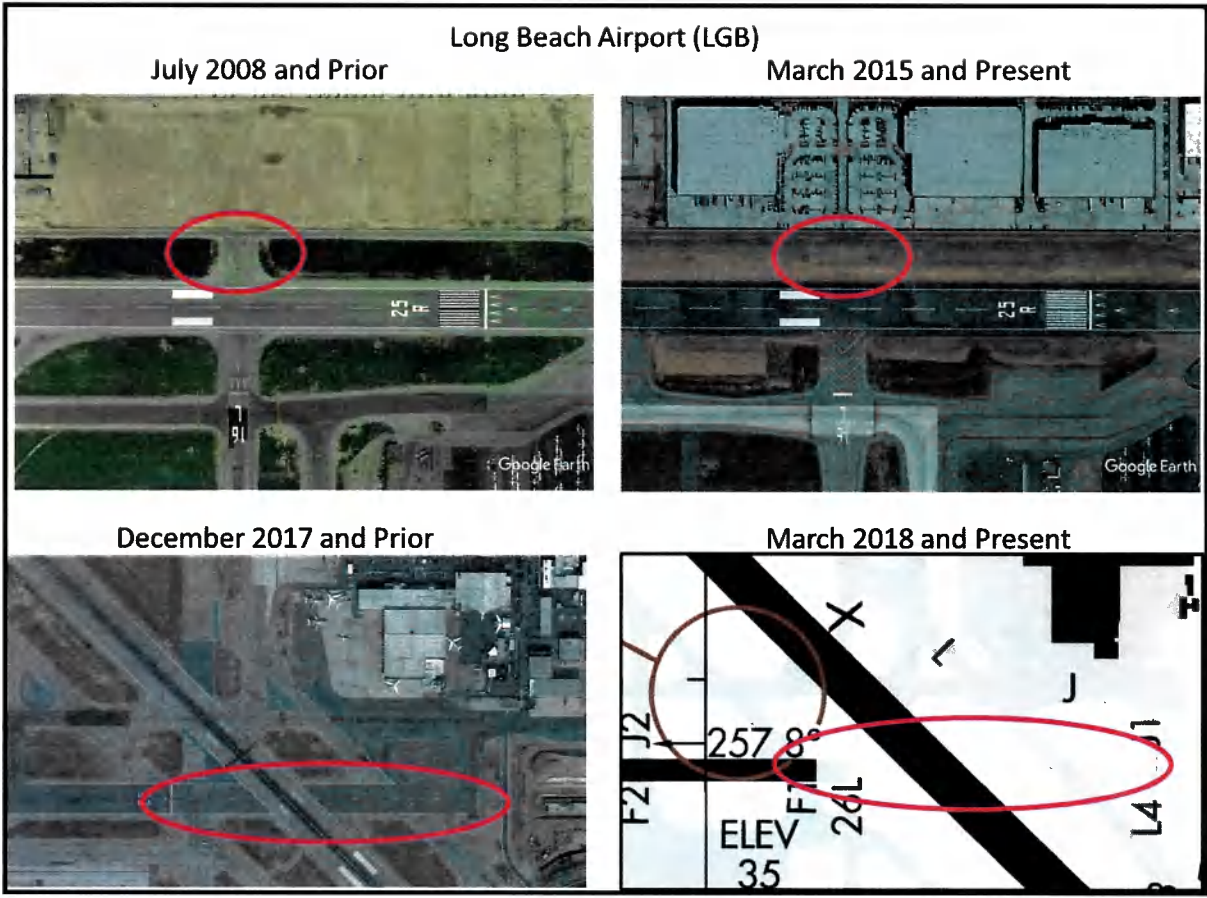
A potential non-airport purpose for the project is a question in this case. The complainants have raised concerns that the City of Santa Monica's (City) only motivation for removing runway and taxiway pavement and seeding the areas is to promote or further the City's goal of closing the airport in order to convert the property into some future non-aviation use. The "non-airport use" in this case may be the ultimate reuse of the airport property for non-aeronautical purposes. This makes this case similar in many ways to the closure and reuse of Meigs Field, Chicago, Illinois and Stapleton International Airport, Denver, Colorado. In those cases, the FAA limited the use of airport revenue to close an airport and to redevelop the land for non-aviation purposes.

The current case at Santa Monica Airport (SMO) differs in many ways from Meigs Field and Stapleton. The most significant difference is that the projects at SMO do not limit or restrict the use of the runway in its current configuration. The area remains within the movement area of SMO and within the Runway Protection Zones. A site visit by FAA staff on September 20, 2019 revealed no apparent non-aviation use or community access/use of the subject areas.

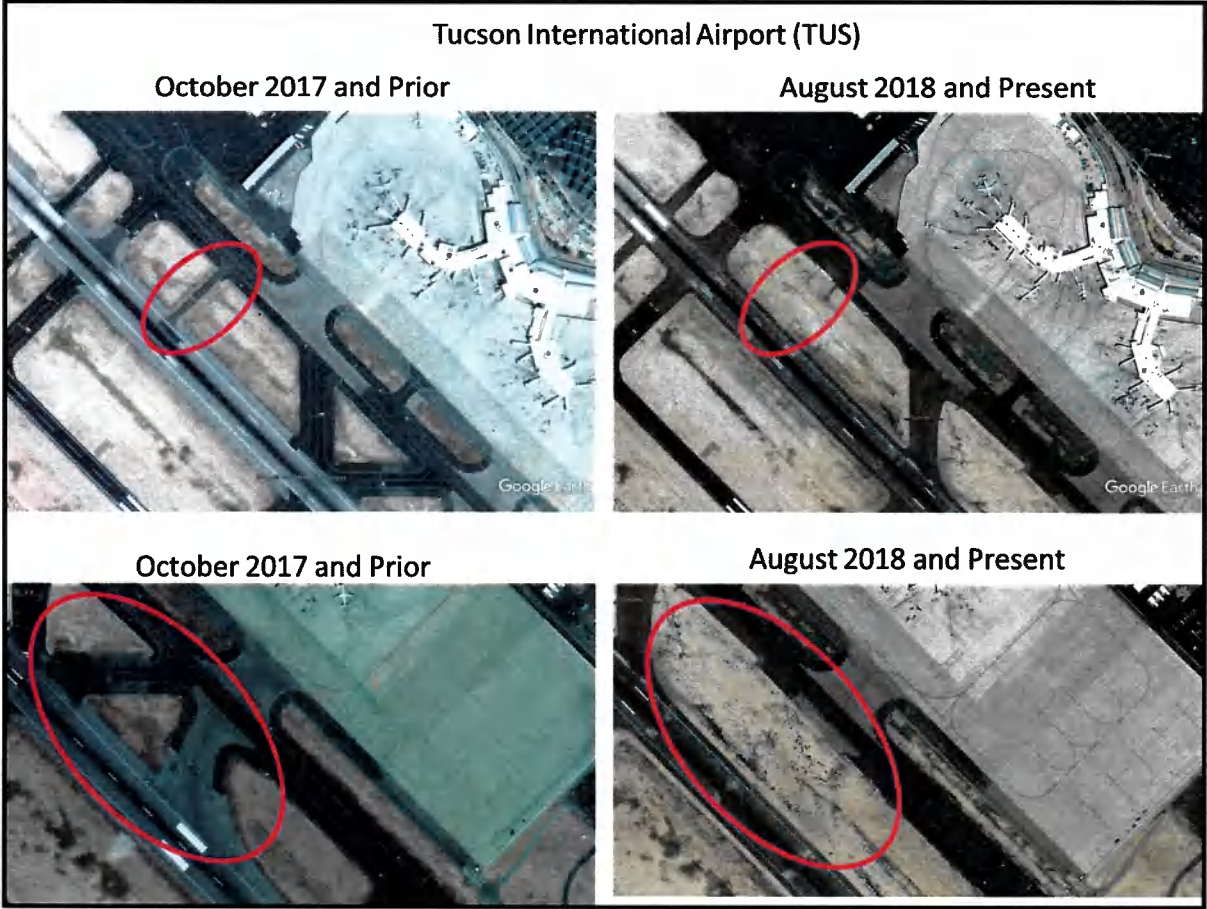
Although the removal of the pavement and seeding of the area may have some non-airport utility beyond 2028, we observed no current non-aviation use or community use of the subject airport property. We also note that the pavement removal and soil stabilization project could have a legitimate airport purpose currently and beyond 2028 should the airport remain open after that time.

### **PROJECT PRECEDENCE**

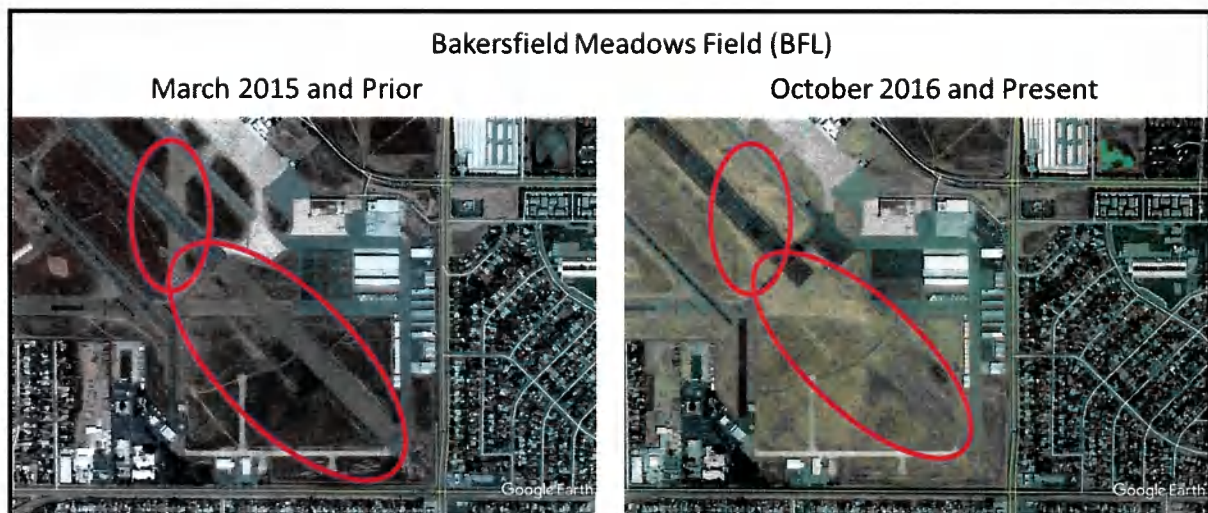
Projects to remove closed and unused former runway and taxi pavements are relatively common and such projects can be a legitimate capital and/or operating cost of an airport. There are numerous examples, throughout the country, of airport operators removing or otherwise clearing closed or unused runway and taxiway pavements. Figures 1, 2, and 3 show examples of similar projects at airports in the FAA's Western-Pacific Region. In some cases, Airport Improvement Program (AIP) funds were provided to complete some elements of these projects with airport revenue used as matching funds for those grants. In other cases, airport revenue was used to pay for the entire project. To date, the FAA has not objected to the use of airport revenue for these types of projects.



**Figure 1 - LGB Pavement Removal Projects**



**Figure 3 - TUS Pavement Removal Projects**



**Figure 2 - BFL Pavement Removal Projects**

### **RELEVANT GEOMETRY ISSUES AND RUNWAY INCURSION HISTORY**

Prior to the shortening of the Runway, the FAA had identified the intersection of Taxiway B and the approach end of Runway 21 as a priority Runway Incursion Mitigation (RIM) Program location. The geometry issues identified under the FAA's RIM Program in this location included: the direct access to the runways from the ramp areas; the short distance from the ramp/apron area to the runway; the taxiway intersected the runway at other than a right angle; and, the wide expanse of taxiway pavement along the runway.

FAA records indicate that 21 runway incursions occurred at this intersection between June 2012 and August 2018. We note however, that the airfield geometry was not a contributing factor in all of the runway incursion events.

The now closed taxiway connectors, formerly known as A1 and B1, as well as the now closed Taxiway A and Taxiway B entrance points with the former approach ends of Runway 3 and Runway 21 all had similar RIM geometry issues of direct access to the runway from ramp areas and the short distance from the ramp areas. The runway incursion history in these locations did not meet the criteria to elevate these locations to priority RIM location status (See Figure 4). However, FAA records do indicate that an additional seven runway incursions occurred at the now closed intersection of Taxiway A and the former approach end of Runway 21 between June 2012 and January 2017.



**Figure 4 - RIM Locations (Source of Base Map: FAA RIM Program Database)**

The project to shorten the runway, to place chevrons on the former runway pavement, to place taxiway edge stripes along the new taxiway alignments, and to place Xs on closed taxiway segments were considered appropriate mitigations for the RIM issues at these locations. If those mitigations had been successful in eliminating Runway Incursions and Surface events, then the removal of pavements may not have been necessary.

After December 23, 2017, following the shortening of the Runway, FAA records indicate that at least 18 incidents have occurred involving aircraft taxiing onto closed areas of Taxiway A, Taxiway B, and the paved areas beyond or proceeding the existing thresholds of Runway 3-21. Events where aircraft landed long and entered the Runway Safety Areas beyond the ends because the pilot could not stop the aircraft before exiting the runway and where the pilot landed short of the beginning of the Runway, are not included in these counts because the purpose of the RSA is to protect for these events.

Of the 18 incidents referenced above, 12 occurred between December 23 and December 27, 2017 immediately following the reconfiguration. The remaining six (6) incidents have occurred since February 1, 2018. City records indicate that 14 such events occurred between January 28, 2018, and February 13, 2019. City records include events that occurred during hours that the FAA's Air Traffic Control Tower was not open. Therefore, those events are not accounted for in FAA Runway Incursion or Surface Incident records.

### **FAA SAFETY RISK MANAGEMENT (SRM AND SMS)**

A FAA Safety Risk Management Panel (SRMP) was conducted on December 18, 2017, to identify hazards and risks that may arise from the airport layout changes at SMO. That panel identified several "medium" risks associated with a potential for loss of pilot and vehicle operator situational awareness. The runway incursion history for the period immediately following the airfield changes and continuing today, as discussed above, confirms these predicted risk concerns.

### **CRITICAL AIRCRAFT DETERMINATION**

Although not specified in the Settlement Agreement/Consent Decree, the FAA and the City have subsequently agreed to apply the Aircraft Approach Category (AAC) B and Airplane Design Group (ADG) II (B-II) standards at SMO.

A critical aircraft determination is an important aspect of airport planning and design of federally obligated airports. It sets dimensional requirements on an airport and the size of certain areas protecting the safety of aircraft operations and passengers. The critical aircraft is the most demanding aircraft type, or grouping of aircraft with similar characteristics, that make regular use of the airport. Regular use is 500 annual operations, including both itinerant and local operations but excluding touch-and-go operations. Documenting aeronautical activity, including the number of operations by aircraft, is the basis for making an existing critical aircraft determination. Sources for documenting aircraft activity include: Aircraft landing fee reports provided by the airport sponsor or completed Instrument Flight Rules (IFR) flight plan data available through the FAA Traffic Flow Management System Counts (TFMSC) database.<sup>1</sup>

The City keeps records of all aircraft departures at SMO. We reviewed the data from the City's records for the one-year period from September 1, 2018 to August 31, 2019 and identified the make and model of each U.S. Registered fixed wing aircraft. The analysis included a total of 25,873 aircraft departures by 2,534 separate U.S. registered aircraft. Of the total departures, 82 were conducted by all aircraft larger than B-II and 2,817 were conducted by B-II aircraft.

The FAA's TFMSC database recorded 11,119 Instrument Flight Plan operations of B-II and smaller aircraft at SMO in Calendar Year (CY) 2018. The TFMSC database recorded 141 Instrument Flight Plan operations of all aircraft larger than B-II in CY 2018.

Based on this data, B-II is the critical aircraft design group and it is, therefore, appropriate to continue to apply B-II design standards at SMO.

### **APPLICABLE AIRPORT STANDARDS**

Paved shoulders and blast pads are allowed for all Airplane Design Groups (ADG), however, at least turf, aggregate-turf, soil cement, lime or bituminous stabilized soil are recommended adjacent to paved surfaces accommodating ADG I and II aircraft.<sup>2</sup>

Paragraph 416 of FAA Advisory Circular 150/5300-13A prohibits aligned taxiways whose centerlines coincides with a runway centerline. Although this was not the case at SMO prior to the pavement removal, we note that this paragraph states: "*Any abandoned pavement should preferably be removed, but at a minimum appropriately marked.*"

We note that the runway safety area, blast pad, and abandoned runway and taxiway areas were marked consistent with all applicable FAA standards prior to the pavement removal. We also note that the City's removal of the subject taxiway, runway, and blast pad pavements is also consistent with applicable FAA standards.

<sup>1</sup> FAA Advisory Circular 150/5000-17, *Critical Aircraft and Regular Use Determination*

<sup>2</sup> FAA Advisory Circular 150/5300-13A, *Airport Design*, Appendix 3, Paragraph A3-5



Because no AIP funds were provided for the pavement removal project, the City was not required to comply with FAA's Standard Specification for Construction of Airports.<sup>3</sup> Although not required, the City's plan to seed the areas where runway and taxiway pavement was removed and outside of the Runway Safety Area appears to be consistent with Part 12, Item T901 Seeding of FAA Advisory Circular 150/5370-10H, *Standard Specification for Construction of Airports*.

### **UNIQUE CIRCUMSTANCES OF SMO**

Through the analysis outlined above, we have determined that projects, similar to the subject project at SMO, can be an appropriate use of airport revenue. There were documented airfield geometry and operational issues with some of the closed pavement areas removed by the subject project. We have also determined that the project was completed in a manner that is consistent with applicable FAA standards.

Section II.B of the Settlement Agreement stipulates: "*The cost to shorten the runway, including but not limited to the installation of EMAS, shall be borne by the City.*" The Settlement Agreement does not clarify the term "borne by the City" and it does not specifically exclude the use of airport revenue to complete the runway shortening or related projects.

The public record shows that certain City leaders are highly motivated to close SMO and may want to further degrade its utility as an airport. The public record also appears to show that these leaders may have supported the subject projects out of a desire to ensure that the runway will remain at its current length of 3,500 feet. This notwithstanding, the FAA has agreed to the 3,500 foot runway length and the pavement removal will not degrade the utility of the existing runway. The pavement removal and soil stabilization has a legitimate airport purpose currently. It also has utility should the airport remain open beyond 2028. Although the removal of the pavement and soil stabilization may have some non-airport utility beyond 2028, we observed no non-aviation use of or community use/access to the subject airport property.

We also note that Section II.A. of the Settlement Agreement states: "The 3,500 foot distance shall not include the runway safety areas that shall be constructed and maintained at both runway ends (Emphasis Added)." The inclusion of the language "shall be constructed" clearly indicates that the parties envisioned that some sort of construction might be needed within the Runway Safety Areas, beyond simple remarking the pavement.

Section III of the Settlement Agreement states: "...the City may use the property no longer needed for the airport... for non-aeronautical uses that are safe and compatible with the operation of the airport." The Settlement Agreement did not constitute FAA approval of any particular use. The FAA considers the subject land to be needed for aeronautical use as Runway Protection Zone (RPZ) and any non-aviation or community use within the areas would not be safe and compatible with the operation of the airport.

We find no unique circumstances or basis for the FAA to treat the subject projects SMO differently from other similar projects at other federally obligated airports.

### **END OF APPENDIX A**

<sup>3</sup> FAA Advisory Circular 150/5370-H, Standard Specification for Construction of Airports.

## **APPENDIX B - HISTORY and ADMINISTRATIVE RECORD**

The administrative record in this case includes:

- January 30, 2017 – Settlement/Consent Decree between FAA and City of Santa Monica.
- February 3, 2017 – Letter from Mr. Reginald Govan, FAA Chief Counsel to Mr. Joseph Lawrence, Acting City Attorney. In relevant part, this letter agrees the City may use revenue derived from airport operations to cover the costs of shortening the runway.
- July 9, 2018 – Letter from Mr. Stelios Makrides, SMO Airport Director, to Mr. David Cushing, Manager of the FAA's Los Angeles Airports District Office. In this letter, the City provided an update on its plans to remove non-usable runway and taxiway pavement, to grade the area, and to place hydro-seed.
- August 31, 2018 – Letter from Mr. David Cushing to Stelios Makrides responding to City's letter dated July 9, 2018. In this letter, the FAA objected to the portion of the project within the RSA and recommended the City refrain from rate basing the cost of removing pavement from the former runway and taxiway segments.
- October 1, 2018 – Letter from Mr. Stelios Makrides to Mr. David Cushing. In this letter, the City reiterated FAA's non-objection to removing pavement from the former runway beyond the RSAs, removal of pavement of now closed taxiways, and hydro-seeding. The City indicated it would use airport funds for the removal of pavements outside the RSA and for hydro-seeding and agreed to refrain from rate basing the costs incurred into aeronautical rates. However, the City requested reconsideration of FAA's objection to the use of airport funds for proposed work in the Runway Safety Areas.
- October 15, 2018 – Letter from Mr. Brian Armstrong, Manager, Airport Safety and Standards Branch to Mr. Stelios Makrides. Responding to October 1, 2018 letter addressed to David Cushing FAA reaffirmed the objections articulated in David Cushing's letter to the City dated August 30, 2018.
- November 30, 2018 – Joint letter from the Trade Associations to Ms. Winsome Lenfert, then Acting Associate Administrator for Airports. The Trade Associations raised concerns about the use of any airport revenue, including existing fund surpluses or future rate-based revenues, to shorten the runway and to remove pavements citing no aeronautical need. The Trade Associations believed the previous advice provided by FAA (in the correspondence referenced above) was erroneous and must be reevaluated.
- February 6, 2019 – Letter from Mr. Kevin Willis, Director of FAA Office of Airport Compliance and Management Analysis to Mr. Stelios Madrides. This letter transmitted the Trade Association November 30, 2018 letter to the City and informed the City that FAA was treating it as a Part 13 complaint. The letter indicates that the City should respond to Brian Armstrong.
- February 6, 2019 – Identical letters from Mr. Kevin Willis to representatives of NBAA, NAMA, and AOPA acknowledging receipt of their November 30, 2018 letter and informing them of our treatment of that letter under Part 13.
- February 25, 2019 – Letter from Mr. Scott Lewis, of law firm of Anderson Kreiger to Mr. Kevin Lewis indicating that Anderson Kreiger had been retained by the City of Santa Monica to respond to the Trade Association letter of November 30 and requesting an extension of time, until March 29, 2019 to respond.

- March 7, 2019 – Letter from Mr. Jol Silversmith of the Law Firm of KMA Zurckert to Mr. Kevin Willis indicating that the Trade Associations have no objection to the City's request for an extension on the condition that the City does not take any steps to alter the status quo prior to filing.
- March 22, 2019 – Letter from Mr. Scott Lewis to Mr. Brian Armstrong providing the City's initial response to the November 30, 2018 Trade Association complaint. Copies of this response were sent directly to the Trade Associations and to the Trade Association's legal counsel.
- April 5, 2019 – Letter from Mr. Jol Silversmith providing the Trade Association's rebuttal to the City's November 22, 2019 response to the initial complaint.
- April 10, 2019 – Email from Mr. Scott Lewis to Mr. Brian Armstrong requesting until May 8, 2019 to respond to the Trade Association's rebuttal.
- April 19, 2019 – Letter from Mr. Brian Armstrong to Mr. Stelios Makrides granting Mr. Lewis' request and indicating that no airport revenue may be used to fund the removal, pulverization or destruction of the existing pavement of the former runway or taxiway areas pending resolution of the complaint.
- May 7, 2019 – Letter from Mr. Scott Lewis to Mr. Brian Armstrong providing the City of Santa Monica's reply to the Trade Associations April 5 rebuttal.

**END OF APPENDIX B**