



U.S Department
of Transportation

**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

August 5, 2005

Tracy L. Means
Airports Director
City of San Diego
Montgomery Field
3750 John J. Montgomery Drive, MS 14
San Diego, CA 92123

Dear Ms. Means:

**Brown Field Municipal Airport (SDM)
Land Use Inspection Follow-up**

Thank you for meeting with us and arranging a tour of Brown Field on July 26, 2005. We appreciate the opportunity we had to discuss airport management issues, review accomplishments, and obtain a compliance update. We are writing to provide the City of San Diego (City) with feedback regarding the City's progress correcting compliance shortcomings at SDM. We are also requesting that the City continue with its corrective action plan to eliminate inappropriate non-aeronautical uses from the airfield as quickly as possible.

We commend the City for initiating action to eliminate some of the non-aeronautical uses that exist at SDM. The City has acquired the Paladin Aviation leasehold site, is endeavoring to repossess David Rowland's lease site, and has caused Otay Carpet Outlet to vacate the airport. LanceAir is focusing on providing aviation services to the public. However, in spite of these successes, more needs to be done.

Airport Planning

As we advised in our letter dated November 8th, the City should be planning to transition the airport back to aviation and develop the airport for aviation. If the City wishes to include non-aviation uses in its plan, it should undertake a Master Plan to describe how the airport will be developed to accommodate aviation and demonstrate whether there is any airport land that is not needed for airport purposes.

In view of recent events in San Diego, we recognize that the reduced size of the City Council may have slowed the City's decision-making process. However, we expect that the City will make the right management decisions with regard to SDM even if local government decisions are not presently being made in a timely manner. The City should continue to make SDM available for aeronautical purposes and eliminate inappropriate non-aeronautical businesses.

Although this transition may be slowed if the City Council does not act promptly on airport matters, we trust that the City will continue to act affirmatively to comply with its federal airport obligations.

As the City works to eliminate non-aeronautical users and cause them to vacate the airport, we encourage airport officials to employ the resources of other City and local government agencies to facilitate the relocation from SDM to other suitable off-airport sites. Presently, non-aviation businesses are occupying space that could better be used for aeronautical purposes. Non-aviation businesses should not be operating at airports. They are capable of operating anywhere and do not need airport space to survive. Aeronautical businesses, on the other hand, can only operate at airports and would not survive or even be allowed to operate elsewhere.

U.S. Border Patrol

The U.S. Border Patrol continues to park numerous vehicles on the airport apron. In effect, the Border Patrol is using the airport operations area as a parking lot. Based on our investigation, the Border Patrol does not base any aircraft at SDM. Rather, the Border Patrol stores a helicopter on its own private property north of the airport. The Border Patrol uses SDM for landing and take-off when picking up or dropping off passengers on the airport apron.

We have also learned that the Border Patrol uses SDM's perimeter road to travel between the apron parking area and its own property north of the airport. Border Patrol vehicles should not be driving on the airfield because their drivers are not trained or authorized to drive on the airport operations area and the vehicles are not properly marked or equipped.

In accordance with Assurance 19, *Operations and Maintenance*, the City is required to ensure that SDM is operated safely at all times. Allowing unauthorized drivers on the airfield creates a safety risk and increases the likelihood of vehicle deviations. Furthermore, there is no perimeter fence on the north side of the airport. Vehicles have easy access to the airport because there is nothing to stop them from entering, exiting, or crossing the airport.

U.S. Customs Service

We have evaluated the U.S. Customs Service operations at SDM and concluded that the Customs Service functions to serve the air transportation needs of people and cargo entering SDM from foreign ports. Therefore, as with other aviation and aeronautical businesses, the FAA has no objection to the presence of Customs Service at SDM.

Long-Term Non-Aeronautical Uses

Certain tenants that engage in non-aeronautical activities have established a long-term presence at SDM. SDM businesses in this category are the Landing Strip Restaurant and the fire station. They provide a tangible service to the airport and its users. Ordinarily, the FAA does not object to airport restaurants. Fire stations can occasionally be justified if land is available that is not needed for aviation and the fire station provides a tangible benefit to the airport. As with all non-aeronautical activities at airports, these non-aeronautical tenants must pay rental rates that are based on fair market value. As long as the rental rate is proper, the FAA has not objected to their presence at SDM.

Customs Broker

The Customs Broker is using office space in the terminal building. It is our understanding that the Customs Broker does not have a need to be located at the airport. Therefore, the space occupied by the Customs Broker could be better used for an aviation-related purpose. More importantly, if the space is needed or can be used for an aeronautical purpose, the Customs Broker should relocate, preferably off the airport. While the terminal space is occupied by the Customs Broker, the rent must be based on fair market value.

Interim Use

As we explained in our letter dated November 8, 2004, the FAA is not objecting to certain specific interim uses of airport property. Interim use signifies a temporary arrangement that allows airport land to be used for short-term periods for a non-aeronautical purpose while it is not needed for aviation. Again, the interim use appears to be appropriate for the ATM and Abre Enterprises. The Customs Broker may use terminal space on a temporary basis and only while no aviation need or demand exists for the space. If the terminal space is needed for an aviation purpose, the Custom Broker should be directed to vacate the terminal. Presently, land on the northwest corner of the airport may be a suitable site for interim uses but only if the City can demonstrate that the interim use is justified.

However, we remind the City that it must seek FAA approval before renewing any agreements with existing non-aeronautical users or introducing any new non-aeronautical uses at SDM.

During inspection tours of SDM, we noticed posted signs that advertise space for rent in the northwest corner of the airport in the area used for vehicle storage and salvage. We bring this to your attention because it appears that non-aeronautical tenants are subletting space. The City should prevent subletting by non-aeronautical tenants, especially if their lease agreement does not authorize subletting. In addition, if subletting is occurring, the tenant, in all likelihood, has more land under lease than is needed. The City should consider withdrawing land from the tenant if land is not being used or is not needed. The City is required by Assurance 24 to make the airport as self-sustaining as possible. Therefore, the City should be collecting market-based rents from all non-aeronautical tenants and imposing rent surcharges on tenants who the City has authorized with FAA approval to sublet to other non-aeronautical users.

Land Release Guidance

The City has previously requested information regarding a land release. Presently, the FAA cannot support a land release that would permanently eliminate federal obligations that require land at SDM be used for aviation. The FAA is not authorized to approve a land release while the City is still not in full compliance with its federal airport obligations. In addition, before a release could be considered, the City will have to formulate a land use and capital improvement plan for SDM within the context of a Master Plan update or Airport Layout Plan Narrative Report in order to show how SDM will be developed. The scope of planning may include a study to determine whether or not there is justification for a land release if it can be shown that all airport land is not needed for airport purposes.

Follow-up

Please provide an updated status report that, at a minimum, includes the following:

1. An update regarding non-aeronautical uses at SDM describing those that remain and those that are no longer at the airport. Include the City's current plan to eliminate non-aeronautical uses from the airport.
2. Update the Lease Information Summary and Map dated 2004 that lists information describing all tenants at SDM and where they are located. Send a copy of the updated Summary and Map to the FAA.
3. Provide the City's plan and schedule to eliminate Border Patrol parking from the airport ramp.
4. Send a copy of the Border Patrol airport lease/sublease to the FAA.
5. If the City believes that certain non-aeronautical users cannot be relocated in the near future, the City should explain why and forecast when they will vacate the airport.
6. If the City believes that certain of the non-aeronautical users should be approved on an interim basis, the City should identify those users and explain why and under what conditions they deserve interim-use approval.

Please provide your response within 45 days of your receipt of this letter.

We remind the City of Section 722 of Public Law 106-181 (April 5, 2000) amended 49 USC 47131 and requires, as part of the Secretary's annual report to Congress, the inclusion of a detailed statement listing airports that the FAA believes are not in compliance with grant assurances or other requirements with respect to airport land use. The report includes a description of the non-compliance issues, the timeliness of corrective actions by the airports, and the actions the FAA intends to take to bring the airport sponsors into compliance. Based on the Section 722 requirement, SDM was included in the annual report to Congress.

To date the City's corrective action progress remains incomplete. The City will be expected to eliminate all non-conforming and unapproved land uses at SDM. (Non-conforming land uses are non-aeronautical uses that have not been approved by the FAA or do not pay a market-based rental rate.) In view of the continuing compliance deficiencies, the city is advised that FAA action to enforce the grant agreements and conveyance deed now includes the withholding of grant funding.

Sincerely,

**Original Signed by
Tony Garcia**

Tony Garcia
Airports Compliance Specialist