

September 20, 2005

Mr. Tony Garcia  
Federal Aviation Administration  
Airports Division, AWP-620.1  
P.O. Box 92007  
Los Angeles, CA 90009

Dear Mr. Garcia:

Subject: City of San Diego Brown Field Municipal Airport (SDM)  
Land Use Inspection Report – 4<sup>th</sup> Letter of Response

This letter responds to your letter dated August 5, 2005, regarding the Brown Field Land Use Inspection Follow-up visit. The City of San Diego (City) appreciates the opportunity to provide additional information that was not available at the time of the inspection; to update the FAA regarding the on-going progress being made to eliminate non-conforming land uses since the inspection; and to express the City's commitment to return the City to full compliance with its federal obligations. We have the support and cooperation of the Airport Advisory Committee (AAC), airport users and stakeholders, and are committed to working together to resolve this matter at the earliest possible date.

Thank you for the interim use approvals. Approved uses will be at fair market rental rates and deposited into the airport enterprise fund. Revenues from these uses fund the operation, maintenance, and development of the airport. The City believes, and is supported by the AAC, that some amount of non-aeronautical land use is appropriate recognizing the City's obligation to make the airport as financially self-sustaining as possible. Regarding planning, the airport layout plan was recently updated and approved by FAA (March 2005) reflecting the proposed elimination of non-aeronautical, and replaced to show future aviation uses. The AAC has also formed an RFP sub-committee to advise the City on new development to meet the needs of general aviation and demand. At the earliest possible date, City Council approval will be sought to implement the recommendations of the sub-committee. Finally, we are awaiting a date from FAA to schedule a Joint Planning Conference (JPC) for increased user participation in the airport planning process, including an airport master plan update.

Below is an updated status report which includes the six requests for information as contained in the "Follow-up" section of your letter.

- 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.*

### **CITY CONTROLLED**

**Response:** ATTACHMENT A is a listing of eliminated non-aeronautical land uses at SDM on City controlled land. As previously acknowledged by the FAA, non-aeronautical land uses have existed at SDM for a long time, with records indicating that such uses existed at SDM since at least 1980. However, it is important to note that the City has not introduced any new non-aeronautical land uses at the airport since early 1997, at which time the City entered into exclusive negotiations with a developer to privatize and develop the San Diego Air Commerce Center, a proposed cargo project. In 2001, the proposed cargo project was formally rejected by the Mayor and Council. Since then, the City has eliminated at least twenty-eight (28) non-aeronautical land uses at SDM, and is currently in the process of terminating the remaining non-aeronautical uses unless or otherwise approved by the FAA. The following is the status of non-aeronautical land uses on City controlled property that have not been approved by FAA:

- ORW (Map Code #10) - the lease agreement between the City and Organic Recycling West (ORW) is scheduled to terminate in November 2005. ORW has been advised to relocate and remove all material from SDM by the November deadline.
- Rowland (Map Code #8) - The City obtained a Writ of Possession for this property from the courts. The City Attorney is seeking additional court action against the tenant for failure to vacate and clean the premises in a timely manner. Because this matter is with the courts, the City Attorney has advised not to access the property to remove the signs observed on your inspection. Please be assured that at the earliest possible time, the City will remove the signs, and eliminate this tenant from the airport. Signs to sublease lots on other portions of the airport have been removed.
- City Customs Office (Map Code #45) – Within the next several weeks, the City will provide notice to terminate this month-to-month agreement. The office will be used for aviation office space.
- US Border Offices and Detention Facility (Map Codes #41 and 42) – Please see City Response #5.

### **NON-CITY CONTROLLED**

**Response:** ATTACHMENT B is a listing of eliminated non-aeronautical land uses at SDM on FBO controlled land. It should be noted that the City's plan to eliminate non-conforming land uses at SDM actually began well before the June 8, 2004, inspection. In fact, the City began meeting with the three FBOs at SDM (Paladin Aviation, Brown Field Aviation Ventures, and Aviation International) in 2002 to discuss and resolve non-compliance issues concerning, among other items, non-authorized uses on their leaseholds. During the FAA's 2004 inspection, FAA personnel observed that all three of the FBOs were allowing non-aeronautical activities on their leaseholds, which directly contributed to the City's non-compliance problem. Over the past several years, the FBOs cited problems such as overhead power lines on the leaseholds; inability to obtain financing; and lack of City-installed infrastructure improvements as rationale for

subleasing to non-aeronautical tenants. For example, the FBOs referred to the City's alleged failure to comply with a lease term that stated that "*The City will diligently pursue, based on available funds, a precision GPS approach.*" While a precision GPS approach may have been a long-term goal, technology for a *precision* GPS was not fully developed in 1996 and today is not yet certified by FAA. Also, navigational aids at public-use airports, like SDM, are typically owned, operated, and funded by the FAA, not individual airport sponsors. Therefore, the City has been unable to provide this particular improvement. Contract issues aside, the City is working with the FBOs to eliminate all non-conforming land uses on the FBO leaseholds. The following is the current status of non-aeronautical uses on those leaseholds:

- Paladin Aviation – The City served this tenant with a formal Notice of Default, dated February 27, 2002, for unauthorized subleasing to non-aeronautical users. After extensive negotiation with Paladin Aviation, on November 8, 2004, the Mayor and Council approved a buyout of Paladin Aviation's interest in the leasehold. Thereafter, on June 30, 2005, Paladin surrendered the property and the City took possession. Since gaining control over the leasehold area, the City has begun the process of terminating all remaining non-aeronautical uses and is issuing 30-Day Notices to vacate. It is the City's plan to continue this course of action until all non-conforming uses are removed from the leasehold.
  - Brown Field Aviation Ventures (BFAV) – The City served this tenant with a formal Notice of Default, dated February 18, 2003, for unauthorized subleasing to non-aeronautical user and was cured. The City and BFAV are currently working on a proposed settlement regarding other matters. Final settlement terms will be forwarded to FAA for review and approval.
  - Aviation International – The City served this tenant with a formal notice of default, dated February 24, 2004, for non-aeronautical uses, and offered an opportunity to cure the default. The tenant's auto repair sublessee is no longer operating on the leasehold, and the tenant has painted over the auto repair sign on the building. The default is being cured.
2. *Update of the Lease Information Summary and Map dated May 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.*

**Response:** ATTACHMENT C is the updated Lease Information Summary, dated September 2005. ATTACHMENT D is the corresponding Tenant Location Map. The Summary includes current and pending information regarding existing tenants, authorized uses, and lease terms. It also identifies FAA interim use approvals. The Map includes a legend for the code numbers.

- 3. Provide the City's plan and schedule to eliminate Border Patrol parking from the airport ramp.*

**Response:** ATTACHMENT E is a letter from the U.S. Customs and Border Protection Agency. It describes the unique mission of the Border Search Trauma and Rescue (BORSTAR) Air Mobile Unit (AMU), and requests a waiver from the FAA so that they can remain. The City acknowledges that BORSTAR's practice of parking automobiles on the ramp is not desirable to the FAA. However, the City believes that the AMU is an aviation-related activity and should be allowed to continue to remain until such time as the City and BORSTAR can negotiate an alternative secured-parking area. The City requests that the FAA approve this continued use on an interim basis. If permitted on an interim basis, the automobile parking would remain limited to authorized government personnel only.

- 4. Send a Copy of the Border Patrol Airport Lease/Sublease to the FAA.*

**Response:** ATTACHMENT F is responsive to this request. Records indicate that Paladin Aviation initially entered into a flat rate sublease with the US Border Patrol in 1998. The sublease was extended in 2001 (Supplemental Agreement No. 1), allowing termination at the discretion of the federal government. Negotiations are currently pending between the City of San Diego and the Department of Homeland Security, Customs and Border Protection. (Supplemental Agreement No. 2)

Under any such agreement, the Department of Homeland Security, Customs and Border Protection will be required to pay fair market rent to the City. The proposed use is for aeronautical activities associated with the unique mission of the Border Search Trauma and Rescue (BORSTAR) Air Mobile Unit (AMU).

- 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.*

**Response:** US Border Patrol Offices and Detention Facility – (Map Codes #41 and 42). This tenant is in discussions with the City Attorney. As additional details and information becomes available, the FAA will be advised. In the meantime, the City requests interim use approval.

- 6. If the City believes that certain of the 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 uses approval.*

**Response:** The City believes that the US Border Patrol should be allowed to remain on the airport at its existing location, and requests FAA approval for its parking on an interim basis until a more suitable location is identified. While your August 2005 letter indicates that the FAA's investigation revealed that the US Border Patrol does not base any aircraft at the airport, such is not the case. BORSTAR has a fixed-wing aircraft on the former Paladin leasehold. At the time of your investigation, the aircraft may not have been present as Border Patrol agents may have been out conducting proficiency training, flying on a rescue mission, or conducting some other operation using the aircraft. Border Patrol agents use the hanger for classes and mission planning for their twenty-five agents.

In reply to the question regarding why they park vehicles on the ramp, Mr. Henry's response was that it is primarily for safety and security reasons. BORSTAR agents store mission-essential equipment and supplies inside their vehicles and, accordingly, prefer to park their vehicles close to the hangar due to concerns about theft and vandalism. The Department of Homeland Security has expressed concern about losing this very important facility. If additional documentation is required to convince the FAA that the continued presence of the BORSTAR air mobile unit is an appropriate aeronautical activity at SDM, please let the City know and we will attempt to provide whatever further justification you require, or put you in contact with the appropriate federal representatives.

### **Other Outstanding Issues**

Please clarify grant funding issue set forth in your letter. The last sentence in that August 5, 2005 letter states, "*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.*" My understanding is that the FAA has not determined that the City is ineligible for future grant funds for SDM. As we discussed, once the City has corrected the deficiencies to the satisfaction of the FAA, Brown Field Airport will again become eligible for federal AIP funds.

Of immediate concern, is the AIP No. 3-06-0213-10 Airfield Lighting System Phase II. Phase I was for design only and Phase II is for construction. The scope for this project includes new airfield lighting and signage for the entire airfield, a new electrical vault building and visual aids. It also includes an Airfield Lighting Control and Monitoring System for the air traffic control tower and improvements to the flood lighting on the customs apron. The entire existing electrical system is old, dilapidated and in need of a complete overhaul. The following paragraph is intended to provide background on the status of the project:

HNTB was retained by the City in August of 2004 to design the electrical project and developed an aggressive design schedule to be completed in ten months. HNTB and the City had the understanding that AIP funding allocated for this project was contingent on awarding the construction, with grants based on bids rather than preliminary estimates, a recent change in FAA grant policy. In February of 2005, HNTB prepared and submitted a set of plans reflecting 75 percent design progress to FAA. It also included a preliminary estimate of probable construction costs of \$2.4M. In late February of 2005, we learned that the FAA could not commit to a grant in the amount of \$2.4M; instead, the available funding programmed for the project was \$1.8M. Further complicating the design, the FAA Runway Safety Team was conducting a separate evaluation and recommended that runway guard lighting be added at a few of the critical taxiway and runway intersections to help reduce potential runway incursions. This required additional modifications to the design, escalated the project cost to \$3.4M, and extended the design schedule. While the FAA suggested phased construction, HNTB advised that this project does not lend itself to phased construction and a partial upgrade would only provide a temporary fix and not alleviate the airfield electrical problems. The recommended solution would be to completely reconstruct the entire electrical system under one project.

To mitigate the funding shortage, the design team working with FAA, had to redesign the project to include separate biddable segments (additive alternates). The additive alternatives were evaluated and reprioritized based on what electrical upgrades would be needed most and what improvements would provide the most benefit. We advised the FAA that the likelihood of having construction bids by August was remote because the design was delayed and under funded. Also, construction bids would not be available. However, it is the City's intent to seek City Council approval to apply for and accept full grant funding for the construction of this important project during FY 2006.

As the matter is clarified as to whether or not the City of San Diego is eligible for future funding, we remain committed to working with the FAA, airport users, and stakeholders, to plan the SDM Airport Capital Improvement Program (ACIP). It is the intention of the City to include an airport master plan update and other infrastructure improvements. I have already contacted FAA engineers to schedule a Joint Planning Conference (JPC) with FAA, AAC, and City Staff at SDM in anticipation of the FY 2006 ACIP.

In closing, thanks again for the opportunity to respond to FAA concerns about Brown Field Airport. The City and its stakeholders desire to resolve all non-compliance issues in a timely fashion and to adhere to all grant agreements and conveyance deeds, both for the sake of compliance and to secure federal funding for much needed airport capital improvement and planning projects at Brown Field Airport. If additional information is needed to make this intent a reality, please let me know what is required, at the earliest possible date. We anxiously await a response. In the meantime, I can be reached at (858) 573-1430 to discuss the matter further.

Sincerely,

Tracy L. Means, A.A.E.  
Airports Director

TLM/afm

Attachments: 1. Attachment A - Eliminated Non-Aeronautical Land Uses at Brown Field Airport on City Controlled Land  
2. Attachment B – Eliminated Non-Aeronautical Land Uses at Brown Field Airport on Non-City Controlled Land  
3. Attachment C – Lease Information Summary  
4. Attachment D – Tenant Location Map  
5. Attachment E – Letter from US Customs and Border Protection Agency  
6. Attachment F – Border Patrol Airport Lease/Sublease

cc: Richard Mendes, Deputy City Manager  
Larry Gardner, General Services Director  
William T. Griffith, Real Estate Assets Director  
Augie Ghio, Homeland Security Director  
Airport Advisory Committee, City of San Diego