

San Joaquin County Grand Jury



Tracy Municipal Airport: *Development vs. Safety Zones*

2013 - 2014 Case No. 1213

Summary

The 2013-2014 Grand Jury received a complaint alleging a secret and illegal business agreement among a local developer, City staff, and the Tracy City Council. Allegations included a proposal to shorten the Tracy Airport runway lengths to accommodate increased development by a local developer in the airport safety zones. It was alleged that City staff did not provide complete and accurate reports regarding the impacts of changes to runway lengths for the City Council to reach an informed decision. The complainants presented information about proposed arrangements between a local developer and the Airport fuel sales operator related to payments owed the city which appeared to be connected to a series of actions requested by the developer.

The Grand Jury investigated the complaint, including whether there was a *quid pro quo* between City Council actions and the local developer's actions, and found areas of concern. There were weaknesses in the staff's fact-finding and reporting related to the Airport and the neighboring development. While the City Council actions did not result in the benefits sought by the local developer, the Grand Jury has made recommendations to strengthen the City of Tracy's associated internal policies and procedures.

Glossary

AAM	Airport Agreement Memorandum, written by a local developer dated April 26, 2013, requesting the City take certain action related to the Tracy Airport
ALP	Airport Layout Plan, depicts existing airport facilities and proposed developments as determined from a review of forecasts for facility requirements and its alternatives analysis
AMP	Airport Master Plan, a comprehensive long range plan that directs and authorizes actions to be permitted on airport property
ALUC	Air Land Use Commission for San Joaquin County which regulates land use planning in the vicinity of airports
ALUCP	Air Land Use Commission Plan for San Joaquin County that establishes planning boundaries and land use compatibility standards for airports
Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 <i>et seq.</i>) regulating the conduct of public meetings and related public information requirements
City Council	The four elected City Council members and the separately elected mayor of the City of Tracy
COG	San Joaquin County Council of Governments, a regional body that addresses regional issues such as planning, economic and community development
County	San Joaquin County
ESP	Ellis Specific Plan, identifies the specific permitted uses, density and location of the development north-west of the Tracy Airport
FAA	Federal Aviation Administration
FFA Airport Classifications	Federal designations for airport based on runway length categories
General Plan	City of Tracy's land use document describing the proposed overall long term development for the City
Mayor	Separately elected Mayor of the City of Tracy

NOTAM	Notice to Airmen provides information of changes to the flight operations at an airport
Quid pro quo	Something for something; receiving an equivalent in return
Safety Zones	The area surrounding the runway prepared or suitable for reducing risk of damage to airplanes in the event of an undershoot, overshoot or excursion from the runway
Third Party Payment	A payment made by one party on behalf of another party's contractual obligation
Tracy Airport	City of Tracy Municipal Airport
Turlock Air Center	Fuel sales operator under contract with the City of Tracy

Background

In 1947 the United States Government's War Assets Administrator deeded the Tracy Municipal Airport to the City of Tracy. The deed states in part:

"(1) That insofar as is within its powers and reasonably possible, the party of the second part and all subsequent transferees, shall prevent any use of land either within or outside the boundaries of the airport, including the construction, erection, alteration or growth of any structure or other object there on, which use would be a hazard to the landing, taking off or maneuvering of aircraft at the airport or otherwise limit the usefulness as an airport."

Tracy Municipal Airport has 166 acres currently being used for aircraft parking, taxiways and runway space. An additional 144 acres are undeveloped. There are two active runways at the Airport, Runway 8/26 and Runway 12/30. The Airport sells aviation gas and jet fuel. Runway 12/30, the longer of the two, is currently designated as being 4,000 feet in length resulting in a "Medium Airport" designation by the FAA. An airport with a runway less than 4,000 feet is designated as a "Small Airport". A significance of the difference is the size and permitted development in the safety zones at both ends of the runways and the benefits that would accrue to the local developer.

The Council of Governments (COG), acting as the Airport Land Use Commission (ALUC), is the agency that oversees airport planning in San Joaquin County. The Airport falls under the guidelines of the Federal Aviation Administration (FAA).

The City of Tracy operates under a Council-Manager form of government. The City Council appoints the City Manager, who is the Chief Executive Officer in charge of all staff. The City Council has five elected members, a separately elected Mayor and four

City Council Members. The City Council has general oversight over the Airport with staff providing direct supervision over its operations. Large development projects, such as the Ellis Specific Plan (ESP), go through a staff generated review process before review and approvals by the City's Planning Commission and City Council. The extent of involvement by the Tracy City Manager and other executive management varies by the individual development.

Reason for Investigation

The Grand Jury initiated this investigation based on a complaint filed by citizens in Tracy alleging a secret and illegal agreement between City leaders and a local developer. Further Citizens in Tracy had voiced their concerns about these allegations during a City Council meeting in December 2013. The Grand Jury investigation focused on the following issues related to the complaint:

- Whether or not there was a secret and illegal written contractual agreement between the City and a local developer related to issues described in an unsolicited April 26, 2013, Airport Agreement Memorandum (AAM) sent to City staff.
- Whether or not any staff actions were taken in regard to the contingencies requested in the AAM.
- Whether or not any City Council actions were taken in response to the contingencies requested in the AAM.
- Whether or not airport operations were in compliance with contractual obligations.

Method of Investigation

The 2013-2014 Grand Jury reviewed documents and conducted interviews.

Materials Reviewed

- Documents provided by complainants
- Tracy Airport Master Plan
- United States Government 1947 deed to Tracy Airport
- Aerial map of Tracy Airport
- City Council meeting and minutes, January 2013 through February 2014
- Airport Agreement Memorandum
- San Joaquin County Councils of Governments (COG) staff report regarding the Ellis Specific Plan (ESP) amendment
- Correspondence between City staff and a consultant
- FAA documents specific to Tracy Airport, including safety zones, classifications and grant qualifications

- Caltrans documents specific to Tracy Airport, including safety zones and classifications
- Ellis Specific Plan (ESP)
- City of Tracy website
- Turlock Air Center e-mail dated February 4, 2014, to City staff and City Council
- Notice to Airmen (NOTAM) information related to runway length change issued on January 19, 2012

Interviews Conducted

- A Complainant
- City Council Members
- Current and former City employees
- Local Tracy area attorney
- Local developer

Discussions, Findings and Recommendations

1.0 Staff Reports Provided to the City Council

Timely and accurate information is paramount for City Council Members and the public to fully understand the issues facing the City and to ensure that enlightened decisions are made. The 2013-2014 Grand Jury found that the City staff failed to provide City Council Members important information related to the Tracy Airport. This information would have given an accurate picture of the repercussions for making changes to runway lengths at the airport.

At the June 18, 2013, City Council meeting staff provided inaccurate information to the City Council on the grant requirements pertaining to the airport's runway lengths. Staff informed the City Council that reducing Runway 12/30 to under 4,000 feet would have no effect on future grant funds to the City. Staff had discussions with the FAA to ensure the City's plans to change the runway length were consistent with the approved Tracy Airport Master Plan (AMP). Staff further informed the City Council that based on discussions with the FAA regarding design parameters, safety issues, etc., that Runway 12/30 could be reduced in length to 3,997 feet. The complainants provided information that said the FAA had advised the City that shortening the runway to less than 4,000 feet was inconsistent with FAA grant requirements currently in place for the Airport, and could jeopardize significant future grant monies to the City for runway improvements at the Airport. An FAA Airport Compliance Specialist responded to a citizen's e-mail dated October 10, 2013, stating that the FAA did not support the shortening of Runway 12/30. The specialist also stated that shortening the runway could not be done without proper justification and FAA approval. As of October 10, 2013, the FAA's San Francisco office had not received any notification related to a change to Runway 12/30 from the City of Tracy.

From testimony and evidence reviewed, the Grand Jury was not able to definitively determine if City staff deliberately provided incomplete and inaccurate information to the City Council or if it was an oversight. As further discussed below, the change in Runway 12/30 length would have financially benefited a local developer who had approved plans for a project in the airport's safety zones. This connection was not specifically mentioned in any related staff reports to the City Council. Also, a number of the proposed actions for the City Council's consideration directly related to the AAM's contingencies – another fact not revealed in staff reports. The Grand Jury was not able to determine if the additional information would have changed the Council Members' decisions, but it did leave crucial pieces of the puzzle out of the public's eyes.

Finding

F 1 City staff provided inaccurate and incomplete information to the City Council which could jeopardize the eligibility for the City receiving future grants.

Recommendation

R 1 City Council direct staff to conduct a comprehensive review for the Council by September 30, 2014, of the FAA and Caltrans safety zone requirements related to development and mandated requirements on runway lengths at the Tracy Airport to insure the City is in compliance for future grant funds.

2.0 Business Proposal to the City

It was alleged that City Council and staff had entered into a secret and illegal agreement with a local developer related to changes in the Airport's runway lengths. The investigation revealed the developer offered to pay a total of \$425,000 to the City between 2013 and 2022 in exchange for the City meeting the contingencies listed in the developer's AAM. The investigation reviewed the AAM's requested contingencies from the City, and whether staff or City Council had entered into any agreement with the local developer without following City policies. Although this investigation discovered no evidence to substantiate the Complainant's allegations, there were, however, actions taken by the City directly related to the contingencies requested in the unsolicited AAM. The extent to which the various staff recommendations and actions were part of specific response to the AAM's requests, or were part of a general development project review was addressed by the Grand Jury due to the lack of minutes, notes or other documentations of the discussions between City staff and the local developer. However, testimony indicated that implementation of the contingencies in the AAM could have resulted in substantial financial benefit to the local developer from changes in the development within the safety zones.

Contingencies A and B in the AAM requested that the City revise the Airport Layout Plan (ALP) and submit it to the FAA reflecting Runway 12/30 as a short general aviation

runway when adopting an update of the Tracy Airport Master Plan, and physically re-mark Runway 12/30 to a maximum length of 3,996 feet.

Tracy City Council and staff took the following actions regarding the Tracy Airport:

- On June 6, 2013, staff sent an e-mail to a consulting airport engineer requesting the airport runway length be changed to 3,997 feet on the grant application to the FAA for re-pavement. The engineer replied to staff on the same date that the revisions had been made on the application.
- On June 18, 2013, staff recommended to City Council that Runway 12/30 be reduced from 4,002 feet to 3,997 feet in length. Staff informed City Council that the runways at the airport were being completely reconstructed and brought up to current safety standards. The Runway 12/30 through the pavement design process would be 3,997 feet in length when completed. Staff also informed City Council that the runway changes would alter the possible land uses surrounding the airport:
- On the same date, City Council voted unanimously to reduce Runway 12/30 to 3,997 feet and authorized staff to submit an application to the FAA requesting funding for the repaving of the runways at the airport, including Runway 12/30, to a length of 3,997 feet.
- On July 1, 2013, staff wrote to the COG that the City was in the process of updating the ALP to reflect Runway 12/30 at 3,997 feet in length.
- On July 11, 2013, the local developer submitted an application to the City to amend the ESP to be consistent with a shortened runway.
- On August 6, 2013, City Council approved a contract with an airport consultant to update the ALP to reflect Runway 12/30 to under 4,000 feet.

On December 1, 2013, the fuel sales operator at the airport wrote to staff that he had agreed to support the City's decision to keep Tracy Airport as a 'boutique airport' in return for revisions on his business agreement with the City. The fuel sales operator said in his letter to the City that he was aware of the January 19, 2012, NOTAM filed by the City alerting pilots that Runway 12/30 was under 4,000 feet in length, and this could potentially eliminate the jet fuel business at the Airport if this facility was officially changed to a small airport classification by the FAA.

Contingencies C and E in the AAM requested that the City notify the ALUC of the revised ALP, reflecting the length change to Runway 12/30, and to amend the ALUCP to reflect Runway 12/30 as a short general aviation runway if the ALUC did not agree to the amendment, and notify the ALUC of the City's intent to override the ALUCP and proceed accordingly with the override process. The amendment to the ALUCP would have allowed a change in the ESP development. In addition the City was to generate and

process amendments to the ESP and the City's General Plan to reflect a safety compatible zone consistent with the 2011 California Transportation Safety Compatibility Zone designated for a short general aviation runway, and reflect zoning development in these areas accordingly.

Tracy City Council and staff took the following actions in regards to the Tracy Airport:

- On July 1, 2013, staff notified COG that the City was in the process of updating the ALP to reflect Runway 12/30 at 3,997 feet in length.
- In August 2013, the developer submitted an ESP amendment to the ALUC with higher density building proposed in the airport's safety zone.
- On September 26, 2013, COG acting as the ALUC, ruled that the amendment to the ESP was inconsistent with the 2009 ALUCP.
- On October 15, 2013, City Council requested staff to research and return with information for its review as to what the override process for the ALUC decision would entail, and to schedule this issue for a meeting in early 2014. To date, the City has not placed this issue on the City Council agenda for public hearing and vote.

Contingency D in the AAM requested that the City set the fuel flowage fee at no less than \$0.07 per gallon, reimbursed to the local developer.

The Tracy City Council took the following action: On June 18, 2013, the City Council approved an amendment revising the fuel flowage fee to a flat \$0.07 per gallon on all aviation fuel sold at the airport by the contracted fuel sales operator.

The AAM requested the City meet contingencies listed in exchange for a financial commitment by the developers company to the City over the next ten years. The developer stated the following:

"We initially committed to funding an Airport shortfall for five years, however we have adjusted that commitment based on recent negotiations with the parties. There are a few important aspects that need to be addressed in the agreement ..."

On June 19, 2013, a local developer drafted a \$50,000 check to the City of Tracy "to assist Turlock Air Center" and "to create harmony at the Airport as well as create a positive neighborhood relationship with the pilots in that area". The check included a notation that it was for the 2009 ALUCP. The City accepted and deposited this payment.

These series of actions related to changes in the Tracy Airport runway length and designation were not individually illegal or necessarily inappropriate for the City to take. Cumulatively, however, they appear to result in a single beneficiary – the local developer of the Ellis Specific Plan. The end result of the actions supporting the AAM's

contingencies was not made known to the public through staff reports or public meetings. The Grand Jury is not making a determination on the appropriateness of the actions, but is concerned about the perception of collusion between the City and the local developer, and the lack of transparency to the public.

Findings

F 2.1 The Tracy City Council did not enter into any written contractual agreement related to any of the contingencies contained in the Airport Agreement Memorandum. However, language in the AAM gave a clear perception that there was an agreement between City staff and the local developer to undertake the contingencies in the memorandum.

F 2.2 City Leaders did not approve any amendment to the ESP as requested by the local developer.

Recommendation

R 2 The Tracy City Council adopt a policy by September 30, 2014, requiring full disclosure of any actions taken by the City on proposed substantial changes to major development projects within the City of Tracy.

3.0 City Acceptance of Third Party Payments

The City of Tracy accepted and deposited a check from a local development company, in the amount of \$50,000. The check was identified as an initial payment for the fuel sales operator's contractual debt to the City. When the check was received, City staff and representatives of the City Attorney's office met to discuss what to do with the check because staff was not aware of what actions should be taken as a result of receiving the check. The Grand Jury was not able to learn of the result of that discussion.

It was determined that the City currently has no policy of how to handle a third party payment for an obligation to the City. In this specific instance, there is no indication that the payment was illegal or inappropriate. However, in light of the other actions taken by the local developer and the City the perception that it was part of a *quid pro quo* related to the changes in the Airport's designation is very strong.

Finding

F 3 There are no adopted policies or procedures for the City to accept a third party check for a debt owed to the City under a contractual agreement with a private firm.

Recommendation

R 3 The Tracy City Council adopt a policy by September 30, 2014, relating to the acceptance of third party payments for contractual obligations to the City of Tracy.

4.0 Airport Classification and Future Development

The Ellis Specific Plan was originally approved by the City in 2008. In January 2013, the ESP was modified and approved by the City, with a specific number of housing units and commercial buildings permitted. The FAA airport classification has no effect on the total number of units agreed to be built under the specific plan. However, an airport's classification does change the allowable densities and locations of housing units and commercial buildings permitted to be built.

The FAA mandates specific sized safety zones based on an airport's designated classification, which is based on an airport's runway length. An airport with runways less than 4,000 feet in length is classified in the small airport category, a medium airport is 4,000 feet to 5,999 feet and a large airport is 6,000 feet or more. The protected safety zone size and requirements between a small and medium-sized airport are considerable and the types of developments allowed between these two classifications could be substantial.

In this specific instance the change from a medium airport to a small airport would have allowed changes to the ESP that could result in substantial financial benefits to the local developer. If the airport designation change was approved the overall change to the development project and any potential benefit to the City would need to be further reviewed by the City.

Finding

F 4 The change in the Tracy Airport runway length, requested in the Airport Agreement Memorandum, could have resulted in significant changes in the Ellis Specific Plan uses and densities allowed to be developed within the safety zone.

5.0 City Review of Business Licenses

The City continued its contractual agreement with the airport fuel sales operator after becoming aware that the operators business license had become suspended by the State. Documents reviewed indicated that the fuel sales operator's business license had been suspended prior to approval of an amendment to the original agreement between the City and the operator on June 18, 2013. City staff was not aware of the license suspension at the time the amendment was being processed and approved by the City. Due to its non-compliance with contract requirements the operator had no legal authority to enter into the contract amendment, and the City had reason to void the contract at that time.

Subsequently, the City was advised that the suspension was made in error due to actions taken by the State agency in charge of business license compliance. On February 4, 2014, staff recommended the City Council adopt a resolution authorizing the City Manager to send a notice of termination to the fuel sales operator. The termination was based on numerous contract deficiencies which the operator failed to correct after due notice.

Finding

F 5 The City processed an amendment to the airport fuel operator's contract without checking the current status of the operator's State license.

Recommendation

R 5 The Tracy City Council adopt a policy by September 30, 2014, requiring the review of the current status of a business' State license when any applicable City contract is proposed to be amended or renewed.

Conclusion

The Mayor and City Council are expected by the citizens they represent to require that their staff conduct thorough reviews of all information regarding City matters prior to making recommendations to the City Council. If staff and management are not held to a high standard of performance regarding their review process on all City matters, the degree of accuracy for the information provided to the City Council could be in question. This could lead to decisions being made by City Council that are based on flawed facts, as well as actions being taken that are not in the best interest of the citizens of Tracy.

This investigation discovered no evidence to substantiate the complainant's allegations of a secret and illegal business agreement having officially been entered into between a local developer, City staff, and the City Council. However, there is an alarming number of City actions taken directly related to the contingencies in the AAM that bring cause for concern. This investigation discovered that City staff and City Council in Tracy made recommendations and took actions that if completed would have met most of the contingencies listed in the AAM. This could have brought about changes to the Tracy Airport that would permanently affect its current uses. The Grand Jury questions whether these were a specific *quid pro quo* between the City and the developer for political or other considerations, or just a City attitude of knowing what the results would be but "wink-wink" we won't say anything.

There are many ways to deceive the public – don't give complete information; give partially accurate information; or turn a blind eye to the real issue and hope no one notices. These can be used by private enterprise, City staff or elected City officials. Whatever the reason, whatever the approach, there is a victim. In this case it is the City's credibility with its citizens.

City Council Members are the sentinels of the City and the citizens they represent. If the City Council and staff conducted City business as if they were in a glass room with unobstructed view by the citizenry, then transparency would not be an issue and the trust from the people they represent would be earned.

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

This report was issued by the Grand Jury with the exception of one member of the jury. This juror was excluded from all parts of the investigation including interviews, deliberations, and the writing and approval of the report.

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

Tracy City Council shall respond to all of the findings and recommendations contained in this report.

Mail or hand deliver a hard copy of the response to:

Honorable Lesley D. Holland, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email a copy of the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org

Appendices

Appendix A: *Airport Agreement Memorandum*

Appendix B: *Tracy Municipal Airport Photo*

APPENDIX A

AIRPORT AGREEMENT MEMORANDUM

TO:
FROM:
SUBJECT: AIRPORT ADVANCE FUNDING AGREEMENT
DATE: APRIL 26, 2013
CC:

We initially committed to funding an Airport shortfall for 5 years; however we have adjusted that commitment based on recent negotiations with the parties. There are a few important aspects that need to be addressed in the agreement between the City and

First:

would submit amounts to the City on the following dates:

Year	2013	June 1 st :	\$50,000
Years	2014-2017	Jan 1 st :	\$50,000 (each year)
Year	2018	Jan 1 st :	\$45,000
Year	2019	Jan 1 st :	\$40,000
Year	2020	Jan 1 st :	\$35,000
Year	2021	Jan 1 st :	\$30,000
Year	2022	Jan 1 st :	\$25,000

Second:

The Fuel Flowage Fee shall be 7 cents per gallon of all fuel pumped and or sold at TCY.

The gross Fuel Flowage Fee shall be paid directly to _____, without any offset, credit or administrative fee, monthly as a reimbursement.

Third:

The following language shall be part of the agreement between _____ and the City:

Contingencies.

1. The obligations contained in this agreement are contingent upon the following events occurring on or before August 1, 2013:
 - A. The City of Tracy shall on or before June 30th 2013 revise the ALP and submit this ALP to the FAA showing runway 12/30 to be a maximum length of 3,996 feet, and shall physically re-mark the runway to conform to the new ALP depicting a runway 12/30 to be a maximum length of 3,996 feet.
 - B. The City of Tracy shall reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway) as attached when adopting/updating the Tracy Airport Master plan.
 - C. The City of Tracy shall notify the San Joaquin County ALUC on or before July 15, 2013 of the new information (revised ALP, reflecting change in 12/30 runway length) and request for Economic rationale or other rationale as agreed to amend the ALUCP to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), in conformance with the City of Tracy newly adopted ALP. The ALUC shall amend the 2009 ALUCP on or before November 30th, 2013 to reflect runway 12/30 designated as a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway)), in conformity with the City of Tracy newly adopted ALP. If the ALUC does not amend the 2009 ALUCP on or before November 30th, 2013, at the request of _____ the City agrees it will notify the ALUC of the City's intent to override any ALUCP that does not reflect a Safety Compatible Zone consistent with the 2011 California Transportation Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and City will then proceed with override hearings per State Law.
 - D. The Fuel Flowage Fee shall not be less than \$0.07 per gallon reimbursed to _____ for all fuel pumped or sold at the Tracy Municipal Airport.
 - E. The City of Tracy agrees to generate and process amendments to the Ellis Specific Plan and City of Tracy General Plan to reflect a Safety Compatible Zone consistent with the 2011 California Transportation

Safety Compatibility Zone for a Short General Aviation Runway (Short Runway), and changes in zoning to TR Ellis in the General Plan from Commercial, and from Limited Use in the Ellis Specific Plan that are no longer in the Safety Compatibility Zone noted above, and to Zone any property that is in the Outer Approach/Departure Compatibility Zone to Commercial in the General Plan, and Limited Use in the Ellis Specific Plan that is not already zoned such, and schedule for hearing dates in December 2013.

2. Cessation of fuel operation. Should the current fuel service operator cease operation, or sell the business or assign the contract with the City of Tracy then obligation to assist in funding the shortfall shall terminate immediately without any prior notice.

APPENDIX B

