

MARK V. CONNOLLY

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October 1, 2013

Honorable Mayor and Members of the City Council
City of Tracy
City Hall
333 Civic Center Plaza
Tracy, CA 95376

Re: Airport Agreement Memorandum, April 26, 2013

Dear Mayor and Members of the City Council:

This letter is to demand that the Surland Airport Advance Funding Agreement (“Agreement”) between the City of Tracy, specifically Rod Buchanan, and Les Serpa, Surland Communities, LLC (“Surland”) be rescinded at a public hearing. The Agreement, as described in the “Airport Agreement Memorandum” attached as Exhibit A to this letter, was entered into in violation of Article 2, Contact Authority, of the Tracy Municipal Code. Additionally the Agreement violates CEQA and the Brown Act.

FACTS:

Exhibit A is an “Airport Agreement Memorandum” released in the last week in response to a Public Records Request. It references a “Surland Airport Advance Funding Agreement” between the City and Surland to shorten runway 12/30 to 3,996 feet, provide Surland with cents per gallon of gas revenue from the airport, and to process a Specific Plan Amendment for Surland. Surland is to make annual payments in sums ranging from a low of \$25,000.00 to a high of \$50,000.00. This Agreement was never presented to the City Council or public at any public hearing. It was a classic backroom deal.

On June 18, 2013, without any disclosure of the backroom deal with Surland, the Council voted to reduce runway 12/30 to less than 4,000 feet as promised to Surland in the undisclosed agreement. It voted to receive 7 cents per gallon in fuel tax from the airport operator, but did not disclose that it had a secret deal to pay that same 7 cents to Surland. The Council in the Staff Report and Minutes assured the public that the \$50,000 was still guaranteed by the Airport Operator, but kept secret that Surland had agreed to pay this \$50,000.00. The City sought approval of its contact modification with the Airport Operator, but kept secret the other half consisting of the Agreement concerning

the same \$50,000.00 minimum payment and gas revenue. The Agenda, Minutes and Staff Report for this Airport agenda item are attached as Exhibit E.

On June 19, 2013, the day after the Council acted in accordance with the secret deal, Surland Communities, LLC sent payment by check to the City in the sum of \$50,000.00. A copy of that check and cover letters obtained by Public Records Act Request to the Director of Finance and the City Attorney are attached as Exhibit B. The letters directly acknowledge the payment

What Agreement, if any, exists between Surland and the Airport Operator is unknown.

Without any public hearing, Council discussion or Council authorization, the City began implementing the Agreement by seeking a Determination of Inconsistent Land Use with the 2009 Airport Land Use Compatibility Plan, for the Ellis Specific Plan Amendment, a copy of that Agenda with its Staff Report is attached as Exhibit C. This was the same Ellis Specific Plan Amendment referenced in the undisclosed Agreement never presented to the council. The Airport Land Use Committee, including Brent Ives, determined that the proposed densities for the 2013 Ellis Specific Plan Amendment are **inconsistent** with the Outer Approach Departure Zone of the 2009 ALUCP. Ellis as approved by the Council in 2013 was consistent with the 2009 ALUCP. So within only a few months after approval of a Specific Plan protecting a 4,000 foot runway the City is proceeding with a Specific Plan Amendment that is inconsistent with a 4,000 foot runway and puts housing in the approach and departure zones of the 2009 ALUCP.

The facts are undisputed. The City entered into a secret Agreement to shorten runway 12/30 to 3,996 feet, give the developer 7 cents of gas revenue and process a Specific Plan Amendment in exchange for \$50,000.00 with no City Council or City Manager approval. That Agreement is being implemented. The City Council voted to shorten the runway and a check was written the next day by the developer. The City has proceeded with other agencies to implement the Agreement.

THE AGREEMENT VIOLATES THE TRACY MUNICIPAL CODE:

The Agreement is an oral agreement between a Department Head to shorten a runway in violation of public policy expressed by the Council. A copy of Sections 2.20.080, 2.20.090 and 2.20.100 is attached as Exhibit D. Neither a Department Head under Section 2.20.100 nor the City Manager under 2.20.090 has the authority to enter into this Agreement. Only the City Council can authorize such an Agreement after public hearing. That did not happen.

BROWN ACT VIOLATION:

If there was any City Council decision to enter into this Agreement with no public hearing that would be a violation of the Brown Act. It is clear that on June 18, 2013 there were two pending contacts relating to the airport: one with Surland and one with the Airport Operator. Both were part of the same Agreement and transaction, but only part

was disclosed to the public. The entire Agreement with Surland was concealed from the public.

CEQA VIOLATION:

The Agreement to shorten the runway has significant environmental impacts as identified in the SJCOG Staff Report attached as Exhibit C. It requires the processing of a Specific Plan Amendment which would increase the residential area by 17 acres in the Outer Approach Departure Zone allowing a residential density of 4 to 9 dwelling units/gross acre. The Outer Approach Departure Zone comprises 49 acres of the 321 acres site.

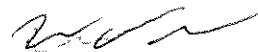
The alternative of a shorter Runway 12/30 was considered as Alternatives 9 and 10 (Modified Ellis Project, EIR Chapter 6) and rejected. The City implemented by entering into the Agreement a Plan to adopt the alternatives rejected in the Ellis Project with no CEQA review even though the EIR identified impacts, including increased noise impacts.

ACTION REQUIRED:

The City has entered into an Agreement in violation of its Municipal Code, CEQA and the Brown Act. The following action needs to immediately be taken:

- (1) At Public Hearing rescind the secret Agreement recited in Exhibit A.
- (2) Return all consideration, including the \$50,000.00 shown in Exhibit B to the City and return of any gas revenue given by the City to Surland.
- (3) Seek from the SJCOG/ALUC a rescission of its Determination of Inconsistent Land Use with the 2009 Airport Land Use Compatibility Plan of the Amended Ellis Specific Plan as that action was requested by the City based on a void Agreement and was not properly authorized.
- (4) Rescission of the action taken on June 18, 2013 which concealed Surland's Agreement and role in the transaction particularly relating to the gas revenue and guarantee minimum payment.
- (5) Terminate all proceedings, including any process to overrule the ALUC determination of inconsistency per the State Aeronautics' Act. PUC Sections 21676 and 21676.5 as they are based on a void contractual agreement.

Very truly yours,



MARK V. CONNOLLY

cc: TRAQC

EXHIBIT A

5/8/13
WLE
1:00pm

AIRPORT AGREEMENT MEMORANDUM

TO: ROD BUCHANAN
FROM: LES SERPA
SUBJECT: SURLAND AIRPORT ADVANCE FUNDING AGREEMENT
DATE: APRIL 26, 2013
CC:

Rod,

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 Surland.

First:

Surland 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 Surland, without any offset, credit or administrative fee, monthly as a reimbursement.

Third:

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

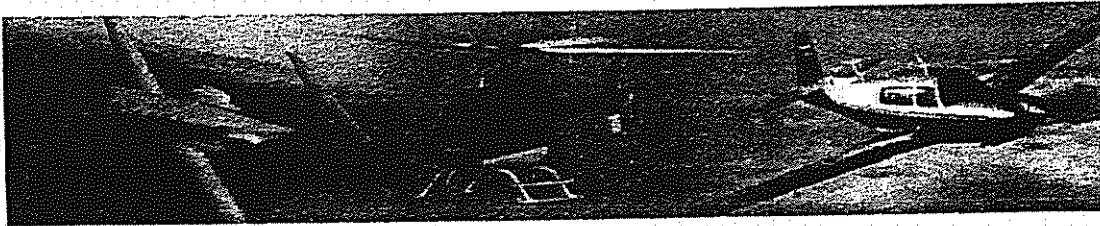
Contingencies.

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 Surland, 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 Surland 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 Surland's obligation to assist in funding the shortfall shall terminate immediately without any prior notice.

EXHIBIT B



HAND DELIVERED

July 1, 2013

Daniel G. Sodergren
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA. 95376

Re: Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center

Dear Mr. Sodergren,

With this letter and attached check, and according to the terms of Section 20.1 of Amendment No. 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, payment of the Minimum Annual Payment Guarantee in the amount of \$50,000 (Fifty Thousand Dollars) for calendar year 2013, is hereby remitted and delivered to the City of Tracy.

Please contact me if you have any questions.

Sincerely,


Stephen S. Stuhmer
Turlock Air Center, LLC
Title: Managing Member

423

Transmittal

DATE: July 2, 2013

TO: Jenny Haruyama
Director of Finance and Administrative Services
City of Tracy Finance Department
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

FROM: Chris Long 
Surland Companies

RE: Fuel Sales Operator and Fuel Facility Lease Agreement
between the City of Tracy and Turlock Air Center

THE FOLLOWING DOCUMENT(S) ARE ENCLOSED:

Enclosed is a check for \$50,000 (Fifty Thousand Dollars) to the City of Tracy, as payment for the Minimum Annual Payment Guarantee for calendar year 2013, per the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center.

SURLAND COMMUNITIES, LLC
1634 EYE STREET, N.W., SUITE 205
WASHINGTON, DC 20006

65-329/550

1083

DATE

June 19 2013

PAY TO THE
ORDER OF

City of Tracy

Fifty thousand

xx

xx

\$ 50,000.00

DOLLARS



Security Features
Details on back

EAGLEBANK
www.eaglebank.com

BETHESDA, MD 20814

[Handwritten Signature]
AUTHORIZED SIGNATURE



FOR

ALVCP 2009

⑈001083⑈ ⑈055003298⑈

0200146629⑈

THE FACE OF THIS DOCUMENT CONTAINS HEAT-SENSITIVE INK. TOUCH OR RUB RED IMAGE. IT WILL DISAPPEAR WITH HEAT.

Surland - Turlock Air ✓

Fuel Flawage Fee

Jan. 1 - Dec. 31 2013

561-2403-024-05801

RTP

EXHIBIT C



**SAN JOAQUIN COUNCIL OF GOVERNMENTS'
BOARD OF DIRECTORS**

555 E. Weber Avenue, Stockton, CA
Board Conference Room

Thursday, September 26, 2013

REGULAR BOARD MEETING AT 5:00 P.M.

The San Joaquin Council of Governments is in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. # 12132) and the Ralph Brown Act (California Government Code # 54954.2) and will make all reasonable accommodations for the disabled to participate in employment, programs and facilities. Person requiring assistance or auxiliary aid in order to participate or persons wishing to store their bicycle safely during the meeting should contact Rebecca Calija at 235-0600 at least 24 hours prior to the meeting.

Highlighted Items in yellow are scheduled for discussion by the full board.

AGENDA

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL:
2. RECOGNITIONS/PRESENTATIONS: NONE.
3. PUBLIC COMMENTS:

At this time, the public is invited to address the Board on any non-agendized item that is within the subject matter of this agency. If a member of the public wishes to speak on an agendized item, he or she is invited to address the Board at the time the item is up for consideration. In accordance with the Council of Government's policy, any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. This item will be listed following the minutes approval and will be limited to a five minute maximum. The five minute maximum time limit for the speaker will apply to all "items from the audience". The determination of whether an item is within the subject matter, jurisdiction of the Council is a discretionary decision to be made by the Chair of the Council. When citizens address the policy body, they are generally asked to address a specific topic. If several speakers are commenting on the same issue, they should try to avoid repetition of views already expressed.

4. MINUTES: August 22, 2013 **ACTION REQUESTED**
5. CONSENT CALENDAR: "ROLL CALL VOTE REQUIRED" **ACTION REQUESTED**
All numbered consent calendar items listed will be acted upon under one roll call vote unless specifically removed from the consent calendar by a member of the Board, a member of staff, or a member of the public. These are items: **to ADOPT ALL**

- A. SJCOG Monthly Financial Report & Transportation Authority Monthly Investment Report – Dial Page 19

- B. Regional Transportation Impact Fee (RTIF) Semi-Annual Activity Report – Swearingen Page 69
 - C. Final Fiscal Year 2012-2013 State Transit Assistance (STA) Revenue and Apportionment Schedule- Castle Page 79
 - D. Revised Fiscal Year 2013-2014 State Transit Assistance (STA) Revenue and Apportionment Schedule- Castle Page 89
 - E. 2012-13 Final Local Transportation Fund (LTF) Revenue and Apportionment Schedule - Castle Page 99
 - F. State Transportation Improvement Program (STIP) Fund Transfer Agreement for Planning, Programming, and Monitoring (PPM) - Ridder Page 111
 - G. Highway 4 Western Extension to Navy Drive Right of Way Expert Witness List of Firms – Sheridan Page 117
 - H. 2014 Second Annual California Airport Land Use Consortium (Cal-ALUC) Conference – Brunn Page 121
 - I. 2013-2014 Local Agency Disadvantaged Business Enterprise (DBE) Submittal Interim Exhibit form 9-B – Orosco Page 125
 - J. Consultant Contract Award for Technical Support for the Regional Congestion Management Program (CMP) – Brunn Page 135
6. SAN JOAQUIN COUNCIL OF GOVERNMENTS’ ITEMS FOR DISCUSSION/ACTION:
- A. 2013 Measure K Strategic Plan – Dial/Ridder Page 139 **DISCUSSION**
 - B. 2014 Regional Transportation Improvement Program (RTIP) Development Policies and Priorities – Ridder Page 149 **ACTION**
 - C. Direction on Draft Regional Transportation Plan Direction Frame Work (RTP)- Hoyt Page 161 **DISCUSSION**
7. AIRPORT LAND USE COMMISSION:
- A. Ellis Specific Plan Amendment- Brunn Page 189 **ACTION**
 - B. Forward Landfill (no staff report)- Brunn **INFORMATION**
8. INFORMATION ITEMS: **INFORMATION ONLY**
- A. San Joaquin Valley Fall Policy Conference (Brochure) – Gorham Page 195
 - B. Rideshare Week – McNickle Page 209
 - C. Fiscal Year 2014/2015 Unmet Transit Needs (UTN) Public Outreach – Meza Page 215
 - D. Status of Major Highway Projects- Sheridan Page 221

***ADJOURN SAN JOAQUIN COUNCIL OF GOVERNMENTS UNTIL THE
CONCLUSION OF SJCOG, INC. MEETING***

9. SJCOG INC:

1. Open Meeting of SJCOG, Inc./Roll Call:

2. Public Comment:

At this time, the public is invited to address the Board on any non-agendized item that is within the subject matter of this agency. If a member of the public wishes to speak on an agendized item, he or she is invited to address the Board at the time the item is up for consideration. In accordance with the Council of Government's policy, any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. This item will be listed following the minutes approval and will be limited to a five minute maximum. The five minute maximum time limit for the speaker will apply to all "items from the audience". The determination of whether an item is within the subject matter, jurisdiction of the Council is a discretionary decision to be made by the Chair of the Council. When citizens address the policy body, they are generally asked to address a specific topic. If several speakers are commenting on the same issue, they should try to avoid repetition of views already expressed.

3. CONSENT CALENDAR: "ROLL CALL VOTE REQUIRED:

All numbered consent calendar items listed will be acted upon under one roll call vote unless specifically removed from the consent calendar by a member of the Board, a member of staff, or a member of the public. These are items:

**ACTION
REQUESTED
to ADOPT
ALL**

- A. Atherton Homes at Woodward Park I Project – Mayo Page 229
- B. American Crane Rental Project – Mayo Page 249
- C. Phillips Farms Expansion Project – Mayo Page 259
- D. Cordes Ranch Project Classification Change – Mayo Page 273

4. SJCOG, INC. ITEMS FOR DISCUSSION/ACTION:

- A. Public Hearing for the Pombo Preserve Acquisition-Mayo P. 285 **ACTION**

5. SJMSCP INFORMATIONAL ONLY ITEMS: NONE.

RECONVENE TO THE SJCOG BOARD MEETING

10. CHAIR'S REPORT

Chair Jeff Laugero

11. COUNCIL MEMBERS' REPORT

12. EX-OFFICIO COUNCIL MEMBERS' REPORT

- A. San Joaquin Regional Transit District
- B. Caltrans District 10
- C. Port of Stockton

13. EXECUTIVE DIRECTOR'S REPORT
A. Valley Voice Recap (no staff report)

Andrew T. Chesley

14. ADJOURNMENT

Chair Jeff Laugero

Meeting adjourned to Thursday, October 24, 2013 at 5:00 p.m., SJCOG Conference Room.

NOTE:

The agenda packet is available for public inspection in the SJCOG Office at 555 E. Weber Avenue during normal business hours. These documents are also available on the San Joaquin Council of Governments' website at www.sjcog.org subject to staff's ability to post the documents before the meeting.

PARKING:

For your convenience, parking is available at the SJCOG Regional Center off of Channel Street- Marked "Visitor" on the east side of the parking lot. There is additional parking available at Public Parking Lot K, located on American Street, just south of Weber Avenue. Additional metered parking is available on Weber Ave.

"SJCOG fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to file a Title VI related complaint see <http://www.sjcog.org> or call (209) 235-0600."

STAFF REPORT

SUBJECT: Airport Land Use Compatibility Plan
Consistency Determination for the Ellis
Specific Plan Amendment and City of Tracy
General Plan Amendment

RECOMMENDED ACTION: Determination of Inconsistent Land Use
with the 2009 Airport Land Use
Compatibility Plan

DISCUSSION:

SUMMARY:

The San Joaquin Council of Governments (SJCOG), as the designated body to fulfill the duties of the Airport Land Use Commission (ALUC), has received a proposed amendment to the Ellis Specific Plan from the City of Tracy. For Specific Plans, General Plans, and subsequent amendments, the State Aeronautics Act, Section 21676, requires ALUCs to determine the project's "consistency" with the applicable Airport Land Use Compatibility Plan (ALUCP). This process is also defined within the Project Review Guidelines for the Airport Land Use Commission, adopted by SJCOG Board in June 2013.

The Ellis Specific Plan Amendment would permit a residential density of 4 to 9 dwelling units per acre within a considerable portion of the Outer Approach Departure Zone (OADZ). The ALUCP's residential density for this zone is 1 dwelling unit per 5 acres.

RECOMMENDATION:

To make the determination that the proposed residential densities for the 2013 Ellis Specific Plan Amendment are inconsistent with the Outer Approach Departure Zone of the 2009 ALUCP.

FISCAL IMPACT: None

BACKGROUND:

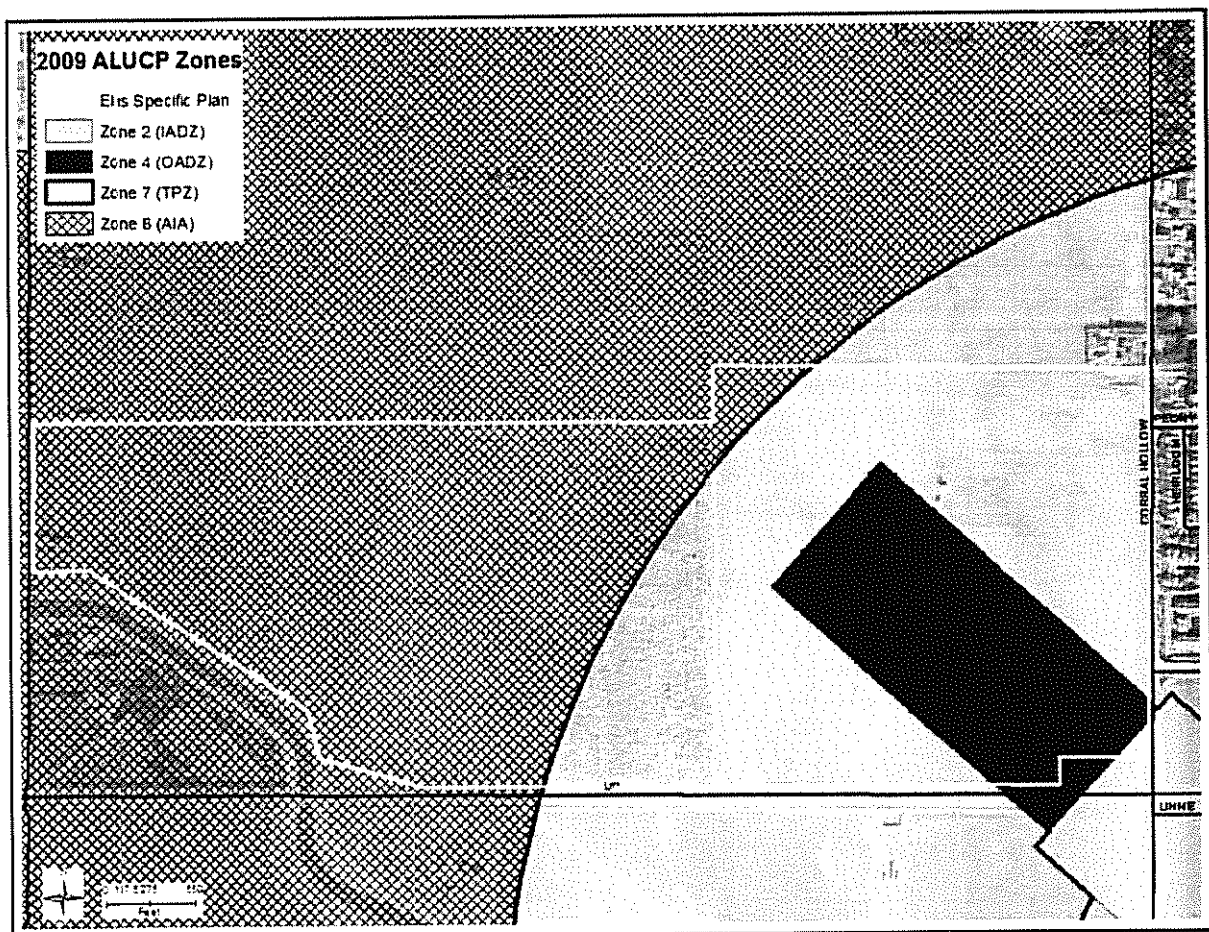
The Ellis Specific Plan (ESP) is primarily residential with a maximum of 2,250 residential units within a 321-acre footprint. The Village Center will include a mix of residential, commercial, office, and recreational uses. A 16-acre swim center is also proposed as part of the ESP. The ESP was approved in December 2008 by the Tracy City Council and was subject to a legal challenge that ultimately resulted in the courts ordering that the certification of the "Original" Ellis EIR and Development agreement be set aside.

In 2012, as a means to address the issues that were noted by the court, the City of Tracy prepared a revised Environmental Impact Report and a "Modified" ESP. ALUC staff reviewed the modified project in November 2012 and notified the City that the land uses were consistent with the most current ALUCP. In June 2009 the ALUC adopted an ALUCP update for the county's five general aviation airports, which includes Tracy Municipal Airport.

CURRENT AIRPORT LAND USE COMMISSION REVIEW:

In August of 2013, Surland Companies submitted a proposed amendment to the ESP. The project also includes a City of Tracy General Plan Amendment. The project is subject to consistency review under the 2009 ALUCP. As shown in **Figure 1**, the entire site is within the Airport Influence Area of Tracy Municipal Airport. The eastern area also lies within the Traffic Pattern and Outer Approach Departure Zone.

FIGURE 1
Ellis Specific Plan Project Boundaries & 2009 ALUCP Zones



The SPA is proposing the following:

1. An increase in the residential area, TR-Ellis, by 17 acres.
2. A decrease in the Commercial land use designation by 17 acres.
3. Allowing residential density of 4 to 9 dwelling units/gross acre within roughly two-thirds of the Outer Approach Departure Zone. The OADZ encompasses approximately 49 acres of the 321 acre project site.
4. The amendment to the existing General Plan includes revision of language to exclude the Ellis Specific Plan Area from the Airport Land Use Compatibility Plan, but subject to the purposes of the State Aeronautics Act, Cal. Pub. Util. Code 21670 et seq.

ALUC staff has reviewed the Ellis Specific Plan Amendment and City of Tracy General Plan Amendment for consistency with the 2009 ALUCP. The residential density within the Outer Approach Departure Zone is 1 dwelling unit per acre. The Ellis SPA would allow for a residential density of 4 to 9 dwelling units per 5 acres. Therefore, the residential density proposed within Zone 4 is inconsistent with the 2009 ALUCP.

LEAD AGENCY AND PROJECT APPLICANT CONSENSUS:

The City of Tracy is the lead agency and “The Surland Companies” is the project applicant for the Ellis Specific Plan project. Both entities have been notified by ALUC staff on the preliminary findings and are in agreement that the proposed land uses are not consistent with the 2009 ALUCP, and an ALUC determination of inconsistency may be approved by the Board.

NEXT STEPS:

If the ALUC determines that the proposed land uses are inconsistent with the 2009 ALUCP, staff will promptly contact the lead agency. In this event, the lead agency has three options in which to proceed 1) do not approve the Specific Plan Amendment, 2) Revise the Specific Plan Amendment to the project, or 3) overrule the ALUC determination of inconsistency per the State Aeronautics Act, PUC Sections 21676 and 21676.5.

EXHIBIT D

Tracy, California, Code of Ordinances >> Title 2 - ADMINISTRATION >> Chapter 2.20 - CONTRACTS AND PURCHASING >> Article 2. Contract Authority >>

Article 2. Contract Authority

2.20.080 City Council authority.

2.20.090 City Manager authority.

2.20.100 Department head authority.

2.20.080 City Council authority.

City Council approval is required for each contract regulated by this chapter unless authority to sign the contract is granted to another City officer under this Article 2. Such authority shall be exercised consistent with this chapter 2.20.

(Ord. 1039 § 2 (part), 2002)

2.20.090 City Manager authority.

- (a) The City Manager is authorized to enter into and sign on behalf of the City, without the prior approval of the City Council, a contract which:
- (1) Contains an initial maximum compensation figure of up to Fifty Thousand and no/100ths (\$50,000.00) Dollars or less. As to a change order excepting those change orders covered under subsection (b) of this code section, the limit of authority may not exceed ten (10%) percent of the original contract amount not to exceed a cumulative total of Fifty-Five Thousand and no/100ths (\$55,000.00) Dollars. Cumulative additional change orders exceeding Fifty-Five Thousand and no/100ths (\$55,000.00) Dollars must be approved by the City Council;
 - (2) Is not required by any applicable State law to be let to the lowest bidder;
 - (3) Is a contract for City-managed professional services in an amount up to One Hundred Thousand and no/100ths (\$100,000.00) Dollars if the following criteria are met:
 - (a) A cost recovery agreement exists;
 - (b) An applicant for development entitlements has deposited the required amount under the contract with the City; and
 - (c) The funds are to be used for development related studies, such as an environmental impact report;
 - (4) Indemnification and hold harmless agreements with other public entities;
 - (5) Right of entry agreements by which the City is granting rights to enter and/or temporarily use City-owned real property and right of entry agreements by which the City is being granted rights to enter and/or temporarily use real properties owned by third parties which agreements may include indemnification and hold harmless clauses; or
 - (6) Is a cost recovery agreement with an applicant or proponent, at no cost to the City.
- (b) Notwithstanding the maximum compensation limits set forth in subsection (a)(1) of this code section, for public projects awarded by City Council resolution, the City Manager may

authorize change orders up to the contingency amount approved by City Council when awarding the bid and/or approving the budget for such public projects and a Department Head, or designee, may authorize a change order of up to Twenty-Five Thousand and no/100ths (\$25,000.00) Dollars provided such change order is still within the contingency amount approved by City Council.

- (c) In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable.

(Ord. 1039 § 2 (part), 2002)

(Ord. No. 1138, § 2, 9-1-2009; Ord. No. 1144, § 1, 3-16-2010)

2.20.100 Department head authority.

Department heads are authorized to enter into and sign on behalf of the City, without the prior approval of the City Manager or City Council, a contract:

- (a) Which is for the purchase or lease of commodities, equipment, general services, and professional services;
- (b) Which contains a maximum compensation amount up to Twenty-Five Thousand and no/100ths (\$25,000.00) Dollars. As to a change order, the limit of authority is twenty-five (25%) percent of the original contract, not to exceed a cumulative amount of Thirty-One Thousand Two Hundred Fifty and no/100ths (\$31,250.00) Dollars; and
- (c) Which is not required by any State law to be let to the lowest responsible bidder.

(Ord. 1039 § 2 (part), 2002)

EXHIBIT E

TRACY CITY COUNCIL

REGULAR MEETING AGENDA

Tuesday, June 18, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Americans With Disabilities Act - The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in Council meetings. Persons requiring assistance or auxiliary aids should call City Hall (209/831-6000) 24 hours prior to the meeting.

Addressing the Council on Items on the Agenda - The Brown Act provides that every regular Council meeting shall provide an opportunity for the public to address the Council on any item within its jurisdiction before or during the Council's consideration of the item, provided no action shall be taken on any item not on the agenda. Each citizen will be allowed a maximum of five minutes for input or testimony. At the Mayor's discretion, additional time may be granted. The City Clerk shall be the timekeeper.

Consent Calendar - All items listed on the Consent Calendar are considered routine and/or consistent with previous Council direction. A motion and roll call vote may enact the entire Consent Calendar. No separate discussion of Consent Calendar items will occur unless members of the City Council, City staff or the public request discussion on a specific item at the beginning of the meeting.

Addressing the Council on Items not on the Agenda - The Brown Act prohibits discussion or action on items not on the posted agenda. Members of the public addressing the Council should state their names and addresses for the record, and for contact information. The City Council's Procedures for the Conduct of Public Meetings provide that "Items from the Audience" following the Consent Calendar will be limited to 15 minutes. "Items from the Audience" listed near the end of the agenda will not have a maximum time limit. Each member of the public will be allowed a maximum of five minutes for public input or testimony. However, a maximum time limit of less than five minutes for public input or testimony may be set for "Items from the Audience" depending upon the number of members of the public wishing to provide public input or testimony. The five minute maximum time limit for each member of the public applies to all "Items from the Audience." Any item not on the agenda, brought up by a member of the public shall automatically be referred to staff. In accordance with Council policy, if staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting. When members of the public address the Council, they should be as specific as possible about their concerns. If several members of the public comment on the same issue an effort should be made to avoid repetition of views already expressed.

Presentations to Council - Persons who wish to make presentations which may exceed the time limits are encouraged to submit comments in writing at the earliest possible time to ensure distribution to Council and other interested parties. Requests for letters to be read into the record will be granted only upon approval of the majority of the Council. Power Point (or similar) presentations need to be provided to the City Clerk's office at least 24 hours prior to the meeting. All presentations must comply with the applicable time limits. Prior to the presentation, a hard copy of the Power Point (or similar) presentation will be provided to the City Clerk's office for inclusion in the record of the meeting and copies shall be provided to the Council. Failure to comply will result in the presentation being rejected. Any materials distributed to a majority of the Council regarding an item on the agenda shall be made available for public inspection at the City Clerk's office (address above) during regular business hours.

Notice - A 90 day limit is set by law for filing challenges in the Superior Court to certain City administrative decisions and orders when those decisions or orders require: (1) a hearing by law, (2) the receipt of evidence, and (3) the exercise of discretion. The 90 day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge a City Council action in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised during the public hearing, or raised in written correspondence delivered to the City Council prior to or at the public hearing.

Full copies of the agenda are available at City Hall, 333 Civic Center Plaza, the Tracy Public Library, 20 East Eaton Avenue, and on the City's website www.ci.tracy.ca.us

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

PRESENTATIONS - Certificate of Appointment – Transportation Advisory Commission
- AAA Check Presentation to City of Tracy for Fire Explorers

1. CONSENT CALENDAR

- A. Approval of Minutes
- B. Authorize a Professional Services Agreement with MHD Group, Inc., for Graphic Design and Marketing Services for the Cultural Arts Division and the Grand Theatre Center for the Arts and Authorize the Mayor to Execute the Professional Services Agreement
- C. Approval of a Professional Services Agreement with Sycamore Landscaping Corporation for Landscape, Parks, and Channelways Maintenance and Authorize the Mayor to Execute the Agreement
- D. Receive Update on the Tracy Municipal Airport Pavement Project and Confirm Staff Direction on Runway Design
- E. Approve Amendment Number 1 to Fuel Sales Operator and Fuel Facility Lease Agreement Between the City of Tracy and Turlock Air Center, LLC. Doing Business as Tracy Air Center, and Authorize the Mayor to Sign the Amendment
- F. Annual Review of City's Investment Policy and Recommendation to Accept this Policy with No Changes
- G. Adoption of the Fiscal Years 2013/2014 and 2014/2015 Strategic Priorities Which Include Public Safety, Quality of Life, Governance and Economic Development
- H. Approve a Roadway Construction and Reimbursement Agreement (RCRA) with Prologis Logistics Services Incorporated for the Construction of Roadway Improvements on Skylark Avenue from the Prologis Park Tracy – Phase 2 Site to Grant Line Road, and Authorize the Mayor to Execute the Roadway Construction and Reimbursement Agreement
- I. Reject Non-Responsive Low Bid from BC Construction Company of Ceres, California, Award a Construction Contract for the Police Firearms Practice Range Restroom Building CIP 71072C to the Second Lowest Responsive Responsible Bidder, Southland Construction from Pleasanton, California, and Authorize the Mayor to Execute the Contract

2. ITEMS FROM THE AUDIENCE

3. ACCEPT ANNUAL REPORT OF THE MEASURE E RESIDENTS' OVERSIGHT COMMITTEE

4. APPROVE CONCEPT PLANS FOR THE PROPOSED ANIMAL SHELTER FACILITY, CIP 71064
5. ITEMS FROM THE AUDIENCE
6. STAFF ITEMS
 - A. Receive and Accept the City Manager Informational Update
7. COUNCIL ITEMS
8. ADJOURNMENT

June 18, 2013

AGENDA ITEM 1.E

REQUEST

APPROVE AMENDMENT NUMBER 1 TO FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AND AUTHORIZE THE MAYOR TO SIGN THE AMENDMENT

EXECUTIVE SUMMARY

The City of Tracy currently has a Fuel Sales Operator and Fuel Facility Lease Agreement (Agreement) with Turlock Air Center, LLC doing business as Tracy Air Center. The Agreement contains terms and conditions related to selling aviation fuel and the leasing of the city-owned fuel facility at the Airport. The Agreement was approved by City Council on October 18, 2011 pursuant to Resolution No. 2011-195.

This amendment modifies specific terms of the Agreement for the purpose of clarifying certain sections of the agreement and modifying certain payment terms.

DISCUSSION

This amendment establishes a new increased fuel flowage fee, which is the rate for which the minimum annual payment of \$50,000 is based. This amendment also removes the City established requirement to have fuel prices at a certain level in relation to surrounding airports.

The amendment modifies the lease extension option so that the lessee has the option to extend the agreement so long as there is no uncured default. A deadline was also set for the lessee to pay for the recoverable fuel that was transferred from the City at the beginning of the lease. The language for returning a portion of the security deposit was also changed so that the lessee will get a portion of the deposit back as long as there is no uncured default by December 31, 2013. The portion of the security deposit returned back to the lessee will be used to pay for a portion of the recoverable fuel that was transferred at the beginning of the lease. The lessee will also have a deadline in which to pay the \$3,000 owed for installation of an electrical meter.

Added to the amendment was a section stating that if the City decides to move the fuel facility to another location, that the City would be responsible for all costs of doing so.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the City's strategic plans.

FISCAL IMPACT

The changes in this agreement do not change the minimum annual payment of \$50,000 to the City which is part of the budgeted revenue for the Airport Fund.

RECOMMENDATION

That City Council, by resolution, approves Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, and authorizes the Mayor to sign the Amendment.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENT:

Exhibit "A" – Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement

**CITY OF TRACY
AMENDMENT NO. 1 TO
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
BETWEEN THE
CITY OF TRACY
AND
TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER**

This Amendment No. 1 (hereinafter "Amendment") to the FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Turlock Air Center, LLC doing business as Tracy Air Center (hereinafter "Lessee").

RECITALS

A. City and Lessee entered into a FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER (hereinafter "AGREEMENT") which was approved by the City Council on October 18, 2011, pursuant to Resolution No. 2011-195;

B. City and Lessee recognize that changes have occurred at the Airport and that additional changes will likely occur in the future, and wish to amend certain sections of the Agreement to accommodate the mutual needs of the parties; and

C. This Amendment therefore modifies specific terms of the Agreement for the purpose of clarifying certain sections of the Agreement and modifying certain payment terms, to facilitate the continued performance of the Agreement by both parties.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Terms of Amendment.** The Agreement is modified as stated herein, effective upon all parties executing this Amendment.

Section 3 of the Agreement, DEFINITIONS, Fuel Services, is hereby amended to read as follows: "Fuel Services: All activities associated with the purchasing, receiving, storage and sale of Aviation Fuel, and when requested by a fuel customer, the dispensing of Aviation Fuel into Aircraft."

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
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The following definitions are hereby added to Section 3:

Default – Failure without legal excuse to perform any promise or obligation in this Agreement within the time or in the manner set forth herein. Any DEFAULT that is not timely remedied or cured pursuant to the provisions of Section 24 shall be deemed a BREACH.

Breach – Doing any act or failing without legal excuse to perform the duties and obligations in the Agreement. A DEFAULT that has not been cured pursuant to Section 24 constitutes a BREACH.

Section 7 of the Agreement is hereby amended to read as follows: "TERM: The Agreement period is twenty-five years and shall commence on the 1st day of January 2012 (hereinafter "Commencement Date"), and run through the 31st day of December 2036.

Lessee may, so long as it is not in uncured default under Section 24, extend the agreement up to three times for a period of ten years each time with the first option extension period running from the 1st day of January 2037, through the 31st day of December 2046; the second option extension period running from the 1st day of January 2047, through the 31st day of December 2056; and the third option extension period running from the 1st day of January 2057, through the 31st day of December 2066. Lessee shall provide City with written notification of the Lessee's election to extend this Agreement as set forth herein at least six months prior to the lease expiration date."

Section 12 of the Agreement is hereby amended to read as follows: "OPERATION OF FUEL FACILITY: Lessee shall continuously use the Fuel Facility for the uses specified in this Agreement. If the premises are totally or partially relocated, destroyed, or condemned, or if full use by Lessee is unavailable, to the extent not caused in any part by the Lessee, (1) Lessee shall be entitled to a pro rata reduction in Rent during all such periods for the affected areas only, and (2) Lessee shall continue operation of its business at the premises to the extent reasonably practical during any period of reconstruction.

If the City decides to move or relocate the Fuel Facility to any other location on the Airport, the City will be responsible for all the costs and expenses for such relocation.

The maintenance and operation of the Fuel Facility shall at all times during the term of this Agreement be under the direct supervision of Lessee or a competent representative of the Lessee, who shall be subject at all times to the direction and control of the Lessee."

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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Section 18.1 of the Agreement is hereby amended to read as follows: "Non-exclusive Privileges: The following shall apply to the operation and maintenance by Lessee of the Fuel Facility. Lessee shall have the non-exclusive privilege of offering for sale, selling and dispensing Aviation Fuels and lubricants on the Airport. The City shall not grant another operator the right to provide the same or similar services except on the same or substantially the same terms, indexed and adjusted for changes in inflation and prevailing economic conditions at the time."

Section 18.4 "Fuel Prices" is hereby deleted from the Agreement.

Section 18.6 of the Agreement is hereby amended to read as follows: "Fuel Handling and Equipment: In regards to delivery of Aviation Fuel to customers, Lessee shall provide Self-Service Fueling from the existing dispensers located on the Fuel Island. Lessee may also provide Pilot-Assisted Fueling from the existing dispensers and Full-Service Jet-A and AvGas Fueling from fuel trucks, and any such fuel trucks will be the sole responsibility of the Lessee. Such operation is permitted when Lessee is in compliance with currently required licenses, permits, and applicable regulations. Each fuel truck shall have an operating two-way VHF radio permitting communication with Aircraft on the ground, and such vehicles shall be operated on the Airport only under the procedures and controls established by the Airport Manager. Aircraft fuel trucks shall be equipped with metering devices that meet all applicable regulatory measures. Each fuel truck shall be equipped and maintained to comply with all applicable safety and fire prevention requirements, standards, and regulatory measures including without limitation, those prescribed by: State of California Fire Code and local Fire Department, National Fire Protection Association (NFPA) Codes, local and state environmental and health departments, and applicable FAA Advisory Circulars (AC) including AC00-34 "Aircraft Ground Handling and Servicing" and AC 150/5210-5 "Painting, Marking and Lighting of Vehicles Used on an Airport".

Section 19.1 of the Agreement is hereby amended to read as follows: "19.1 Fuel Facility Use Fee: In consideration for the continuous maintenance, operation, repairs, and upgrades by Lessee of the City owned Fuel Facility, Lessee shall not be required to pay to City a Fuel Facility Use Fee.

Section 19.2 of the Agreement is hereby amended to read as follows: "Fuel Flowage Fee: For the privilege of selling Aviation Fuel at the Airport, Lessee shall pay the City a Fuel Flowage Fee of seven cents (\$0.07) per gallon on all Aviation Fuel sold. Payment due City in this Section shall be credited monthly against Lessee's prepaid Minimum Annual Payment Guarantee (Section 20.1), and after the aggregate amount of the rent and fees required under this Agreement in any given year exceeds Lessee's prepaid Minimum Annual Payment Guarantee, Lessee shall without demand, pay such excess amount on or before fifteen days following the end of the preceding month throughout the term of this Agreement and any

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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extensions. Lessee shall also provide, on a monthly basis, a report of Lessee's fuel flowage during the preceding month, which shall include a copy of all BOE sales tax reports filed with the State of California during the preceding month, and a copy of each delivery receipt or bill of lading from Lessee's fuel distributor, showing the gravity-corrected and recalibrated net quantity delivered during the preceding month. Any disputes or controversies between the parties with respect to this Section shall be resolved in accordance with the provisions of Section 26 LEGAL ACTION AND MEDIATION of this Agreement."

Section 20.1 of the Agreement is hereby amended to read as follows: "Minimum Annual Payment Guarantee: Lessee will pay the greater of either the total of the Fuel Flowage Fees described in 19.2 above, or a minimum annual payment of \$50,000, paid on or before of April 1 of the current year for each 12 month period beginning January 1, 2013. In the event the total of all payments specified in 19.2 is less than \$50,000 in any given 12 month period beginning on January 1 of any given year, Lessee shall be allowed to accrue the difference between the actual payment and \$50,000 and recoup that difference in future years to the extent that the actual Fuel Flowage Fee exceeds \$50,000. But in no case shall the City receive less than \$50,000, paid in advance, in any single period, nor will the City have any responsibility to pay Lessee for un-recouped fees at the end of the term of the Agreement. It shall be the responsibility of Lessee to provide the City with a report of the prior year's payments made during the preceding calendar year within fifteen days following the end of the preceding year."

Section 20.2 of the Agreement is hereby amended to read as follows: "Late Payment of Rent and Fees: In the event Lessee fails to pay City any Rent or Fees due under this Agreement within five business days after such Rent or Fee is due, regardless of notification from City, Lessee shall pay to City a late charge of One Hundred and No/100 Dollars (\$100) per occurrence, plus interest on said unpaid balance at a rate of one percent simple interest per month, from the date said payment was due and payable until paid in full. Lessee shall pay said late charge on or before the next installment of Rent or Fee is due. City and Lessee hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix the City's actual damage from any late payments and, thus, that Lessee shall pay as liquidated damages to City the late charge specified in this section, which is the result of the parties' reasonable endeavor to estimate fair average compensation therefore. Acceptance of any late charge shall not constitute a waiver of the Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to the City. If Lessee fails to pay its monthly or annual payments within 10 calendar days after such payment is due, regardless of notification from City, Lessee shall be in default of this Agreement."

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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Section 20.5 of the Agreement is hereby amended to read as follows: "Security Deposit: Upon execution of this Agreement, Lessee shall pay to City the sum of Twenty Thousand and No/100 Dollars (\$20,000) in cash as security (hereinafter "Security Deposit") for the faithful performance of the terms, covenants, and conditions of this Agreement. If Lessee performs without uncured default for the entire first two years, \$14,000 of the deposit will be refunded subject to Section 20.6. If Lessee is in default of this Agreement, City may in its sole discretion use the Security Deposit, or any portion of it, to cure the default or compensate City for damages sustained by City resulting from the Lessee's default. Upon demand by the City, Lessee shall immediately pay to City a sum equal to the portion of the Security Deposit expended or applied by City as provided in this subsection so as to maintain the Security Deposit in the sum initially deposited. Upon final accounting by City, any balance of said deposit shall be refunded to Lessee, without interest."

Section 20.6 of the Agreement is hereby amended to read as follows: "Transfer of Inventory at Beginning and End of Lease: On January 1, 2012, 8,510 gallons of recoverable Aviation Fuel was transferred to Lessee at a total value, based on Last-In-First-Out (LIFO), of \$34,953.80. In addition, 3,712 gallons of unrecoverable Aviation Fuel was transferred to Lessee at a total value of \$14,910.51. Recoverable fuel is the Aviation Fuel inside the fuel tanks that is above the fuel tank outlets and can be pumped out of the tanks and sold. Unrecoverable fuel is the Aviation Fuel that is below the fuel tank outlets and cannot be pumped out of the tanks. Lessee agrees to allow the City to use the deposit refund in the amount of \$14,000, as stated in Section 20.5, as the Aviation fuel payment when it is due Lessee. Lessee agrees to pay the remaining amount \$20,953.81 at time of entering into a restaurant or corporate hangar lease agreement, or by January 1, 2023, whichever occurs sooner. Upon termination of the Agreement, the City shall purchase the existing Aviation Fuel inventory levels from Lessee, less 3,712 gallons of unrecoverable fuel, with payment due to Lessee within thirty days. The price of the recoverable Aviation Fuel inventory will be based on the LIFO price, but in no event shall the purchase price exceed the wholesale price of fuel on the date of transfer. After termination, and after final accounting by the City, any balance remaining of such payment shall be paid to the Lessee, without interest."

Section 21.4.2 of the Agreement is hereby amended to read as follows: "City installed an electric meter for Lessee and Lessee agrees to pay City \$3,000 (three-thousand dollars), for modification to the electrical service as described above at time of entering into a restaurant or corporate hangar lease agreement with City, or by January 1, 2018, whichever occurs sooner."

Section 21.4.10 of the Agreement is hereby amended to read as follows: "Lessee may install an additional 12,000 gallon fuel tank, at Lessee's sole option and expense. If installation of the additional fuel tank requires use of Airport land other

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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than that shown on the Fuel Facility Diagram, Lessee shall pay an additional Fuel Facility Ground Lease Fee on a per square foot basis as described in Section 19.3.

Section 24 of the Agreement is hereby amended to change its heading to the following: "DEFAULT AND REMEDIES:"

Section 24.1 of the Agreement is hereby amended to change its heading to the following: "Default by Lessee:"

Section 24.1.1 of the Agreement is hereby amended to read as follows: "The Lessee's failure to pay the Rent or Fees in accordance with the terms of this Agreement.

Section 24.2 of the Agreement is hereby amended to read as follows: "**Right of Reentry Upon Uncured Default:** Upon the issuance of an unlawful detainer by a court of competent jurisdiction, the City, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and Property from the Fuel Facility; such Property may be removed and stored in a public warehouse or elsewhere at the cost of, with cost not exceeding the market rate cost charged by public storage facilities and reasonable moving expenses in the City of Tracy, and for the account of, the Lessee. Should City elect to re-enter as provided herein pursuant to legal proceedings, it may either terminate this Agreement or relet the Fuel Facility and Improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this Agreement) and such rental or re-rental and upon such other terms and conditions as City in its sole discretion may deem advisable, with the right to make alterations and repairs to Fuel Facility and Improvements."

Section 24.4 of the Agreement is hereby amended to read as follows: "**Waiver of Default:** No default of this Agreement may be waived except by the written consent of the City. Any waiver by City of any default by Lessee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent default by Lessee of either the same or a different provision of this Agreement. Forbearance or indulgence by the City, in any regard, shall not constitute a waiver of any requirement under this Agreement, and City shall be entitled to invoke any remedy available to it in equity or by law, despite such forbearance or indulgence."

Section 24.1.7 of the Agreement is hereby amended to read as follows: "The Lessee's failure, after five calendar days written notice thereof, to repair mechanical or other problems which prevent customers from obtaining Fuel Services (either AVGas or Jet Fuel) in accordance with the terms of this Agreement."

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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Section 24.7 is added to the Agreement to read as follows: "Lessee's Right to Cure Defaults: If Lessee is in default of any provision of this Agreement, City shall provide Lessee with a written notice of default wherein City must describe the specific default and advise Lessee to cure the same within 30 calendar days after receipt of the notice. Should Lessee fail to cure the default within 30 calendar days after the written notice is sent by City, City may elect to terminate this Agreement. However, if the subject default cannot be cured within 30 calendar days by the exercise of due diligence by Lessee, City may elect to not terminate this Agreement if City agrees that Lessee has taken all necessary steps to begin the cure of such default so as to effect said cure as soon as feasible after the expiration of such 30 calendar day period."

Section 25.1 of the Agreement is hereby amended to read as follows:

"Assignment: This Agreement, or any part thereof, shall not be assigned or transferred by Lessee other than to an Entity controlled by the Lessee, by process or operation of law or in any other manner, without the prior written consent of City. No assignee for the benefit of the Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this section. Lessee agrees that City may hypothecate, pledge, assign, or transfer this Agreement for any lawful purpose. Lessee shall not enter into agreements with others whereby others share in the fueling privileges or the services herein authorized without the prior written consent of the City. Any assignment, encumbrance, or Sublease without the City's consent shall be voidable and, at the City's election, shall constitute a default. No consent to any assignment, encumbrance, or Sublease shall constitute a further waiver of the provisions of this paragraph. If Lessee requests City to consent to a proposed assignment, the proposed assignee must demonstrate at least comparable professional competence and qualifications as the Lessee, and Lessee shall pay to the City, whether or not consent is ultimately given, the City's reasonable administrative costs, including costs for staff and attorney review incurred in connection with each such request. One percent (1%) of any sums to be paid by an assignee to the Lessee, other than to an Entity controlled by the Lessee, in consideration of the assignment of this Agreement shall be paid to the City."

Section 25.2 of the Agreement is hereby amended to read as follows: "The Lessee's Right to Sublease: Lessee shall have the right to Sublease a portion of the Fuel Facility space, subject to the City's written consent, which will not unreasonably be withheld; provided however, that the term of any Sublease shall not extend beyond the term of this Agreement; any and all Subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Agreement, and any sublessee shall be required to comply with the Airport Rules and Regulations, or any subsequent resolutions passed by City Council. Lessee may sublease space only for the purposes to which City agrees in writing. The Commercial Aeronautical Services and business purpose shall be clearly stated in the Sublease and the

CITY OF TRACY

Amendment No. 1 to

FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT

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sublessee shall be limited to those activities and business purposes. In the case of a partial Sublease, Lessee shall further specify that the operation is under the direct supervision and guidance of Lessee and subject to the terms and conditions of the Agreement in effect between Lessee and the City. Lessee shall provide ground space, facilities, and accommodations sufficient for each of its permitted activities. Lessee immediately and irrevocably assigns to the City, as security for the Lessee's obligations under this Agreement, all Rent from any subletting of all or a part of the premises as permitted by this Agreement, and the City, as assignee and as attorney in- fact for the Lessee, or a receiver for Lessee appointed on the City's application, may collect such Rent due subsequent to the Lessee's default and apply it toward the Lessee's obligations under this Agreement with any excess amounts collected returned to the Lessee; except that, until the occurrence of an act of default by Lessee or sublessee, Lessee shall have the right to collect such Rent."

Section 26.1 of the Agreement is hereby amended to read as follows: "Legal Action and Alternative Dispute Resolution: If any dispute arises between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, the parties will first attempt to resolve the dispute through informal discussions. In the event a dispute cannot be resolved in this manner within 30 days, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement. No action arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person or Entity not a party to this Agreement unless the United States of America is a necessary party. In the event of litigation, the prevailing party shall recover reasonable costs of such proceedings from the non-prevailing party."

Section 28.7 of the Agreement is hereby amended to read as follows: "Lessee Office: For the purposes of providing fuel truck services as identified in the Agreement, City will provide Lessee with the use of Airport office "4-6", in an AS IS condition (as shown on Figure 3), for up to two Lessee employees for a period of five years from the Commencement Date. The cost of installing and/or providing utilities will be at Lessee's expense."

Section 28.8 "Hangar Rental Services" is deleted from the Agreement.

3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
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this Amendment on behalf of the respective legal entities of the Lessee and the City.
This Amendment shall inure to the benefit of and be binding upon the parties
thereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the
terms set forth herein.

CITY OF TRACY

By: _____
Brent H. Ives
Title: Mayor
Date: _____

Turlock Air Center, LLC

By: _____
Stephen S. Stuhmer
Title: Managing Member
Date: 6-13-13

Attest:

By: _____
Sandra Edwards
Title: City Clerk
Date: _____

Approved as to form

By: _____
Daniel G. Sodergren
Title: City Attorney
Date: _____

RESOLUTION _____

APPROVING AMENDMENT NUMBER 1 TO FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AND AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT

WHEREAS, The City of Tracy has entered into a Fuel Sale Operator and Fuel Facility Lease Agreement (Agreement) with Turlock Air Center, LLC doing business as Tracy Air Center, which expires December 31, 2036; and

WHEREAS, the parties wish to amend the Agreement to clarify same and modify payment and other terms,

NOW, THEREFORE, BE IT RESOLVED, That City Council approves Amendment No. 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement with Turlock Air Center, LLC doing business as Tracy Air Center, and authorizes the Mayor to sign the Amendment.

The foregoing Resolution _____ was passed and adopted by the Tracy City Council on the _____ day of _____, 2013, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

June 18, 2013, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

The invocation was offered by Deacon Jack Ryan.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

Mayor Ives presented a Certificate of Appointment to Bruce George to the Transportation Advisory Commission.

Russ Ramirez, Vice President, AAA Northern California, and Jane Drymon, AAA Tracy Branch Manager, presented a \$5,000 check to Firefighters Jeremy Ward, Ben Moreno, and Senior Explorer Miguel Beltran, for the Tracy Fire Explorers program.

1. CONSENT CALENDAR

Following the removal of items 1-D and 1-E by staff; 1-C and 1-F by Council Member Young; and item 1-I by a member of the audience; it was moved by Council Member Rickman and seconded by Council Member Manne to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.

- A. Approval of Minutes – Special meeting minutes of April 8, 2013, and April 16, 2013, were approved.
- B. Authorize a Professional Services Agreement with MHD Group, Inc. for Graphic Design and Marketing Services for the Cultural Arts Division and the Grand Theatre Center for the Arts and Authorize the Mayor to Execute the Professional Services Agreement – Resolution 2013-087 approved the Agreement.
- G. Adoption of the Fiscal Years 2013/2014 and 2014/2015 Strategic Priorities Which Include Public Safety, Quality of Life, Governance and Economic Development - Resolution 2013-088 adopted the Strategic Priorities.
- H. Approve a Roadway Construction and Reimbursement Agreement (RCRA) with Prologis Logistics Services Incorporated for the Construction of Roadway Improvements on Skylark Avenue from the Prologis Park Tracy – Phase 2 Site to Grant Line Road, and Authorize the Mayor to Execute the Roadway Construction and Reimbursement Agreement - Resolution 2013-089 approved the Agreements.
- C. Approval of a Professional Services Agreement with Sycamore Landscaping Corporation for Landscape, Parks, and Channelways Maintenance and Authorize the Mayor to Execute the Agreement - Connie Vierra, Management Analyst, provided the staff report. On March 21, 2013, staff issued a Request for Proposals for Landscape, Parks, and Channelways Maintenance. The proposals were for maintenance of Fully Funded Zones, Under Funded Zones, and

Channelways within the Landscape Maintenance District (LMD) with the possibility of new landscaping being added to the agreement at a later date.

Previously, LMD maintenance had four separate contracts: Fully Funded, Under Funded, Eleventh Street, and Channelways. This new agreement will be combining all four contracts into one agreement. This agreement will have various Scopes of Work which will apply to all Zones, Fully Funded Zones, Under Funded Zones, and Channelways. By having only one agreement, it will provide the City with consistency in supervising differing maintenance levels commensurate with funding.

In addition to the landscape maintenance services in the LMD, additive bid items for landscape maintenance are included for the Fully Funded and Under Funded Zones. These additives are performed as requested and are for specific tasks that include dethatching of turf areas, aeration of turf areas, fertilizing, ground cover and shrub maintenance including pruning, median maintenance, and spraying of broadleaf weeds.

The City received proposals from four potential contractors: Sycamore Landscaping Corporation, Dominguez Landscape Services Inc., Marina Landscape Inc., and TerraCare Associates LLC. Staff reviewed all proposals submitted for Landscape, Parks, and Channelways Maintenance. In comparing the detailed costs submitted to the price per square foot submitted by each potential contractor, only two contractors were consistent in their pricing, which coincidentally were the two contractors with the lowest base proposals. Both of those contractors were contacted to discuss if there was a potential of adjusting the proposed prices. One contractor (Marina Landscape Inc.) was not able to adjust the price of the proposal. The other contractor (Sycamore Landscaping Corporation) was able to lower the proposal costs by 12%. This adjustment will bring the base price for Sycamore to \$500,000. The actual price for additives will vary based on the need of the City for various additives.

Upon approval, the initial term of the agreement will be from July 1, 2013 through June 30, 2016. In the event that the City determines that the contractor has satisfactorily performed all requirements in this agreement, and per recommendation from the Public Works Director to the City Manager, the City Manager may extend the agreement for two additional two year terms.

A majority of the funding for this agreement will come out of the LMD Fund. The remainder funding for the maintenance of Zone 38 will come from the General Fund. However, sufficient funds have been appropriated in the Fiscal Year 2013/2014 budget that Council adopted on June 4, 2013.

Staff recommended that Council approve a three year Professional Services Agreement with Sycamore Landscaping Corporation for services required for Landscape, Parks, and Channelways Maintenance and authorize the Mayor to execute the agreement.

Council Member Young asked why funding for Zone 38 comes from the General Fund instead of the LMD Fund. Ms. Vierra stated certain areas zoned as General Fund areas and not part of the LMD, receive funding from the General Fund. Anne Bell, Management Analyst, added that areas in the City that provide

a general overall benefit cannot be funded by assessment districts and must be paid for by another source.

Council Member Young asked who the current contractor was. Ms. Vierra indicated Sycamore Landscaping Corporation. Council Member Young commended staff for negotiating a lower contract.

Mayor Ives invited members of the public to address Council on the item.

Trina Anderson addressed Council stated she lives in zone 17 near the Sycamore Village Apartments. Ms. Anderson stated the area is poorly maintained, has broken sprinklers, and overgrown trees. Rod Buchanan, Interim Director Public Works, stated the new contract identifies specific performance measures that will allow the City to hold the contractor accountable.

Dave Anderson, 1940 Earl Way, asked that the Sycamore Village area be cleaned up. Mayors Ives clarified that the contract covered the entire City and not just the Sycamore Village area.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-090 approving a three year Professional Services Agreement with Sycamore Landscaping Corporation for services required for Landscape, Parks, and Channelways Maintenance. Voice vote found all in favor; passed and so ordered. Mayor Ives abstained from voting on Zone 24, Council Member Manne abstained from voting on Zone 18; Council Member Young abstained from voting on Zone 3

- D. Receive Update on the Tracy Municipal Airport Pavement Project and Confirm Staff Direction on Runway Design – Leon Churchill, Jr., City Manager, prefaced that items 1-D and 1-E were inadvertently placed on the consent calendar. Rod Buchanan, Interim Public Works Director, provided the staff report.

On October 18, 2011, Council held a joint meeting with the Transportation Advisory Commission. During this meeting a list of items were presented to Council as potential improvement items for the Tracy Municipal Airport. One of those items was to confirm the length of Runway 12/30. Staff surveyed Runway 12/30 and found that the runway's physical length was actually 3,999 feet and if minor patching was completed, the runway could be calculated at 4,000 feet. Staff also found that Runway 12/30 had been mismarked during the past pavement slurry seal project. The actual marked distance was calculated at 3,996 feet. A NOTAM (Notice to Airmen) was immediately filed on January 19, 2012, to alert pilots to those conditions.

On January 17, 2012, staff presented an update on the Airport Improvement Options. At that meeting, Council was notified of the conditions and actions by staff relative to Runway 12/30.

On May 15, 2012, staff presented another update on the Airport Improvement Options. At this meeting, Council directed staff to work towards returning Runway 12/30 to 4,000 feet. On October 2, 2012, staff completed the necessary work to return the Runway 12/30 to 4,000 feet and cancelled the previous NOTAM.

Staff has been pursuing grant funding from the Federal Aviation Administration to permanently rehabilitate all pavement surfaces at the Tracy Municipal Airport.

Reinard W. Brandley, consulting Airport Engineer, was hired by the City as an airport consultant. A Pavement Evaluation Study for the Tracy Airport has been completed indicating the need for pavement rehabilitation and the design is currently underway for all pavement areas at the airport. The Airport Pavement Project is important to achieve the goal of a higher quality Airport to support commerce and recreational aviation needs.

Through the design process, the Federal Aviation Administration (FAA) has informed the City that the Airport's current runway and taxiway widths of 100 feet and 40 feet respectively, exceed the FAA standard widths that are available for funding for our airport classification. FAA grant funding will only cover a width of 75 feet for the runways and 35 feet for the taxiways. If the City wishes to keep the runways and taxiways at the current widths, the City would have to pay the difference. Staff recommends adjusting the pavement design to meet the FAA standards in order to achieve full funding from the FAA.

The runways are being completely reconstructed and brought up to current standards, including safety standards. It is anticipated that through the pavement design process, runway 12/30 will now be 75 feet wide and 3,997 feet long in the final design. The overall impact of the above runway changes to the airport operations is minimal. A runway length of 3,997 is compatible with existing operations and planned development at the airport. These changes will alter the land use surrounding the airport.

The 2011 California Airport Land Use Planning Handbook (CALUPH) designates different land use planning guidelines for development surrounding airports based in part on runway length as categorized below:

Less than 4,000': Small Airport
4,001' to 5,999: Medium Airport
6,000' or more: Long Airport

In 2009, the San Joaquin Council of Governments, acting as the Airport Land Use Commission (ALUC), determined that the Tracy Municipal Airport (TMA) did not meet the criteria for a "Medium" or "Small" Airport designation. The ALUC determined that a hybrid land use planning designation would be appropriate for the TMA. If the runway is changed, then the TMA would meet the length criteria for a Small Airport designation as outlined in the CALUPH instead of the existing hybrid from the ALUC. Such a designation would be pursued through a request to the ALUC, and if approved, would change the land use surrounding the airport to be in line with a Small Airport designation.

As part of the Fiscal Year 2013/14 CIP budget, Council approved matching funds for the first phase of the pavement project. A reduction in project costs may result from the width reduction. It is unknown at this time how much FAA grant funding, if any, will be available to the City. The City will receive notification of funding status in July or August.

Staff recommended that City Council receive the update on the Tracy Municipal Airport Pavement Project and confirm staff direction on runway design.

Mayor Ives stated supplemental information was received by Council from the Aircraft Owners and Pilots Association (AOPA) and Dave and Trina Anderson.

Council Member Manne asked if the matching funds allocated by Council was dependent on the FAA's funding. Mr. Buchanan stated if the FAA did not give the City funding, the matching funds would not be needed. Council Member Manne asked if the funding was based on a width of 140 feet versus 75 feet. Mr. Buchanan stated no, and it was possible that the FAA would come back with less funding because of the reduced runway width.

Mayor Pro Tem Maciel asked if there was a "Plan B" should the FAA not grant funding. Mr. Buchanan stated the project would be considered through the Capital Improvement Project (CIP) process.

Mayor Ives invited members of the public to address Council on the item.

John Favors addressed Council regarding the runway length and the need for it to remain at 4,000 feet. Mr. Favors asked Council and staff address some of the misinformation.

Steve Nicolau provided Council with a handout entitled "Instrument of Transfer" and provided a history of the document and the Airport. Mr. Nicolau suggested that the GSA may object to decreasing the airport runway length and recommended keeping the airport runway at 4,000 feet.

John Anderson addressed Council stating he understood the need to shorten the width of the runway to 75 feet, but was unclear why it was determined that the length needed to be decreased as well. Mr. Anderson stated he did not support shortening the runway length and stated safety buffers must be maintained.

Dave Helm addressed Council regarding incompatible uses surrounding the runway and voiced his support in keeping the runway length at 4,000 feet.

Chris Long, Surland Companies, 1024 Central Avenue, addressed Council indicating it was important to work together as good neighbors. Mr. Long stated they support the design of the Airport Pavement Project. Mr. Long indicated that all development standards of the Ellis project will comply with Federal and State guidelines.

George Riddle addressed Council noting his disappointment that runway length was being discussed again.

Trina Anderson indicated she believed they could work with the developer and develop a good working relationship. Ms. Anderson stated she did not believe there was a rush to approve this item suggesting a decision be postponed until a response from the FAA can be obtained.

Steve Stumer, Tracy Airport, indicated he was in support of harmony between the community, developers and the Airport Association. Mr. Stumer indicated funding was key, asking that Council do whatever was necessary to improve the runway.

Mayor Ives asked if there was a time constraint. Mr. Buchanan stated he anticipated funding in July or August 2013. Mr. Buchanan added that Council already approved the design of the pavement areas which are currently underway. Mr. Buchanan stated in order to obtain funding this year, the FAA would like the design complete. Mr. Buchanan added that the design consultant is waiting for direction on the final runway design, and that once funding is received, the City can begin work and improve runway conditions.

Mayor Ives asked if staff spoke with the FAA regarding the length of the runway as well. Mr. Buchanan stated staff has been in discussions with the FAA who approves leases, airport master plans and airport layouts to ensure the City's plans are consistent with the approved master plan.

Mayor Ives asked if the FAA voiced any objections when staff issued the NOTAM. Mr. Buchanan stated no.

Mayor Ives asked if the standard width for a runway length of approximately 4,000 feet was 75 feet. Mr. Buchanan stated the width has to do with the classification of airports; the City of Tracy is only eligible for Category B funding.

Mayor Ives asked for clarification regarding prospects for FAA funding relative to the length of the runway. Mr. Buchanan stated he has spoken with the FAA regarding design parameters, safety issues, object free areas, demarcation, and the available area within the airport. Mr. Buchanan stated based on those facts/conditions, was why the 3,997 length was being proposed.

Mayor Ives asked if there was any affect over the potential for receiving FAA grant funding relative to the length. Mr. Buchanan stated no. Mr. Buchanan stated if a problem arises, the City could act quickly.

Council Member Rickman asked if the length of the runway had anything to do with funding. Mr. Buchanan stated the FAA has not stated the length is an issue; they commented on the width.

Council Member Manne asked if the design consultant was on hold until the width of the runway was determined. Mr. Buchanan stated the length and width needed to be determined.

Mayor Pro Tem Maciel indicated he supports the Airport and has never heard anything from this Council or former Councils regarding closing the Airport. Mayor Pro Tem Maciel stated he was in support of staff's recommendation.

Council Member Young asked what the deficiencies were for the Airport falling into the designation of a hybrid airport. Mr. Buchanan stated the Airport was approximately 4,000 - 4,002 feet in length and at one point the Airport Land Use Commission decided they wanted to look at it in terms of compatibility. The

Airport Master Plan, done in 1998, also had the Airport listed as a hybrid and could have chosen a medium sized Airport then. Mr. Buchanan further stated an Airport that is right in the middle doesn't meet either small or medium which is why they decided to do a hybrid.

Council Member Young stated what seemed to be before the Council was to look at the Airport's operational use to ensure we have the best Airport possible and obtain the funding necessary to improve our Airport. Council Member Young indicated she was in support of staff's recommendation.

Council Member Rickman asked if there was any change in the type of plane that could land or take off. Mr. Buchanan stated in general, no. Council Member Rickman asked if corporate jets could land at the Tracy Airport. Mr. Buchanan stated yes.

Mayor Ives stated the best thing the City can do for the Airport is obtain funding.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to accept the report and direct staff to proceed with the necessary runway adjustment at the Airport to meet FAA standards in order to achieve full funding from the FAA. Voice vote found all in favor; passed and so ordered.

- E. Approve Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC. doing Business as Tracy Air Center, and Authorize the Mayor to Sign the Amendment - Ed Lovell, Management Analyst, provided the staff report. This amendment establishes a new increased fuel flowage fee, which is the rate for which the minimum annual payment of \$50,000 is based. This amendment also removes the City established requirement to have fuel prices at a certain level in relation to surrounding airports.

The amendment modifies the lease extension option so that the lessee has the option to extend the agreement so long as there is no uncured default. A deadline was also set for the lessee to pay for the recoverable fuel that was transferred from the City at the beginning of the lease. The language for returning a portion of the security deposit was also changed so that the lessee will get a portion of the deposit back as long as there is no uncured default by December 31, 2013. The portion of the security deposit returned back to the lessee will be used to pay for a portion of the recoverable fuel that was transferred at the beginning of the lease. The lessee will also have a deadline in which to pay the \$3,000 owed for installation of an electrical meter. Added to the amendment was a section stating that if the City decides to move the fuel facility to another location, that the City would be responsible for all costs of doing so. The changes in this agreement do not change the minimum annual payment of \$50,000 to the City which is part of the budgeted revenue for the Airport Fund.

Staff recommended that Council approve Amendment 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, and authorize the Mayor to sign the Amendment.

Mayor Ives invited members of the public to address Council on the item.

Trina Anderson addressed Council stating a \$50,000 fee before you can begin business doesn't seem like a very good business plan. Ms. Anderson indicated there was an expensive fuel system in place and it didn't appear that the City was charging rent to use the system. Mr. Buchanan indicated consideration for the existing equipment which is approximately 12 years old, is that Mr. Stumer's business will take care of repairing the equipment as it disintegrates and replacing it at the end of its life cycle.

Ms. Anderson stated based on her research she did not believe Turlock Air Center had a valid hazardous permit or a Spill Prevention Control (SPC) plan on file and would like to have it added. Ms. Anderson also stated Mr. Stumer fails to keep adequate inventory of fuels on hand. Ms. Anderson indicated since January 1, 2012, Mr. Stumer has not paid any money to the City, nor has he paid anything for the \$40,000 worth of fuel he sold which belonged to the City.

Mayor Ives asked for clarification regarding a hazardous material permit. Mr. Buchanan indicated he could not speak regarding Turlock Air and invited Mr. Stumer to respond.

Mr. Stumer indicated they do have SPC plans and a hazmat certificate or the State would shut them down.

Mayor Ives asked about the City's fuel. Mr. Buchanan indicated staff believes they have come up with a viable plan to assist Mr. Stumer with his losses over the last year and one half and to secure long term funding for the Airport. Mr. Buchanan stated one of Council's major considerations was to have a balanced budget for the Airport. Mr. Buchanan stated this agreement represents a way to accomplish that task; it's sequential, in writing, and a term of the new lease.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-091 approving Amendment 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, and authorizing the Mayor to sign the Amendment. Voice vote found all in favor; passed and so ordered.

- F. Annual Review of City's Investment Policy and Recommendation to Accept this Policy with No Changes - Robert Harmon, Senior Accountant, provided the staff report. The City has an adopted investment policy that provides guidance regarding the investment of City funds which is consistent with the State. Annually the City Treasurer reviews this policy with support from its registered investment advisors for any changes that would require amendment to the investment policy.

At the January 28, 2013, meeting of the Investment Review Committee, the City Treasurer reviewed the City Investment Policy (Council Policy B-6) with the committee and recommended no changes.

Mr. Harmon indicated the City Treasurer recommends that Council accept the existing City Investment Policy (Council Policy B-6) with no changes.

Mayor Ives invited members of the public to address Council. There was no one wishing to address Council on the item.

Council Member Young referred to idle and surplus funds stating Council received monthly investment reports.

It was moved by Council Member Young and seconded by Council Member Rickman to adopt Resolution 2013-092 accepting the existing City Investment Policy (Council Policy B-6) with no changes. Voice vote found all in favor; passed and so ordered.

1. Reject Non-Responsive Low Bid from BC Construction Company of Ceres, California, Award a Construction Contract for the Police Firearms Practice Range Restroom Building CIP 71072C to the Second Lowest Responsive Responsible Bidder, Southland Construction from Pleasanton, California, and Authorize the Mayor to Execute the Contract

Paul Miles asked if approval of a pre-fab building was required, and what the City was getting in exchange by going to the next higher bid at an additional cost of \$18,000. Kuldeep Sharma, City Engineer, indicated the bid documents required the contractor to provide an approved pre-fabricated building, and to comply with State and local bidding requirements. Mr. Sharma indicated the lowest bidder took an exception in order to receive approval, and by doing so their bid became non-responsive.

Mayor Ives asked if the proposed building had a physical difference or if it was a nuance. Mr. Sharma stated there was no physical difference; the difference was the approval process. Dan Sodergren, City Attorney, added the competitive bidding process set up by State law indicates if there is a variance in the bid documents, the City can waive certain variances, but if it creates an unfair advantage then the City has to declare the bid as non-responsive.

Mayor Ives invited members of the public to address Council. There was no one wishing to address Council on the item.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-093 rejecting the non-responsive low bid from BC Construction, awarding a construction contract for the Police Firearms Practice Range Restroom Building - CIP 71072C, to second lowest bidder, Southland Construction of Pleasanton, California, in an amount not-to-exceed \$156,425, and authorizing the Mayor to execute the contract. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Trina Anderson addressed Council regarding the last Young Eagle Flights event for youth ages 8-17 years. Ms. Anderson stated the next event was scheduled for July 13, 2013, and that interested individuals could contact her at dntanderson@email.com for more information.

Paul Miles addressed Council regarding previous comments provided at the March 5, 2013, Council meeting by Steve Abercrombie.

Mayor Pro Tem Maciel encouraged anyone who had concerns regarding Mr. Miles' complaints to visit his website.

John Favors provided Council with a handout entitled "Getting the Word Out", inviting residents to the Tracy Airport Open House 84th Anniversary and Independence Celebration to be held June 29, 2013, at the Tracy Municipal Airport.

3. ACCEPT ANNUAL REPORT OF THE MEASURE E RESIDENTS' OVERSIGHT COMMITTEE – Anne Bell, Management Analyst, introduced the members of the Oversight Committee.

Archie Bakerink, Chairperson, presented a summary of the Measure E Annual Report including a discussion on roles and responsibilities, financial analysis, and Committee conclusions and recommendations.

The Committee reported receipts of \$5,910,308 in Measure E revenue in fiscal year ending June 30, 2012. This amount was deposited in the City's General Fund. Chairperson Bakerink pointed out that official City income statements mask the extent of City's General Fund structural deficit which is bolstered by an average \$6 million annually in Measure E tax revenues. To align expenditures with revenues and achieve the goal of a structurally balanced General Fund budget by fiscal year 2016/17, the City needs to additionally reduce annual expenditures by an average of \$2.3 million.

For FY 2012/13, the City is projecting revenues of \$49.98 million and expenditures of \$50.89 million, resulting in a projected deficit of \$0.91 million. However, non-Measure E revenues of \$43.88 million and expenditures of \$50.89 million result in a projected structural deficit of \$7.01 million.

The Committee recommended Council: 1) In years of General Fund surplus, reserve surplus in special fund; 2) Prepare Non Measure E financial statements and forecasts; and 3) Continue to explore additional cost reduction and revenue enhancement strategies to align General Fund revenue and expenditure levels in anticipation of the expiration of Measure E in the year 2016.

Mayor Ives stated the Committee did a good job pointing out what Council knew and has ensure everyone knows the budget deficit has not been solved yet. Mayor Ives stated Council is clear at guiding Mr. Churchill in achieving a balanced budget.

Mayor Ives thanked the Committee for the report and their perspective.

Council Member Manne stated the report represented a fair assessment. Mayor Pro Tem Maciel added that information received from staff is consistent with what has been presented. Council Member Rickman thanked the Committee for their service and report.

Mayor Ives invited members of the audience to address Council. There was no one wishing to address Council on the item.

Council Member Manne asked if it was possible to establish a special fund as recommended by the Committee. Leon Churchill, Jr., City Manager, indicated Measure E funds are general revenue. Mr. Churchill stated the Committee's recommendation has great bearing on a future Council discussion regarding revenues in excess of expenditures.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to accept the annual report of the Measure E Residents' Oversight Committee. Voice vote found all in favor; passed and so ordered.

4. APPROVE CONCEPT PLANS FOR THE PROPOSED ANIMAL SHELTER FACILITY, CIP 71064 – Kuldeep Sharma, City Engineer, provided the staff report. The City's existing Animal Shelter is located on Arbor Road between Holly Drive and MacArthur Drive east of the City's Waste Water Treatment Plant. The existing facility is approximately 4,200 square feet in covered area comprising a modular office, administrative space, and indoor and outdoor area for the animals. Tracy's new Animal Shelter will be located at the south west corner of Grant Line Road and Paradise Road on a City owned 2.19 acre parcel.

On April 2, 2013, Council approved a Professional Services Agreement with Indigo Hammond and Playle Architects of Davis, California to prepare plans, specifications and cost estimates for the first phase of the Animal Shelter Project. The consultant, after meeting with staff and stakeholders, discussed and prepared the project concept plans. Two meetings were held to solicit input and comments from the general public and various interest groups.

The proposed Animal Shelter Facility will be approximately 12,000 square feet at build out. This project is the first phase of the Animal Shelter Facility and will include approximately 6,000 square feet and will include an office area, animal holding areas, storage, a get acquainted area, restroom, laundry room, intake areas, euthanasia room, and other site improvements to provide a fully functional shelter facility. Phase 2 will expand the shelter by increasing the animal holding areas and by providing other animal care amenities as needed. The modular building concept used for this project provides the option to construct future expansions of this facility in one or multiple phases in a cost effective manner.

Mr. Sharma introduced the architectural team and Bruce Playle provided a power point presentation outlining features of the project.

There is no impact to the General Fund. The Animal Shelter Project - CIP 71064 is a fully funded approved Capital Improvement Project in the FY 2012-13 budget.

Staff recommended that Council approve the concept plans for the Animal Shelter Facility which will enable the consultant to proceed with detailed design and preparation of construction documents.

Council Member Manne indicated he would like to see veterinary services included in Phase 1. Mr. Sharma indicated that possibility had not been considered at this point.

Mayor Pro Tem Maciel asked if the veterinary services meant the City was providing the facility or paying for the veterinary services. Gary Hampton, Police Chief, indicated the

area in Phase 2 for veterinary services represents a move to bring services to the animals versus bringing animals to veterinary services. Police Chief Hampton indicated the City currently contracts with various veterinaries in the City for services to animals in the City's care. Police Chief Hampton stated the plan is to provide spay and neuter services at the new facility; how those services will be provided has not been studied. Police Chief Hampton further stated the items identified in Phase 1 have been considered essential to the operation of the facility.

Mayor Pro Tem Maciel asked if the plan would work for Mr. Miller and staff. Mr. Miller stated yes.

Council Member Manne asked what a "cattery" was. Mr. Playle stated a cattery is a place to hold cats.

Mayor Ives asked if there were other holding facilities for animals other than dogs or cats for emergency services. Mr. Playle stated other cages are available where they could be housed.

Mayor Ives asked what the budget for this item was. Mr. Sharma indicated the approved budget was \$4.6 million. Mayor Ives asked if Phase 2 had a breakdown of costs, and specifically how much would the veterinary service cost. Mr. Sharma indicated preliminary cost estimates are \$7.8 million for the entire project. Chief Hampton stated it appeared that the veterinary area could be added in Phase 1 for approximately \$400,000 - \$600,000 in construction costs which does not cover equipment and operational costs.

Council Member Rickman asked staff if there was an area that could hold a larger animal. Mr. Miller outlined various options available until an appropriate rescue agency could respond.

Council Member Rickman offered a couple of suggestions such as naming rights for various areas in the facility and a web site to feature animals at the shelter.

Mayor Ives invited members of the public to address Council.

Arlene Robbins stated the City has needed a new animal shelter for years and hopes that the new site won't be too noisy. Ms. Robbins asked that Council approve the animal shelter plans.

Cathryn Rush stated she was glad the City will have a shelter to be proud of. Ms. Rush voiced concern that the veterinary services were part of Phase 2, indicating she knew many individuals who would be willing to donate or fundraise for that portion of the shelter.

Ben Peterson, Prologis, addressed Council in support of the project. Mr. Peterson apologized for not being a part of the process, asking that they be given an opportunity to discuss the site plan with staff especially regarding to access points and driveways. Mr. Peterson introduced Ryan George, the new manager who will be representing Prologis in the Tracy area.

Police Chief Hampton indicated the design presented to Council takes advantage of existing curb cuts and approaches present at the site. Police Chief Hampton stated a significant amount of community outreach has taken place and staff was challenged with strict timelines to meet expectations of the community. Police Chief Hampton indicated they were certainly willing to work with Prologis as a neighbor, but in order to meet deadlines approval at this meeting keeps the City on schedule.

Pam Summers, Animal Rescue of Tracy, addressed Council stating she was happy to see a new shelter coming to Tracy. Ms. Summers urged Council to push for the veterinary option in Phase 1.

Anne Marie Fuller addressed Council stating the new design is wise and addresses many safety issues encountered at the current shelter. Ms. Fuller urged Council to approve the design.

An animal lover and volunteer at the shelter addressed Council recommending that a plan be developed to have veterinary services included in Phase 1.

Mayor Ives asked for an estimated timetable. Mr. Sharma indicated design completion is scheduled for December 2013, bidding January 2014, award of contract in February 2014; construction completion by the end of October 2014; and ribbon cutting in November 2014.

Council Member Rickman stated it was a great design and thanked everyone who provided input on the project.

Mayor Ives stated he was glad the City has the money to build the facility and urged staff to find ways to build the shell for the veterinary services.

It was moved by Council Member Rickman and seconded by Council Member Manne to adopt Resolution 2013-094 approving the concept plans for the proposed Animal Shelter Facility – CIP 71064. Voice vote found all in favor; passed and so ordered.

5. ITEMS FROM THE AUDIENCE – Manuel Alvarez addressed Council concerning the lack of activities for youth. Mr. Alvarez suggested Council consider a youth center or a place for youth to show their art.
6. STAFF ITEMS
 - A. Receive and Accept the City Manager Informational Update - Leon Churchill, Jr., City Manager, provided the staff report. Council accepted the report.
7. COUNCIL ITEMS – Council Member Rickman reminded everyone that the Parks summer guide was available and offers classes for all ages.

Mayor Pro Tem Maciel indicated he attended a Delta Coalition meeting on Monday, June 17, 2013, and provided Council with a packet that was presented to the legislators.

8. ADJOURNMENT - It was moved by Council Member Rickman and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered.
Time: 10:25 p.m.

The above agenda was posted at the Tracy City Hall on June 13, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk



From Dave Helm
provided @ City Council Meeting
on 10/1/13

City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

CITY MANAGER'S OFFICE

MAIN 209.831.6000
FAX 209.831.6120
www.ci.tracy.ca.us

Memorandum

Date: May 25, 2012
To: Mayor and Council
From: R. Leon Churchill, Jr., City Manager
Subject: CBS News 13 Story on Airport Runway

I wanted to clarify facts aired on CBS News 13 Cast titled "Short Runway Hurting Tracy Business". This story aired yesterday, Thursday, May 24 and is found at the following internet link, <http://sacramento.cbslocal.com/2012/05/23/short-runway-hurting-tracy-airport-business/> It is important note that a Skyview Aviation employee was interviewed for the story when staff was not on-site nor aware of the potential story.

As you recall on May 15th council accepted a staff report on Airport Improvements and provided input to staff. The following Friday, May 17th, the Tracy Press wrote an article, "Council to Sort Out Runway". This article is the link to CBS News 13 and served as the starting point for the news desk.

At 12:30 p.m. Wednesday, May 23rd, City staff became aware of CBS News 13 reporters on the Airport property. A camera operator was observed taking pictures on the fuel-ramp (the area where aircraft stop to refuel) of the fuel tank farm. Airport Coordinator, Bruce Ludeman approached the man and asked that he leave the fuel area. The TSA considers the taking of photos of aircraft fuel storage tanks (22,000 gallons at Tracy Airport) a potential terrorist activity. The reporter then joined the discussion and despite their objections, both were asked to move back to the public areas for safety and security reasons.

During brief discussions, staff discovered the two of them were a Channel 13 news team and called the Parks & Community Services Department to speak to someone regarding the airport. Staff explained that Rod Buchanan was on vacation and other city staff members familiar with the airport were not immediately available.

Airport Coordinator, Bruce Ludeman than called, Brian Gregory, Channel 13's assignment-desk and found out his team's assignment was to obtain filmed-interviews

and additional film related to a "two-inch shortening of the runway". Bruce advised Brian that Rod was leading the investigation of the situation and developing a resolution-plan with the FAA, and that Rod would likely be pleased to talk to a reporter when he returned to the office on Monday.

As previously stated, an interview for the story took place prior to staff arriving at the airport. CBS 13 interviewed Ron Dement, an employee of Skyview Aviation, a private aeronautical services company that leases hanger office space in the airport.

There were several misrepresentations of information during the news story. Below are clarifications to points made in the newscast:

1. The "airport employee" interviewed is an employee of Skyview Aviation, not a city employee or authorized to speak on the City's behalf.
2. "Four thousand feet is the magic number the airport's runways need to be for some jet planes to be able to land". This is a very common limitation established by the aircraft-operator's insurance company – not the aircraft manufacturer. A few jets still land at Tracy but the owner/operator/pilot is risking an assumption of liability should an accident occur.
3. "The problem is that one runway is marked a few feet shy, while the other is just two inches short". The correct description is: the length of the runway as marked is 3,996 feet. The length of the pavement, as surveyed, is 3,999 feet, 10 inches.
4. "Business owners and the Tracy Air Association say it's no laughing matter". A more accurate statement is the Tracy Airport Association, a private association whose members are typically hangar-tenants or frequent users of the Airport, not Business Owners.
5. "They say the FAA has issued a notification to pilots about the runways". Rather, the City submitted to the FAA, a Notice to Airmen (NOTAM) that makes this important information regarding the accurate length of the runway available to pilots. Submitting a NOTAM enhances pilot safety and reduces the City's liability.
6. "According to Airmav.com, Tracy Airport jet fuel is priced the lowest in 40 miles. The owner says it's a response to the significant drop in business". A more accurate description of the fuel situation is that jet fuel sales are significantly lower than anticipated, given the low price.
7. "The city has promised to fix the problem". Rod Buchanan is investigating the situation, developing possible solutions, and working with the FAA to resolve the issue.

8. "Dement says there's a concern it will be classified as a small airport and receive fewer federal funds". The FAA allocates entitlement funds of \$150,000 yearly, to all airports regardless of their size. Allocations of discretionary funds are dependent upon an Airport's needs. During these depressed economic times, nearly all discretionary funds are allocated to airports like San Jose and San Francisco to fund the expansion of their Runway Safety Areas.

Staff expects to conclude research regarding the runway in two weeks. Therefore, a closed session with the City Council to discuss options may be requested for June 5, 2012. I anticipate a public announcement soon thereafter with Council's decision.

A seal coat of the runway will be completed by end of this calendar year. Funds are available, pending the completion of an FAA application. Mr. Buchanan is the lead staff on this effort.

If you have any further questions, please let me know.

Bruce Ludeman

4

From: Bruce Ludeman
Sent: Tuesday, January 22, 2013 4:18 PM
To: 'Steve.Stuhmer'
Cc: Rod Buchanan; Ed Lovell
Subject: RE: JEPPESEN

Steve,
Thanks for the update regarding runway lengths, but when I dropped by your office earlier today requesting an update on outstanding matters, I expected the update to speak of your intentions regarding payment of past-due amounts. I didn't want to mention the past-due amount in front of your staff, otherwise I would have made this request perfectly clear.

Can you please provide us with an update regarding your payment-intentions?

Regards,

Bruce

From: Steve.Stuhmer [<mailto:steve.stuhmer@gmail.com>]
Sent: Tuesday, January 22, 2013 2:16 PM
To: Rod Buchanan
Cc: Bruce Ludeman; Ed Lovell
Subject: Fwd: JEPPESEN

Rod,

I spoke with Jeppesen, the industry standard for aviation chart services. I received the below emails confirming Tracy Airport would be omitted from the Jeppesen data base if City Council were to reduce the runway length below 4,000' to accommodate the Ellis project. As discussed in our meeting last week, the NOTAM reducing the runway length to below 4,000' issued a week after we commenced operations last year, and remained in effect for the better part of 2012, all but eliminated our ability to market jet fuel, the profit center of the fueling business. A permanent reduction in runway length will jeopardize the long term viability and profitability of our fueling operation and significantly limit the growth potential of the airport.

I plan to attend the City Council meeting tonight and speak on the subject.

Best regards,

Steve

Begin forwarded message:

From: Nathan Cupps <Nathan.Cupps@jeppesen.com>
Date: January 22, 2013 1:19:04 PM PST
To: "Steve.Stuhmer" <steve.stuhmer@gmail.com>
Subject: RE: JEPPESEN

Steve,

That is confirmed. If an airport is less than 4000ft that airport will not be in the database; the reciprocal is likewise. Hopefully your airport does not make that decision for the reasons you have stated...

From: Bruce Ludeman
Sent: Tuesday, March 05, 2013 3:06 PM
To: Rod Buchanan
Cc: Ed Lovell
Subject: Stuhmer

Rod, Ed,
Although I was not asked directly to comment, here is what I think needs to be done to move forward.

Worse case:

If no commitment from council to maintain 4,000 foot runway, either renegotiate the lease with Steve or do a new RFP. If we want to renegotiate with Steve, I believe he will build some larger hangars and a modest restaurant, but the lease, the fees, the new-facilities, the staffing, and the availability of fuel trucks will be based on GA realities, not corporate jet growth. We can't expect a private company to invest another \$200K this year if they can't focus on building up jet/turbine traffic (expenses I estimate at \$50K fuel fee + \$72K staffing + \$26K fuel trucks + \$12K insurance + maybe another \$40K or more for maintenance, upgrades, fuel leak detection system, and SPCC plan).

Best case:

Council commits to maintaining 4,000 foot runway. Steve will fund the large hangars, a nice restaurant, and perform needed maintenance and upgrades to the fuel system. Since Steve is now in default, this is a timely opportunity to get some contractual commitments from Steve as to the dates those improvements will be started and completed, and perhaps obtain some additional financial performance guarantees.

If council is unable to commit to maintaining 4,000 foot runways, an alternative would be to negotiate an appropriately large reimbursement of Steve's total investment to be funded by land-developers (presuming land-developers would be the beneficiaries of a shortened runway).

Lastly:

Taking back the fuel services will require a large financial commitment from the City. Immediately the airport will likely need about \$75K to purchase fuel inventories and \$2-5K for additional insurance, and near-term (within 4-6 months) the airport will need another \$40K for fuel system maintenance and upgrades.

Staff fortunately is capable of taking on the resulting burdens of daily system tests, daily inventory management, customer assistance (not aircraft refueling), the preparation of monthly sales tax returns, obtaining hazardous materials and above-ground-storage tank permits, recurrent training for fuel system safety, and hazardous materials management. Staff will also commit to making themselves available for after-hours fuel deliveries and after-hours requests for refueling assistance.

Bruce Ludeman

From: Steve Stuhmer <steve.stuhmer@gmail.com>
Sent: Friday, April 12, 2013 9:51 AM
To: Rod Buchanan; Andrew Malik
Subject: FSO Agreement

Rod and Andrew,

TAA, Skyview, Surland and Tracy Air Center are all now in accord with the overall direction and vision for development of TCY as a boutique GA airport. I'm sure most thought that bringing all the stakeholders together on the same page was going to be quite a challenge, but it appears we have accomplished just that.

Modifying the FSO agreement to fit this new direction is an integral part of the unification process and a positive step forward for all parties involved. The consensus among the parties is that we need to get this matter before City Council as soon as possible so we can set in motion the collective efforts of the now unified group.

I would like to meet with both of you Tuesday morning if your schedules permit to review and finalize the FSO agreement.

Thanks gentlemen. I look forward to hearing from you.

Best regards,

Steve

Bruce Ludeman

7

From: Iserpa <Iserpa@surlandcompanies.com>
Sent: Friday, April 26, 2013 10:07 AM
To: Rod Buchanan
Cc: clong
Subject: Agreement Terms

Rod,

We have come up with a direction and some thoughts on how we would like to proceed. The basic concept is as follows:

1. All fuel flows would be 7 cents.
2. Surland deposits \$50k per year for the 1st 5 years and receives the fuel flowage revenue.
3. Surland deposits are reduced each of the next 5 years and receives the fuel flowage revenue.
4. Actions which the City needs to take should be memorialized in the agreement.

Will send over a memo today detailing the concepts above.

The idea behind the reduction in the 2nd five years is that the fuel revenue model will never be self sustaining, and we are simply in a subsidy situation for the Airport and the Airport will need to look for revenue in other area's. We had never planned on the 2nd 5 year term, but want to accommodate and make concessions to make this work for everyone.

We have spoken to Steve and explained to him that the fuel flowage fees must be 7 cents on all fuel flowage, and will provide him with a copy of the memo as well.

5/8/13
WLE
1:00pm

AIRPORT AGREEMENT MEMORANDUM

TO: ROD BUCHANAN
FROM: LES SERPA
SUBJECT: SURLAND AIRPORT ADVANCE FUNDING AGREEMENT
DATE: APRIL 26, 2013
CC:

Rod,

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 Surland.

First:

Surland 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 Surland, without any offset, credit or administrative fee, monthly as a reimbursement.

Third:

The following language shall be part of the agreement between Surland 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 Surland, 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 Surland 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 Surland's obligation to assist in funding the shortfall shall terminate immediately without any prior notice.

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Sandra Edwards

From: Ed Lovell
Sent: Thursday, June 06, 2013 9:12 AM
To: brandley@rwbrandley.com
Subject: Tracy Grant Application

Importance: High

Reinard,
Rod would like the 4000' length changed to say 3997' just to be safe. Please make the necessary adjustments on the application. Thanks.

Ed Lovell
Management Analyst II

City of Tracy, Public Works
Tracy Transit Station
50 E. 6th Street
Tracy, CA 95376

(209) 831-6204 direct
(209) 831-6218 fax

ed.lovell@ci.tracy.ca.us

<http://www.ci.tracy.ca.us>

12
APPROVED ON
6-18-2013
June 18, 2013

AGENDA ITEM 1.D

SET AT 3,997 FEET.

REQUEST

**RECEIVE UPDATE ON THE TRACY MUNICIPAL AIRPORT PAVEMENT PROJECT
AND CONFIRM STAFF DIRECTION ON RUNWAY DESIGN**

EXECUTIVE SUMMARY

At the January 17, 2012 Council Meeting, Council directed staff to begin the process to address the pavement issues at the Tracy Municipal Airport. On October 2, 2012, Council approved hiring an airport consultant to assist with these efforts. A Pavement Evaluation Study has been completed for the site, and the design for a pavement rehabilitation project is currently underway. Through the design process, certain runway changes are anticipated.

DISCUSSION

On October 18, 2011, City Council held a joint meeting with the Transportation Advisory Commission. During this meeting a list of items were presented to Council as potential improvement items for the Tracy Municipal Airport. One of those items was to confirm the length of Runway 12/30. Staff surveyed Runway 12/30 and found that the runway physical length was actually 3,999 feet and if minor patching was completed the runways could be calculated at 4,000 feet. Additionally staff found that Runway 12/30 had also been mis-marked during the past pavement slurry seal project. The actual marked distance was calculated at 3,996 feet. A NOTAM (Notice to Airmen) was immediately filed on January 19, 2012 to alert pilots to those conditions.

On January 17, 2012, staff presented an update on the Airport Improvement Options. At this meeting, City Council was notified of the above conditions and actions by staff relative to Runway 12/30.

On May 15, 2012, staff presented another update on the Airport Improvement Options. At this meeting, City Council directed staff to work towards returning Runway 12/30 to 4,000 feet. On October 2, 2012, staff completed the necessary work to return the Runway 12/30 to 4,000 feet and cancelled the previous NOTAM.

Since that time staff has been pursuing grant funding from the Federal Aviation Administration to permanently rehabilitate all pavement surfaces at the Tracy Municipal Airport.

Reinard W. Brandley, consulting Airport Engineer, was hired by the City as an airport consultant. A Pavement Evaluation Study for the Tracy Airport has been completed indicating the need for pavement rehabilitation and the design is currently underway for all the pavement areas at the airport. The airport pavement project is important to achieve the goal of a higher quality airport to support commerce and recreational aviation needs.

Through the design process, the Federal Aviation Administration (FAA) has informed the City that the airport's current runway and taxiway widths of 100 feet and 40 feet respectively, exceed the FAA standard widths that are available for funding for our airport classification. FAA grant funding will only cover a width of 75 feet for the runways and 35 feet for the taxiways. If the City wishes to keep the runways and taxiways at the current widths, the City would have to pay the difference. Staff recommends adjusting the pavement design to meet the FAA standards in order to achieve full funding from the FAA.

The runways are being completely reconstructed and brought up to current standards, including safety standards. It is anticipated that through the pavement design process, runway 12/30 will now be 75 feet wide and 3,997 feet long in the final design.

The overall impact of the above runway changes to the airport operations is minimal. A runway length of 3,997 is compatible with existing operations and planned development at the airport. The above changes will alter the land use surrounding the airport. The 2011 California Airport Land Use Planning Handbook (CALUPH) designates different land use planning guidelines for development surrounding airports based in part on runway length as categorized below:

- Less than 4,000': Small Airport
- 4,001' to 5,999: Medium Airport
- 6,000' or more: Long Airport

In 2009, the San Joaquin Council of Governments, acting as the Airport Land Use Commission (ALUC), determined that the Tracy Municipal Airport (TMA) did not meet the criteria for a "Medium" or "Small" Airport designation. The ALUC determined that a hybrid land use planning designation would be appropriate for the TMA. However, if the runway is changed as indicated above, then the TMA would meet the length criteria for a Small Airport designation as outlined in the CALUPH instead of the existing hybrid from the ALUC. Such a designation would be pursued through a request to the ALUC, and if approved, would change the land use surrounding the airport to be in alignment with a Small Airport designation.

Following are the next steps and timelines for the pavement project:

- Basic Design of the Pavement Project: COMPLETE
- Notice of Available Funding by FAA: July/August 2013
- Final Design of the Pavement Project: Two weeks from notice of funding by FAA
- Construction Bid Documents Issued: Three weeks from notice of funding by FAA
- Award Construction Contract: Six weeks from release of RFP
- Construction Completed: Five months from contract award

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the City's strategic plans.

FISCAL IMPACT

As part of the Fiscal Year 2013/14 CIP budget, Council has already approved matching funds for the first phase of the pavement project. Some potential reduction in project costs may result from the width reduction. It is unknown at this time how much FAA grant funding, if any, will be available to the City of Tracy. The City will receive notification of funding status in July/August timeframe.

RECOMMENDATION

Staff recommends that the City Council receive the update on the Tracy Municipal Airport Pavement Project and confirm staff direction on runway design.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

Approved by: R. Leon Churchill Jr., City Manager

APPROVED ON 15
6-18-2013

June 18, 2013

AGENDA ITEM 1.E

REQUEST

APPROVE AMENDMENT NUMBER 1 TO FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN THE CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER, AND AUTHORIZE THE MAYOR TO SIGN THE AMENDMENT

EXECUTIVE SUMMARY

The City of Tracy currently has a Fuel Sales Operator and Fuel Facility Lease Agreement (Agreement) with Turlock Air Center, LLC doing business as Tracy Air Center. The Agreement contains terms and conditions related to selling aviation fuel and the leasing of the city-owned fuel facility at the Airport. The Agreement was approved by City Council on October 18, 2011 pursuant to Resolution No. 2011-195.

This amendment modifies specific terms of the Agreement for the purpose of clarifying certain sections of the agreement and modifying certain payment terms.

DISCUSSION

This amendment establishes a new increased fuel flowage fee, which is the rate for which the minimum annual payment of \$50,000 is based. This amendment also removes the City established requirement to have fuel prices at a certain level in relation to surrounding airports.

The amendment modifies the lease extension option so that the lessee has the option to extend the agreement so long as there is no uncured default. A deadline was also set for the lessee to pay for the recoverable fuel that was transferred from the City at the beginning of the lease. The language for returning a portion of the security deposit was also changed so that the lessee will get a portion of the deposit back as long as there is no uncured default by December 31, 2013. The portion of the security deposit returned back to the lessee will be used to pay for a portion of the recoverable fuel that was transferred at the beginning of the lease. The lessee will also have a deadline in which to pay the \$3,000 owed for installation of an electrical meter.

Added to the amendment was a section stating that if the City decides to move the fuel facility to another location, that the City would be responsible for all costs of doing so.

STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the City's strategic plans.

FISCAL IMPACT

The changes in this agreement do not change the minimum annual payment of \$50,000 to the City which is part of the budgeted revenue for the Airport Fund.

RECOMMENDATION

That City Council, by resolution, approves Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, and authorizes the Mayor to sign the Amendment.

Prepared by: Ed Lovell, Management Analyst II

Reviewed by: Rod Buchanan, Interim Director of Public Works

Approved by: R. Leon Churchill, Jr., City Manager

ATTACHMENT:

Exhibit "A" – Amendment Number 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement

**CITY OF TRACY
AMENDMENT NO. 1 TO
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
BETWEEN THE
CITY OF TRACY
AND
TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER**

This Amendment No. 1 (hereinafter "Amendment") to the FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER is made and entered into by and between the City of Tracy, a municipal corporation (hereinafter "City"), and Turlock Air Center, LLC doing business as Tracy Air Center (hereinafter "Lessee").

RECITALS

- A.** City and Lessee entered into a FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT BETWEEN CITY OF TRACY AND TURLOCK AIR CENTER, LLC DOING BUSINESS AS TRACY AIR CENTER (hereinafter "AGREEMENT") which was approved by the City Council on October 18, 2011, pursuant to Resolution No. 2011-195;
- B.** City and Lessee recognize that changes have occurred at the Airport and that additional changes will likely occur in the future, and wish to amend certain sections of the Agreement to accommodate the mutual needs of the parties; and
- C.** This Amendment therefore modifies specific terms of the Agreement for the purpose of clarifying certain sections of the Agreement and modifying certain payment terms, to facilitate the continued performance of the Agreement by both parties.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation By Reference.** This Amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.
- 2. Terms of Amendment.** The Agreement is modified as stated herein, effective upon all parties executing this Amendment.

Section 3 of the Agreement, DEFINITIONS, Fuel Services, is hereby amended to read as follows: "Fuel Services: All activities associated with the purchasing, receiving, storage and sale of Aviation Fuel, and when requested by a fuel customer, the dispensing of Aviation Fuel into Aircraft."

The following definitions are hereby added to Section 3:

Default – Failure without legal excuse to perform any promise or obligation in this Agreement within the time or in the manner set forth herein. Any DEFAULT that is not timely remedied or cured pursuant to the provisions of Section 24 shall be deemed a BREACH.

Breach – Doing any act or failing without legal excuse to perform the duties and obligations in the Agreement. A DEFAULT that has not been cured pursuant to Section 24 constitutes a BREACH.

Section 7 of the Agreement is hereby amended to read as follows: "TERM: The Agreement period is twenty-five years and shall commence on the 1st day of January 2012 (hereinafter "Commencement Date"), and run through the 31st day of December 2036.

Lessee may, so long as it is not in uncured default under Section 24, extend the agreement up to three times for a period of ten years each time with the first option extension period running from the 1st day of January 2037, through the 31st day of December 2046; the second option extension period running from the 1st day of January 2047, through the 31st day of December 2056; and the third option extension period running from the 1st day of January 2057, through the 31st day of December 2066. Lessee shall provide City with written notification of the Lessee's election to extend this Agreement as set forth herein at least six months prior to the lease expiration date."

Section 12 of the Agreement is hereby amended to read as follows: "OPERATION OF FUEL FACILITY: Lessee shall continuously use the Fuel Facility for the uses specified in this Agreement. If the premises are totally or partially relocated, destroyed, or condemned, or if full use by Lessee is unavailable, to the extent not caused in any part by the Lessee, (1) Lessee shall be entitled to a pro rata reduction in Rent during all such periods for the affected areas only, and (2) Lessee shall continue operation of its business at the premises to the extent reasonably practical during any period of reconstruction.

If the City decides to move or relocate the Fuel Facility to any other location on the Airport, the City will be responsible for all the costs and expenses for such relocation.

The maintenance and operation of the Fuel Facility shall at all times during the term of this Agreement be under the direct supervision of Lessee or a competent representative of the Lessee, who shall be subject at all times to the direction and control of the Lessee."

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
Page 3 of 9

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Section 18.1 of the Agreement is hereby amended to read as follows: "Non-exclusive Privileges: The following shall apply to the operation and maintenance by Lessee of the Fuel Facility. Lessee shall have the non-exclusive privilege of offering for sale, selling and dispensing Aviation Fuels and lubricants on the Airport. The City shall not grant another operator the right to provide the same or similar services except on the same or substantially the same terms, indexed and adjusted for changes in inflation and prevailing economic conditions at the time."

Section 18.4 "Fuel Prices" is hereby deleted from the Agreement.

Section 18.6 of the Agreement is hereby amended to read as follows: "Fuel Handling and Equipment: In regards to delivery of Aviation Fuel to customers, Lessee shall provide Self-Service Fueling from the existing dispensers located on the Fuel Island. Lessee may also provide Pilot-Assisted Fueling from the existing dispensers and Full-Service Jet-A and AvGas Fueling from fuel trucks, and any such fuel trucks will be the sole responsibility of the Lessee. Such operation is permitted when Lessee is in compliance with currently required licenses, permits, and applicable regulations. Each fuel truck shall have an operating two-way VHF radio permitting communication with Aircraft on the ground, and such vehicles shall be operated on the Airport only under the procedures and controls established by the Airport Manager. Aircraft fuel trucks shall be equipped with metering devices that meet all applicable regulatory measures. Each fuel truck shall be equipped and maintained to comply with all applicable safety and fire prevention requirements, standards, and regulatory measures including without limitation, those prescribed by: State of California Fire Code and local Fire Department, National Fire Protection Association (NFPA) Codes, local and state environmental and health departments, and applicable FAA Advisory Circulars (AC) including AC00-34 "Aircraft Ground Handling and Servicing" and AC 150/5210-5 "Painting, Marking and Lighting of Vehicles Used on an Airport".

Section 19.1 of the Agreement is hereby amended to read as follows: "19.1 Fuel Facility Use Fee: In consideration for the continuous maintenance, operation, repairs, and upgrades by Lessee of the City owned Fuel Facility, Lessee shall not be required to pay to City a Fuel Facility Use Fee.

Section 19.2 of the Agreement is hereby amended to read as follows: "Fuel Flowage Fee: For the privilege of selling Aviation Fuel at the Airport, Lessee shall pay the City a Fuel Flowage Fee of seven cents (\$0.07) per gallon on all Aviation Fuel sold. Payment due City in this Section shall be credited monthly against Lessee's prepaid Minimum Annual Payment Guarantee (Section 20.1), and after the aggregate amount of the rent and fees required under this Agreement in any given year exceeds Lessee's prepaid Minimum Annual Payment Guarantee, Lessee shall without demand, pay such excess amount on or before fifteen days following the end of the preceding month throughout the term of this Agreement and any

extensions. Lessee shall also provide, on a monthly basis, a report of Lessee's fuel flowage during the preceding month, which shall include a copy of all BOE sales tax reports filed with the State of California during the preceding month, and a copy of each delivery receipt or bill of lading from Lessee's fuel distributor, showing the gravity-corrected and recalibrated net quantity delivered during the preceding month. Any disputes or controversies between the parties with respect to this Section shall be resolved in accordance with the provisions of Section 26 LEGAL ACTION AND MEDIATION of this Agreement."

Section 20.1 of the Agreement is hereby amended to read as follows: "Minimum Annual Payment Guarantee: Lessee will pay the greater of either the total of the Fuel Flowage Fees described in 19.2 above, or a minimum annual payment of \$50,000, paid on or before of April 1 of the current year for each 12 month period beginning January 1, 2013. In the event the total of all payments specified in 19.2 is less than \$50,000 in any given 12 month period beginning on January 1 of any given year, Lessee shall be allowed to accrue the difference between the actual payment and \$50,000 and recoup that difference in future years to the extent that the actual Fuel Flowage Fee exceeds \$50,000. But in no case shall the City receive less than \$50,000, paid in advance, in any single period, nor will the City have any responsibility to pay Lessee for un-recouped fees at the end of the term of the Agreement. It shall be the responsibility of Lessee to provide the City with a report of the prior year's payments made during the preceding calendar year within fifteen days following the end of the preceding year."

Section 20.2 of the Agreement is hereby amended to read as follows: "Late Payment of Rent and Fees: In the event Lessee fails to pay City any Rent or Fees due under this Agreement within five business days after such Rent or Fee is due, regardless of notification from City, Lessee shall pay to City a late charge of One Hundred and No/100 Dollars (\$100) per occurrence, plus interest on said unpaid balance at a rate of one percent simple interest per month, from the date said payment was due and payable until paid in full. Lessee shall pay said late charge on or before the next installment of Rent or Fee is due. City and Lessee hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix the City's actual damage from any late payments and, thus, that Lessee shall pay as liquidated damages to City the late charge specified in this section, which is the result of the parties' reasonable endeavor to estimate fair average compensation therefore. Acceptance of any late charge shall not constitute a waiver of the Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to the City. If Lessee fails to pay its monthly or annual payments within 10 calendar days after such payment is due, regardless of notification from City, Lessee shall be in default of this Agreement."

CITY OF TRACY
Amendment No. 1 to
FUEL SALES OPERATOR AND FUEL FACILITY LEASE AGREEMENT
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Section 20.5 of the Agreement is hereby amended to read as follows: "Security Deposit: Upon execution of this Agreement, Lessee shall pay to City the sum of Twenty Thousand and No/100 Dollars (\$20,000) in cash as security (hereinafter "Security Deposit") for the faithful performance of the terms, covenants, and conditions of this Agreement. If Lessee performs without uncured default for the entire first two years, \$14,000 of the deposit will be refunded subject to Section 20.6. If Lessee is in default of this Agreement, City may in its sole discretion use the Security Deposit, or any portion of it, to cure the default or compensate City for damages sustained by City resulting from the Lessee's default. Upon demand by the City, Lessee shall immediately pay to City a sum equal to the portion of the Security Deposit expended or applied by City as provided in this subsection so as to maintain the Security Deposit in the sum initially deposited. Upon final accounting by City, any balance of said deposit shall be refunded to Lessee, without interest."

Section 20.6 of the Agreement is hereby amended to read as follows: "Transfer of Inventory at Beginning and End of Lease: On January 1, 2012, 8,510 gallons of recoverable Aviation Fuel was transferred to Lessee at a total value, based on Last-In-First-Out (LIFO), of \$34,953.80. In addition, 3,712 gallons of unrecoverable Aviation Fuel was transferred to Lessee at a total value of \$14,910.51. Recoverable fuel is the Aviation Fuel inside the fuel tanks that is above the fuel tank outlets and can be pumped out of the tanks and sold. Unrecoverable fuel is the Aviation Fuel that is below the fuel tank outlets and cannot be pumped out of the tanks. Lessee agrees to allow the City to use the deposit refund in the amount of \$14,000, as stated in Section 20.5, as the Aviation fuel payment when it is due Lessee. Lessee agrees to pay the remaining amount \$20,953.81 at time of entering into a restaurant or corporate hangar lease agreement, or by January 1, 2023, whichever occurs sooner. Upon termination of the Agreement, the City shall purchase the existing Aviation Fuel inventory levels from Lessee, less 3,712 gallons of unrecoverable fuel, with payment due to Lessee within thirty days. The price of the recoverable Aviation Fuel inventory will be based on the LIFO price, but in no event shall the purchase price exceed the wholesale price of fuel on the date of transfer. After termination, and after final accounting by the City, any balance remaining of such payment shall be paid to the Lessee, without interest."

Section 21.4.2 of the Agreement is hereby amended to read as follows: "City installed an electric meter for Lessee and Lessee agrees to pay City \$3,000 (three-thousand dollars), for modification to the electrical service as described above at time of entering into a restaurant or corporate hangar lease agreement with City, or by January 1, 2018, whichever occurs sooner."

Section 21.4.10 of the Agreement is hereby amended to read as follows: "Lessee may install an additional 12,000 gallon fuel tank, at Lessee's sole option and expense. If installation of the additional fuel tank requires use of Airport land other

than that shown on the Fuel Facility Diagram, Lessee shall pay an additional Fuel Facility Ground Lease Fee on a per square foot basis as described in Section 19.3.

Section 24 of the Agreement is hereby amended to change its heading to the following: "DEFAULT AND REMEDIES:"

Section 24.1 of the Agreement is hereby amended to change its heading to the following: "Default by Lessee:"

Section 24.1.1 of the Agreement is hereby amended to read as follows: "The Lessee's failure to pay the Rent or Fees in accordance with the terms of this Agreement.

Section 24.2 of the Agreement is hereby amended to read as follows: "**Right of Reentry Upon Uncured Default:** Upon the issuance of an unlawful detainer by a court of competent jurisdiction, the City, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and Property from the Fuel Facility; such Property may be removed and stored in a public warehouse or elsewhere at the cost of, with cost not exceeding the market rate cost charged by public storage facilities and reasonable moving expenses in the City of Tracy, and for the account of, the Lessee. Should City elect to re-enter as provided herein pursuant to legal proceedings, it may either terminate this Agreement or relet the Fuel Facility and Improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this Agreement) and such rental or re-rental and upon such other terms and conditions as City in its sole discretion may deem advisable, with the right to make alterations and repairs to Fuel Facility and Improvements."

Section 24.4 of the Agreement is hereby amended to read as follows: "**Waiver of Default:** No default of this Agreement may be waived except by the written consent of the City. Any waiver by City of any default by Lessee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent default by Lessee of either the same or a different provision of this Agreement. Forbearance or indulgence by the City, in any regard, shall not constitute a waiver of any requirement under this Agreement, and City shall be entitled to invoke any remedy available to it in equity or by law, despite such forbearance or indulgence."

Section 24.1.7 of the Agreement is hereby amended to read as follows: "The Lessee's failure, after five calendar days written notice thereof, to repair mechanical or other problems which prevent customers from obtaining Fuel Services (either AvGas or Jet Fuel) in accordance with the terms of this Agreement."

Section 24.7 is added to the Agreement to read as follows: "Lessee's Right to Cure Defaults: If Lessee is in default of any provision of this Agreement, City shall provide Lessee with a written notice of default wherein City must describe the specific default and advise Lessee to cure the same within 30 calendar days after receipt of the notice. Should Lessee fail to cure the default within 30 calendar days after the written notice is sent by City, City may elect to terminate this Agreement. However, if the subject default cannot be cured within 30 calendar days by the exercise of due diligence by Lessee, City may elect to not terminate this Agreement if City agrees that Lessee has taken all necessary steps to begin the cure of such default so as to effect said cure as soon as feasible after the expiration of such 30 calendar day period."

Section 25.1 of the Agreement is hereby amended to read as follows:
"Assignment: This Agreement, or any part thereof, shall not be assigned or transferred by Lessee other than to an Entity controlled by the Lessee, by process or operation of law or in any other manner, without the prior written consent of City. No assignee for the benefit of the Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this section. Lessee agrees that City may hypothecate, pledge, assign, or transfer this Agreement for any lawful purpose. Lessee shall not enter into agreements with others whereby others share in the fueling privileges or the services herein authorized without the prior written consent of the City. Any assignment, encumbrance, or Sublease without the City's consent shall be voidable and, at the City's election, shall constitute a default. No consent to any assignment, encumbrance, or Sublease shall constitute a further waiver of the provisions of this paragraph. If Lessee requests City to consent to a proposed assignment, the proposed assignee must demonstrate at least comparable professional competence and qualifications as the Lessee, and Lessee shall pay to the City, whether or not consent is ultimately given, the City's reasonable administrative costs, including costs for staff and attorney review incurred in connection with each such request. One percent (1%) of any sums to be paid by an assignee to the Lessee, other than to an Entity controlled by the Lessee, in consideration of the assignment of this Agreement shall be paid to the City."

Section 25.2 of the Agreement is hereby amended to read as follows: "The Lessee's Right to Sublease: Lessee shall have the right to Sublease a portion of the Fuel Facility space, subject to the City's written consent, which will not unreasonably be withheld; provided however, that the term of any Sublease shall not extend beyond the term of this Agreement; any and all Subleases shall be expressly made subject to all of the terms, covenants, and conditions of this Agreement, and any sublessee shall be required to comply with the Airport Rules and Regulations, or any subsequent resolutions passed by City Council. Lessee may sublease space only for the purposes to which City agrees in writing. The Commercial Aeronautical Services and business purpose shall be clearly stated in the Sublease and the

sublessee shall be limited to those activities and business purposes. In the case of a partial Sublease, Lessee shall further specify that the operation is under the direct supervision and guidance of Lessee and subject to the terms and conditions of the Agreement in effect between Lessee and the City. Lessee shall provide ground space, facilities, and accommodations sufficient for each of its permitted activities. Lessee immediately and irrevocably assigns to the City, as security for the Lessee's obligations under this Agreement, all Rent from any subletting of all or a part of the premises as permitted by this Agreement, and the City, as assignee and as attorney in- fact for the Lessee, or a receiver for Lessee appointed on the City's application, may collect such Rent due subsequent to the Lessee's default and apply it toward the Lessee's obligations under this Agreement with any excess amounts collected returned to the Lessee; except that, until the occurrence of an act of default by Lessee or sublessee, Lessee shall have the right to collect such Rent."

Section 26.1 of the Agreement is hereby amended to read as follows: "Legal Action and Alternative Dispute Resolution: If any dispute arises between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, the parties will first attempt to resolve the dispute through informal discussions. In the event a dispute cannot be resolved in this manner within 30 days, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement. No action arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person or Entity not a party to this Agreement unless the United States of America is a necessary party. In the event of litigation, the prevailing party shall recover reasonable costs of such proceedings from the non-prevailing party."

Section 28.7 of the Agreement is hereby amended to read as follows: "Lessee Office: For the purposes of providing fuel truck services as identified in the Agreement, City will provide Lessee with the use of Airport office "4-6", in an AS IS condition (as shown on Figure 3), for up to two Lessee employees for a period of five years from the Commencement Date. The cost of installing and/or providing utilities will be at Lessee's expense."

Section 28.8 "Hangar Rental Services" is deleted from the Agreement.

3. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirements of the Agreement.
4. **Severability.** In the event any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in full force and effect.
5. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute

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this Amendment on behalf of the respective legal entities of the Lessee and the City.
This Amendment shall inure to the benefit of and be binding upon the parties
thereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the
terms set forth herein.

CITY OF TRACY

Turlock Air Center, LLC

By: _____

By: _____

Brent H. Ives

Stephen S. Stuhmer

Title: Mayor

Title: Managing Member

Date: _____

Date: 6-13-13

Attest:

By: _____

Sandra Edwards

Title: City Clerk

Date: _____

Approved as to form

By: _____

Daniel G. Sodergren

Title: City Attorney

Date: _____

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SURLAND COMMUNITIES, LLC
1634 EYE STREET, N.W., SUITE 205
WASHINGTON, DC 20006

65-329/550 1083
DATE June 19 2013

PAY TO THE ORDER OF City of Troy \$ 50,000.00
Fifty thousand ^{xx} _{xx} DOLLARS

EAGLEBANK BETHESDA, MD 20814
www.eaglebank.com

[Signature]
AUTHORIZED SIGNATURE



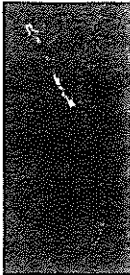
FOR ALUCP 2009

⑈001083⑈ ⑆055003298⑆ 0200146629⑈

Surland - Turlock Air
Fuel Flowage Fee
Jan 1 - Dec 31 2013

361-2403-024-05801

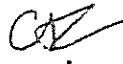
RTP



Transmittal

DATE: July 2, 2013

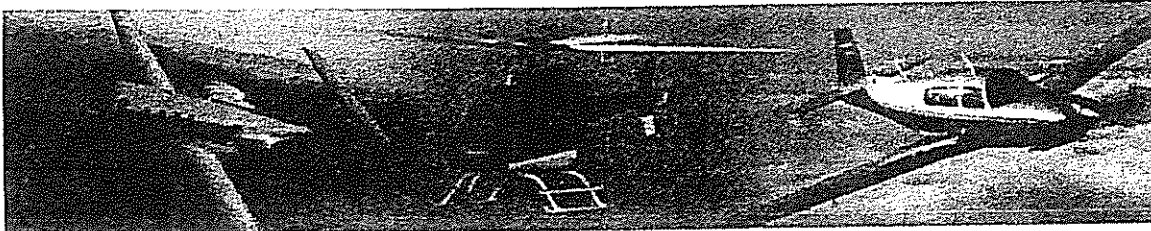
TO: Jenny Haruyama
Director of Finance and Administrative Services
City of Tracy Finance Department
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

FROM: Chris Long 
Surland Companies

RE: Fuel Sales Operator and Fuel Facility Lease Agreement
between the City of Tracy and Turlock Air Center

THE FOLLOWING DOCUMENT(S) ARE ENCLOSED:

Enclosed is a check for \$50,000 (Fifty Thousand Dollars) to the City of Tracy, as payment for the Minimum Annual Payment Guarantee for calendar year 2013, per the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center.



HAND DELIVERED

July 1, 2013

Daniel G. Sodergren
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA. 95376

Re: Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center

Dear Mr. Sodergren,

With this letter and attached check, and according to the terms of Section 20.1 of Amendment No. 1 to the Fuel Sales Operator and Fuel Facility Lease Agreement between the City of Tracy and Turlock Air Center, LLC doing business as Tracy Air Center, payment of the Minimum Annual Payment Guarantee in the amount of \$50,000 (Fifty Thousand Dollars) for calendar year 2013, is hereby remitted and delivered to the City of Tracy.

Please contact me if you have any questions.

Sincerely,

Stephen S. Stuhmer
Turlock Air Center, LLC
Title: Managing Member

TRACY CITY COUNCIL	SPECIAL MEETING MINUTES
August 6, 2013, 6:00 p.m.	
City Council Chambers, 333 Civic Center Plaza	Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 6:00 p.m., and led the Pledge of Allegiance.

The invocation was provided by Pastor Scott McFarland, Journey Christian Church.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.

1. CONSENT CALENDAR - Following the removal of items 1-D, 1-G and 1-H, it was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to adopt the consent calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of June 4 and June 18, 2013, closed session minutes of June 4 and June 18, 2013, and special meeting minutes of June 18, 2013, were approved.
 - B. Approval of an Agreement with the Tracy Unified School District (TUSD) and Authorization for the Mayor to Execute the Agreement; Accept Funding for Drug Abuse And Resistance Program (DARE) to be used for Supplies, T-Shirts, and Graduation Expenses for Fiscal Year 2013-14, in the Amount of \$10,000 – Resolution 2013-108 approved the agreement.
 - C. Authorize the Appointment of Six Youth Commissioners to the Youth Advisory Commission – Resolution 2013-109 authorized the appointments.
 - E. Rescind Resolution 2013-076, Approve the Revised Lathrop-Tracy Purchase, Sale and Amendment Agreement, Authorize the Mayor to Execute the Agreement, Authorize a Supplemental Appropriation from the Wastewater Fund and Establish a Loan to the Water Fund in the Amount of \$5 Million – Resolution 2013-110 rescinded Resolution 2013-076 and approved the revised agreement.
 - F. Authorization of Amendment No. 22 to Professional Services Agreement No. CH8 with CH2M Hill for Preparation of Wastewater Treatment Plant 2013-15 NPDES Permit Studies and Authorization for the Mayor to Execute the Amendment – Resolution 2013-111 authorized the amendment.
 - I. Award A Professional Services Agreement (PSA) No. DE 2 with Dokken Engineering to Provide Professional Services to Prepare Project Approval and Environmental Documents (PA & ED) for the I-205 / Chrisman Road New Interchange Project CIP 73109, Federal No. HPLULN-5192 (034), for a Not-to-Exceed Amount of \$826,919, Authorize the Director of Development Services to Acquire Additional Services if Needed up to an Amount of \$80,000, Authorize Transfer of \$239,838 from CIP 73014 to 73109, and Authorize the Mayor to Execute the Agreement – Resolution 2013-112 awarded the agreement.

- J. Acceptance of the Jackson Alley and 9th Street Storm Drainage Improvement CIP 73134A, Completed by Extreme Excavation of Tracy, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-113 accepted the project.
- K. Acceptance of the Monitoring Wells Abandonment Project – CIP 71033, Completed by Technicon Engineering Services, Inc., of Fresno, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2013-114 accepted the project.
- L. Rescind Resolution 2013-077 and Approve Four Reimbursement Agreements with Cordes Ranch Property Owners for the Acquisition of Water Supply – Resolution 2013-115 rescinded Resolution 2013-077 and approved the agreements.
- M. Approval of Amendment Number Four to the Professional Services Agreement with Design, Community and Environment, Inc. for the Preparation of an Environmental Impact Report, Assistance with the Preparation of a Specific Plan and Annexation for the Cordes Ranch Specific Plan Project – Resolution 2013-116 approved Amendment Four.
- N. Approval of a Real Property Purchase Agreement with Maria O. Silva Revocable Trust and Bernadine (A.K.A. Bernardine) Silva for Acquisition of the Right-of-Way for a Storm Drainage Channel in the North East Industrial (NEI) Area and Authorize the Mayor to Execute the Agreement – Resolution 2013-117 approved the agreement.
- D. Approval of a Wholesale Water Agreement Between Byron Bethany Irrigation District and the City of Tracy for Water Supply for Tracy Hills, Find the CEQA Negative Declaration Adequate for the City's Use, and Authorize the Mayor to Execute the Agreement – Steve Bayley, Project Specialist, provided the staff report. The subject agreement provides water supply for a portion of the Tracy Hills Specific Plan area. This land was annexed into the City in 1998 and was annexed into the Byron Bethany Irrigation District (BBID) in 1999. The subject agreement, in conjunction with a water exchange agreement between BBID and the US Bureau of Reclamation (USBR), will provide for BBID's water to be pumped into the Delta-Mendota Canal (DMC) and delivered to the City's John Jones Water Treatment Plant.

BBID will construct the necessary pump station and pipeline between their facilities and the DMC. Water will then be pumped into the DMC, conveyed to Tracy and, after treatment, potable water will be pumped to serve the Tracy Hills development. The agreement provides for delivery of up to 4,500 acre-feet per year. Delivery of the water is to be scheduled through the USBR and is subject to conveyance capacity being available in the DMC. The agreement has a term of approximately 40 years, through February 28, 2053.

BBID is the lead agency for CEQA and has prepared and adopted a Negative Declaration.

There is no fiscal impact to the General Fund. The City, through water rates, will fund maintenance of the BBID pump station and will pay for the delivered

water. Staff recommended that Council approve the Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy, find the CEQA negative declaration adequate for the City's use, and authorize the Mayor to execute the agreement.

Mayor Ives invited members of the public to address Council on the item.

Dave Anderson addressed Council voicing concerns that the development will be in existence long past the 40 year contract. Mr. Anderson asked where the water could come from after 40 years. Mr. Bayley indicated staff considered the water source to be reliable and stated a contract cannot be negotiated into perpetuity. Mr. Bayley added that the City has successive rights of renewal on the agreement.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to adopt Resolution 2013-118 approving a Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy for Water Supply for Tracy Hills, finding the CEQA Negative Declaration Adequate for the City's use, and authorizing the Mayor to execute the Agreement. Voice vote found all in favor; passed and so orders.

- G. Adopt a Resolution Authorizing the City Manager to Sign Terms and Conditions of Accepting Airport Improvement Program Grants; Execute Grant Agreements AIP #3-06-0259-014-2013 and AIP #3-06-0259-015-2013 in the amount of \$600,000 with the Federal Aviation Administration for an Update to the Airport Layout Plan, Reimbursement for a Pavement Maintenance and Management Plan, and Reimbursement for Engineering and Design Work on the Airport Pavement Project

Dave Anderson, President Tracy Airport Association, provided Council with a copy of the deed for the Tracy Airport. Mr. Anderson requested that Council approve the item with a stipulation that the airport runway remain at 4,002 feet. Leon Churchill, Jr., City Manager, indicated documents that will be submitted are based on prior Council and action leading to that decision.

Roger Birdsall addressed Council regarding shortening of the runway length. Mr. Birdsall stated that records show that the runway length has been at 4,000 feet since 1980. Mr. Birdsall asked that Council re-consider the runway length.

Mayor Pro Tem Maciel asked if the handout provided by Mr. Anderson was supported by the Tracy Airport Association. Mr. Anderson provided a verbal response from the audience that was inaudible.

Council Member Rickman asked Mr. Churchill how the City was benefiting from a shorter runway length and safety zone. Mr. Churchill indicated the issue regarding the safety zone has been addressed as dictated by State regulations for safety zones based on airport length. Mr. Churchill stated the demarcation line between a small and a medium size cone is indeed 4,000 feet in length. Mr. Churchill indicated the City is submitting plans consistent with those regulations. Mr. Churchill added that a smaller cone does allow more homes to be built as part of the Ellis development. Mr. Churchill stated there are public policy advantages for a City that has a dearth of housing development while seeking to maintain a land use balance between commercial, industrial and residential uses.

Council Member Rickman asked if the three feet difference in runway length affects what type of plane can land. Mr. Anderson provided a response from his seat that was inaudible.

Mayor Ives asked if certain types of airplanes would no longer be able to land at the airport because of a change in runway length. Mr. Churchill indicated based on exhaustive research, staff had no verification of that information.

Council Member Young clarified that she would always support the economic value of the airport. Council Member Young stated that during the last Council discussion all Council Members voiced support for the airport.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-119 authorizing the City Manager to sign terms and conditions of accepting Airport Improvement Program Grants; executing Grant Agreements AIP #3-06-0259-014-2013 and AIP #3-06-0259-015-2013 in the amount of \$600,000 with the Federal Aviation Administration for an Update to the Airport Layout Plan, Reimbursement for a Pavement Maintenance and Management Plan, and Reimbursement for Engineering and Design Work on the Airport Pavement Project. Voice vote found all in favor; passed and so ordered.

- H. Approval of Task Order No. 3 with R.W. Brandley, Consulting Airport Engineer, for an Update of the Airport Layout Plan for the Tracy Municipal Airport Required for Implementation of a Federal Aviation Grant, Authorize the Mayor to Execute the Task Order, Authorize use of \$79,650 from the Airport Fund for the Completion of the Task Order until Reimbursement from the Federal Aviation Administration

Dave Anderson, President Tracy Airport Association, stated that when the airport plan is drawn, the Tracy Airport Association, the Aircraft Owners Association and the California Pilots Association will push the City to follow the agreement it made when the property was transferred to the City. Mr. Anderson urged Council to do due diligence.

Mayor Pro Tem Maciel asked if the City had a civil engineer measure the runway length. Ed Lovell, Management Analyst, indicated an engineer surveyed the runway and determined its length to be 3,996 feet and 9 inches.

Mayor Pro Tem Maciel asked if the Airport currently complies with all safety regulations. Mr. Lovell stated yes.

Council Member Rickman asked if a corporate jet could land at the Tracy Airport. Mr. Lovell stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt Resolution 2013-120 approving Task Order No. 3 with R.W. Brandley, Consulting Airport Engineer, for an update of the Airport Layout Plan for the Tracy Municipal Airport required for Implementation of a Federal Aviation Grant, authorizing the Mayor to execute the Task Order, authorizing use of \$79,650 from the Airport Fund for the completion of the Task Order until

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Reimbursement from the Federal Aviation Administration. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – None.
3. COUNCIL ITEMS – Council Member Rickman invited everyone to the last Block Party scheduled for August 16, 2013, where music from the 80's will be featured.
4. ADJOURNMENT – It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 6:27 p.m.

The above agenda was posted at the Tracy City Hall on August 1, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk

Business Entity Detail

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Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, September 20, 2013. Please refer to Processing Times for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name	TURLOCK AIR CENTER, LLC
Entity ID	200905610180
Effective Date	02/25/2009
Status	SUSPENDED
State	CALIFORNIA
Address	P O BOX 6035
City	SCOTTSDALE AZ 85261
Agent Name	STEPHEN S STUHMER
Agent Address	13604 NEWPORT RD
Agent City	BALLICO CA 95303

* Indicates the information is not contained in the California Secretary of State's database.

* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to Name Availability.
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to Information Requests.
- For help with searching an entity name, refer to Search Tips.
- For descriptions of the various fields and status types, refer to Field Descriptions and Status Definitions.

RESULT: DENIED

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September 2013
ALUC

STAFF REPORT

SUBJECT: Airport Land Use Compatibility Plan
Consistency Determination for the Ellis
Specific Plan Amendment and City of Tracy
General Plan Amendment

RECOMMENDED ACTION: Determination of Inconsistent Land Use
with the 2009 Airport Land Use
Compatibility Plan

DISCUSSION:

SUMMARY:

The San Joaquin Council of Governments (SJCOG), as the designated body to fulfill the duties of the Airport Land Use Commission (ALUC), has received a proposed amendment to the Ellis Specific Plan from the City of Tracy. For Specific Plans, General Plans, and subsequent amendments, the State Aeronautics Act, Section 21676, requires ALUCs to determine the project's "consistency" with the applicable Airport Land Use Compatibility Plan (ALUCP). This process is also defined within the Project Review Guidelines for the Airport Land Use Commission, adopted by SJCOG Board in June 2013.

The Ellis Specific Plan Amendment would permit a residential density of 4 to 9 dwelling units per acre within a considerable portion of the Outer Approach Departure Zone (OADZ). The ALUCP's residential density for this zone is 1 dwelling unit per 5 acres.

RECOMMENDATION:

To make the determination that the proposed residential densities for the 2013 Ellis Specific Plan Amendment are inconsistent with the Outer Approach Departure Zone of the 2009 ALUCP.

FISCAL IMPACT: None

BACKGROUND:

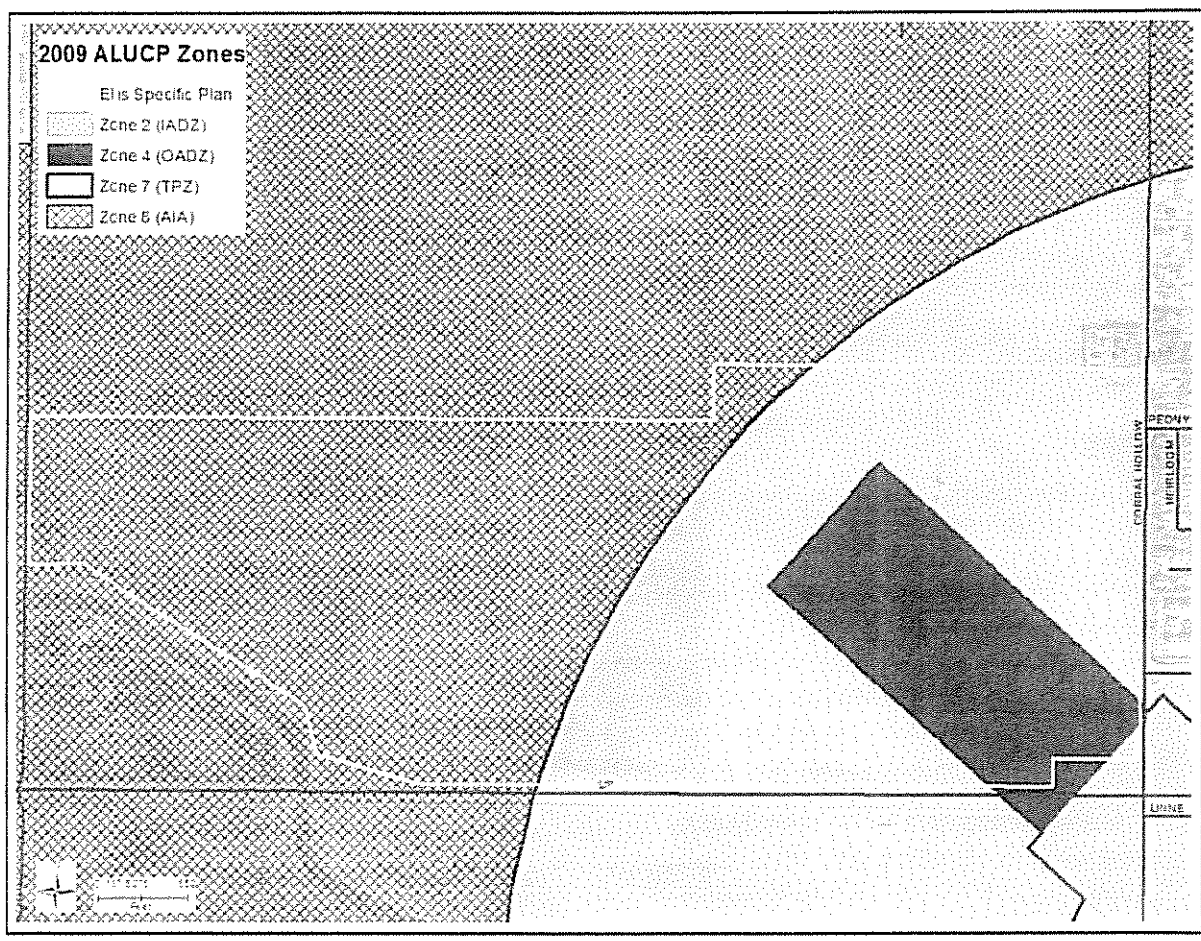
The Ellis Specific Plan (ESP) is primarily residential with a maximum of 2,250 residential units within a 321-acre footprint. The Village Center will include a mix of residential, commercial, office, and recreational uses. A 16-acre swim center is also proposed as part of the ESP. The ESP was approved in December 2008 by the Tracy City Council and was subject to a legal challenge that ultimately resulted in the courts ordering that the certification of the "Original" Ellis EIR and Development agreement be set aside.

In 2012, as a means to address the issues that were noted by the court, the City of Tracy prepared a revised Environmental Impact Report and a "Modified" ESP. ALUC staff reviewed the modified project in November 2012 and notified the City that the land uses were consistent with the most current ALUCP. In June 2009 the ALUC adopted an ALUCP update for the county's five general aviation airports, which includes Tracy Municipal Airport.

CURRENT AIRPORT LAND USE COMMISSION REVIEW:

In August of 2013, Surland Companies submitted a proposed amendment to the ESP. The project also includes a City of Tracy General Plan Amendment. The project is subject to consistency review under the 2009 ALUCP. As shown in **Figure 1**, the entire site is within the Airport Influence Area of Tracy Municipal Airport. The eastern area also lies within the Traffic Pattern and Outer Approach Departure Zone.

FIGURE 1
Ellis Specific Plan Project Boundaries & 2009 ALUCP Zones



The SPA is proposing the following:

1. An increase in the residential area, TR-Ellis, by 17 acres.
2. A decrease in the Commercial land use designation by 17 acres.
3. Allowing residential density of 4 to 9 dwelling units/gross acre within roughly two-thirds of the Outer Approach Departure Zone. The OADZ encompasses approximately 49 acres of the 321 acre project site.
4. The amendment to the existing General Plan includes revision of language to exclude the Ellis Specific Plan Area from the Airport Land Use Compatibility Plan, but subject to the purposes of the State Aeronautics Act, Cal. Pub. Util. Code 21670 et seq.

ALUC staff has reviewed the Ellis Specific Plan Amendment and City of Tracy General Plan Amendment for consistency with the 2009 ALUCP. The residential density within the Outer Approach Departure Zone is 1 dwelling unit per acre. The Ellis SPA would allow for a residential density of 4 to 9 dwelling units per 5 acres. Therefore, the residential density proposed within Zone 4 is inconsistent with the 2009 ALUCP.

LEAD AGENCY AND PROJECT APPLICANT CONSENSUS:

The City of Tracy is the lead agency and “The Surland Companies” is the project applicant for the Ellis Specific Plan project. Both entities have been notified by ALUC staff on the preliminary findings and are in agreement that the proposed land uses are not consistent with the 2009 ALUCP, and an ALUC determination of inconsistency may be approved by the Board.

NEXT STEPS:

If the ALUC determines that the proposed land uses are inconsistent with the 2009 ALUCP, staff will promptly contact the lead agency. In this event, the lead agency has three options in which to proceed 1) do not approve the Specific Plan Amendment, 2) Revise the Specific Plan Amendment to the project, or 3) overrule the ALUC determination of inconsistency per the State Aeronautics Act, PUC Sections 21676 and 21676.5.

provided by Dave Anderson
@ the 10/1/13 City Council
meeting.

NTSB Identification: ERA13FA358

14 CFR Part 91: General Aviation

Accident occurred Friday, August 09, 2013 in New Haven, CT

Aircraft: ROCKWELL INTERNATIONAL 690B, registration: N13622

Injuries: 4 Fatal.

This is preliminary information, subject to change, and may contain errors. Any errors in this report will be corrected when the final report has been completed. NTSB investigators either traveled in support of this investigation or conducted a significant amount of investigative work without any travel, and used data obtained from various sources to prepare this aircraft accident report.

On August 9, 2013, about 1121 eastern daylight time, a Rockwell International 690B, N13622, was destroyed after impacting two homes while maneuvering for landing in East Haven, Connecticut. The airplane was registered to Ellumax, LLC, and was operated by a private individual. The commercial pilot, one passenger, and two people on the ground were fatally injured. The personal flight was conducted under the provisions of 14 Code of Federal Regulations Part 91. Instrument meteorological conditions prevailed and an instrument flight rules (IFR) flight plan was filed for the flight that departed Teterboro Airport (TEB), Teterboro, New Jersey, about 1049 and was destined for Tweed-New Haven Airport (HVN), New Haven, Connecticut.

Review of preliminary data from the Federal Aviation Administration revealed that at 1115:10, the flight was cleared for the instrument landing system (ILS) approach to runway 2, circle to land runway 20 at HVN by New York Approach Control (N90). At 1115:43 the pilot contacted HVN tower and reported 7 and one half miles from SALLT intersection. The HVN local controller instructed the pilot to enter a left downwind for runway 20. At 1119:26 the pilot reported to HVN air traffic control (ATC) that he was entering a left downwind for runway 20. HVN ATC cleared the pilot to land on runway 20. While circling to runway 20, the HVN tower controller asked the pilot if he would be able to maintain visual contact with the airport. The pilot replied "622 is in visual contact now". At 1120:55 the HVN air traffic controller made a truncated transmission with the call sign "622". No further communications were received from the accident airplane. The last recorded radar target was at 1120:53, about .7 miles north of the runway 20 threshold indicating an altitude of 800 feet mean seal level.

According to a student pilot witness, who was traveling on interstate 95 (I-95) at exit 51; he looked to his right while traveling east bound and saw the airplane at the end of a right roll. The airplane was inverted and traveling at a high rate of speed, nose first, towards the ground in the vicinity of where HVN was located. He stated that he stopped at a local business and found out that the airplane had crashed.

According to another witness, who lives two houses from the impact point of the airplane, he was in his living room when he saw the airplane descending about 90 degrees right side down into the homes.

The airplane was located inverted, with the forward half of the airplane inside the basement of the primary home on a heading of 192 degrees magnetic. The cockpit, left engine and forward two-thirds of the fuselage were located inside the basement. The left wing was located on the back porch of the primary home. The right wing impacted a secondary adjacent house on the north side of the primary home. The right engine and propeller impacted the ground in between both homes. A postaccident fire ensued and consumed a majority of the wreckage.

The recorded weather at HVN, at 1126, included wind from 170 degrees at 12 knots, gusting to 19 knots, visibility 9 miles, and overcast ceiling at 900 feet.

[Index for Aug2013](#) | [Index of months](#)

NTSB Identification: DCA13MA133

Nonscheduled 14 CFR Part 121: Air Carrier operation of UNITED PARCEL SERVICE CO

Accident occurred Wednesday, August 14, 2013 in Birmingham, AL

Aircraft: AIRBUS A300 F4-622R, registration: N155UP

Injuries: 2 Fatal.

This is preliminary information, subject to change, and may contain errors. Any errors in this report will be corrected when the final report has been completed. NTSB investigators traveled in support of this investigation and used data obtained from various sources to prepare this aircraft accident report.

On August, 14, 2013, at about 0447 central daylight time (CDT), United Parcel Service flight 1354, an Airbus A300-600, N155UP, crashed short of runway 18 while on approach to Birmingham-Shuttlesworth International Airport (KBHM), Birmingham, Alabama. The two flight crew members were fatally injured and the airplane was destroyed. The cargo flight was operating under 14 Code of Federal Regulation Part 121 supplemental and originated from Louisville International Airport, Louisville, Kentucky.

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INSTRUMENT OF TRANSFER

B. W. Pendervis
Checked
Legal Karduz

KNOW ALL MEN BY THESE PRESENTS:

That, THE UNITED STATES OF AMERICA, acting by and through the WAR ASSETS ADMINISTRATION, under and pursuant to Executive Order 9689, dated January 31, 1946, and the powers and authority contained in the provisions of the Surplus Property Act of 1944, as amended, and applicable rules, regulations and orders, party of the first part, in consideration of the assumption by the CITY OF TRACY, a municipal corporation in the State of California, party of the second part, of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, has remise, released and forever quitclaimed, and by these presents does remise, release, and forever quitclaim unto the said CITY OF TRACY, its successors and assigns, under and subject to the reservations, restrictions and conditions, exceptions, and reservation of property and rights hereinafter set out, all right, title, interest and claim in and to the following described property situate in the County of San Joaquin, State of California, to wit:

PARCEL 1:

Beginning at the NE corner of the SE $\frac{1}{4}$ of Section 8, township 3 South, range 5 East, Mount Diablo Base & Meridian, running thence northerly along the easterly line of Section 8 1,000 feet; running thence westerly parallel and distant 1,000 feet northerly from the south line of the northeast quarter of said Section 8 to a point on the westerly line of said NE $\frac{1}{4}$ a distance of 2,633.0 feet; running thence northerly along the westerly line of said NE $\frac{1}{4}$ 490 feet more or less to a point 1,490 feet northerly of the SE Corner of the NW $\frac{1}{4}$ of said Section 8; running thence westerly parallel and distant 1,490 feet northerly at right angles from the southerly line of the NW $\frac{1}{4}$ of said Section 8 a distance of 2,633.0 feet more or less to a point on the west line of the NW $\frac{1}{4}$ of said Section 8, running thence southerly along the westerly line of said Section 8 a distance of 1,490 feet to the west corner of said Section 8; running thence easterly along the south line of the N $\frac{1}{2}$ of said Section 8 a distance of 5,266 feet to the NE corner of the SE $\frac{1}{4}$ of said Section 8, being the point of beginning; excepting therefrom that portion lying within Jefferson Road on the easterly boundary of said tract; containing 150.51 acres, more or less.

1 TOGETHER WITH runways, taxiways, parking aprons and field lighting
2 system, one 20x30' wood frame building and steel control tower.

3 The above described premises are subject to existing easements for
4 roads, highways, public utilities, railways and pipe lines, and irrigation
5 ditches of the Banta-Carbona Irrigation District.

6 EXCEPTING, HOWEVER, from this conveyance all right, title and
7 interest in and to all property in the nature of equipment, furnishings,
8 and other personal property located on the land above described and on the
9 land leased from the City of Tracy as hereinafter set out, which can be
10 removed from the land without material injury to the land or structures
11 located thereon, other than property of such nature located on such premises
12 which is required for the efficient operation for airport purposes of the
13 structures and improvements specifically listed hereinabove as being trans-
14 ferred hereby; and further excepting from this conveyance all structures on
15 such premises other than structures specifically described or enumerated
16 above as being conveyed hereunder, and reserving to the party of the first
17 part the right of removal from the premises of its property and structures
18 excepted hereby within a reasonable period of time after the date hereof,
19 which shall not be construed to mean any period less than one (1) year after
20 date of this instrument.

21 And further excepting from this conveyance and reserving to the
22 United States of America a perpetual easement for the construction, use,
23 maintenance, replacement and repair of a right of way for the Delta-Mendota
24 Canal (Central Valley Project), over 25.52 acres of land, more or less, a
25 portion of the above described land, which is more particularly delineated
26 on map dated January 3, 1946, numbered P 258 A, a copy of which is attached
27 hereto and made a part hereof.

28 Further, the party of the first part, for the considerations
29 hereinabove expressed, does hereby surrender, subject to the terms and
30 conditions of this instrument, to the party of the second part the former's
31 leasehold interest in and to the premises set forth and described in a Lease
32 No. W-668-eng-2143 from the City of Tracy to the United States of America,

1 dated March 10, 1942, as modified by Supplemental Agreement No. 1 thereto,
2 dated June 24, 1946, including 156.5 acres, more or less, of land situated
3 in the County of San Joaquin, State of California.

4 The party of the second part does hereby release the party of the
5 first part from any and all claims which exist or may arise under the
6 provisions of the aforesaid lease, as so modified, except claims which may
7 be submitted under Section 17 of the Federal Airport Act.

8 Said property transferred hereby was duly declared surplus and
9 was assigned to the War Assets Administrator for disposal, acting pursuant
10 to the provisions of the Surplus Property Act of 1944, as amended, Executive
11 Order 9689, and applicable rules, regulations and orders.

12 That by the acceptance of this instrument or any rights hereunder,
13 the said party of the second part, for itself, its successors and assigns,
14 agrees that the aforesaid surrender of leasehold interest and transfer of
15 other property shall be subject to the following restrictions, set forth
16 in subparagraphs (1) and (2) of this paragraph, which shall run with the land,
17 imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the
18 Constitution of the United States of America, the Surplus Property Act of
19 1944, as amended, Executive Order 9689, and applicable rules, regulations
20 and orders:

21 * (1) That the aforesaid leased premises and all property described
22 in Parcel One above which together shall hereinafter be called the "airport",
23 shall be used for public airport purposes, and only for such purposes, on
24 reasonable terms and without unjust discrimination and without grant or
25 exercise of any exclusive right for use of the airport within the meaning of
26 Section 303 of the Civil Aeronautics Act of 1938. As used herein, "public
27 airport purposes" shall be deemed to exclude use of the structures conveyed
28 hereby, or any portion thereof, for manufacturing or industrial purposes.
29 However, until, in the opinion of the Civil Aeronautics Administration or its
30 successor Government agency, it is needed for public airport purposes, any
31 particular structure transferred hereby may be utilized for non-manufacturing
32 or non-industrial purposes in such manner as the party of the second part

1 deems advisable, provided that such use does not interfere with operation
2 of the remainder of the airport as a public airport.

3 (2) That the entire landing area, as defined in WAA Regulation 16,
4 dated June 26, 1946, and all structures, improvements, facilities and equip-
5 ment of the airport shall be maintained at all times in good and serviceable
6 condition to assure its efficient operation; provided, however, that such
7 maintenance shall be required as to structures, improvements, facilities and
8 equipment only during the remainder of their estimated life as determined by
9 the Civil Aeronautics Administration or its successor Government agency. In
10 the event materials are required to rehabilitate or repair certain of the
11 aforementioned structures, improvements, facilities or equipment, they may
12 be procured by demolition of other structures, improvements, facilities or
13 equipment transferred hereby and located on the above described premises,
14 which have outlived their use as airport property in the opinion of the Civil
15 Aeronautics Administration or its successor Government agency.

16 That by the acceptance of this instrument, or any rights hereunder,
17 the party of the second part, for itself, its successors and assigns, also
18 assumes the obligations of, covenants to abide by and agrees to, and this
19 surrender and transfer is made subject to, the following reservations and
20 restrictions set forth in subparagraphs (1) to (6) of this paragraph, which
21 shall run with the land, imposed pursuant to the authority of Article 4,
22 Section 3, Clause 2 of the Constitution of the United States of America, the
23 Surplus Property Act of 1944, as amended, Executive Order 9689 and applicable
24 rules, regulations and orders:

25 (1) That insofar as is within its powers and reasonably possible,
26 the party of the second part, and all subsequent transferees, shall prevent
27 any use of land either within or outside the boundaries of the airport,
28 including the construction, erection, alteration, or growth of any structure
29 or other object thereon, which use would be a hazard to the landing, taking-off,
30 or maneuvering of aircraft at the airport, or otherwise limit its usefulness
31 as an airport.
32

1 (2) That the building areas and non-aviation facilities, as such
2 terms are defined in WAA Regulation 16, dated June 26, 1946, of or on the
3 airport shall be used, altered, modified, or improved only in a manner which
4 does not interfere with the efficient operation of the landing area and of
5 the airport facilities, as defined in WAA Regulation 16, dated June 26, 1946.

6 (3) That itinerant aircraft owned by the United States of America
7 (hereinafter sometimes referred to as the "Government"), or operated by any
8 of its employees or agents on Government business, shall at all times have
9 the right to use the airport in common with others; provided, however, that
10 such use may be limited as may be determined at any time by the Civil
11 Aeronautics Administration or the successor Government agency to be necessary
12 to prevent interference with use by other authorized aircraft, so long as
13 such limitation does not restrict the Government's use to less than
14 twenty-five (25) per centum of capacity of the landing area of the airport.
15 Government use of the airport by virtue of the provisions of this sub-
16 paragraph shall be without charge of any nature other than payment for
17 damage caused by such itinerant aircraft.

18 * (4) That during the existence of any emergency declared by the
19 President of the United States of America, or the Congress thereof, the
20 Government shall have the right without charge, except as indicated below,
21 to the full, unrestricted possession, control and use of the landing area,
22 building areas, and airport facilities, as such terms are defined in WAA
23 Regulation 16, dated June 26, 1946, or any part thereof, including any
24 additions or improvements thereto made subsequent to the declaration of any
25 part of the airport as surplus; provided, however, that the Government shall
26 be responsible during the period of such use for the entire cost of maintain-
27 ing all such areas, facilities, and improvements, or the portions used, and
28 shall pay a fair rental for the use of any installations or structures which
29 have been added thereto without Federal aid.

30 (5) That no exclusive right for the use of any landing area or air
31 navigation facilities, as such terms are defined in WAA Regulation 16, dated
32 June 26, 1946, included in or on the airport shall be granted or exercised.

1 (6) That the airport may be successively transferred only with
2 the approval of the Civil Aeronautics Administration or the successor
3 Government agency, and with the proviso that such subsequent transferee
4 assumes all the obligations imposed upon the party of the second part by the
5 provisions of this instrument.

6 By acceptance of this instrument, or any right hereunder, the party
7 of the second part further agrees with the party of the first part as
8 follows:

9 * (1) That upon a breach of any of the aforesaid reservations or
10 restrictions by the party of the second part, or any subsequent transferee,
11 whether caused by the legal inability of said party of the second part or
12 subsequent transferee to perform any of the obligations herein set out, or
13 otherwise, the title, right of possession and all other rights transferred
14 to the party of the second part, or any portion thereof, shall at the
15 option of the party of the first part revert to the party of the first part
16 upon demand made in writing by the War Assets Administration or its successor
17 Government agency at least sixty (60) days prior to the date fixed for the
18 reversion of such title, right of possession and other rights transferred, or
19 any portion thereof; provided, that, as to installations or structures which
20 have been added to the premises without Federal aid, the Government shall
21 have the option to acquire title to or use of the same at the then fair
22 market value of the rights therein to be acquired by the Government.

23 (2) That if the construction as covenants of any of the foregoing
24 reservations and restrictions recited herein as covenants, or the application
25 of the same as covenants in any particular instance is held invalid, the
26 particular reservations or restrictions in question shall be construed
27 instead merely as conditions upon the breach of which the Government may
28 exercise its option to cause the title, right of possession and all other
29 rights transferred to the party of the second part, or any portion thereof,
30 to revert to it, and the application of such reservations or restrictions as
31 covenants in any other instance and the construction of the remainder of
32 such reservations and restrictions as covenants shall not be affected thereby.

1 TO HAVE AND TO HOLD the property transferred hereby, except the
2 property and rights excepted and reserved above, and under and subject to
3 the aforesaid reservations, restrictions, and conditions, unto the said party
4 of the second part, its successors and assigns forever.

5 IN WITNESS WHEREOF, the United States of America, acting by and
6 through the War Assets Administrator, has caused these presents to be executed
7 in its name and on its behalf by J. WAYNE HANROP, Acting Deputy Regional
8 Director, War Assets Administration, and the CITY OF TRACY, to evidence its
9 complete acknowledgment of, accord with, acceptance of and agreement to be
10 bound by the terms, conditions, reservations and restrictions set forth in
11 this instrument, has caused these presents to be executed in its name and on
12 its behalf by J. W. STOCKING, its Mayor, and attested by CHAS. E. DE FREITAS,
13 its City Clerk, and its seal to be hereunto affixed, all as of the

14 27 day of May, 1947.

16 UNITED STATES OF AMERICA
17 Acting by and Through
18 War Assets Administration

19 WITNESSES:

20 Albert S. Lindsey
21 A. G. Boylen

20 By J. Wayne Hanrop
21 J. WAYNE HANROP
22 Acting Deputy Regional Director
23 Office of Real Property Disposal
24 War Assets Administration
25 San Francisco, California

23 CITY OF TRACY
24 A municipal corporation

24 WITNESSES:

25 Frieda Peterson
26 Larry Waldsworth

25 By J. W. Stocking
26 Its Mayor

29 ATTEST:

30 Chas. E. De Freitas
31 City Clerk

1 STATE OF CALIFORNIA :
2 CITY AND COUNTY OF SAN FRANCISCO : ss.

3 On this 27 day of May, 1947, before me,
4 MARION M. BENDER

5 a Notary Public in and for the City and County
6 of San Francisco, California, personally appeared J. WAYNE HARROP, known to me
7 to be the Acting Deputy Regional Director, War Assets Administration, and
8 known to me to be the person whose name is subscribed to the within instrument
9 on behalf of War Assets Administration, who executed said instrument on behalf
10 of the United States of America, and acknowledged to me that he executed the
11 same as the free and voluntary act and deed of the United States of America and
12 the War Assets Administration and as his own free and voluntary act and deed.

Marion M. Bender
Notary Public
In and for the City and County of
San Francisco, State of California

13 (SEAL)

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16 My commission expires: My Commission Expires Dec 24 1950

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STATE OF CALIFORNIA :
 : ss.
COUNTY OF SAN JOAQUIN :

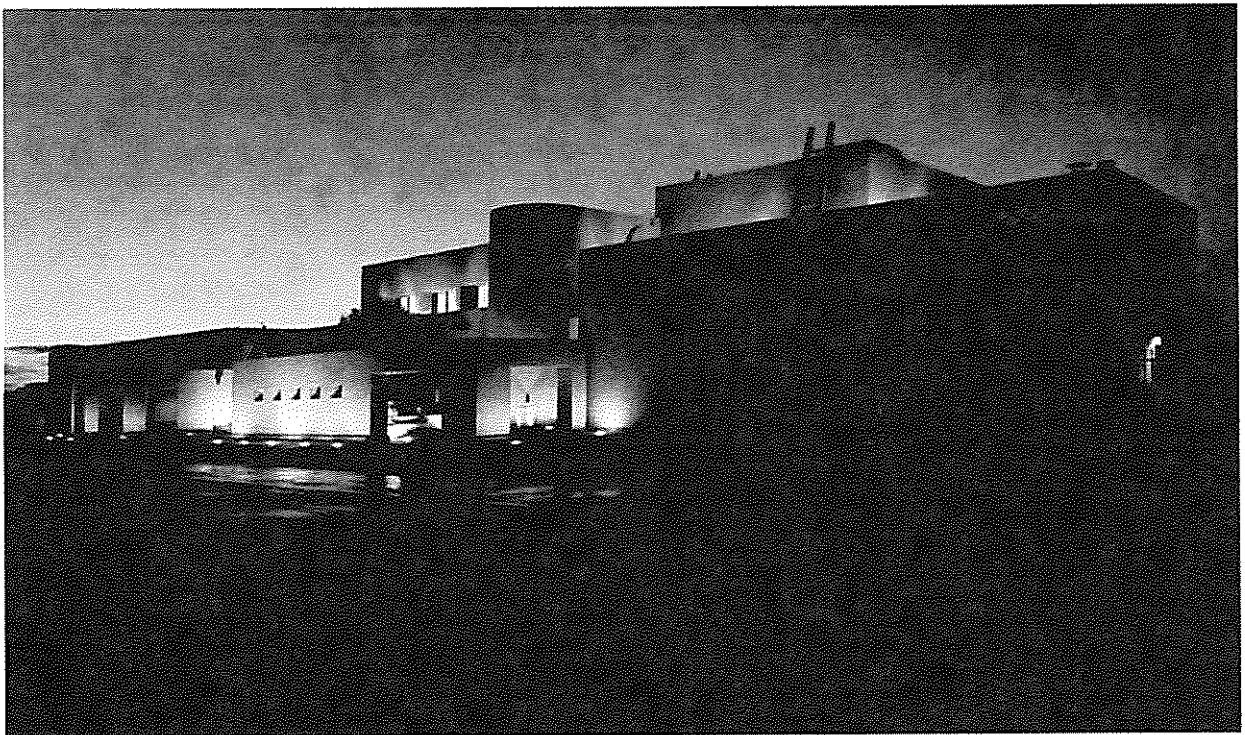
On this 19th day of June, 1947, before me Benny
Walsworth, a Notary Public in and for said
County, personally appeared J. W. STOCKING,
known to me to be the Mayor of the CITY OF TRACY, and known to me to be the
person whose name is subscribed to the within instrument on behalf of the
CITY OF TRACY, and acknowledged to me that he executed the same as the free
and voluntary act and deed of the CITY OF TRACY and as his own free and
voluntary act and deed.

Benny Walsworth
Notary Public

(SEAL)

My commission expires:
April 26, 1950

**North Las Vegas Airport
SJR-3 Flight Safety
Review and Recommendations**



**Submitted to the
Nevada Legislative Commission
by the
SJR-3 Stakeholder Group
November 1, 2009**

CLARK COUNTY
DEPARTMENT OF AVIATION



General Aviation

North Las Vegas Airport
Henderson Executive Airport
Jean Airport
Overton Airport

Cecil Johnson
Assistant Director of General Aviation

North Las Vegas Airport
2730 Airport Dr., Suite 101
North Las Vegas, NV 89032
(702) 261-5746
Fax: (702) 647-7508

October 27, 2009

Lorne Malkiewich, Secretary
Nevada Legislative Commission
401 South Carson Street
Carson City, NV 89701-4747

Dear Mr. Malkiewich:

Senate Joint Resolution No. 3 (SJR-3) of the 2009 Nevada State Legislature, urged the Federal Aviation Administration (FAA) and the Clark County Department of Aviation (CCDOA) to convene a stakeholder group comprised of representatives including the FAA, CCDOA, the City of North Las Vegas, the Clark County Aviation Association, the Aircraft Owners and Pilots Association, neighborhood residents and airport tenants to analyze concerns and make recommendations to improve flight safety standards at North Las Vegas Airport. Although the FAA did not participate as a stakeholder member, the Manager of the FAA Las Vegas Flight Standards District Office did provide extensive technical advice during the meetings. The attached report presents the unanimous findings of the stakeholder group.

The highlights of the report are featured in the executive summary. This information is supported by more detailed data reported in the main body of the report. A brief historical and operational overview of North Las Vegas Airport is provided, the responsibilities of the FAA and CCDOA are outlined, recent airport safety improvements are enumerated, and a review of aircraft accidents within approximately the past 10 years on and near the airport is included using data from the National Transportation Safety Board. The report concludes with 13 recommendations the stakeholder group believes can serve to improve the safe operation of general aviation aircraft using North Las Vegas Airport.

I would like to personally extend my appreciation to everyone that participated for their time and effort in the completion of this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cecil Johnson'. The signature is fluid and cursive, with the first name 'Cecil' being more prominent.

Cecil Johnson
Assistant Director, General Aviation, Clark County Department of Aviation
Chairman, SJR-3 Stakeholder Group

cc: Senator Steven Horsford
Assemblywoman Marilyn Kirkpatrick
Randall H. Walker, Director, Clark County Department of Aviation
Rosemary A. Vassiliadis, Deputy Director, Clark County Department of Aviation

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EXECUTIVE SUMMARY

North Las Vegas Airport is owned and operated by the Clark County Department of Aviation. Opened in 1941, it is a general aviation "reliever" airport designed to attract light aircraft traffic from nearby McCarran International Airport. It is the second busiest airport in Nevada and one of the 100 busiest airports in the United States with over 600 based aircraft. According to a recent study the airport annually contributes over \$136 million to the local economy.

Two aircraft accidents in the vicinity of North Las Vegas Airport in 2008 prompted the Nevada State Legislature to examine safety at the airport. A resolution of the Nevada State Legislature urged the formation of a stakeholder group to review current operational practices and make recommendations to improve flight safety at North Las Vegas Airport. This report presents the findings of this group, including the following:

- By law the Federal Aviation Administration (FAA) is solely responsible for monitoring and regulating aviation safety.
- The Clark County Department of Aviation (DOA) is responsible for maintaining infrastructure on airport grounds, including airfield lighting, signage, taxiways and runways.
- The Federal Aviation Administration and the Clark County Department of Aviation have partnered to improve safety at the airport in recent years through aviation education and facility improvements.
- Between January 1999 and September 2009, North Las Vegas Airport experienced 2.23 million takeoffs and landings. Forty-three accidents were recorded by the National Transportation Safety Board (NTSB) during this period within a 10-mile radius of the airport. The annual number of accidents has declined over this period. Those accidents range from a high of 7 in 2000 and 2003 to a low of 1 in 2007 and 2009 (Appendix C).
- Over this period, 75 percent of accidents were attributable to pilot error (Appendix D).
- Three of the 43 accidents involved experimental aircraft. Experimental aircraft account for 7 percent of the total number of based aircraft at North Las Vegas Airport and represent 7 percent of all accidents (Appendix G).
- Through examination of available data, it was determined that of a total of 43 accidents, 32 or 74 percent involved based aircraft, and 11 or 26 percent involved transient aircraft. Of a total of 32 based aircraft accidents, 8 or 25 percent involved flight instructional activities. Five of these 8 accidents, or 63 percent, involved the use of helicopters by flight schools (Appendix G).

- A review of accident data reveals different causes for accidents that occurred both on and off airport property. Loss of directional control was the most frequent cause of accidents on airport property. Fuel system mismanagement was the most frequent cause for accidents occurring off airport property (Appendix E).
- Additional research and analysis by the National Transportation Safety Board is warranted to better determine the causal effects of all aircraft accidents at North Las Vegas Airport.
- None of the accidents were attributable to airport infrastructure or other site conditions at North Las Vegas Airport.

This report presents specific recommendations to enhance flight safety standards at North Las Vegas Airport.

INTRODUCTION

Senate Joint Resolution No. 3 of the 2009 Nevada State Legislature (SJR-3) became effective on May 22, 2009 (Appendix A). On August 22, 2008 a Kilgore Velocity experimental aircraft experienced engine trouble and collided with a residence, resulting in the fatalities of the pilot and two occupants in the house. On August 28, 2008 a Navajo twin-engine aircraft manufactured by Piper Aircraft Corporation experienced an onboard fire and the aircraft impacted a house while attempting to return to the airport for an emergency landing. The pilot was fatally injured.

This resolution urged the Federal Aviation Administration to work closely with the Clark County Department of Aviation and the entire aviation community in Clark County to convene a stakeholder group with representation from each of the following for the purpose of improving safety:

- The Federal Aviation Administration
- The Clark County Department of Aviation
- The City of North Las Vegas
- The Aircraft Owners and Pilots Association
- Clark County Aviation Association
- Residents of neighborhoods surrounding the North Las Vegas Airport
- Tenants of the North Las Vegas Airport

This stakeholder group was directed to issue a preliminary analysis of concerns regarding the current flight safety practices at North Las Vegas Airport and to make recommendations to improve flight safety standards at the airport, particularly with respect to experimental aircraft.

On August 26, 2009, September 22, 2009 and October 13, 2009, meetings of the stakeholder committee were held with the following committee members:

- Anita Wood, North Las Vegas City Council
- Janice Ridondo, Resident of the City of Las Vegas¹
- Cecil Johnson, Clark County Department of Aviation
- Stacy Howard, Aircraft Owners and Pilots Association
- David Lerner, Clark County Aviation Association
- Kenny Scherado, North Las Vegas Airport Commercial Tenant
- Dave Edwards, North Las Vegas Airport Tenant²
- Dan Markoff, North Las Vegas Airport Tenant (Absent 10/13/09)

¹ Ms. Ridondo is a long term resident of a neighborhood near North Las Vegas Airport, and an employee of Clark County, Nevada

² Mr. Edwards is also Vice President of the Clark County Aviation Association and a member of the Experimental Aircraft Association

The following individuals participated in the SJR-3 meetings and provided extensive technical advice:

- Pete Yiakos, Manager, Federal Aviation Administration Las Vegas Flight Standards District Office (Absent 9/22/09)
- Ben Czyzewski, Airport Manager, Clark County Department of Aviation
- Doug McNeeley, Sr. Management Analyst, Clark County Department of Aviation

Discussion was held concerning the regulation of general aviation aircraft, previous steps taken by the Clark County Department of Aviation to improve safety at the airport, potential safety enhancements, and methods to improve communication with area residents. Based on this discussion and a review of the causal factors involved in aircraft accidents associated with the airport, it is the purpose of this report to analyze available data and provide recommendations to improve flight safety standards at North Las Vegas Airport.

AIRPORT BACKGROUND

The Clark County Department of Aviation owns and operates McCarran International Airport and four general aviation airports, including North Las Vegas Airport. The following information provides a brief historical and operational perspective:

- North Las Vegas Airport opened as the Sky Harbor Airport on December 7, 1941.
- Clark County purchased the airport in 1987. After it was purchased, Clark County Department of Aviation began a multi-million dollar renovation of the facility, including construction of a 15,600 square foot terminal building that opened in 1992.
- The primary mission of the airport today is to attract as many general aviation aircraft as possible from McCarran International Airport to reduce congestion at this busy commercial airport.
- In 2008 North Las Vegas had 165,197 takeoffs and landings, making it the second busiest airport in Nevada after McCarran International Airport.
- The North Las Vegas Airport has 286 enclosed hangars, 214 shade hangars and 171 outdoor parking spaces. Currently, there are 659 aircraft based at the airport, from two-seat training aircraft to business jets.

- The airport is 914 acres in size, making it larger than LaGuardia Airport in New York, Midway Airport in Chicago or Reagan National Airport in Washington, DC.
- In 2008 the Clark County Department of Aviation sold over 1.3 million gallons of fuel at North Las Vegas Airport.
- Over 1 million pounds of air freight, primarily small packages and documents were processed through the North Las Vegas Airport in 2008.
- The airport contributes 1,771 jobs and over \$136 million in annual economic benefits to the community, according to an economic impact study completed by the University of Nevada in 2005.
- There are 20 commercial businesses located at the airport, including flight schools, aircraft maintenance facilities, office and hangar rental companies, aircraft charter operators and a Grand Canyon sightseeing airline.
- The airport provides a host of community services. A senior Civil Air Patrol squadron based at the airport flies vital search and rescue missions. Air ambulance flights transport critically ill patients from the airport to receive care at specialized treatment centers throughout the region. Charitable organizations also fly needy patients for treatment throughout the Southwest United States. The Las Vegas Metropolitan Police fly patrols from the airport to help safeguard the community. Traffic reporters fly from the airport to broadcast reports that make daily commuting safer and easier.
- The airport is certified by the Federal Aviation Administration under 14 CFR Part 139 which provides increased inspection and maintenance activity.

DELINEATION OF RESPONSIBILITY

Federal law provides that the United States Government has exclusive sovereignty of airspace in the United States and requires the FAA Administrator to prescribe regulations regarding the flight of aircraft to prevent collisions and to protect persons and property on the ground. Accordingly, the functions of the FAA include such items as:

- Operation of the air traffic control system in the United States, including the North Las Vegas Air Traffic Control Tower
- The establishment of training requirements for pilots and aircraft technicians.
- The establishment of aircraft operating procedures.

- The issuance of pilot certificates and the enforcement of all Federal Aviation Regulations.
- The establishment of aircraft maintenance procedures, including the construction process for experimental aircraft.

It should also be noted that under Federal Aviation Regulations the FAA grants considerable responsibility and authority to the pilot in command. The following is stated in 14 CFR 91.3 (a):

The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

The Clark County Department of Aviation owns and operates North Las Vegas Airport, along with three other general aviation airports, Henderson Executive, Jean Sport, Perkins-Field Overton and McCarran International. The Department of Aviation does not have jurisdiction over the regulation of aviation safety. They are primarily responsible for maintaining infrastructure on the ground including buildings, airfield lighting, signage, taxiways and runways. The specific responsibilities of Department of Aviation managers, supervisors, and employees fall into a number of broad categories, as follows:

- Daily inspection of pavement, safety areas, pavement markings, lighting, navigational aids, obstructions, fueling operations, construction areas, equipment related to emergency response, security measures for public protection, and potential wildlife hazards.
- Routine maintenance of all airport facilities, and 24-hour response to urgent maintenance requirements.
- Oversight of all airport construction projects.
- The promulgation and enforcement of rules and regulations regarding the use of airport facilities.
- Oversight of all airport security measures.
- Compliance with all local, state, and federal environmental regulations.
- Oversight of all airport fueling operations and the provision of various aviation services and products for based and transient aircraft and pilots.
- Drafting and issuing leases and other grants of occupancy for space at the airport for use by commercial and individual tenants.

- Drafting and issuing Requests for Proposals for companies wanting to provide commercial services at the airport.
- The preparation of and adherence to the annual airport operating budget.

AIRPORT SAFETY MEASURES

In recent years, the Clark County Department of Aviation has undertaken a significant number of capital projects and other measures to improve safety at the North Las Vegas Airport. The North Las Vegas Airport has received over \$80 million in grants from the FAA since 1987 for capital projects. The funding for federal grants used within the Clark County Airport System comes primarily from the users of the aviation system through a tax on aviation fuel purchased and airline tickets, not general tax revenue. Future capital projects at North Las Vegas Airport will be evaluated for their ability to improve safety and airport capacity. Although the airport is under a program of continuous improvement, there are no plans to expand the physical boundaries of the airport or change the type of air traffic that uses the facility.

- A new Runway 12R GPS instrument approach was commissioned in October 1996 at North Las Vegas Airport to enable pilots to maintain instrument flying proficiency.
- A new parallel Runway 12L – 30R was constructed in November 2001 at the airport to provide a more efficient flow of air traffic and segregate primary flight training activities.
- A new air traffic control tower with state-of-the art equipment was constructed and put into service in April 2000.
- Additional airport directional signage and pavement markings were installed throughout 2003 to help prevent runway incursions.
- An Enhanced Airport Lighting System was installed in December 2004 to help prevent runway incursions. This system included above ground lights placed at 29 taxiway intersections and in pavement lights at three intersections to increase situational awareness.
- Beginning in January 2005, bi-monthly meetings are conducted by the Department of Aviation to discuss safety procedures with based individual and commercial tenants.
- A Memorandum of Understanding was signed in August 2005 between the Department of Aviation and the Federal Aviation Administration to segregate helicopter training activity and reduce helicopter flights over neighborhoods surrounding the airport.

- In October 2005, North Las Vegas Airport was certified by the Federal Aviation Administration under 14 CFR Part 139, which provides increased inspections and maintenance activities at the airport facility.
- A new Runway 12L Instrument Landing System was commissioned in December 2005 to assist pilots in maintaining instrument proficiency.
- Runway End Identifier Lights were installed at the end of each runway at the airport in November 2006 to improve situational awareness for pilots approaching the airport at night.
- An educational brochure was created by the FAA in cooperation with the Department of Aviation and distributed to pilots throughout the region in October 2006 to help reduce runway incursions.
- General Aviation Airports Rules & Regulations were adopted by the Clark County Board of Commissioners in January 2007 to ensure a safe operating environment at the airport.
- In June 2007 interactive information was placed on the airport website outlining methods that based and transient pilots can use to guard against runway incursions.
- A Motor Vehicle Driving Safety Manual was issued in September 2007 by the Department of Aviation to provide information for the safe operation of vehicles on the airfield.
- The procurement and operational introduction of an airport ground support incident vehicle in July 2007. This vehicle is equipped with dry chemical and foam fire retardant.
- An airport emergency drill was conducted in September 2007 involving multiple agencies and utilizing National Incident Management System protocol.
- General Aviation Airports Operating Directives were adopted in December 2007 to further clarify safe operating procedures on the airfield.
- A capital project was completed in March 2008 to cover drainage channels on the airfield to eliminate potential obstructions.
- Information on aviation safety is continuously presented in a newsletter sent bi-monthly to each based tenant by the Department of Aviation.
- North Las Vegas became one of the first airports in the country to participate in an FAA Pilot Study and submit a Safety Management System

(SMS) study and manual to the FAA. This will be used to help establish SMS standards to be used by over 600 airports nationwide.

- A project to remove high-tension power lines immediately south of the airport along Carey Ave. and relocate them underground commenced in September 2009.

AIRCRAFT ACCIDENT ANALYSIS

The National Transportation Safety Board (NTSB) maintains the official database of aircraft accidents occurring within the United States. This database may be accessed by the general public at www.nts.gov, and it was used in compiling information for this report. Accident data for North Las Vegas Airport between January 1999 and August 2009 is summarized in Appendix B.

The committee reviewed accident data for North Las Vegas Airport. The following criteria were used as the basis for analysis:

- The geographic area of inquiry was narrowed to within a ten (10) nautical mile radius of the airport. The selected geographic area encompasses most of the “congested” area in the immediate vicinity of the airport, and it excludes accidents that were attributed to the airport but actually occurred in remote areas during the en route portion of flight.
- The analysis period was narrowed to the timeframe between January 1999 and September 2009. This is the time period when most of the airport safety improvements were incorporated. The FAA Las Vegas Flight Standards District Office (FSDO) also selected this timeframe as a representative sampling of aircraft accidents for analysis.

Based upon the stated criteria, a total of 43 accidents were selected for final analysis. The findings below are based upon that analysis:

- Between 1999 and 2009 there were 2.23 million takeoffs and landings at North Las Vegas Airport.
- The total annual number of aircraft accidents at North Las Vegas Airport has declined over the inquiry period, from a high of 7 accidents in 2000 and 2003 to a low of 1 accident in 2007 and 1 accident in 2009 year to date. However, while the number of on airport accidents has declined significantly in the past four years, the number of off airport accidents has remained relatively constant (Appendix C).
- Through examination of available data, it was determined that of a total of 43 accidents, 32 or 74 percent involved based aircraft, and 11 or 26 percent involved transient aircraft. Of a total of 32 based aircraft accidents, 8 or 25

percent involved flight instructional activities. A total of 28 accidents, 65 percent, occurred on airport property and 15 accidents, 35 percent, occurred off airport property. Five of these 8 accidents, or 63 percent, involved the use of helicopters by flight schools. NTSB accident data does not reveal in every case if the certified flight instructor or the student pilot was operating the controls at the time of an accident.

- Forty of the 43 total accidents, 93 percent, during the period analyzed involved manufactured aircraft (Appendix G).
- Three of the 43 accidents involved experimental aircraft. Experimental aircraft account for 7 percent of the total number of based aircraft at North Las Vegas Airport and represent 7 percent of all accidents (Appendix G).
- As a result of the above-referenced accidents, 14 fatalities resulted (Appendix F).
- The number of fatalities attributable to manufactured aircraft during this period was 11 and accounted for 73 percent of the total. One accident on December 25, 2003 resulted in 6 deaths (Appendix F).
- The number of fatalities attributed to experimental aircraft during this period was 3 and accounted for 27 percent of the total. Three of the 7 fatalities that occurred off airport, or 43 percent, involved experimental aircraft. These airport fatalities are attributed to the accident that occurred on August 22, 2008 (Appendix F)
- According to the NTSB Probable Cause Report, the experimental aircraft accident of August 22, 2008 resulted from a partial loss of engine power due to the owner/builder's inadequate installation of the supercharger system and belt-tensioning adjustment. This underscores the importance of the recent prohibition by the FAA FSDO of any Phase I flight activity at North Las Vegas Airport and the need to prohibit a waiver of the minimum number of required flight test hours under Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products*.
- Of the 43 total accidents, 32 accidents, 75 percent, were attributable to pilot error. A total of 7 accidents, 16 percent, were due to mechanical issues including failure of components and maintenance errors. In addition, a total of 1 accident, 2 percent, was due to controller error, a total of 1 accident, 2 percent, was due to pilot incapacitation, and 2 accidents, 5 percent, were due to unknown causes (Appendix D).
- NTSB identified 28 accidents as occurring on airport property. The most prevalent factor involving aircraft was a loss of directional control (a total of 10 accidents, or 36 percent), primarily as a result of windy conditions. The

next most prevalent cause of aircraft accidents on airport property was the mechanical malfunction of landing gear (a total of 3, or 11 percent). There was one aircraft aerodynamic stall, or 4 percent. A total of 10 accidents, or 36 percent, were attributable to other factors including an unstable approach with excessive speed, pilot incapacitation, and controller error. The only factor involved in helicopter accidents on airport was inadequately performed autorotations that resulted in hard landings (a total of 4, or 14 percent) (Appendix E).

- The causal factors involved in the 15 accidents off airport property were very different than those on airport property. The most prevalent cause of these accidents was fuel system mismanagement (a total of 6 accidents, or 40 percent) involving either the incorrect positioning of switches or miscalculating the fuel consumption rate and exhaustion of the fuel supply. Additionally, 2 accidents, 13 percent, were caused by a loss of engine power for unknown reasons. There was one aircraft aerodynamic stall, or 7 percent. The remaining 4 aircraft accidents, or 26 percent, were attributable to unrelated factors including insufficient climb rate and striking an obstruction. Two accidents, or 13 percent, involved helicopters (Appendix E).
- Of the total number of accidents, 42 involved aircraft used for private business and recreational use (Part 91) and one involved an aircraft used for commercial purposes (Part 135 Charter).
- The number of aircraft accidents by type (manufactured/ experimental) could not be compared with the number of annual aircraft operations to determine an accident rate because the FAA does not retain this information.

RECOMMENDATIONS

Based on the analysis of aircraft accidents and other information presented in this report, the SJR-3 Stakeholder Group makes the following recommendations to improve flight safety at North Las Vegas Airport:

1. The Las Vegas FAA Flight Standards District Office FSDO issued a memorandum on December 9, 2008 to its inspectors to no longer permit any Phase I flight operations of experimental aircraft from North Las Vegas Airport. This bans experimental aircraft from using the airport until they have completed the first phase of flight time, either 25 or 40 hours depending on the aircraft's engine and propeller combination. The FAA FSDO should monitor and ensure adherence by local experimental aircraft builders to this published, prohibition. The FAA FSDO should not grant any waivers of the minimum number of flight test hours specified in Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products*,

Section 9, Paragraph 152c(1). The FAA FSDO and the Clark County Department of Aviation should work collaboratively on any proposed changes in the prohibition of Phase I flight or the conditions under which waivers may be granted.

2. The FAA should continue to take immediate and appropriate enforcement action when it is determined that Federal Aviation Regulations have been violated. This FAA FSDO intervention should better promote pilot adherence to Federal Aviation Regulations.
3. The FAA FSDO should prepare a detailed annual report for distribution to the local aviation community regarding enforcement action initiated against any pilot or other certificate holder within their jurisdiction. This report will protect individual identity, but should include a brief description of each investigative case and enforcement action taken. The total number of investigative cases initiated compared with the total number for the previous year. This will provide comparative analysis to measure trends in enforcement activity.
4. The FAA should require local FAA Operations Inspectors, Designated Examiners, Certified Flight Instructors and the FAAS Team to emphasize the importance of proper fuel management techniques and the effect of crosswinds and density altitude on aircraft performance during all Bi-Annual Flight Reviews and Practical Flight Tests. Heightened awareness of these factors by pilots should increase safety.
5. The FAA FSDO should continue the periodic and unannounced monitoring of activities in the Air Operations Area of the airport to ensure that pilots, aircraft mechanics and flight instructors are following safe operating practices and adhering to Federal Aviation Regulations. Unannounced visits by the FAA FSDO inspectors should increase the overall effectiveness of the enforcement program.
6. Additional research and analysis by the National Transportation Safety Board is encouraged to provide as much information as possible regarding the causal factors involved in each general aviation aircraft accident. More detailed analysis will capture all available data and may suggest additional methods to reduce aircraft accidents.
7. The FAA FSDO should encourage awareness of and adherence to Federal Aviation Regulations and safe aircraft operating practices through educational initiatives at the local, regional, and national level, including information posted on the FAAS Team website, www.faasafety.com. The Aircraft Owners and Pilots Association should also be encouraged to communicate safety information to local pilots. Ongoing educational efforts

serve to increase situational awareness and prepare pilots to more effectively handle airborne emergencies.

8. The FAA Air Traffic Control Tower at North Las Vegas Airport should be encouraged to record announcements on the Automatic Terminal Information Service (ATIS) that pilots “check density altitude” when the air temperature is over 85 degrees Fahrenheit and state the actual reading. This information is used by pilots during flight planning to calculate aircraft takeoff and climb performance.
9. The FAA Air Traffic Control Tower at North Las Vegas Airport should adhere to guidance in the *Aeronautical Information Manual* regarding standard airport traffic patterns. To the extent possible they should minimize the requirement for pilots to fly extended downwind, base, or final legs. By remaining in close proximity to the airport pilots are in better position to return to the airport during emergency situations.
10. The Clark County Department of Aviation should be encouraged to purchase available vacant land adjacent to North Las Vegas Airport, particularly in or near any Runway Protection Zone (RPZ), to ensure that remaining open area is preserved in the immediate vicinity of the airport. This will provide an expanded area for aircraft to land during emergencies.
11. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the construction of new buildings, communication towers or other obstructions above a safe height in the immediate vicinity of North Las Vegas Airport. Existing structures that may be determined to pose a hazard to air navigation near the airport should be evaluated using a cost and benefit analysis for alteration or removal. This will help eliminate the possibility of aircraft striking tall structures within the immediate vicinity of the airport.
12. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the further construction of residential housing or other non-compatible land uses within the immediate vicinity of North Las Vegas Airport. The City of North Las Vegas is addressing this issue in the current revision of its Zoning Ordinance (Title 17). As part of this process, North Las Vegas has also submitted its draft Air Terminal Environs Ordinances to the Clark County Department of Aviation for review and comment. This reduces the possibility of non-compatible development near the airport and aids in future community planning.
13. The Clark County Department of Aviation, the Clark County Aviation Association and other stakeholders should be encouraged to work together to establish open communication with local residents regarding North Las Vegas Airport. The methods used to establish communication include, but

are not limited to, airport open house events, programming dedicated to the airport on Clark County Cable Television Channel 4, public meetings and the distribution of informational brochures. This will serve to increase awareness on the part of the general public regarding continued airport safety enhancements, economic contributions and community benefits.

SUMMARY

North Las Vegas Airport is an active general aviation airport ranked as the second busiest airport in Nevada. Between January 1999 and September 2009 there were 2.23 million takeoffs and landings and a total of 43 accidents in the immediate vicinity of the airport.

The annual number of accidents at the airport has declined in recent years. The Federal Aviation Administration and the Clark County Department of Aviation have each instituted a variety of proactive safety measures. The Department of Aviation has worked closely with airport stakeholders to make constructive changes that enhance safety at all of their facilities, particularly North Las Vegas Airport. An important objective of the Department of Aviation is to work with residents to ensure that airport operations are compatible with the surrounding community.

While the risk of aircraft accidents can never be completely mitigated, the clear objective of aviation stakeholders as well as area residents is to reduce the number of aircraft accidents at North Las Vegas Airport. The most significant finding of this report is the very specific and unique factors involved in aircraft accidents that have occurred on and off the airport. None of the accidents reviewed for this report were attributable to infrastructure or other site conditions at North Las Vegas Airport, including the inspection, maintenance or repair of runways and taxiways, lighting, signage, pavement markings or navigational aids under the direct care, custody and control of the Clark County Department of Aviation.

The SJR-3 Stakeholder Group believes any initiatives to improve flight safety standards should involve a collaborative effort on the part of the Federal Aviation Administration, the Clark County Department of Aviation and other stakeholders. Recommendations from this SJR-3 Stakeholder Group have been presented in this report. These recommendations are specific and should result in an even safer operating environment at North Las Vegas Airport.

References:

14 Code of Federal Regulations, Part 91.3 (q)

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49 United States Code § 40103

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National Transportation Safety Board, Probable Cause Report LAX08LA274 (July 2009).

Nevada General Aviation Airport Economic Impact Study, Bureau of Business and Economic Research, University of Nevada, Reno (2005).

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www.faa.gov, The Operations Network (OPSNET)

www.faasafety.gov, FAASTeam

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Senate Joint Resolution No. 3–Senator Horsford

Joint Sponsor: Assemblywoman Kirkpatrick

FILE NUMBER.....

SENATE JOINT RESOLUTION—Urging the Federal Aviation Administration and the Clark County Department of Aviation to convene a stakeholders' group to develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft.

Legislative Counsel's Digest:

Federal law provides that the United States Government has exclusive sovereignty of airspace of the United States and requires the Administrator of the Federal Aviation Administration to prescribe regulations on the flight of aircraft to prevent collisions between aircraft and to protect persons and property on the ground. (49 U.S.C. § 40103) This resolution urges the Federal Aviation Administration to work closely with the Clark County Department of Aviation to convene a stakeholders' group to develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft.

WHEREAS, The expansion of urban areas in Clark County increasingly places homes and neighborhoods directly in the flight paths of aircraft flying to and from the North Las Vegas Airport; and

WHEREAS, Flights of experimental homebuilt aircraft to and from the North Las Vegas Airport are increasingly common; and

WHEREAS, Experimental homebuilt aircraft have higher accident rates than other types of aircraft and accounted for more than 12 percent of airplane accidents nationwide in 2007; and

WHEREAS, Experimental homebuilt aircraft have been involved in nine accidents at airports within the Clark County airport system since 2003, three of which were at the North Las Vegas Airport; and

WHEREAS, A crash involving an experimental homebuilt aircraft flying from the North Las Vegas Airport resulted in the deaths of two persons on the ground in 2008; and

WHEREAS, The Federal Aviation Administration sets standards for the number of hours experimental homebuilt aircraft must be tested before such aircraft can be operated at airports such as the North Las Vegas Airport; and

WHEREAS, Some of the experimental homebuilt aircraft operated at the North Las Vegas Airport may have been operated without having met those national standards; and



WHEREAS, The safety of persons who live near the North Las Vegas Airport is of the highest concern to the people of this State; and

WHEREAS, The Clark County Department of Aviation cannot regulate the flights of experimental homebuilt aircraft to and from the North Las Vegas Airport because federal law provides the United States Government with exclusive sovereignty of airspace in the United States; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature expresses serious concerns regarding the current flight safety practices at the North Las Vegas Airport; and be it further

RESOLVED, That the Nevada Legislature urges the Federal Aviation Administration to work closely with the Clark County Department of Aviation and the entire aviation community in Clark County to convene not later than June 1, 2009, a stakeholders' group, which must include, without limitation:

1. A representative from the Federal Aviation Administration;
2. A representative of the Clark County Department of Aviation;
3. A representative of the Clark County Aviation Association;
4. A representative of the City of North Las Vegas;
5. A representative of the Aircraft Owners and Pilots Association;
6. Residents of neighborhoods surrounding the North Las Vegas Airport; and
7. Tenants of the North Las Vegas Airport; and be it further

RESOLVED, That the stakeholders' group shall, on or before August 1, 2009, issue its preliminary analysis of the concerns regarding the current flight safety practices at the North Las Vegas Airport; and be it further

RESOLVED, That the stakeholders' group shall, on or before November 1, 2009, develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft, for submission to the appropriate entities for consideration and to the Legislative Commission; and be it further

RESOLVED, That the Nevada Legislature urges the Nevada Congressional Delegation to use its best efforts to encourage the Federal Aviation Administration to participate in this endeavor; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Administrator of the Federal



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Aviation Administration, the Board of County Commissioners of Clark County, the Director of the Clark County Department of Aviation, the North Las Vegas City Council and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage.

20 _____ 09



AIRCRAFT ACCIDENT DATABASE JANUARY 1999 TO SEPTEMBER 2009

NORTH LAS VEGAS AIRPORT

**Data Source: National Transportation Safety Board
Accidents more than 10 nautical miles (NM) from the airport are excluded
and are identified as shaded**

Appendix B -- Accident Summary Data

NORTH LAS VEGAS AIRPORT

Date	Location	N-Number	Make/Model	Mfr	Type of Operation	Fa-tal	Error	Description
4/22/2009	Off Airport	N17YS	Schweizer 269C	M	Based Part 91 Instructional	0	Awaiting Probable Cause Report	The helicopter lost engine power while attempting to land on high terrain, resulting in a hard landing. A probable cause has not yet been issued.
4/14/2009	On Airport	N4816D	Cessna 182	M	Based Part 91	0	PE	The pilot lost directional control while attempting to land and veered off the pavement into the dirt causing a prop strike and wing damage.
8/28/2008	Off Airport	N212HB	Piper PA-31-350	M	Transient Part 91	1	Awaiting Probable Cause Report	The aircraft departed VGT, experienced an onboard fire and was returning for an emergency landing when it crashed into a home 1.2 miles W of the airport. NTSB has not yet issued a probable cause.
8/22/2008	Off Airport	N415MK	Kilgore Velocity 173RG	E	Based Part 91	3	ME	An experimental homebuilt aircraft departed VGT on a test flight and crashed into a house 1.1 miles SE of the airport.
6/28/2008	Off Airport	N4063W	Piper Lance	M	Transient Part 91	4	PE	The pilot departed VGT and struck rapidly rising terrain in a mountain valley near Mt. Charleston. Lack of situational awareness and density altitude were causal factors.
2/29/2008	Off Airport	N958CP	Schweizer 269C	M	Based Part 91 Instructional	0	PE	A helicopter departed VGT and crashed in high terrain due to the student pilot's failure to maintain control and the instructor's inadequate supervision. Lack of suitable terrain for an emergency landing was also a contributing factor.

M -- Manufactured, E -- Experimental, PE -- Pilot Error, ME -- Mechanical Error, CE -- Controller Error
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

11/8/2007	Off Airport	N881CP	Cessna T182	M	Transient Part 91	2	PE	An aircraft operated by the Civil Air Patrol departed VGT during night VFR conditions and subsequently crashed into high terrain 13 miles SW of Las Vegas.
4/7/2007	Off Airport	N1079M	Cessna 172	M	Based Part 91 Instructional	0	ME	A solo student pilot attempting to land on Runway 12L and landed on Decatur Blvd. adjacent to the airport after a loss of engine power for undetermined reasons.
11/26/2006	Off Airport	N414AY	Cessna 414	M	Based Part 91	0	PE	The aircraft's right engine experienced a loss of power and the aircraft collided with a fence during an emergency landing in a residential area. The probable cause was fuel starvation as the result of the pilot's improper fuel management.
11/24/2006	Off Airport	N977SA	Cessna T210	M	Transient Part 91	0	PE	The aircraft lost engine power and collided with a telephone line during the forced landing attempt 2 miles NE of VGT due fuel exhaustion and the pilot's fuel mismanagement.
8/8/2005	On Airport	N58431	Hughes 369D	M	Based Part 91 Instructional	0	PE	A student pilot was conducting an autorotation at VGT when the tail rotor and stinger contacted the ground due to his improper flight control use and the instructor's inadequate supervision.
7/21/2005	On Airport	N7JUP	Aero Commander 680	M	Transient Part 91	0	PE	As the aircraft rotated and became airborne it settled and impacted the ground as the result of excessive flap selection and high density altitude.
7/20/2005	On Airport	N4961D	Cessna 172	M	Based Part 91 Instructional	0	PE	After touching down on Runway 12L, the aircraft veered left, struck a ditch and collided with an airport location sign due to the solo student pilot's failure to maintain directional control.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

5/5/2005	On Airport	N337DR	Gulfstream 695	M	Based Part 91	1	Pilot Incapacitation	A passenger took control of the aircraft and made a hard landing at VGT after the pilot experienced a cardiac event in the air and died. ⁵
	Off Airport	N6663P	Cessna P210	M	Based Part 91	0	PE	A pilot returning to VGT made a forced landing in an open field 6 mile NE after a total loss of engine power. The probable cause was determined to be fuel exhaustion.
10/30/2004	Off Airport	N6675X	Cessna 210A	M	Based Part 91	0	ME	While descending to land at VGT, the pilot experienced a total lack of power and landed on a nearby residential street. The NTSB could not determine a cause for the reported power failure.
9/5/2004	On Airport	N994RW	Robinson R-22	M	Based Part 91 Instructional	0	PE	A helicopter hit the ground hard during a practice autorotation due to the flight instructor's misjudged flare and delayed recovery.
5/27/2004	On Airport	N5010X	Raytheon Premier Jet	M	Based Part 91	0	PE	The aircraft was landing on Runway 7 when it left the pavement at the departure end and crashed through the perimeter fence due to an unstabilized approach, excessive speed and the presence of a tailwind.
5/22/2004	Off Airport	N154ZP	American Blimp Corp. A-1-50	M	Transient Part 91	0	PE	A blimp collided with a one story office building while attempting to takeoff from VGT due to winds and the pilot's inability to obtain a sufficient rate of climb.
12/25/2003	On Airport	N364JR	Beech A36TC	M	Transient Part 91	6	Unknown	On initial climb from Runway 12R the pilot declared an unspecified emergency and then crashed. The NTSB could not determine a specific cause of this accident.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

9/23/2003	On Airport	N8604N and N146PM	Piper Arrow and Piper Mirage	M	Transient and Based Part 91	0	CE	A landing Piper Arrow and a departing Piper Mirage collided at the intersection of Runways 12L and 7. The NTSB identified the failure of FAA personnel to maintain proper separation as the probable cause.
8/31/2003	On Airport	N103TK	Piper Malibu	M	Based Part 91	0	PE	The aircraft crashed short of Runway 12R due to the pilot's failure to maintain an adequate approach speed during approach for the aircraft's flight configuration.
7/27/2003	On Airport	N499R	Hogarty Lancair IV P	E	Transient Part 91	0	PE	The aircraft settled to the ground during takeoff and the main landing gear collapsed due to the pilot's premature lift-off before airspeed was attained resulting in a stall.
6/1/2003	Off Airport	N991RW	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with a wire during a pinnacle approach due to the pilot's failure to maintain adequate visual lookout.
4/25/2003	On Airport	N43VB	Cessna 182	M	Based Part 91	0	PE	Aircraft landing on Runway 25 crashed during day VFR due to the pilot's inadequate compensation for gusty cross wind conditions and a failure to maintain directional control.
4/4/2003	Off Airport	N553CH	Cessna 172	M	Based Part 91 Instructional	2	PE	The aircraft descended near vertically to ground impact on a private pilot practical flight test due to the applicant pilot's failure to maintain adequate airspeed while maneuvering.
3/30/2003	Off Airport	N95DC	Beechcraft V35	M	Based Part 91	0	PE	The aircraft lost power on departure and crashed into nearby obstacles due to fuel starvation as a result of the pilot's mismanagement of his fuel supply.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

10/12/2002	On Airport	N2209F	Cessna 310	M	Based Part 91	0	PE	Pilot became distracted when approaching Runway 30L during night VFR conditions and slid to a stop with retracted landing gear.
9/25/2002	Off Airport	N601GM	Bell 206 Helicopter	M	Based Part 91	0	PE	The helicopter experienced an emergency hard landing 2 miles S of VGT due to inadequate pre-flight planning that resulted in fuel exhaustion.
8/31/2002	Off Airport	N3184	Breezy RLU-1A	E	Based Part 91	0	PE	While maneuvering around a large rock formation the aircraft entered a box canyon and crashed due to both pilot's failure to maintain an adequate terrain clearance altitude.
6/23/2002	On Airport	N160RA	Cessna 172	M	Based Part 91	0	PE	The aircraft was taxiing when it departed the taxiway and came to rest in a concrete drainage ditch due to the pilot's decision to fly after dark with an inoperative landing light and his unfamiliarity with the airport.
6/14/2002	Off Airport	N7041B	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with the ground while attempting a downwind takeoff from a remote practice area due to the student pilot's control inputs and the instructor's lack of adequate supervision.
6/6/2002	On Airport	N7196W	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	While attempting an autorotation the helicopter landed hard and was damaged due to the student pilot's improper control inputs and the instructor's lack of adequate supervision.

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Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

3/29/2002	Off Airport	N7040C	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with the ground and rolled over while practicing autorotations in a remote area due to the failure of the instructor to properly judge the landing flare.
11/9/2001	On Airport	N8232M	Cessna 210	M	Based Part 91	0	ME & PE	On the first flight following an annual inspection during night VFR conditions, the landing gear would not fully extend and the right main gear collapsed upon landing. This was due to the failure of maintenance personnel to properly diagnose the cause of a reported maintenance discrepancy and the pilot's improper handling of the emergency.
6/4/2001	On Airport	N209TA	Piper Navajo	M	Based Part 135	0	ME	When the aircraft touched down at VGT the right main gear collapsed due to fatigue failure of a landing gear component.
5/19/2001	Off Airport	N9820R	Beech M35	M	Based Part 91	1	ME & PE	The aircraft collided with obstructions during a forced landing precipitated by a loss of power. The probable cause was the pilot's failure to properly install an oil filter during an owner-assisted annual inspection, which resulted in oil exhaustion and a loss of power.
4/1/2001	On Airport	N9572H	Cessna 172	M	Based Part 91	0	PE	During an aborted landing the pilot collided with a fence due to his inadequate compensation for existing cross wind conditions and his failure to maintain runway alignment.

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Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

12/14/2000	Off Airport	N7189K	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	During an autorotation landing the helicopter touched down hard resulting in substantial damage due to the instructor's inadequate supervision of the second pilot.
9/22/2000	On Airport	N2963P	Piper PA-22	M	Transient Part 91	0	PE	During landing the aircraft veered off the runway and the nose gear collapsed due to the pilot's inadequate compensation for gusty and variable cross wind conditions.
9/16/2000	On Airport	N27CG	Stevens Starduster II	E	Based Part 91 Instructional	0	ME	On the landing rollout the aircraft ground looped causing substantial damage due to the failure of a mechanical component in the tail wheel.
9/2/2000	On Airport	N739HA	Cessna 172	M	Based Part 91	0	PE	While attempting to land on Runway 25 the aircraft landed in the dirt off the runway due to the failure of the pilot to maintain proper airspeed which resulted in a stall.
7/28/2000	On Airport	N3386D	Cessna 180	M	Transient Part 91	0	PE	The aircraft bounced on landing and veered off the runway causing the right main landing gear to separate from the aircraft due to the pilot's failure to maintain directional control.
4/28/2000	On Airport	N2193S	Cessna 210	M	Transient Part 91	1	PE	During a go-around attempt the aircraft impacted the ground and it was destroyed due to the pilot's failure to maintain control during cross wind conditions.
4/28/2000	On Airport	N9344C	Cessna 180	M	Based Part 91	0	PE	The aircraft landed right of the runway centerline and then nosed down causing substantial damage due to the pilot's inadequate compensation for existing cross wind conditions.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

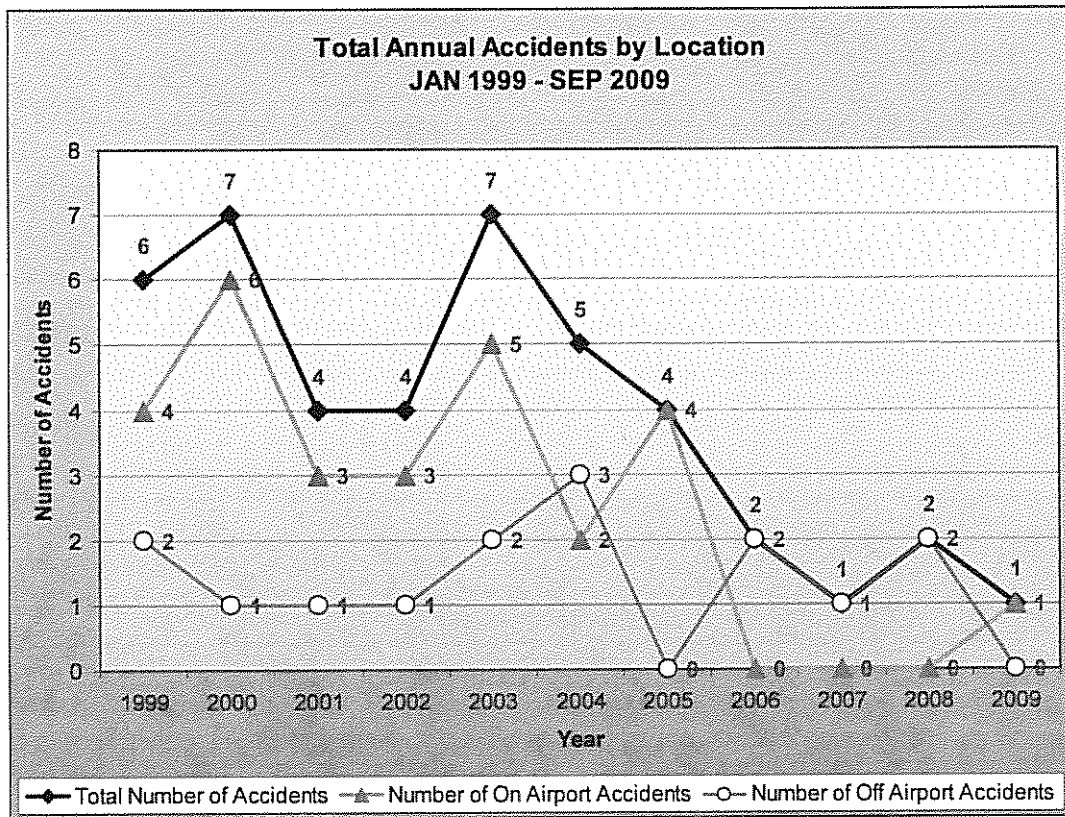
10/14/1999	Off Airport	N1024B	Piper Navajo	M	Based Part 135	1	PE	The aircraft collided with mountainous terrain after takeoff from VGT due to the pilot's lack of situational awareness and various errors on the part of air traffic controllers.
8/29/1999	Off Airport	N40RP	Cessna P210	M	Based Part 91	0	PE	The aircraft was in the traffic pattern when the engine lost power due to the pilot's failure to follow recommended procedures for use of the fuel pump. The aircraft subsequently collided with the ground causing substantial damage.
8/20/1999	Off Airport	N2654W	Mooney M20	M	Based Part 91	1	PE	The aircraft was in the traffic pattern when it began a wing rocking motion and descended until it collided with a tree and a residence, causing an explosion and fire. It was determined the pilot executed a steep turn at low altitude resulting in an accelerated stall and loss of control.
7/2/1999	On Airport	N180HW	Cessna 180	M	Based Part 91	0	PE	During the takeoff roll the aircraft experienced a gust of wind that nosed it over due to the pilot's failure to compensate for the existing cross wind conditions.
5/8/1999	On Airport	CGIUX	Cessna 172	M	Transient Part 91	0	PE	During an aborted landing the aircraft struck a chain link fence and impacted the ground due to the pilot's premature rotation and failure to attain and maintain sufficient airspeed.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

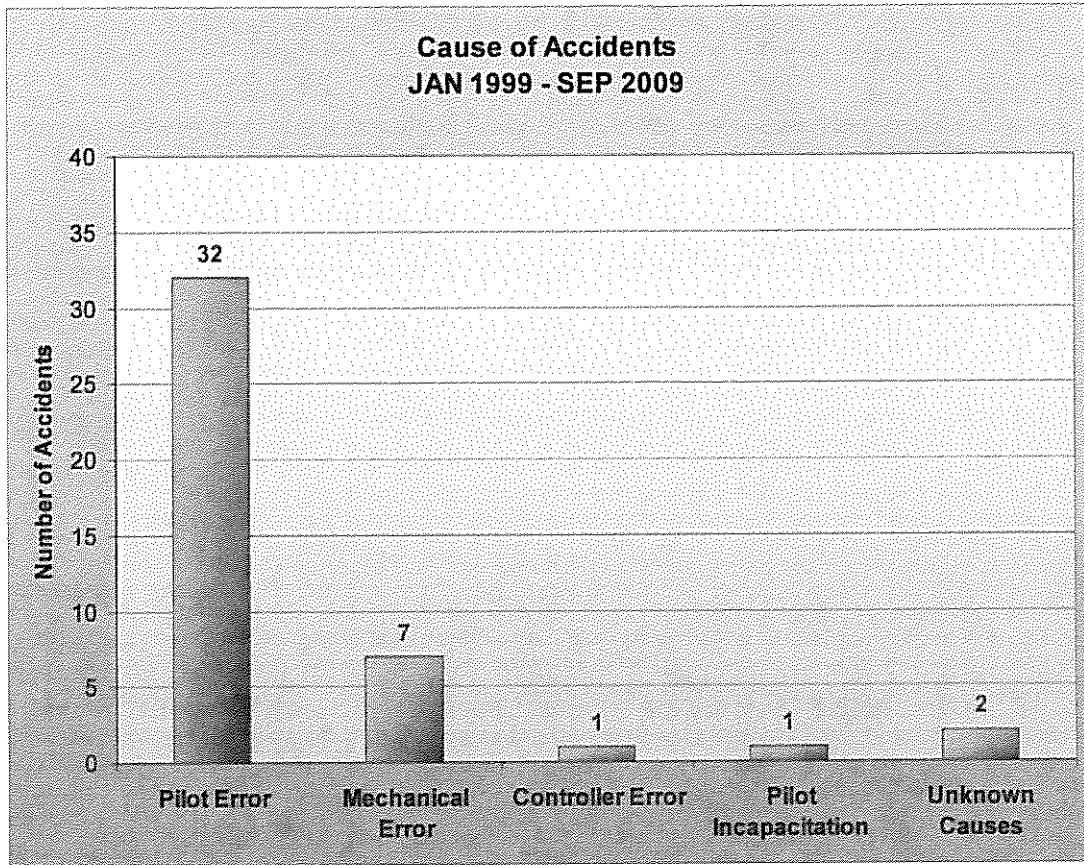
4/10/1999	Off Airport	N88212	Bellanca 7KCAB	M	Based Part 91	0	PE	While performing aerobatic maneuvers at altitude the control stick became jammed, the pilot was unable to regain control, and he abandoned the aircraft and parachuted to the ground. It was determined this was due to the pilot's failure to secure loose items in the cockpit before attempting aerobatic maneuvers.
4/10/1999	On Airport	N3289L	Cessna 172	M	Based Part 91	0	PE	On takeoff the aircraft veered to the right and struck a taxiway sign due to the pilot's failure to maintain directional control.
1/31/1999	On Airport	N56431	McDonnell Douglas 369D	M	Based Part 91	0	PE	While performing a practice autorotative landing the tail stinger contacted the ground due to the pilot's failure to properly judge the landing flare maneuver.
1/17/1999	Off Airport	N857JA	Abraham J G II/Erickson K One design	E	Based Part 91	0	ME	The pilot pressed the left rudder pedal while practicing outside snap rolls. The rudder pedal went all the way to the floor with no resistance. The cable had separated from the rudder horn due to the improper installation. The aircraft entered an unrecoverable right bank and the pilot parachuted to safety.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error
Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

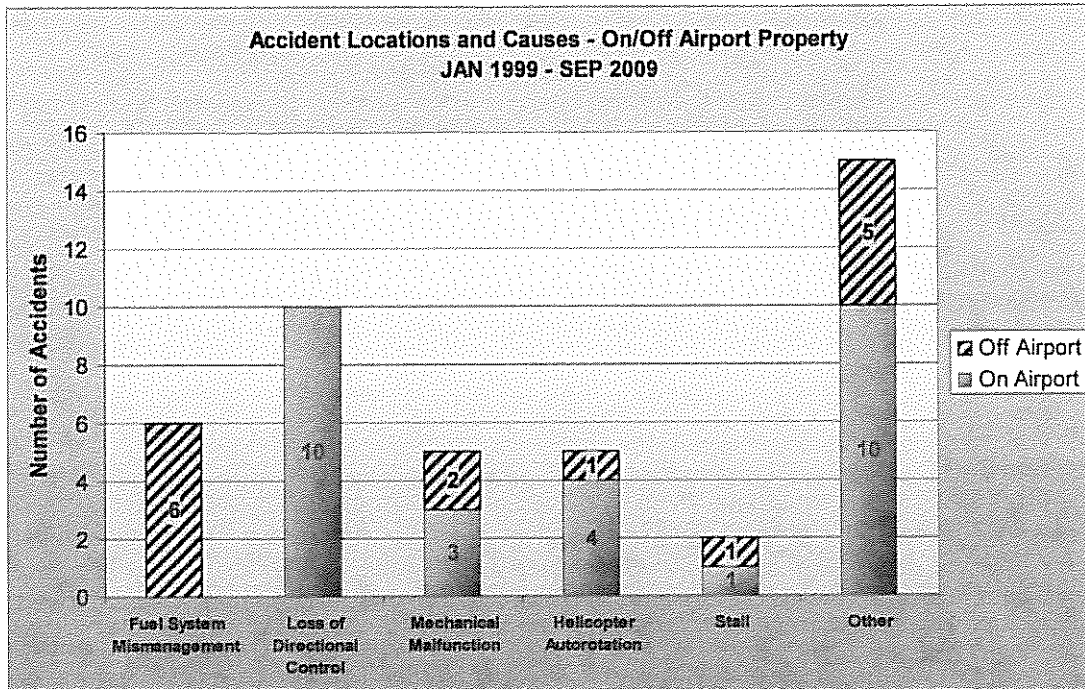
Appendix C – Total Annual Accidents by Location



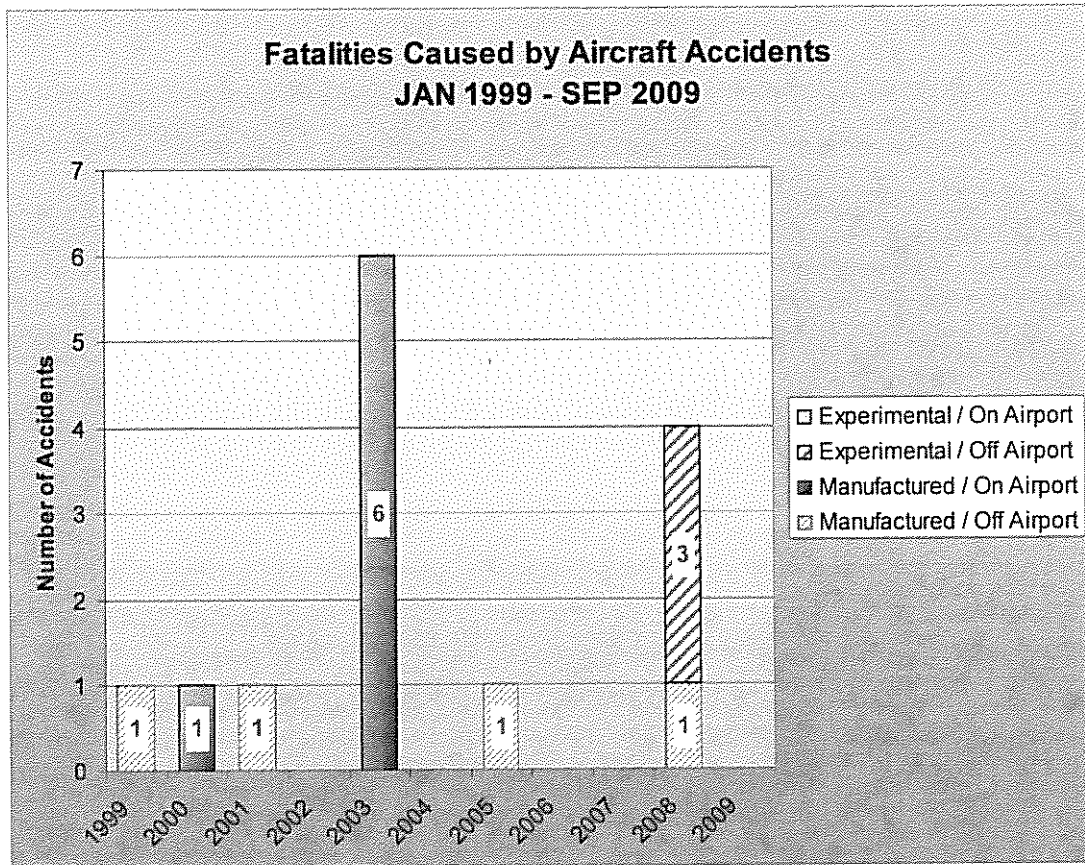
Appendix D – Cause of Accidents



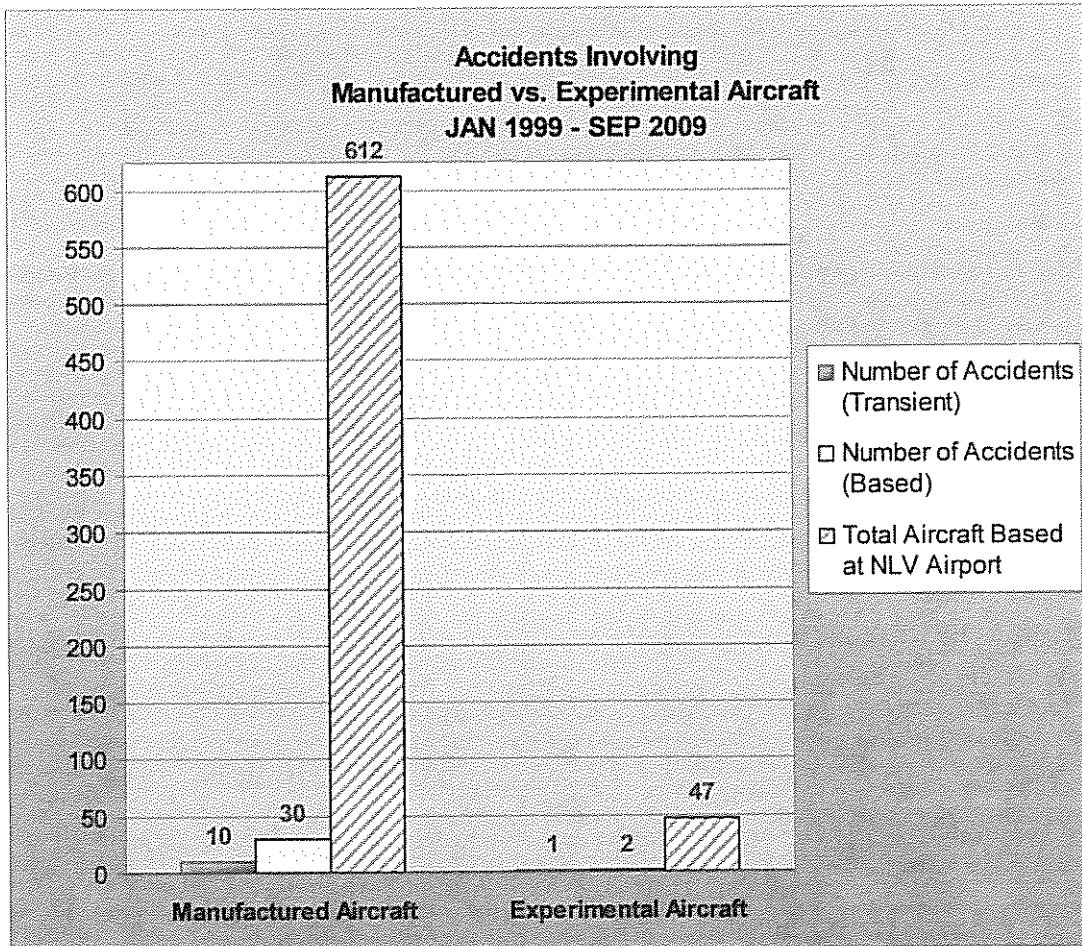
Appendix E – Accident Locations and Causes – On/Off Airport Property



Appendix F – Fatalities Caused by Aircraft Accidents



Appendix G – Accidents Involving Manufactured vs. Experimental Aircraft



GLOSSARY

Aircraft Accident – An occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. (*National Transportation Safety Board, 49 Code of Federal Regulations, Part 830.2*)

Based Aircraft – An aircraft that is operational & air worthy, which is typically based at an airport for the majority of the year. (*Federal Aviation Administration, National Based Aircraft Inventory Program, Frequently Asked Questions*)

Experimental Aircraft – A special airworthiness certificate in the experimental category is issued to operate an aircraft that does not have a type certificate or does not conform to its type certificate and is in a condition for safe operation. Additionally, this certificate is issued to operate a primary category kit-built aircraft that was assembled without the supervision and quality control of the production certificate holder. Special airworthiness certificates may be issued in the experimental category for the following purposes: research and development, showing compliance with regulations, crew training, exhibition, air racing, and market surveys. (*Federal Aviation Administration website, www.faa.gov*)

Flight School – Any pilot school, flight training center, air carrier flight training facility, or flight instructor certified under 14 CFR Part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 United States Code (U.S.C.) Sub-title VII, Part A, in the operation of any aircraft or flight simulator. (*Transportation Security Administration, 49 Code of Federal Regulations, Part 1552.1*)

Flight Training – Training, other than ground training, received from an authorized flight instructor in flight in an aircraft. (*Federal Aviation Administration, 14 Code of Federal Regulations, Part 61.1*)

Transient Aircraft – Operations that are performed by an aircraft, either Instrument Flight Rules (IFR), Special Visual Flight Rules (SVFR), or Visual Flight Rules (VFR) that lands at an airport, arriving from outside the airport area, or departs an airport and leaves the airport area (This is synonymous with itinerant aircraft). (*Federal Aviation Administration website, www.faa.gov*)

Part 91 – The Federal Aviation Regulation that governs the operation of aircraft within the United States, including such items as minimum safe altitude, radio communications and air traffic control procedures. Most general aviation pilots and aircraft operate under this regulation (14 CFR Part 91.1(a)).

Part 135 – The Federal Aviation Regulation that governs the commuter or on-demand operations of each person holding an Air Carrier Certificate or Operating Certificate (14 CFR 135.1(a)).

Part 139 – The Federal Aviation Regulation that governs the certification and operation of airports in the United States serving any scheduled passenger-carrying operation of an air carrier operating aircraft designed for more than 9 passenger seats (14 CFR Part 139.1(a)).

IFR – An acronym for Instrument Flight Rules, a set of rules governing the conduct of flight under instrument meteorological conditions, or periods of inclement weather with reduced visibility (www.faa.gov).

VFR – An acronym for Visual Flight Rules, a set of rules that governs flight during visual meteorological conditions, or periods of fair weather (www.faa.gov).

File No. 3-1191

AIRCRAFT ACCIDENT REPORT

SPECTRUM AIR, INC.
Sabre Mark 5, N275X
Sacramento, California
September 24, 1972
Adopted: March 28, 1973

NATIONAL TRANSPORTATION SAFETY BOARD
Washington, D.C. 20591
Report Number: NTSB-AAR-73-6

TECHNICAL REPORT STANDARD TITLE PAGE

1. Report No. NTSB-AAR-73-6	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle Aircraft Accident Report- SPECTRUM AIR, INC., SABRE MARK 5, N275X SACRAMENTO EXECUTIVE AIRPORT, SACRAMENTO, CALIFORNIA SEPTEMBER 24, 1972		5. Report Date March 28, 1973	
		6. Performing Organization Code	
7. Author(s)		8. Performing Organization Report No.	
9. Performing Organization Name and Address National Transportation Safety Board Bureau of Aviation Safety Washington, D. C. 20591		10. Work Unit No. 1003A	
		11. Contract or Grant No.	
12. Sponsoring Agency Name and Address NATIONAL TRANSPORTATION SAFETY BOARD Washington, D. C. 20591		13. Type of Report and Period Covered Aircraft Accident Report September 24, 1972	
		14. Sponsoring Agency Code	
15. Supplementary Notes Aircraft Safety Recommendations A-72-219 through A-72-223 are included in this report.			
16. Abstract Spectrum Air, Inc., Sabre Mark 5, N275X, crashed during a rejected takeoff from Runway 30 at Sacramento Executive Airport, Sacramento, California, at approximately 1624 Pacific daylight time, on September 24, 1972. The aircraft collided with several automobiles and came to rest in an ice cream parlor across the street from the airport. Twenty-two persons on the ground were killed and 28 others, including the pilot, were injured. The aircraft was destroyed. The aircraft became airborne twice during the attempted takeoff, but each time returned to the runway. The pilot reported that the aircraft acceleration and control response were normal until he felt a vibration shortly after initial liftoff. He did not recall if it persisted through the subsequent liftoff and the rejected takeoff. The National Transportation Safety Board determines that the probable cause of this accident was the overrotation of the aircraft and subsequent derogation of the performance capability. The overrotation was the result of inadequate pilot proficiency in the aircraft and misleading visual cues. Five recommendations were made to the FAA.			
17. Key Words Overrotation, Inadequate proficiency, Surplus military aircraft		18. Distribution Statement Released to Public Unlimited Distribution	
19. Security Classification (of this report) UNCLASSIFIED	20. Security Classification (of this page) UNCLASSIFIED	21. No. of Pages 35	22. Price

NTSB Form 1765.2 (11/70)

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NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C. 20591
AIRCRAFT ACCIDENT REPORT

Adopted: March 28, 1973

SPECTRUM AIR, INC.. SABRE MARK 5, N275X
SACRAMENTO EXECUTIVE AIRPORT
SACRAMENTO, CALIFORNIA
SEPTEMBER 24, 1972

SYNOPSIS

Spectrum Air, Inc., Sabre Mark 5, N275X, crashed during a rejected takeoff from Runway 30 at Sacramento Executive Airport, Sacramento, California, at approximately 1624 Pacific daylight time, on September 24, 1972. The aircraft collided with several automobiles and came to rest in an ice cream parlor across the street from the airport. Twenty-two persons on the ground were killed and 28 others, including the pilot, were injured. The aircraft was destroyed.

The aircraft became airborne twice during the attempted takeoff but each time returned to the runway. The pilot reported that the aircraft acceleration and control response were normal until he felt a vibration shortly after initial lift-off. He did not recall whether it persisted through the subsequent liftoff and the rejected takeoff.

The National Transportation Safety Board determines that the probable cause of this accident was the overrotation of the aircraft and subsequent derogation of the performance capability. The overrotation was the result of inadequate pilot proficiency in the aircraft and misleading visual cues.

As a result of this accident the Safety Board recommended major changes in the regulations and procedures governing certification of aircraft in the experimental category and the control of pilots who fly them. Recommendations were also made in regard to the safety of persons and property around airports.

1. INVESTIGATION

1.1 History of the Flight

Spectrum Air, Inc., Sabre Mark 5, N275X, was flown from Oakland to Sacramento, California, to be exhibited as a static display at the Sacramento Executive Airport on September 24, 1972. This was the final day of the 2-day Golden West Sport Aviation Show. The pilot used Runway 29 for takeoff from Oakland International Airport, at approximately 1000.1/ En route to Sacramento, he rendezvoused with a friend who was flying a Grumman F-8 Bearcat, and they proceeded to Sacramento as previously arranged. Approximately 30 miles from Sacramento, the Sabre pilot requested permission for a low pass over the runway, and the tower subsequently cleared him for a low approach to Runway 30. The low pass was made at approximately 100 to 150 feet and 200 knots, in order to check the runway approach and landing area. During the low pass, the F-8 followed at a distance of approximately 3,000 feet. Normal landings were made and the Sabre was parked beside a Ford Trimotor. which was also owned by Spectrum Air, Inc. The Sabre remained parked in the roped static display area throughout the airshow.

During a break in the aerial display, at 1400, the pilot preflighted the Sabre in preparation for departure; however, an adequate starting unit was not found until about 1545. At this time the airshow was finished, and many aircraft were departing. Following a normal start and routine checking of various systems, the pilot requested, ". . . taxi VFR to Oakland. I'd like to use Runway two ah if the wind is right." The ground controller advised that Runway 30 was the active runway and that there would be a delay if he wanted Runway 2. The pilot advised that he couldn't wait too long because of fuel consumption. The ground controller then reported, ". . . Runway three zero, five thousand feet and the wind is three two zero at eight, can you handle that?" The pilot responded, "Yeah, as long as I don't have to wait for an hour out there." He was then given taxi instructions. As he approached the end of Runway 30, he was cleared into position to hold. At 1623:40, the controller advised, "Sabre Liner Seven Five X-ray, observe the two aircraft at the ah northwest field boundary climbing out ahead of you, cleared for takeoff." The pilot acknowledged, "Okay, thanks a lot huh." This was the last transmission from the aircraft.

1/ All times herein are Pacific daylight, based on the 24-hour clock, unless otherwise noted.

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The pilot stated that the flaps were in the takeoff position, and he completed the pretakeoff checklist. He checked throttle friction, emergency ignition, and engine instruments during the engine runup at the end of the runway. The exhaust gas temperature was 600° to 690° and the tachometer was indicating 97 to 98 percent r.p.m. He released the brakes and used nosewheel steering for directional control until his speed was approximately 60 knots. He then checked the engine instruments for the last time -- everything was normal. At 105 knots he applied sufficient back pressure to raise the nosewheel off the runway, and maintained that attitude. The aircraft became airborne within a few seconds. The takeoff roll and lift-off were normal in every respect. After a slight hesitation, preparatory to raising the landing gear, the pilot heard and felt an unusual vibration which startled him. The aircraft was no longer accelerating in a normal fashion, so he instinctively lowered the nose, confirmed that he still had full throttle, and was surprised that the aircraft settled back onto the runway. He did not recall whether the vibration ended, but acceleration seemed normal again so he dismissed a momentary thought of discontinuing, and resumed the takeoff attitude. The aircraft became airborne again; however, it was obvious to the pilot that the aircraft was not going to fly, and he began the rejected takeoff procedure. He closed the throttle, touched down, and continued straight ahead trying to slow the aircraft. Within a second he hit something and was airborne again. He shut off the "fuel switch" and shielded his face with his right arm. He was unable to control the aircraft as it continued across the street and into the building. The highest airspeed he observed at anytime was 120 knots.

The pilot stated that he rotated the aircraft on this takeoff the same as he always did. He established takeoff attitude by raising the nose until the farthest point on the runway disappeared. Although he looked to the right and to the left of the nose for reference, he did not use the horizon to establish the deck angle.

Statements were obtained from 18 eyewitnesses, and two 8-mm. movies of the takeoff were also received. The movies and witness information generally corroborated the takeoff as described by the pilot. The entire runway was used, and there were two separate lift-offs as the aircraft moved along the runway.

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1.2 Injuries to Persons

<u>Injuries</u>	<u>Crew</u>	<u>Passengers</u>	<u>Others</u>
Fatal	0	0	22
Nonfatal	1	0	27
None	0	0	

1.3 Damage to Aircraft

The aircraft was destroyed by impact and subsequent fire.

1.4 Other Damage

The airport perimeter fence and a fire hydrant were broken, several cars were damaged, and an ice cream parlor was damaged by impact, fire, and water.

1.5 Crew Information

Richard L. Bingham, aged 37, held airline transport pilot certificate No. 1670088, with ratings for airplane multiengine land and DC-3, and commercial privileges for airplane single-engine land and CV-PBY (VFR only). He held a certificated flight instructor certificate with an expiration date of April 30, 1974, and flight engineer (reciprocating engine powered) certificate No. 2039643. He also held mechanic certificate No. 1987269, with an airframe and powerplant rating, and a first-class medical certificate issued September 7, 1972, with no limitations. He stated that at the time of the accident, he had accumulated approximately 2,500 total flying hours, of which 600 hours were in jet aircraft, and 7.5 hours were in the Sabre Mark 5. His logbook indicated a total of 2,085 flying hours, including 342 hours in jet aircraft, 3.5 of which were in the Sabre Mark 5. The last entry in the logbook was dated September 17, 1972.

Mr. Bingham received a letter of authority, dated June 2, 1972, to fly the Sabre Mark 5 for proficiency. This letter expired June 9, 1972, but was replaced on June 6, 1972, by a letter permitting flight for proficiency or exhibition at bona fide airshows (see Appendix B). The issuing Federal Aviation Administration (FAA) inspector verbally stipulated that his office should be advised verbally anytime the aircraft was going to be exhibited.

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Mr Bingham was employed as General Manager of Spectrum Air, Inc., in September 1971. He participated in the negotiations to purchase N275X and attended the 10-hour formal ground school which was given by a former F-86 pilot in May 1972. He received an additional 2 hours of emergency procedures and 2 hours of flight procedures instruction on the day of his first flight, June 6, 1972.2/ All ground instruction was monitored by an FAA representative. The initial flight consisted of performing basic airwork maneuvers, including approaches to a stall. The instructor monitored the flight by radio in a P-51 "chase plane," but he did not see the Sabre or issue any instruction to the pilot during most of the flight.

All of Mr Bingham's takeoffs in the Sabre Mark 5 were made on Runway 29 at Oakland International Airport, except the accident flight. Runway 29 is 10,000 feet long, 150 feet wide, and is bounded at both ends by San Francisco Bay. He testified that, ". . . the sight that you see is different between Runway 30 (and) Oakland." There are visible obstructions at the end of the runway in Sacramento whereas, The Oakland runway runs right in the water and it's unlimited out there." He stated that, "I was told that on normal reference, not necessarily straight ahead, but out to the sides as well, that as I got the proper angle for rotation that I would just not quite be able to see the runway."

Mr Bingham stated that he had retired at 2300 the night before the accident, and awoke at 0600 on the day of the accident. He had a normal breakfast and a snack for lunch.

1.6 Aircraft Information

Canadair, Ltd., Sabre Mark 5, N275X, was manufactured on September 19, 1954, with serial no. 1054. The aircraft was flown by the Royal Canadian Air Force for 300 hours and then placed in long-term storage on October 31, 1961. Periodic inspections were accomplished through June 19, 1967. The aircraft was first registered in the United States in July 1971, and purchased by Spectrum Air, Inc., on November 4, 1971. During the next 3 months the aircraft was worked on in Syracuse, New York, to prepare it for a ferry flight to California where it would be based. Although the maintenance performed during this period is unknown, it was described as routine to the activation of an aircraft from long-term storage.

2/ Although his first flight was logged on June 2, the aircraft acceptance test hop was not flown until June 3, and Mr Bingham's initial flight was several days subsequent to the acceptance check.

Special airworthiness certificates were issued to ferry N275X on January 5, February 2, and February 22, 1972. Each was valid for approximately 3 weeks. The aircraft was ferried to Napa County Airport (California) in February 1972, and subsequently flown to Oakland International Airport in March 1972, where the airworthiness inspection was conducted. On May 8, 1972, the Oakland General Aviation District Office (GADO) issued a special airworthiness certificate in the experimental classification for the purpose of exhibition. The operating limitations imposed for the 1-year period of the certificate were as follows:

THIS LISTING SHALL BE ACCESSIBLE TO THE PILOT

This aircraft must be operated in compliance with the following limitations:

1. Flights are authorized only for the purpose of exhibiting the aircraft at bona fide airshows and exhibits, movement of the aircraft to exhibit locations, and proficiency flights by persons so authorized.
2. Each person operating this aircraft shall comply with the operating limitations prescribed in Federal Aviation Regulation Part 91, Section 91.42, and shall conduct all flights in accordance with applicable FAA air traffic and general operating rules.
3. All flights shall be conducted in such a manner that the aircraft will not present a hazard to persons or property.
4. Aircraft and aircraft engine operations shall be conducted in compliance with the military and/or manufacturer's limitations issued for the aircraft.
5. All flights shall be conducted during daylight hours.
6. This aircraft may not be operated in weather conditions below the minimums prescribed for VFR flight. Operations in positive control areas and route segments shall conform to the equipment and operational requirements of FAR 91.97 and FAR 91.170.
7. Operations of this aircraft may be conducted only by a pilot authorized under a Letter of Authority issued by the Administrator.
8. Any major change, alteration, or change of owner of this aircraft renders this airworthiness certificate invalid.

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1.7 Meteorological Conditions

The local surface weather observation, made by the National Weather Service observer following the accident was, in part, sky clear, visibility 30 miles, temperature 81° F., wind 320° at 7 knots, altimeter setting 29.87 inches.

1.8 Aids to Navigation

No aids to navigation were involved.

1.9 Communications

There was **no** difficulty with radio communication between the aircraft and the tower.

1.10 Aerodrome and Ground Facilities

Sacramento Executive Airport is located in a commercial/residential urban area approximately 3 miles southwest of Sacramento, California. There are three asphalt runways, each 150 feet wide. Runway 2, the instrument runway, is 6,003 feet long, and Runway 34 is 4,984 feet long. Runway 30 is 5,000 feet long, but the landing threshold for Runway 12, the reciprocal, is displaced 670 feet to meet approach slope criteria at the northwest end of the runway. The airport elevation is 21 feet, but the elevation at the northwest end of Runway 30 is 17 feet.

In January 1964, a shopping center was proposed for construction on commercially zoned property at the northwest corner of the airport. The FAA circulated particulars of the construction to various aeronautical interests in order to obtain their comments on the effect of the construction. There were four obstructions the height of which exceeded the then current standards of Section 77.27(b)(2)3/ by 9, 11, 13, and 14 feet.

3/ Part 77 is the Federal regulation governing "Objects Affecting Navigable Airspace." Part 77.27(b)(2) established an imaginary approach area surface for runways such as Runway 30 as follows: beginning at the end of the runway and extending 500 feet outward at the elevation of the approach end of the runway and then sloping upward at the ratio of 1 to 40, being 500 feet wide at the beginning and expanding uniformly to a width of 3,000 feet at the outer extremity, 10,000 feet from the end of the runway.

The airport manager and the California Aeronautics Commission objected to the construction on the basis that it would be a hazard not only to aircraft on approach to the runway, but also to persons on the ground who would be concentrated in the shopping center. The Air-Transport Association objected because it might result in a reduction of runway effective length, thereby forcing air carriers to operate at reduced gross weights. The construction proposal was discussed further at an informal meeting of all concerned. The FAA determined that the construction would not be a hazard to air navigation. The plans were modified so that the heights of only three points exceeded the standards by 11, 11 and 13 feet, and the shopping center was constructed.

On July 1, 1967, the County of Sacramento assumed operational control of the airport under a lease agreement. In October 1967 all air carrier operations were moved to the new Metropolitan Airport, and Executive Airport continued operation as a general aviation facility.

In December 1969, an addition to the shopping center was proposed, and the FAA again circulated the details for comment. It was noted that the proposed building, an ice cream parlor, exceeded the height standard by 5 feet. No objections were received, and the FAA determined that no hazard existed. However, the California Department of Aeronautics, in responding to a city zoning hearing, commented that the State's study indicated that other structures in the area of the new building were of equal height so that the addition had no substantive effect on the airport activity.

In January 1970, the FAA circulated another aeronautical study regarding the proposed construction of a sign for the ice cream parlor. The sign exceeded the standards of Part 77 by 26 feet, but this was later reduced to 21 feet. The California Department of Aeronautics indicated no objection if it was shadowed by other existing structures. The Director of Airports, on behalf of Sacramento County, objected to the construction because it was in the clear zone and exceeded the 40:1 slope by 14.5 feet. Also, the size of the sign (20 feet by 30 feet) would tend to confuse pilots during low visibility conditions. Once again, the FAA determined that no hazard existed because the sign had no greater adverse effect on aircraft operations than the existing obstructions, provided it had appropriate obstruction lighting. The California Department of Aeronautics also filed objection to the sign in the city's zoning variance process, and indicated that if the runway threshold was displaced sufficiently to eliminate the intrusion into the approach surface, they would withdraw their objection. As noted earlier, the threshold for Runway 12 was displaced.

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1.11 Flight Recorders

There were **no** flight recorders installed, and none was required.

1.12 Wreckage

The aircraft skid marks began approximately **40** feet from the end of Runway **30** and continued **453** feet over a sod overrun and a 25-foot-wide perimeter roadway. At this point the aircraft became airborne again, crashed through a chain link fence and a fire hydrant, and skidded across a 112-foot-wide divided highway. The aircraft came to rest approximately **800** feet from the end of the runway, less than **25** feet to the left of the extended runway centerline.

Both wings separated from the aircraft fuselage. The right wing separated at the wing/center section attach fitting. This forging was fractured longitudinally through the ribs, but all attach bolts were tight and in place. The aileron and flap were still attached. The left wing and center section were still intact as one assembly. The left aileron and flap had separated from the wing.

The right wing leading edge was crushed back to the front spar in two places, near the wing root and 2 feet inboard from the tip. The Pitot mast was separated at the leading edge, and the Pitot head was missing. Wood splinters were jammed into one end of the mast. The Pitot and static lines were intact and unobstructed from the wingtip to the inboard end of the wing. The Pitot and static lines in the fuselage were destroyed.

The fuselage forward of the cockpit bulkhead was destroyed. The forward cockpit bulkhead and instrument panel was bent forward and down approximately **30"**. The fuselage skin on both sides was buckled, burned, and melted in several places, from the cockpit aft to the area of the speed brakes. The lower fuselage skin was gone. Both speed brakes were in the open position. The aft fuselage section was attached, but the skin and tailpipe were buckled, with three deep wrinkles just aft of the speed brakes. The lower aft end of the fuselage and tailpipe were both dented and buckled upward. The vertical stabilizer and both horizontal stabilizers were damaged but intact. The rudder and left elevator remained attached, but the right elevator was separated.

All three landing gear assemblies separated from the aircraft. The main landing gear tires were inflated and showed **no** flat spots. The wheels and brakes rotated freely. The brake discs showed **no** signs of overheat, and the pads were undamaged. The nosewheel tire was deflated. The rim **was** dented on both sides and slightly spread.

The right and left flap jackscrews were partially extended and required 7-1/4 and 7-1/2 turns, respectively, to reach full extension.

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The first two compressor stages of the engine had light foreign object damage, but there was no evidence of overtemperature or foreign object damage in the turbine. The engine rotor rotated freely.

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Samples of fuel, oil, and hydraulic fluid were examined, and there was no evidence of contamination other than that due to the fire and sampling conditions.

The engine fuel control, two engine driven fuel pumps, and the fuel distributor assembly were functionally tested at the facilities of Orenda, Ltd. All units were capable of supplying the required amount of fuel to develop maximum rated thrust for takeoff at sea level and standard temperature.

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1.13 Fire

The aircraft external fuel tanks ruptured on the chain link fence, and other tanks failed as the aircraft continued skidding across the street into the ice cream parlor. The main fireball occurred on the airport side of the street, and the fire trail followed the aircraft into the building.

Airport fire and rescue units were located at the takeoff end and midpoint of Runway 30. Rescue 8, the pickup truck at the end of the runway, began moving down the runway in anticipation of the accident and crashed through the perimeter fence on the most direct route to the wreckage. All other vehicles also responded, and firefighting activity began within a highly commendable short period of time. Other units from the Sacramento Fire Department arrived at the site within 5 minutes. In addition, the sprinkler system in the ice cream parlor was activated by the fire.

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1.14 Survival Aspects

This was a survivable accident. The pilot exited the aircraft unassisted and crawled to a window of the building. He was assisted from the building by bystanders. Approximately 100 to 150 people were in the ice cream parlor at the time of the accident. Most of the survivors escaped unassisted through large windows of the building; however, many were assisted or carried out by spectators and firemen.

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1.15 Tests and Research

The aircraft handbook for the Sabre Mark 5 contains the following performance data for the conditions at the time of the accident:

Nosewheel lift-off speed . . . 110 knots
Takeoff speed 130 knots
Takeoff distance 3,200 feet
Distance to clear
50-foot obstacle , 4,600 feet

An 8-mm. movie of the takeoff was analyzed by making a series of 8 x 10 inch enlargments of every eighth frame, counting backward from the initial fireball. Various stationary landmarks in the background of each photograph were used to determine the angular displacement of the aircraft from the camera location, and also the distance the aircraft moved along the runway. The deck angle of the aircraft in each photograph was then measured and corrected for the distortion of that particular viewing angle. The groundspeed, based on camera frame speed and distance traveled, was calculated and the speeds were averaged for every three frames to minimize the effects of sighting errors, Finally, the height of the aircraft was established by calculation or estimated in relation to other photographs where calculations could not be made.

In summary, the initial lift-off occurred between 2,800 and 2,900 feet from the end of the runway at an airspeed of 124 knots. The deck angle was approximately 11° Aircraft Noseup (ANU). The airspeed and deck angle continued to increase to 130.5 knots and 15.5' ANU, respectively, At this time the deck angle kept increasing, but the acceleration stopped and the speed began decreasing. The aircraft was 2 feet above the ground, measured from the bottom of the main landing gear. The aircraft settled back to the runway at approximately 3,700 feet, as the nose attitude lowered to about 10° ANU and the velocity dropped to 128 knots. Within a few seconds the speed began increasing again and eventually reached a maximum of approximately 137 knots. However, the deck angle also increased markedly to over 16.5° ANU and remained in that attitude. During the same interval, the aircraft was approximately 5 feet above the runway. The aircraft touched down again 5,005 feet from the takeoff end of the runway and disappeared from the camera view.

The nose attitude of another Sabre Mark 5 aircraft was calculated from film made during a takeoff. Although the aircraft was not equipped with external fuel tanks, the initial lift-off attitude would not vary significantly from that of N275X. The attitude during the test takeoff was approximately 5° ANU.

1.16 Other

The Golden West Sport Aviation Show was a 2-day airshow sponsored by the Active 20-30 Club and Chapter 52 of the Experimental Aircraft Association, both of Sacramento. The purpose of the show was the static and aerial exhibition of "experimental and antique" aircraft. The proceeds were designated for charitable and aviation educational support. Preliminary planning for the airshow began in February 1972 with monthly meetings, and culminated in a formal Application for Certificate of Waiver or Authorization from the provisions of FAR 91.71(c) and (d)4/. The application, dated August 8, 1972, stipulated that all events would take place within the confines of Sacramento Executive Airport and listed three pilots with the aircraft that each would fly. The planned schedule of events, beginning at 0800, September 23, 1972, and ending at 1530, September 24, 1972, was attached.

On August 30, 1972. the Sacramento GADO issued a Certificate of Waiver or Authorization for "Acrobatic aerial demonstrations within the boundary of the Sacramento Executive Airport from the surface to 3,000 feet . . ." In addition to granting waivers from the provisions of FAR 91.71(c) and (d), the certificate also waived FAR 91.79(b) which establishes a minimum safe altitude over congested areas. Eighteen special provisions were listed for further compliance (see Appendix C) to promote safety, including authority for appropriate officials of the airshow or the FAA to stop the airshow for reasons of safety.

FAR 61.16(a) states that no person may act as pilot-in-command of turbojet aircraft unless he holds a type rating for the aircraft; however, an exception is granted when an authorization is issued by a Flight Standards District Office. Letters of authority are normally issued in the following circumstances:

- (a) Practice in a single-control aircraft to qualify for a type rating.
- (b) Ferry flight by a pilot who will not regularly fly the aircraft.
- (c) Test flight in an aircraft repaired or modified by an approved repair station or manufacturer.
- (d) Other specific flights considered safe under the existing circumstances if it is not practicable to require the type rating.

4/ FAR 91.71(c) prohibits acrobatic flight within a control zone or Federal airway. FAR 91.71(d) prohibits acrobatic flight below an altitude of 1,500 feet above the surface.

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The inspector is cautioned to issue letters of authority only if the pilot is qualified to complete the flight safely. This evaluation should consider:

- (a) Total pilot time.
- (b) Type ratings or military experience in similar aircraft.
- (c) Extensive pilot experience in aircraft with similar flight characteristics.
- (d) Current flight experience and pilot competency.

FAR Part 21 prescribes procedures for certification of products and parts, and subpart H deals specifically with the issuance of airworthiness certificates. Standard airworthiness certificates are issued for type certificated aircraft in the normal, utility, acrobatic, and transport categories. Special airworthiness certificates are issued for other categories including, among others, special flight permits and experimental. Special flight permits, effective for the period of time specified on the permit, are issued for aircraft that may not meet applicable airworthiness requirements, but which are capable of safe flight.^{5/} Experimental certificates are issued, for a maximum of 1 year, for the following purposes:

- (1) Research and Development.
- (2) Showing compliance with regulations.
- (3) Crew training.
- (4) Exhibition.
- (5) Air racing.
- (6) Market surveys.
- (7) Operating amateur-built aircraft.

An applicant for an experimental certificate must include in the application a statement of the purpose for which the aircraft will be used, enough data to identify the aircraft, and, upon inspection of the aircraft, any pertinent information found necessary to safeguard the general public,

^{5/} Examples of special flight permits may include: 1) flying the aircraft to a base for repair or storage; 2) delivering or exporting the aircraft; 3) production flight testing; 4) evacuating aircraft from areas of impending danger, etc.

On November 9, 1972, the FAA issued a General Notice (GENOT) to all field offices on "future Civil Certification, Operation, and Maintenance of Military Surplus Jet Airplanes." The notice supplements applicable handbooks, in part, as follows:

- (1) Surplus military jets will not take off or land over densely populated areas; deviations will be approved at regional level.
- (2) Prior to participation in airshows with this type of aircraft, the pilot shall submit a resume of his participation in each exhibit. Flights for this purpose, including routes of flight takeoff, departure, approach and landing shall be approved by the FAA office involved.
- (3) A pilot will not be authorized to operate a surplus military jet unless:
 - (a) He shows evidence of having completed a military or manufacturer's checkout in that aircraft.
 - (b) He has flown as pilot-in-command of jet aircraft within the preceding 3 months and as pilot-in-command in the particular type during the preceding 12 months.
 - (c) He successfully demonstrates his knowledge of the aircraft and his flight proficiency by making three takeoffs and landings observed by an FAA inspector.

2. ANALYSIS AND CONCLUSIONS

2.1 Analysis

The aircraft was certificated in accordance with existing procedures, and there is no evidence of malfunction or mechanical failure which would have prevented a normal takeoff. The pilot reported that he felt and heard a vibration shortly after initial lift-off. Apparently, he was not sufficiently concerned to reject the takeoff at that point. He stated that when he lowered the nose, acceleration seemed normal again and he continued the takeoff. The Board believes that the vibration experienced was precipitated by disturbed airflow, because of excessive nose-high attitude during lift-off. Documentation of the excessive attitude, and proper thrust development by the engine, was found in the testimony of witnesses and the analysis of the 8-mm. movies of the takeoff. The aircraft pitch attitude during the initial lift-off was more than

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three times higher than that of the test Sabre Mark 5 aircraft, yet N275X reached a velocity of more than 130 knots in an exaggerated takeoff attitude twice on the 5,000-foot runway. Apparently, both times the aircraft remained airborne in ground effect as long as the pilot maintained the excessive noseup control input. Each time he relaxed the back pressure on the yoke the aircraft settled to the runway.

The overrotation was undoubtedly a function of (1) a lack of familiarity with the Sabre Mark 5 and (2) the effect of visual cues at Sacramento as opposed to Oakland. The pilot had logged a total of 3.5 flying hours in N275X, but claimed an additional 4 hours which were not logged. The only other "swept wing" experience he had was 31 hours logged as second-in-command in a Lockheed Jetstar. The remainder of his jet experience was accumulated in a Lear Jet as second-in-command. Although all jet experience provides a measure of exposure to the faster acceleration, and consequently to the quicker reactions required, very few models of aircraft are more sensitive to overrotation than Sabre-type aircraft. In this respect, the high thrust/weight ratio and relatively lower elevator power of the Lear Jet may have developed habit patterns which would increase the tendency of overrotation in the Sabre. For example, the Sabre Mark 5 has a lower thrust/weight ratio than the Lear Jet, but more effective elevator power at slow speeds. This combination results in the ability of the Sabre Mark 5 to achieve high angles of attack before flying speed is attained, with insufficient thrust to overcome the induced drag generated by the attitude. The application of excess noseup control in the Lear Jet, prior to reaching flying speed, generally does not result in an overrotated condition because the airspeed increases faster than the elevator effectiveness.

A second, and perhaps more significant factor, is the previously mentioned visual cues. The pilot was accustomed to establishing a takeoff attitude by reference to the environment around Runway 29 at Oakland, where the "wide open" expanse of San Francisco Bay creates a very indefinite horizon. This results in the visual impression of an "unlimited" runway. Actually the horizon would appear to recede as the aircraft moved along the runway. Under these circumstances, takeoffs by the inexperienced pilot were accomplished with little likelihood of overrotation. Although the pilot established a takeoff attitude by ~~reference to the amount~~ of runway remaining, the actual lift-off attitude ~~is determined~~ by the length of the runway and the sensory illusion that the end of the runway was still quite distant.

In contrast to the environment at Oakland, Runway 30 at Sacramento is closely surrounded by trees, buildings, water towers, and other objects which create a well-defined horizon. During this takeoff -- the pilot's first from another runway in the Sabre -- the short length of the

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runway and the nature and proximity of the objects comprising the horizon would combine to accentuate the rate of closure. Additionally, the angular measurement from the pilot's eye level at a normal lift-off point to the apparent horizon of each runway would increase at a significantly greater rate at Sacramento. The rapid change in viewing angle would magnify the apparent height of the objects at the end of the runway and, in combination with the rate of closure, would result in a sense of urgency about becoming airborne as soon as possible. Considering his experience in the aircraft, and the very misleading but compelling visual cues, it is easily understood why the pilot rotated the aircraft to as much as 17° ANU.

Although this accident was a result of pilot technique, which has been discussed in detail, the catastrophic consequences resulted from two entirely separate circumstances: (1) inadequacies in the rules governing the operation of experimental aircraft; and (2) the location of the ice cream parlor.

The pilot was restricted from operating N275X from any airport other than Oakland or Sonoma County, except for exhibition. When the aircraft was exhibited at a bona fide airshow, the only airport restriction was that imposed by the performance capability of the aircraft. If there had been no airshow, N275X would not have been authorized to land or take off from Sacramento. Consequently, the rejected takeoff must be considered as directly related to the airshow, even though N275X was not specifically identified as part of the airshow.

The inadequacies of the rules governing operation of experimental aircraft are, perhaps, best demonstrated in a comparison of the provisions before and after the accident. The generalized statements concerning pilot qualification for a letter of authority were changed to require a military or manufacturer's checkout and recent pilot-in-command experience in jet aircraft. The previous certification requirement, for a statement of the purpose for which the aircraft will be used, is now expanded by a requirement to submit a resume each time the aircraft is to be exhibited. The resume must include all routes of flight, arrival, and departure, which must be approved by the FAA office involved. Takeoffs or landings over densely populated areas must now be approved at the regional level. It is obvious that the pilot of N275X could not qualify for a letter of authority under the new directive because he had not completed the appropriate training and because he lacked the pilot-in-command experience. Additionally, there is a possibility that the proposed exhibition might have been rejected if a resume had been presented to the FAA Western Region, as now required. Even assuming that the region approved the flight into Sacramento Executive Airport, some runway restriction would have been imposed because of the

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populated areas surrounding certain runways, The Safety Board supported the FAA in the remedial action accomplished by the GENOT, issued November 9, 1972, and formally recommended that the provisions governing pilot qualifications be expanded to include pilots of any high-performance surplus military aircraft.

The second circumstance which added to the catastrophe was the location of the ice cream parlor. The construction of the shopping center was accomplished in accordance with existing statutes of the various jurisdictions. Although some of the structures exceeded the height standards of Part 77, the FAA determined that the obstructions did not constitute hazards to air navigation. The city, county, and State governments all generally agreed that once the shopping center was built, the subsequent addition of the ice cream parlor and sign had little effect on aircraft operations. This conclusion was an obvious extension of the initial rationale that "... the construction (of the shopping center) would affect operations no differently than other existing structures such as a gasoline sign, television antennas, traffic signal standards, etc." Additional aspects of this accident were discussed in the Board's recommendation to the Federal Aviation Administration (see Appendix E).

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2.2 Conclusions

(a) Findings

1. The aircraft was certificated in accordance with existing regulations.
2. The pilot was certificated and held a valid letter of authority for the flight.
3. The regulations and procedures concerning certification of experimental aircraft, and issuance of letters of authority for pilots, were inadequate.
4. The aircraft was capable of taking off from Runway 30 without incident, under the conditions at Sacramento.
5. The differences between the horizon and runway length at Oakland and Sacramento created visual illusions that induced an apparent need for rapid lift-off at Sacramento.
6. The pilot did not have sufficient experience in the Sabre Mark 5 to enable him to compensate for the misleading visual cues.
7. The catastrophic consequence of this accident is directly attributed to the proximity of the shopping center to the runway.

March 2

(b) Probable Cause

The National Transportation Safety Board determines that the probable cause of this accident was the overrotation of the aircraft and subsequent derogation of the performance capability. The overrotation was the result of inadequate pilot proficiency in the aircraft and misleading visual cues.

3. RECOMMENDATIONS

As a result of the investigation of this accident, the Safety Board on December 28, 1972, issued five recommendations (Nos. A-72-219 through 223) directed to the Administrator of the Federal Aviation Administration. Copies of the recommendation letter and the Administrator's response thereto are included in Appendices E and F, respectively.

BY THE NATIONAL TRANSPORTATION SAFETY BOARD

/s/ JOHN H. REED
Chairman

/s/ FRANCIS H. McADAMS
Member

/s/ LOUIS M. THAYER
Member

/s/ ISABEL A. BURGESS
Member

/s/ WILLIAM R. HALEY
Member

March 28, 1973

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APPENDIX A

INVESTIGATION AND HEARING

1. Investigation

The Board received notification of this accident at approximately 1800 on September 24, 1972, from the Federal Aviation Administration. An investigating team was dispatched to the scene of the accident. Working groups were established for Operations, Maintenance Records and Performance, Human Factors, Airworthiness, and Airport Environment. The Federal Aviation Administration and Spectrum Air, Inc., participated in the investigation as interested parties. The on-scene investigation was completed on October 4, 1972.

2. Hearing

A public hearing was held at Sacramento, California, on October 16, 1972. Parties to the hearing included the Federal Aviation Administration and Spectrum Air, Inc.

3. Reports

There was no preliminary report on this investigation.

APPENDIX B

General Aviation District Office
P. O. Box 2397 - Airport Station
Oakland, California 94614

6 June 1972

Letter of Authority

M Richard L. Bingham
575 Arthur Street
Novato, California

Dear **M** Bingham:

This letter authorizes you to serve as pilot-in-command of Canadair MK5 N275K for the purpose of pilot proficiency and exhibition of the aircraft. The following limitations, in addition to those outlined in the operating limitations of the aircraft, will apply:

1. All pilot proficiency operations will be limited to an area within 100 miles of the Metropolitan Oakland International Airport or the Sonoma County Airport, and takeoffs and landings for such operations will be limited to these airports, other than for emergency reasons. If an emergency landing is required at another airport, a full written report of the facts and circumstances must be submitted to this office within 48 hours of its occurrence.
2. All flights from the Metropolitan Oakland Airport and the Sonoma County Airport must be approved by their respective airport managers.
3. All flights shall be conducted to avoid areas having heavy air traffic, and when operating in the vicinity of cities, towns, villages and congested areas, conducted in a manner that the aircraft will not create a hazard to persons or property on the ground.
4. No persons other than the pilot shall be carried.

This authorization will expire upon written notification, but in no case later than December 1, 1972.

Sincerely,

JOHN S. ZEMNER
Chief

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FEDERAL AVIATION AGENCY

APPENDIX C

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CERTIFICATE OF WAIVER OR AUTHORIZATION

ISSUED TO

Jerry L. Worthington, Chairman
Golden West Sport Aviation Show

ADDRESS

701 Wales Drive
Folsom, California 95630

This certificate is issued for the operations specifically described hereinafter. No person shall conduct any operation pursuant to the authority of this certificate except in accordance with the standard and special provisions contained in this certificate, and such other requirements of the Federal Aviation Regulations not specifically waived by this certificate.

OPERATIONS AUTHORIZED

Acrobatic aerial demonstrations within the boundary of the Sacramento Executive Airport from the surface to 3,000 feet mean sea level.

Area of operation: Sacramento, California

LIST OF WAIVED REGULATIONS BY SECTION AND TITLE

- FAR 91.71(c) - Acrobatic flight within a control zone or Federal Airway.
- FAR 91.71(d) - Acrobatic flight below an altitude of 1,500 feet above the surface.
- FAR 91.79(b) - Altitude over congested areas.

STANDARD PROVISIONS

1. A copy of the application made for this certificate shall be attached to and become a part hereof.
2. This certificate shall be presented for inspection upon the request of any authorized representative of the Administrator of the Federal Aviation Agency, or of any State or municipal official charged with the duty of enforcing local laws or regulations.
3. The holder of this certificate shall be responsible for the strict observance of the terms and provisions contained herein.
4. This certificate is nontransferable.

NOTE.—This certificate constitutes a waiver of those Federal rules or regulations specifically referred to above. It does not constitute a waiver of any State law or local ordinance.

SPECIAL PROVISIONS

Special Provisions Nos. _____ to 19, inclusive, are set forth on the attached pages reverse side hereof.

This certificate is effective from 12:30 8-20-72 to 12:30 8-20-72, inclusive, and is subject to cancellation at any time upon notice by the Administrator or his authorized representative. Coordinated with: SAC FOS, SAC LSA

BY DIRECTION OF THE ADMINISTRATOR:

George J. Schwab
George J. Schwab

Western

(Region)

(Signature)

8-30-72

(Date)

Chief, General Aviation District Office

(Title)

WE-GAFC-12

SPECIAL PROVISIONS

1. Acrobatic aerial demonstrations shall not be conducted over congested areas of cities, towns, or settlements. This does not prohibit normal flight of aircraft conducted in accordance with Section 91.79 of the Federal Aviation Regulations. Abnormal break maneuvers (rolls exceeding 90°) are considered acrobatic.
2. All acrobatic aerial demonstrations by aircraft operating at speeds in excess of 130 knots shall be conducted at least 1,500 feet horizontally from the designated spectator area. All acrobatic aerial demonstrations by aircraft operating at speeds of 130 knots or less shall be conducted at least 500 feet horizontally from the designated spectator area. Normal takeoffs and landings shall not be considered as part of the demonstrations; however, no takeoff or landing shall be made toward or over the designated spectator area.
3. Federal Aviation Regulations, Section 91.79(b), is waived only with respect to open air assembly of persons and only to the extent authorized in Special Provision No. 2 of this Certificate.
4. All acrobatic maneuvers shall be conducted in a direction which will most nearly parallel the boundaries of the designated spectator area or in a direction away from such area.
5. Acrobatic aerial demonstrations are not authorized if the visibility is less than five (5) miles and the ceiling is less than 2,500 feet at the time of the demonstration. Acrobatic maneuvers shall be conducted at least 1,000 feet below the ceiling. These minimums may be modified by the Federal Aviation Administration (FAA) monitor within the limitations set forth by established FAA policy.
6. Adequate oral or visual communications capability shall be provided to advise spectators and participants that the aerial demonstration has been halted or canceled, or to otherwise communicate with these parties as required to maintain a safe operation.
7. A physical barrier and adequate policing shall be provided to confine spectators to designated areas.
8. The demonstration shall be halted when unauthorized persons or aircraft enter the operations area, or for any other reason, in the interest of safety.
9. All participants shall attend the pre-demonstration briefing, that will be conducted by the holder, and acknowledge in writing that they understand the Certificate of Waiver or Authorization, including the Special Provisions and location of all deadlines.

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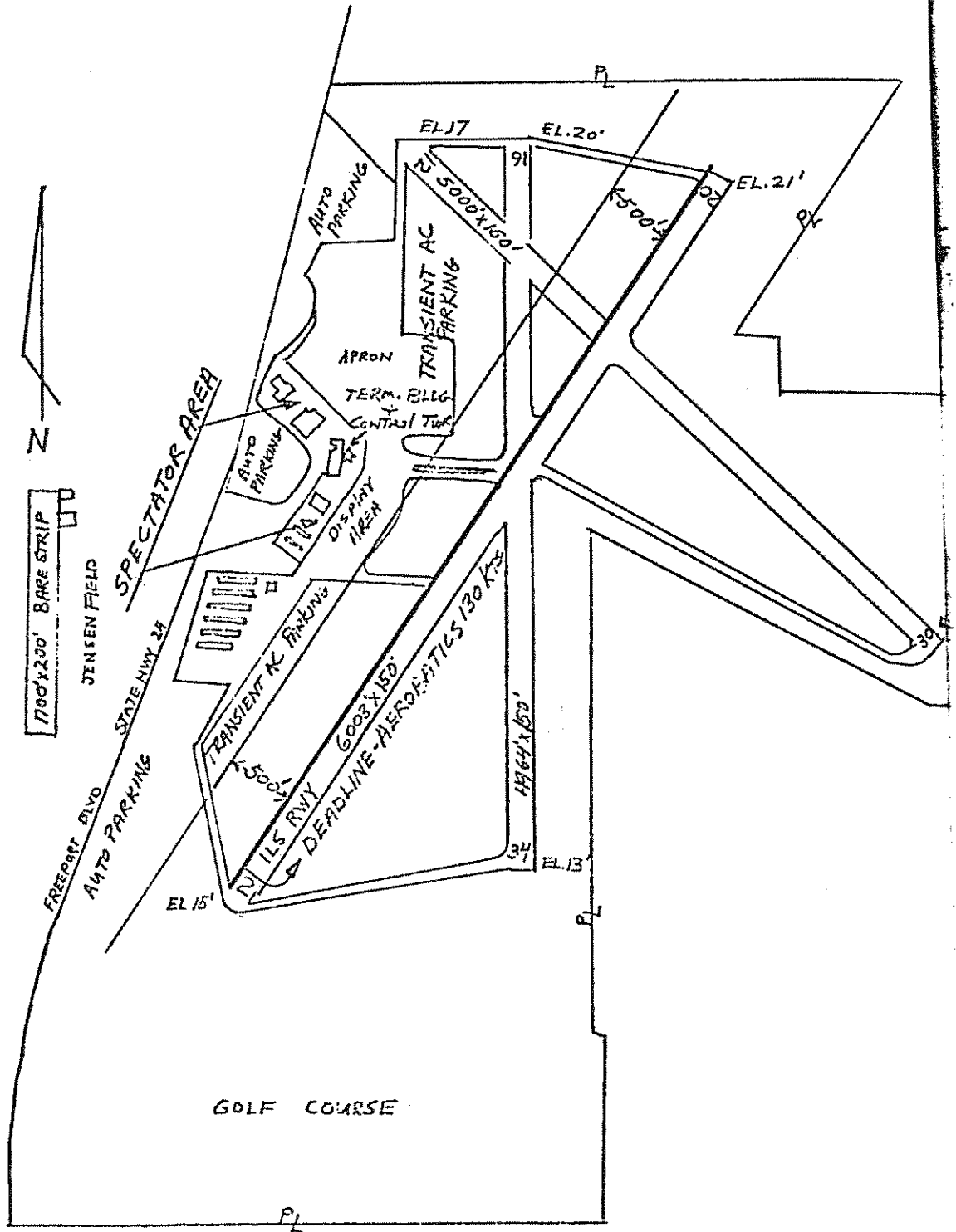
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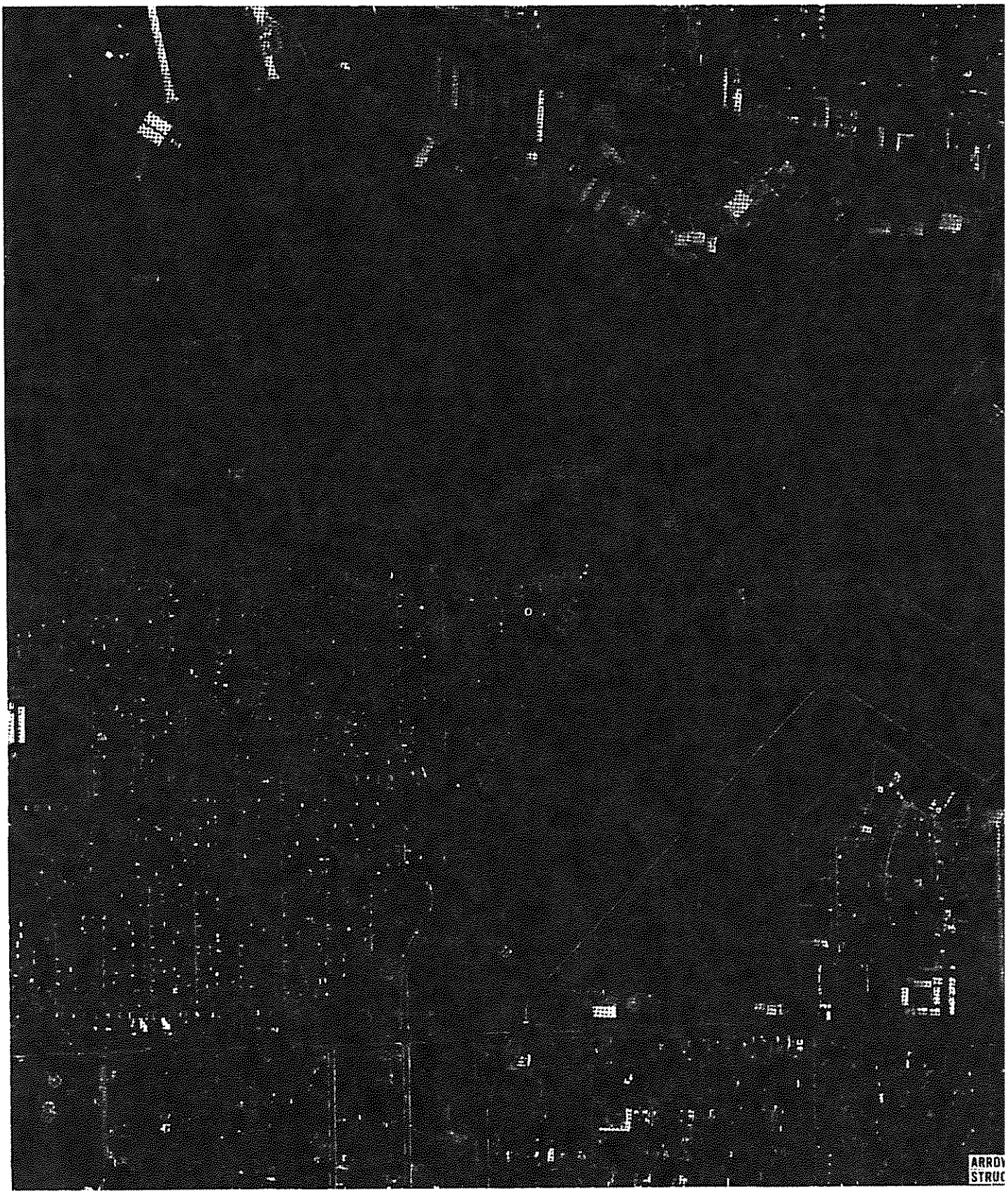
10. Deadlines, man-made or natural, readily visible to the participant, shall be provided by the holder to ensure that aircraft remain the approved distance from the spectators. Such deadlines shall be agreed upon by the FAA representative prior to any demonstrations.
11. Aircraft shall not be taxied nor their engines started in designated spectator or static display areas, unless appropriate measures are taken to preclude creating a hazard to spectators.
12. The holder shall establish a central control point from which he or his representative shall direct the demonstrations and be immediately available during the demonstrations for coordination with the FAA representative.
13. The holder shall notify the Sacramento Flight Service Station Telephone No. 916/449-3234/3176 of the date, time, place, altitudes, nature and direction of the operations, and request that a Notice to Airmen be disseminated. Such action shall be accomplished at least 48 hours prior to the demonstration time.
14. The holder shall have the responsibility to temporarily halt or cancel the authorized operations if at any time the safety of persons or property, on the ground or in the air, is in jeopardy or if there is a contravention of the terms or conditions of the Waiver.
15. The FAA representative designated to monitor the demonstration shall have the authority to temporarily halt or cancel the authorized operations if he finds that the holder has failed to do so, and the safety of persons or property, on the ground or in the air, is in jeopardy, or if there is a contravention of the terms or conditions of the Waiver.
16. All civil aircraft and pilots scheduled for participation in the events shall be made available for FAA inspection prior to the event. If, in the opinion of the FAA representative, pilot competency or airworthiness of an aircraft is unsatisfactory, such pilots or aircraft shall not be permitted to participate.
17. Contravention of any provision of this certificate will constitute a violation of Section 610(a)(5) of the Federal Aviation Act of 1958 as amended.
18. All participants in aerobatic demonstrations must hold a currently effective Letter of Competence issued by an FAA General Aviation Operations Inspector. Participants will perform only those maneuvers listed in their preplanned routine and no substitutions will be permitted without prior approval of the Flight Standards Service Inspector.

Page 2

Golden West Sport Aviation Show
 Sacramento, California September 23 & 24, 1972

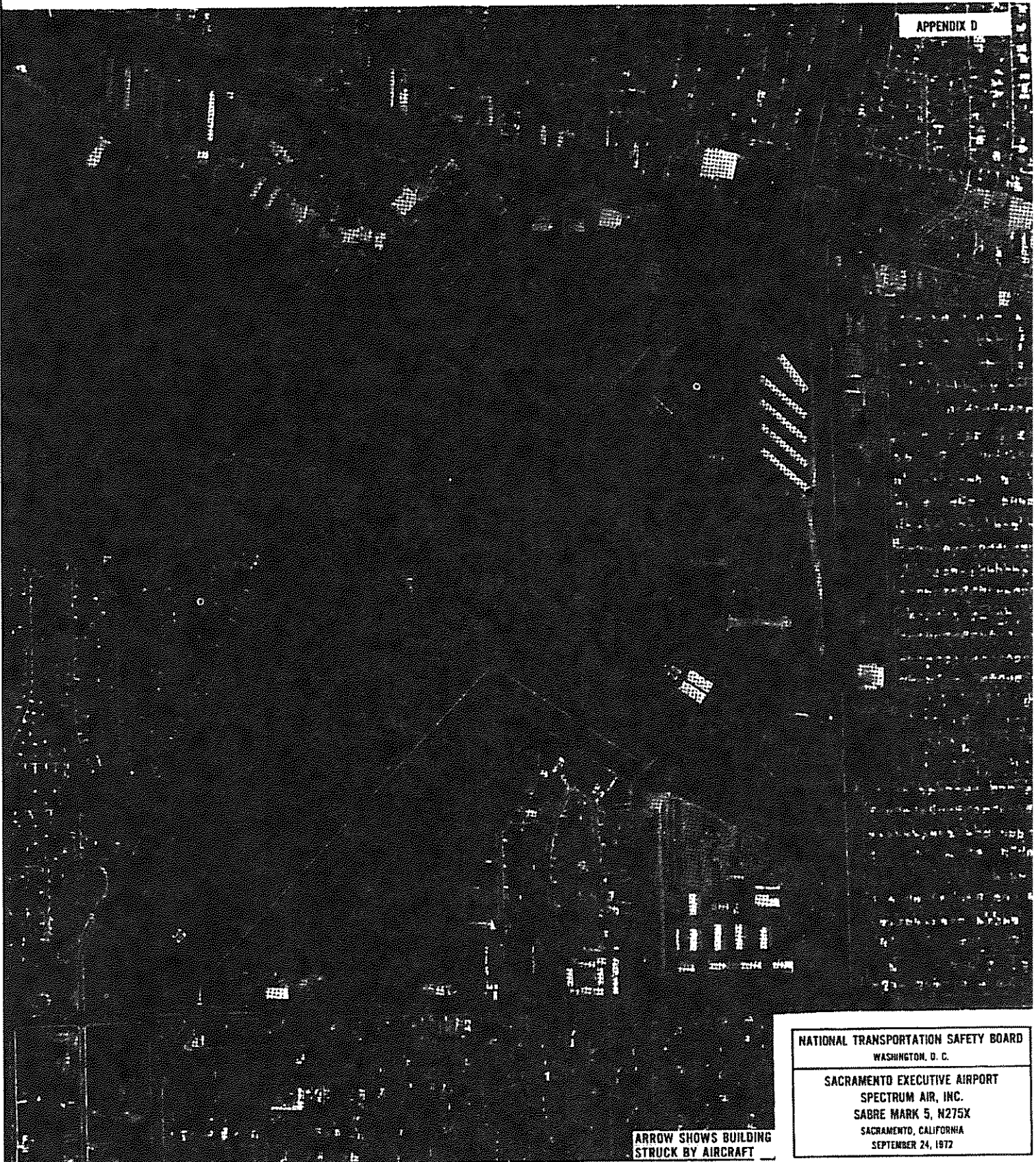
Sacramento Executive Airport
Sacramento, California





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APPENDIX D



ARROW SHOWS BUILDING
STRUCK BY AIRCRAFT

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

SACRAMENTO EXECUTIVE AIRPORT
SPECTRUM AIR, INC.
SABRE MARK 5, N275X
SACRAMENTO, CALIFORNIA
SEPTEMBER 24, 1972

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

ISSUED: December 28, 1972

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 13th day of December 1972

.....
FORWARDED TO:)
Honorable John H. Shaffer)
Administrator)
Federal Aviation Administration)
Department of Transportation)
Washington, D. C. 20591)

SAFETY RECOMMENDATION A-72-219 thru 223

In the course of the investigation of the September 24, 1972, accident in Sacramento, California, involving Canadair Ltd., Sabre Mark J, N275X, the National Transportation Safety Board examined the pilot's proficiency for the operation, the certification of experimental aircraft, and the associated regulatory provisions. The airport's environmental aspects, which had a direct bearing on the catastrophic consequences of this accident, were also considered.

The aircraft was operated under a Special Airworthiness Certificate with an experimental classification for exhibition purposes. The operating limitations stipulated, among other things, that the aircraft could be operated only by a pilot authorized under a letter of authority issued by the Administrator. The pilot involved held such a letter, which authorized him to operate this aircraft for the purpose of pilot proficiency and exhibition flying. The letter limited his proficiency operations to an area within 100 miles of two specified airports and limited the takeoffs and landings for proficiency flights to those airports, except for emergency reasons.

The restrictions imposed upon the pilot in connection with his proficiency flying contrasted strongly with the lack of restrictions on his operation of the aircraft for exhibition purposes. Part 21 of the Federal

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APPENDIX E

Aviation Regulations defines exhibition, in part, as "exhibiting the aircraft's flight capabilities, performance, or unusual characteristics at airshows." Testimony during the public hearing in Sacramento on October 16-18 revealed that neither the pilot nor the operations inspector of the General Aviation District Office involved were aware of the extent of the flying activities covered by this definition. The operations inspector who prepared the pilot's letter of authority stated that the pilot could legitimately have flown this aircraft to a bona fide airshow for exhibition purposes following his first flight in it.

Based on this and similar testimony, the Board concludes that the guidelines dealing with the issuance of authorization to operate this type aircraft were too broad to provide adequate guidance for General Aviation District Office inspectors with regard to pilot qualification and proficiency and the formulation of safeguards in the special conditions and limitations

The Board is aware of the GENOT (General Notice) distributed to your regional, district, and field offices on November 9, 1972, entitled: "Future Civil Certification, Operation, and Maintenance of Military Surplus Jet Airplanes." These supplemental guidelines should help in the interpretation of existing instructions with regard to the safe utilization of surplus military jets. However, the Board is of the opinion that similar consideration should be given to all high-performance military surplus airplanes, reciprocating as well as turbine engine powered. Unless a pilot receives his transition training from an organization or club that imposes its own safeguards, there appear to be no constraints on a private pilot with minimum experience who wishes to operate an F-51, for example. The establishment of reasonable minimum standards in this area would serve to promote aviation, rather than inhibit it.

In view of the variety of purposes for which experimental certificates can be issued, it appears that separate classification of those activities which are not truly experimental would facilitate the exercise of more selective regulatory control for the benefit of the operator as well as the general public.

The Board is also concerned about the airshow waiver provisions, although they did not have a bearing on this accident. The special provisions dealing with the separation criteria between spectator areas and aircraft performing acrobatic maneuvers took into consideration only the safety of designated spectator areas. At Sacramento Executive Airport, residential encroachment extended to within about 500 feet of the demonstration runway. In addition, the Board questions the adequacy of the

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guidelines in the General Aviation Operations Inspector's Handbook that use a cruising speed of 130 knots as a criterion for "Dead Line" separation from spectator areas during airshows; in excess of 130 knots, the minimum is 1,500 feet and at lower speeds it is 500 feet. Although this rule may be suitable for the protection of designated spectator areas that parallel the demonstration runway, it does not take into account the potential trajectory of disassociated aircraft parts and their hazard to persons and property in the line of flight, near the airport boundaries.

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The built-up area around the Sacramento Executive Airport raises serious questions with regard to the suitability for airshows of this and similar airports, especially when one considers the practicability of applying the following sample of a special provision from the pertinent handbook: "The holder of the airshow waiver shall insure that roads adjacent to the airport, as specified below, are devoid of vehicular traffic and the property adjoining the airport shall be free of spectators." This provision was not incorporated in the certificate of waiver for the Sacramento airshow; if it had been, it would have been very difficult to implement. In this respect, it is of interest to note that the 92 accidents that occurred during airshows or air racing in a recently researched 8-year period (1964-1971) did not result in injuries to other than aircraft occupants. The Board is of the opinion that open space around most of the airports involved played a predominant role in protecting public and property beyond the designated spectator areas.

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With regard to the catastrophic consequences of this accident, the public hearing produced no evidence of specific regulatory provisions, or firm guidelines, at the Federal, State, or local level, that would have precluded the construction of public or private facilities in such close proximity to the departure end of Runway 30. The Board is unable to find any direct reference to the safety of persons or property on the ground in Part 77 (Objects Affecting Navigable Airspace) or in Advisory Circular 150/5190-3 (Model Airport Zoning Ordinance). This does not imply that such consideration is not given during aeronautical studies and hearings, or that this accident was typical in its environmental impact of the approximately 25,780 takeoff and landing accidents that occurred on, or in the immediate vicinity of U. S. airports during the earlier-mentioned 8-year period. The Board also recognizes that the responsibility for prudent restrictions on the use of land around airports, and construction thereon, rests with local jurisdictions. However, advisory guidance, and the judicious use of controls in the fund allocations under the Airport Development Aid Program, could be influential in convincing the jurisdictions involved that the compatibility considerations of airports and surrounding environment should not only include noise, pollution, and similar factors, but also a practical regard for the safety of people and property on the ground.

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With regard to existing hazardous situations around certain airports, the Board believes **that** there is a need to issue guidelines restricting the use of specific runways to specific aircraft or operations, based on such factors as the aircraft's accelerate-stop distance, runway length, engine-out capability, and the proximity of urban congestion to the runway involved; this would assist airport managers in securing or implementing the authority to offset the hazards inherent in the environmental encroachment that has been allowed to develop near **some** airports.

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In view of the foregoing, the National Transportation Safety Board recommends **that** the Federal Aviation Administration:

1. Limit the issuance of experimental certificates to those aircraft and operations **that** are truly experimental in nature and reclassify the other activities listed in FAR 21.191 in a manner **that** **will** permit more selective regulatory control without unduly inhibiting the promotion of aviation.
2. Establish pilot experience, transition, and proficiency standards applicable to the operation of all high-performance **surplus** military aircraft, reciprocating as well as turbine engine powered.
3. Establish additional airshow separation criteria applicable to persons and property in other than designated spectator areas to insure **that** the overall suitability of an airport for airshows is taken into account.
4. Include in the guidelines dealing with compatible land use planning around airports, consideration for the safety of persons and property on the ground, and use the controls available in the Airport Development Aid Program to insure compliance.
5. Establish guidelines that will assist airport managers in setting limitations on the utilization of runways where existing environmental encroachment and runway length combine to create a high-risk level for certain aircraft operations.


Honorable John H. Shaffer

APPENDIX E

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These recommendations ~~w~~ be released to the public on the issue date shown above. No public dissemination of the contents should be made prior to ~~that~~ date.

Reed, Chairman, McAdams, Burgess, and Haley, Members, concurred in the above recommendations. Thayer, Member, was absent, not voting.

By: 
John H. Reed
Chairman

board

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

APPENDIX F

WASHINGTON, D.C. 20590



OFFICE OF
THE ADMINISTRATOR

26 JAN 1973

Honorable John H. Reed
Chairman, National Transportation
Safety Board
Department of Transportation
Washington, D. C. 20591

[Handwritten Signature]
Dear Mr. Chairman:

This in response to NTSB Safety Recommendations A-72-219 thru 223.

1. A regulatory project is underway to separate exhibition, air racing and amateur-built aircraft from the experimental category and to specify appropriate operating restrictions for each. We expect to issue a Notice of Proposed Rule Making in the near future.
2. We are considering including all high performance military surplus aircraft in the recently established pilot competency requirements. We expect a policy to be established on this in the near future.
3. Action is underway to update air show guidelines and policy. We fully recognize that every airport environment is not suitable for air shows. This will be given special emphasis.
4. The Airport and Airway Development Act, which is the basic authority for the Airport Development Aid Program (ADAP), provides, among other things, that no airport development project shall be approved unless sponsor submits satisfactory assurances that appropriate action has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including the landing and takeoff of aircraft.

This provision of the Act is implemented by section 152.35 of the FAR which requires the sponsor of an ADAP project to state in its application the action it has taken to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations.

Additional guidance on compatible land use is provided for field personnel in Order 5100.18, paragraph 277. This paragraph suggests various means of achieving compatible land use "such as promoting and fostering the development of open air areas, recreational areas, and other uses and activities that do not generate assemblies of people. Federal assistance programs that will preserve open land

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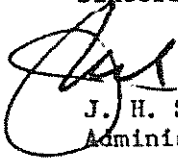
APPENDIX F

uses around an airport should be used to the extent possible. These programs include the Department of Housing and Urban Development Open Space Land Program and recreation and conservation land grants of the Bureau of Outdoor Recreation, Department of the Interior." We list in this order as constituting incompatible land uses, such uses as residential development, and places of public assembly including schools, hospitals, churches, and similar institutions.

On the basis of the above requirements and guidance, we believe we are already in conformance with recommendation 4.

5. The FAA will look into the possibility of revising our publication 150/5190-3A, "Model Airport Hazard Zoning Ordinance," to include guidance of the type stated in recommendation 5. Also, we will consider this recommendation in the development of our new Advisory Circular on airport design considerations of obstruction, obstacles, and objects around the airport,

Sincerely,



J. H. Shaffer
Administrator



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