

December 3, 2013

City of Tracy City Council
333 Civic Center Plaza
Tracy, CA 95376

Mayor Brent Ives:

At the November 19, 2013 City Council meeting I called on you to direct City staff to provide me with the procedures and policies that were implemented to ensure that complaints against the Chief of Police would be appropriately investigated. Recall that as a result of the Chief Thiessen fiasco, you personally assured me that such policies and procedures had now been put in place. I have received no communication from any member of the City staff on this topic.

As you know, I have been unable to find any documents that indicate that such procedures and policies exist in City Council agendas, minutes, or responses to Public Records Act requests. Penal Code § 832.5 requires that such procedures be established. Failure to do so is a criminal violation of law.

At this point, and until I am provided evidence to the contrary, I am forced to conclude that you have lied to me regarding the existence of these policies and procedures. My question at this point is: Who should be held accountable for this violation of law – the City staff or you and this Council?

Regretfully,



Paul Miles

1397 Mansfield St.
Tracy

Steve Nicolaou

Attorney At Law

445 W. 11th Street, Suite C

Tracy, California 95376

October 21, 2013

VIA E-MAIL & REGULAR MAIL

Robin K. Hunt

Manager, San Francisco Airports District Office

FEDERAL AVIATION ADMINISTRATION

Western Pacific Region

1000 Marina Boulevard, Suite 220

Brisbane, California 94005

Re: Tracy Airport, Tracy, California

Dear Ms. Hunt:

On October 15, 2013, as part of the Tracy City Council's agenda, there was an agenda item concerning the Tracy Airport. A copy of the agenda item is enclosed for your review.

The agenda item basically addressed two issues:

1. Whether runway 12/30 should be shortened to 3,996 feet or set at 4,002 feet; and,
2. Whether the City Council should consider over-riding the San Joaquin Council of Governments as the designated Airport Land Use Commission's ("ALUC") decision at its September 23, 2013 denying the request of the City of Tracy as the lead agency a proposed amendment to the Ellis Specific Plan to allow a residential density of 4 to 9 units per acre with a considerable portion of the Outer Approach Departure Zone. The 2009 Airport Land Use Compatibility Plan adopted in 2009 allows only 1 residence for every 5 acres.

Based in large part on Robert Lee's e-mail to us dated October 10, 2013, the City Council voted 5-0 to have runway 12/30 set at 4,002 feet. For that, I thank you, Mr. Lee and your office immensely.

However, as to the over-ride issue, notwithstanding Mr. Lee's statement that an override of the ALUC's September 23, 2013 decision would be a violation of sponsor Grant Assurance 21, the Council voted, 4-1, to consider an over-ride, with the next step involving the hiring of a consultant to study the issue.

During the course of the hearing on the agenda item concerning whether the City Council should consider an over-ride, several attorneys for Surland Companies ("Surland"), the developer of the proposed Ellis project, in essence stated that the City Council had the unfettered right to over-ride the ALUC's decision of September 23, 2013 in accordance with California's State Aeronautics Act, specifically *Public Utilities Code*

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Manager, San Francisco Airports District Office
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Sections 21676 and 21676.5, and that no one, not even the FAA, could prevent that from happening. The City of Tracy agreed with this position as presented by Surland's attorneys; ergo the 4-1 vote to consider going down the path of an over-ride.

Although that may be the case where an airport was initially created "from scratch" by a local agency or municipality, I am of the firm opinion that given the unique circumstances of how the Tracy Airport came into being, our City Council does not, in fact, have that unilateral right to over-ride the ALUC's decision under California's State Aeronautics Act, and in fact, requires the acquiescence of the federal government to do so. My reasoning for that proposition is as follows.

On or about May 27, 1947, the War Assets Administration executed an Instrument of Transfer ("Instrument") transferring the Tracy Airport to the City of Tracy. A copy of the Instrument is enclosed for your review.

If you will note on page 4 of the Instrument, specifically the second full paragraph, the following language appears:

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

Subparagraph (1), at the bottom of page 4 of the Instrument, then states as follows:

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

The party of the second part that is referenced in both of the foregoing paragraphs quoted from the Instrument refers to the City of Tracy.

Finally, on page 7 of the Instrument, starting in the middle of the 4th line of the last full paragraph, the following language appears:

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".... And the CITY OF TRACY, to evidence the complete acknowledgment of, accord with, acceptance of and agreement to be bound by the terms, conditions, reservations and restrictions set forth in this instrument, has caused these presents to be executed in its name and on its behalf by J.W. STOCKING, its Mayor, and attested by CHAS. E. DE FREITAS, its City Clerk, and it seal to be hereunto affixed, all as of the 27 day of May, 1947". (Emphasis added).

In reading the foregoing language, as well as the language of the Instrument as a whole, one thing becomes abundantly clear – in accepting the airport from the Federal Government in 1947, the City of Tracy contractually bound itself to the Federal Government that it would not do anything that would denigrate it or impact its ability to safely operate as an airport. I would submit to you that given the legal obligations the City undertook towards the Federal Government as evidenced by the foregoing language that has been quoted, the City does not have the unfettered right or discretion to over-ride the ALUC's September 23, 2013 decision denying the Ellis Specific Plan Amendment so as to allow a residential density of 4 to 9 dwelling units per acre within a considerable portion of the current Outer Approach Departure Zone versus the current 1 residence per 5 acres that is allowed.

The City's right to over-ride the ALUC's decision is something that is given to it under state law in the form of *Public Utilities Code Sections 21676 and 21676.5*. The contractual obligations imposed upon the City as noted in the second full paragraph of page 4 of the Instrument were imposed pursuant to the United States Constitution and the Surplus Property Act of 1944. Under the supremacy clause of the United States Constitution, this Instrument and the contractual obligations set forth therein that were agreed to by the City of Tracy trump the State Aeronautics Act provisions the City and Surland are trying to rely upon in attempting an over-ride of the ALUC's decision.


Allowing more houses to be built at the end of runway 12/30 would in effect hamper the ability of the airport to operate in a safe and efficient manner and limit its usefulness as an airport, something the City of Tracy is clearly obligated to refrain from engaging in as noted, and the placement of those homes would constitute a "hazard", something that is strictly forbidden by the third full paragraph of page 4 of the Instrument.

After you have had an opportunity to review the foregoing, any comments or insights you may have on the matter would be greatly appreciated, including whether my interpretation of how the Instrument reads and the obligations it imposes on the City of Tracy vis-à-vis the Federal Government to not just vote for an over-ride based on a violation of Grant Assurance 21 as noted in Mr. Lee's October 10, 2013; but that also an over-ride would be a material breach of the obligations the City assumed when it accepted the airport from the Federal Government in 1947.

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Thank you for your courtesy in this matter. Should you have any questions or comments, please feel free to give me a call.

Sincerely,



STEVE NICOLAOU

SN/sn
Enclosures

October 15, 2013

AGENDA ITEM 6

REQUEST

DISCUSS AND PROVIDE DIRECTION ON (1) AIRPORT IMPROVEMENTS AND TIMELINE PRIOR TO FINALIZING THE AIRPORT DESIGN AND LAYOUT PLAN, AND (2) REVIEW ITEMS RELATED TO SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT AN APPLICATION TO AMEND THE ELLIS SPECIFIC PLAN FROM SURLAND COMMUNITIES, LLC IS NOT CONSISTENT WITH THE SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S AIRPORT LAND USE COMPATIBILITY PLAN

EXECUTIVE SUMMARY

Staff requests that Council discuss the Tracy Municipal Airport ("Airport") improvements and timeline prior to updating the Airport Layout Plan ("ALP") and finalizing the Airport design. Additionally, staff requests Council discuss San Joaquin County Airport Land Use Commission's ("ALUC") determination that the application to amend the Ellis Specific Plan submitted by Surland Communities, LLC ("Surland") is not consistent with the ALUC's Airport Land Use Compatibility Plan ("ALUCP").

This staff report presents Council with additional information relative to the Federal Aviation Administration ("FAA") re-pavement grant timeline, which results in a staff recommendation regarding the Airport runway length. Additionally, Council is presented with two options related to the amendment application for the Ellis Specific Plan submitted by Surland. These options are now available given ALUC's determination of inconsistency.

DISCUSSION

This staff report is divided into two sections: the first section provides Council with an Airport improvement update and timeline associated with obtaining FAA pavement grant funding and the associated implications to the Airport design. The second section provides Council with two options in response to ALUC's determination that the application to amend the Ellis Specific Plan is inconsistent with the ALUCP.

SECTION ONE: UPDATE ON AIRPORT IMPROVEMENTS AND REPAVEMENT GRANT TIMELINE:

A longstanding City goal has been to repave the Airport runway. Over the years, staff has taken several steps necessary to secure FAA funding. The most recent step was the completion of a Pavement Maintenance and Management Plan that delineated the necessary pavement improvements at the Airport. On June 18, 2013, staff presented Council with an update on the Airport Pavement Project and recommended changes to both the runway width and length. Staff recommended adjusting the runway width from 100 feet to 75 feet and the taxiway width from 40 feet to 35 feet. This recommendation was made in order to meet FAA standards and receive full

funding. Additionally, because the City had an opportunity to complete a revised airport design, staff also recommended reducing the runway length from 4,002 feet to 3,997 feet, which was estimated to be compatible with existing operations and planned development at the airport. Subsequent to the June 18, 2013, recommendations on runway width and length, staff better understands the FAA's grant review and grant award timeline.

The total cost for a complete re-pavement of the Airport is estimated at \$15,589,000. The FAA requires a 10% match. The City will submit an FAA pavement grant application in the amount of \$13,255,740 (90% of funding), which requires a City funding match of \$2,333,260 (a 10% match is an approved Capital Improvement Project). The improvements would be completed over four years, as FAA funding is received on an annually proportioned basis.

In order to meet the FAA 2014 funding cycle, adherence to the timeline below is necessary:

Oct. - Dec. 2013:	Consultant revises ALP and Finalizes Airport Capital Improvement Plan ("ACIP") Plan
Jan. 2014:	ALP and ACIP is submitted to FAA for review
Jan. - Sept. 2014:	FAA review of ALP and ACIP (6-9 month review, if runway length remains as currently outlined in ALP (4,002 ft.) ¹
Mar. - Apr. 2014:	Pavement construction application submitted to FAA
Jun. - Sept. 2014:	Anticipated acceptance of ALP by FAA
Jun. - Sept. 2014:	Construction grant awarded by FAA

Because the City's goal is to ensure timely submittals of required documents to meet the 2014 funding cycle and because changing the runway length in the ALP would add an additional three months to the FAA review, staff recommends leaving the runway length at 4,002 feet. (Attachment A: Historical Timeline Related to Runway Length).

SECTION TWO: OVERRULE REQUEST:

Currently, the Airport Land Use Compatibility Plan ("ALUCP") restricts land use within a safety zone that covers a portion of the Ellis project. Surland submitted applications to amend the City's General Plan and Ellis Specific Plan, which the ALUC determined to be inconsistent with the ALUCP. As a result, City Council must decide whether to overrule the ALUC's determination. The overruling allows denser housing

¹ An additional 3-month review period would be added if changes to the Runway length (shortened to 3,997) are requested and included in the ALP (extending the review time to Dec. 2014 jeopardizes the City's ability to meet the 2014 FAA funding cycle).

within the safety zone than is currently permitted.

Airport Land Use Commission Law and Overrule

The State Aeronautics Act ("Act") establishes Airport Land Use Commissions for the purpose of "...protect public health, safety, and welfare, by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards with areas around public airports to the extent that these areas are not already devoted to incompatible uses." In San Joaquin County, the San Joaquin Council of Governments (SJCOG) serves as the ALUC.

The ALUC is required to adopt an ALUCP for the Airport and the surrounding area. By law, the City must submit to the ALUC any amendments to the General Plan or a specific plan, or adoptions or approvals to a zoning ordinance or building regulation within the area covered by the ALUCP. If the ALUC determines that an action, regulation, or permit is inconsistent with the ALUCP, the City may, after a public hearing, overrule the determination by a two-thirds vote of the City Council.

If Council chooses to overrule the ALUC, the City must provide the ALUC and the State Division of Aeronautics ("Division") a copy of the proposed decision and findings at least 45 days prior to the decision to overrule. The ALUC and the Division may provide comments to the City Council within 30 days of receiving the proposed decision and findings. The comments by the Division and the ALUC serve as advisories to the City Council.

Surland's Application

In January, 2013, City Council approved a General Plan Amendment and a Specific Plan for the Ellis project ("current approvals"). These current approvals allow 2,250 houses at Ellis, however only four or five houses are permitted in the area currently restricted by the ALUCP safety zones.

In July, 2013, Surland submitted applications requesting a General Plan Amendment and Specific Plan Amendment to the Ellis project, which were revised in August, 2013 ("proposed amendments"). The proposed amendments would allow density in this area of Ellis at approximately 4 to 9 units per every acre of land. Attachment B displays a map comparing the current approvals and the proposed amendments.

Subsequently, in a letter dated September 30, 2013, the City received notification from SJCOG regarding a determination that the proposed amendments are not consistent with the ALUCP. The notification provides three options:

- 1) Do not approve the application;
- 2) Request a revision to the project for consistency with the Airport Land Use Plan;
- 3) As provided within the State Aeronautics Act PUC Sections 21676 and 21676.5 overrule the ALUC determination by a two-thirds vote of the governing body.

As mentioned above, City Council has the authority to overrule the ALUC.

City Council Options related to Surland's application

Staff is seeking direction from the Council as to whether or not staff should begin work on determining findings for an overruling, or not. As such, the Council has the following two options:

- 1) ***Direct staff to not pursue an overruling.***
Under this option, staff is unable to recommend approval of the proposed amendments unless they are changed to conform to the ALUCP;
- 2) ***Direct staff to pursue an overruling.***
This option is a three-step process. First, staff would seek an airport consultant and recommend City Council approval of a contract relating to making findings (one month). Second, a draft of the findings will be presented to the ALUC and the Division of Aeronautics for comment (two-three months). Third, the application for amendments to the Ellis project would proceed to Planning Commission for a hearing to make a recommendation to City Council and then City Council for a hearing and action on the overrule and the applications (three months). This option would ultimately require a two-thirds vote of the City Council, which equates to a four-fifths vote of five members, as mentioned above.

STRATEGIC PRIORITIES:

This item does not relate to Council's identified Strategic Priorities.

FISCAL IMPACT

With regard to the Airport Pavement Design, the City currently has a contract with a consultant for the ALP update. At this time it is not known whether that contract would have to be amended to address FAA related processes if City Council directs staff to shorten the runway to less than 4,002 feet.

With regard to the Ellis Specific Plan Amendment, if City Council chooses to pursue an overrule (Option 2 under Section Two), these costs would be paid by Surland under the City's Cost Recovery Agreement, therefore there is no impact to the General Fund.

RECOMMENDATION

Staff recommends that City Council discuss and provide direction on the (1) Airport improvements and timeline, maintaining runway length at 4,002 feet, prior to finalizing the airport design and layout plan, and (2) review items related to San Joaquin County Airport Land Use Commission's determination that the application to amend the Ellis Specific Plan from Surland Communities, LLC is not consistent with the San Joaquin County Airport Land Use Commission Compatibility Plan.

Prepared by: Bill Dean, Assistant Development Services Director
Ed Lovell, Management Analyst II, Public Works Department
Andrew Malik, Development Services Director
Monica Gutierrez, Management Analyst, City Manager's Office

Reviewed by: Maria A. Hurtado, Assistant City Manager

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

ATTACHMENTS

Attachment A: Historical Timeline Related to Airport Runway Length
Attachment B: Comparison of Ellis current approvals and proposed amendments

ATTACHMENT A

Airport Runway Length Historical Timeline

- 1975: Airport Master Plan states 4000 feet
- 1980: Appraisal for land purchase for approach zones refers to runway length of 4000 feet
- 1983: Airport Land Use Commission (San Joaquin County Council of Governments) adopted an Airport Land Use Compatibility Plan referring to runway lengths of 3880 feet and 3418 feet
- 1993: Airport Land Use Compatibility Plan amended (SJOOG acting as Airport Land Use Commission) and refers to runways of 3680 feet and 3418 feet
- 1997: Airport Land Use Compatibility Plan amended (SJOOG acting as Airport Land Use Commission) to use the draft (yet-to-be-adopted) Tracy Airport Master Plan and Caltrans Division of Aeronautics handbook as the basis for the safety zones
- 1998: Tracy Airport Master Plan adopted by City Council. The runway lengths referenced in previous ALLUP (3418 feet and 3680 feet) were noted to be understated runway lengths, and actual pavement is 4004 feet and 4002 feet
- 2001: Airport Layout Plan approved by Federal Aviation Administration. Runway length is 4002 feet. (Minor updates to ALP approved by Caltrans in 2006 and 2007 - runway remains 4002 feet)
- 2007: Slurry seal and stripping on all runways and taxiways due to poor condition of pavement; specs required work to be completed in accordance with runway length as established on the ALP. However, it was later identified that the resulting length of stripped area is 3996 feet
- 2008: Ellis project approved under 1993 ALLUP (as amended in 1997)
- 2009: SJOOG finalizes ALLUP and lists the safety areas as a hybrid scenario based on argument from City that runway is right on the line of delineation between short and medium safety cones
- 10/2011: Transportation Advisory Commission and City Council meet to discuss future airport projects, one of which was to fix the pavement at the airport
- 12/2011: Survey of runway ends due to mistake in painting and slurry seal at the end of the runway and the final stripped length was identified as 3996 feet

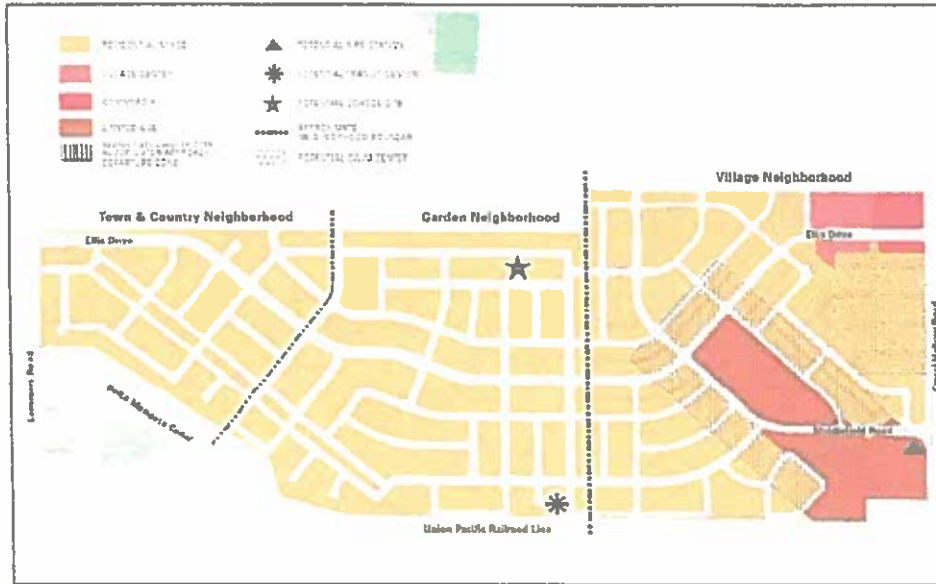
- 1/2012: Staff sends City Council a memo notifying them that the length of the runway under then current conditions was 3996 feet, and that that length would serve as the base for future airport multi-phased planning including identifying optimal runway length
- 3/2012: Pilots express concern to City Council about the airport runway length
- 5/1/2012: City Council receives airport update agenda item and directs staff to establish runway length at 4000 feet
- 10/2012: Pavement Maintenance and Management Plan (PMMP) began by Airport Consultant, completed in 3/2012 shows deterioration of pavement at the airport. PMMP Required in order to apply for FAA grant. Staff notifies City Council that the runway asphalt had been patched and painted to restore length back to 4000 feet
- 1/2013: Ellis project approved again by City Council, consistent with 2009 ALLCP.
- 2013: Airport Consultant begins design work on reconstruction of all pavements at the airport
- 5/2013: FAA notifies City staff that runway width standards had changed and that an updated ALP would be required prior to award of any grant to fix the pavement
- 6/2013: City staff brings agenda item to City Council to have runway length set at 3997 as part of the ALP update.
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Ellis Specific Plan

ATTACHMENT B

Approved Ellis Specific Plan

A Total of 2250 residential units can be built within the Ellis project. A portion of this project has to conform to the 2009 ALLUCP which limits the density of units on a portion of the site. This portion of the site is approximately 22.8 acres in size and is identified as the tan cross-hatched pattern on the map below. Within this portion of Ellis, the ALLUCP limits residential density to 1 dwelling unit per 5-acres. This means that only 4 homes could be built within the cross-hatched area. The remaining residential portions of Ellis are permitted to have a density of between 4 and 9 units per 1-acre. Actual density will not be known until applications for subdivision maps have been submitted and approved by City Council.



Current Surland Application

A total of 2,250 residential units could be built within the Ellis project. An "overrule" by City Council would allow housing to be built at a density of 4 to 9 units per acre in the area (approximately 40 acres) that currently is limited by the 2009 ALLUCP to 1 unit per every 5 acres. This means that the number of homes within this portion of Ellis under an "overrule" by City Council would increase by approximately 160 to 360 units. This does not affect the total number of units at Ellis.



Zoning/Unit Comparison Table

	Zoning	Acres	Number of units
Current	Limited Use	26.2	0
	Residential Mixed/ALLUCP	22.8	4.5 (1 unit/5 acres)
Proposed	Limited Use	9	0
	Residential Mixed	40	160 to 360 (4-9 units/acre)

B. W. Fendervis
Checked
Legal Counsel

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INSTRUMENT OF TRANSFER

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 Santa-Carbosa 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-568-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.
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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.

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

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

27 day of July, 1947.

UNITED STATES OF AMERICA
Acting by and Through
War Assets Administration

WITNESSES:

Alfred S. Lindig
A. G. Boylen

By J. Wayne Hanrop
J. WAYNE HANROP
Acting Deputy Regional Director
Office of Real Property Disposal
War Assets Administration
San Francisco, California

CITY OF TRACY
A municipal corporation

WITNESSES:

Irinda Patton
Larry Wallsworth

By J. W. Stocking
Its Mayor


ATTEST:

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

12 
13 _____
14 Notary Public
15 In and for the City and County of
16 San Francisco, State of California

17 (SEAL)

18 My commission expires: My Commission Expires Dec 31 1949

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

On this 19th day of June, 1947, before me Benny
Wallsworth, a Notary Public in and for San
County, personally appeared J. T. 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 Wallsworth
Notary Public

(SEAL)

My commission expires:
April 26, 1950

Steve Nicolaou

Attorney At Law

445 W. 11th Street, Suite C

Tracy, California 95376

October 22, 2013

VIA E-MAIL & REGULAR MAIL

Robin K. Hunt

Manager, San Francisco Airports District Office

FEDERAL AVIATION ADMINISTRATION

Western Pacific Region

1000 Marina Boulevard, Suite 220

Brisbane, California 94005

Re: Tracy Airport, Tracy, California

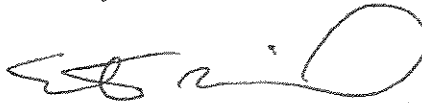
Dear Ms. Hunt:

As a follow-up to my letter to you of October 21, 2013, I am also enclosing a copy of Tracy City Council Resolution No. 273, which was approved by the Tracy City Council on May 6, 1947 on a 5-0 vote. This resolution gave Mayor J.W. Stocking the authority to negotiate on behalf of the City of Tracy with the Federal Government the terms and conditions governing the transfer of the Tracy Airport as evidenced by the Instrument of Transfer dated May 27, 1947 ("Instrument"). Resolution No. 273 also gave Mayor Stocking the legal authority to bind the City to those terms and conditions as evidenced by his execution of the Instrument as noted in my October 21, 2013 letter to you.

In my opinion, with this final document, I think we have been able to prove, beyond any doubt, that the City of Tracy did enter into a *binding, legal agreement* with the Federal Government governing the Tracy Airport, with said agreement governed by *federal law* as I previously stated to you in my letter of October 21, 2013.

Should you have any questions or comments, please feel free to give me a call.

Sincerely,



STEVE NICOLAOU

SN/sn

Enclosure

Arthur Sonnenberg, services	\$5.00
F.M. Van Ness, Water & Cups	\$6.25
Given Electric CO	\$54.00
Tracy Machine & Engine Works	\$ 2.50
American Grill, Meals	\$284.11
Tracy Auto Parts, supplies	\$ 40.07
Tracy Lumber CO, lumber & material	\$671.52
S.J. Ferichs & Son, bond	\$ 25.00
Good Lumber CO, supplies	\$ 22.35
Associated Oil CO, vesdol	\$ 75.03
Bauer's Blacksmith Shop, labor	\$ 8.71
Frank B. Marks & Sons, Road gravel X mix	\$ 29.06
Firestone Stores, supplies	\$ 57.60
Thompson Motors, parts & labor	\$144.71
Tredway's, supplies	\$ 15.34
The Texas CO, Gasoline	\$400.96
Shell Oil CO, motor oil	\$ 24.16
Tracy Rock & Gravel CO, plant mix & gravel	\$120.00
Fire Department Members	\$120.00
Harley-Davidson Sales & Service, parts & labor	\$ 7.20
The A. Lietz CO, supplies	\$ 8.80
State Compensation Insurance Fund, premium	\$166.14
Crane Company, supplies	\$ 17.69
Natural Gas equipment, supplies	\$180.66
Neptune Meter CO, supplies	\$943.37
S.M. McGaw, motor grader	\$600.00
Buckner Manufacturing CO, supplies	\$106.53
Keuffel & Esser CO, supplies	\$ 6.05
Dallman Supply CO, supplies	\$656.13
Tay-Holbrook Inc	\$103.62
Delta Pipe & Supply CO, supplies	\$ 19.02
Mueller CO, supplies	\$ 52.48
The Fred W. Hanks CO, supplies	\$261.48
Edward R. Bacon CO, supplies	\$163.52
Momelite Corporation, supplies	\$ 24.23
Iowa Valve CO, supplies	\$472.85
Gordon Rowe CO, Quarterly Audit	\$187.50
O.K. Rubber Welders, tube	\$ 12.99
Delta Rubber & Equipment CO, supplies	\$ 6.08
Standard Office Equipment CO, services	\$ 17.44
Water Works Supply CO, supplies	\$1667.61
Art Concrete Works, meter boxes	\$ 114.80
Monroe Calculation Machine CO, Inc, maintenance	\$ 32.00
M And M. Builders Supply, lumber	\$1414.83
Fairbanks, Morse & CO, starters	\$ 867.77
Howard G. Bissell, services as Planning Consultant	\$ 400.00
Keene, Riess Supply CO, supplies	\$ 257.94
Ray's Radio Shop, services	\$ 72.15

The following resolution was introduced by Councilman Sheppard.

RESOLUTION NO. 273

RESOLUTION OF CITY COUNCIL OF THE CITY OF TRACY AUTHORIZING APPLICATION FOR TRANSFER TO IT OF AIRPORT PROPERTY BY WAR ASSETS ADMINISTRATION AND APPOINTING AGENT TO REPRESENT SAID CITY OF TRACY IN NEGOTIATING AND CONSUMMATING SUCH TRANSFER

WHEREAS, The War Assets Administration heretofore gave notice by publication of availability of Stockton Aux. 5 (Tracy) in the County of San Joaquin, State of California under the surplus Property Act of 1944 as amended and War Assets Administration Regulation 16, dated June 26, 1946.

WHEREAS, the City of Tracy through its City Council is about to make application to the War Assets Administration of the United States for the transfer to it of that certain property hereinafter described as airport property, under the Surplus

Property Act of 1944 and,

WHEREAS, it is necessary that an agent and representative be appointed by said City of Tracy to negotiate for such transfer and sign and accept the necessary documents on behalf of said City therefor,

IT IS HEREBY RESOLVED that said City of Tracy make application to the War Assets Administration of the United States for the transfer to said City under the Surplus Property Act of 1944, as amended, of that certain real property located in the County of San Joaquin, State of California, described as follows:

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.

together with the buildings and improvements thereon, and operating equipment.

IT IS FURTHER RESOLVED that the Mayor of said City of Tracy, be, and he is hereby constituted and appointed the agent and representative of said City for the purpose of and with authority on behalf of said City to negotiate for and sign the said application for transfer of such property to said City of Tracy, to accept delivery of all formal instruments of transfer, and to sign on behalf of said City any and all documents that may be necessary to complete said transaction and transfer.

IT IS FURTHER RESOLVED that said City of Tracy shall be bound by all the reservations, restrictions and conditions of transfer as set forth in said application.

That said application shall be made pursuant to the provisions of and by virtue of authority given by the "Municipal and County Airport Law", Stats 1927, Page 485, as amended, being also known as Act 149 in Deering's General Laws.

Adopted by the City Council of the City of Tracy, State of California on the 6th day of May, 1947, by the following vote:

Ayes: Councilmen, Eagan, Larsen, Ratekin, Sheppard, Stocking
Noes: Councilmen, none
Absent: None

State of California)
) SS.
County of San Joaquin)

I, Charles E. DeFreitas, City Clerk of the City of Tracy, State of California, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by said Council at a regular meeting of said Council held on May 6th, 1947.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City of Tracy, on this 6th day of May, 1947.

Chad R. L. Linton

The following resolution was introduced by Councilman Larsen:

RESOLUTION NO. 274

RESOLVED, by the City Council of the City of Tracy that the sum of Five Cents (5¢) be transferred from the General Improvement Bond Fund #2 to the General Improvement Bond Fund #6.

The above resolution was introduced by Councilman Larsen, who moved its adoption. The motion was seconded by Councilman Ratekin and roll call showed the following vote:

AYES: Councilmen, Eagan, Larsen, Ratekin, Sheppard and Stocking
NOES: NONE
ABSENT: NONE

ATTEST: *Frank S. D...
City Clerk*

J. W. Stocking
Mayor

RESOLUTION NO. 275

WHEREAS, there are now growing upon the following described streets and/or sidewalks and/or private property within the City of Tracy, weeds which bear seeds of a wingy or downy nature or attain such a large growth as to become a fire menace when dry, or which are otherwise noxious or dangerous, and

WHEREAS, the City Council of the City of Tracy believes that the said weeds are a public nuisance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Tracy, County of San Joaquin, State of California, that the weeds now growing upon the hereinafter described property are hereby found and declared to be a public nuisance, and

BE IT FURTHER RESOLVED, that the Superintendent of Public Works and other officials of the said City shall proceed to have the same abated as provided by Act 5197 of Deering's California General Laws of the State of California, and

BE IT FURTHER RESOLVED, that the property herein referred to is located in the City of Tracy, County of San Joaquin, State of California, and more particularly described as follows:

- Lots 13 and 14, Block 56, City of Tracy
- " 10 " 11, " 53, " " "
- " 12 " 13, " 59, " " "
- " 7, 8 & 9, " 60, " " "
- Lot 22, New Sub of West Park Acreage
- All of property, Irsandade Portuguese De Festa Do Esperito De Tracy, Inc. bounded by W. Ninth on the North, Winder on the West, and West Sixth Street on the South.
- Lot 159, Parker Villas #3
- " 70 " " "
- " 119 " " #2
- " 111, " " "
- Lot 40, Hollywood Manor
- East 50 feet of lot 11, Parker Villas
- West 100 feet of Lot 42, Parker Acres
- Lots 7 and 8, Slacks Addition

J. W. Stocking
Mayor of the City of Tracy

COMMENTS OF STEVE NICOLAOU

Good evening Mayor Ives, Council Members and Staff.

In reading last Friday's Tracy Press article, I was very encouraged to see that Councilmember Rickman, Councilmember Young and our City Manager, Mr. Churchill, all appear to be in favor of having the facts and circumstances thoroughly investigated surrounding the April 23, 2013 memorandum from Mr. Serpa to Mr. Buchanan and the check dated June 19, 2013 from Surland to the City of Tracy that referenced the 2009 ALUCP.

I trust that Major Ives, Mayor Pro Tem Maciel and Councilmember Manne are also of the same mindset to have this matter thoroughly investigated to ascertain whether anything improper or not incurred with respect to the airport. This would be in keeping with the promise of transparency and integrity in government each of you have stated in the past as being of paramount importance to you.

However, in my humble opinion, I believe that this Council should not engage in any such investigation or inquiry. Instead, I believe that it should refer this matter to the Grand Jury for investigation. My reasons are as follows.

First, one of your key witnesses, Rod Buchanan, is no longer employed by the City. In fact, it is my understanding that Mr. Buchanan has moved out of the state, residing and working in Arizona if I am not mistaken. This Council does not have the authority to compel Mr. Buchanan to appear before this body to answer questions concerning this whole airport matter. The Grand Jury does have that legal authority through its power to issue subpoenas and hold persons in contempt for disobeying a lawfully issued and served subpoena.

Second, along those same lines, this Council does not have the power to subpoena witnesses and documents, such as, for example, private e-mail exchanges, bank records of private parties to ascertain whether any moneys from sales of fuel at the airport during the relevant time period changed hands, and other documents in the possession of interested parties evidencing some sort of private agreement along the lines alluded to by Mr. Churchill in last Friday's Tracy Press as possibly existing between Turlock Air and Surland. The Grand Jury does have that power.

Third, this Council does not have the power to place witnesses under oath to provide testimony; nor does it have the power to hold uncooperative witnesses in contempt, nor to refer them for prosecution if they are found to have committed perjury by lying under oath or obstructing justice. The Grand Jury does have these powers.

Fourth, given that the Council would in essence be investigating itself, there would in all likelihood be a perception in many minds that if you were to come back and say there was nothing amiss and that was truly the case, that you did not dig deep enough because you did not want to make yourselves and/or the City "look bad". Having an impartial third party such as the Grant Jury, with the appropriate investigative tools and authority at its disposal, there is a greater chance that its findings would be accepted, and a lesser chance of having them disregarded or not give credence. If nothing illegal or

unethical occurred, wouldn't you want that "Good Housekeeping" seal of approval issued by the Grand Jury?

Fifth, by having the matter investigated by the Grand Jury, you would have professional staff, such as members from the District Attorney's office, assisting and giving the grand jurors guidance in conducting its investigation in complete compliance with the law, insuring that minimum requirements of due process were followed so that the inquiry would not degenerate into a witch hunt.

Finally, by having the Grand Jury do the investigation, it is my understanding that the City would not have to pay a dime for having the investigation conducted.

In conclusion, if this Council is serious about having this matter thoroughly investigated and letting the chips fall where they may, then it appears the only logical choice is to have this matter referred by our City Attorney to the Grand Jury for inquiry. And I would like to point out to you that there is precedence for this type of action – tonight, the Stockton City Council is expected to authorize and direct their City Attorney to refer to the Grand Jury its own mayor, Mayor Anthony Silva, for investigation for alleged Brown Act violations stemming from that City's attempts to hire a new city manager a few weeks back. If that Council can refer its own mayor to the Grand Jury for investigation, why can't you on this important issue? By doing so, no one can accuse you of shirking the duty you undertook when each of you took an inviolable oath to uphold the law upon taking the office each of you now hold.

Thank you for your time.



November 27, 2013

Brian and LeAnn Van Lehn
540 Winston Court
Tracy, California 95376

Re: Leprino Foods Matter

Dear Brian and LeAnn,

Thank you for your confidence in Abbott & Kindermann, LLP. We understand that our services are no longer required for the matter for which this firm was retained. In these circumstances, our practice is to provide formal written notification to the client that the attorney-client relationship has concluded, and that we are closing our file.

Thank you for the opportunity to be of service. Should you have any future needs, or should this matter require further attention, please feel free to call me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane", is written in black ink.

Diane Kindermann Henderson

DKH/sb



WILSON IHRIG & ASSOCIATES

ACOUSTICAL AND VIBRATION CONSULTANTS

CALIFORNIA

NEW YORK

WASHINGTON

6001 SHELLMOUND STREET
SUITE 400
EMERYVILLE, CA 94608

Tel: 510-658-6719

Fax: 510-652-4441

www.wiai.com

12 December 2013

Mr. and Mrs. Brian Van Lehn
540 Winston Court
Tracy, California

Dear Mr. and Mrs. Van Lehn,

This letter reports our assessment of low-frequency mechanical noise at your residence at 540 Winston Court in Tracy, California, and the surrounding neighborhood. The purpose of the assessment is to try to assess and account for the noise disturbance you have reportedly been experiencing over the past several years since the neighboring Leprino Foods plant was expanded and enlarged. As described to us by you, one of the primary ramifications of the noise has been a regular disruption of your ability to sleep through the night.

Our analysis of calibrated noise recordings made at 540 Winton Court and other neighboring properties has identified two strong, low frequency tones which would account for the reported disturbance. In this report, we will explain why the tonal noise is disturbing and annoying, as well as why the simple, A-weighted noise level measurements that were done previously in other prior studies may have failed to identify the problem.

While the exact source of the noise is unknown at this point, it is likely caused by mechanical equipment at the Leprino Foods processing plant. For reasons based on both the sound data and observations made by you, we conclude that the source is mechanical equipment serving the building itself, not the refrigerated rail cars that are often stored behind the plant. The acoustical analysis data provides identifying information about the source of the disturbance which would make exact identification of the equipment relatively simple.

BACKGROUND

Leprino Foods operates a processing plant behind the homes on Winston Court and Colony Drive. Previous noise measurements sponsored by the City of Tracy and Leprino Foods have concluded that the noise level generated by Leprino operations are less than the 67 dBA allowed by a Noise Exemption Application approved by the City. The major identifiable noise sources at the Leprino plant are diesel-engine powered refrigeration rail cars, building HVAC and other mechanical systems.

ACOUSTICAL MEASUREMENTS

Sound is the propagation of mechanical pressure waves through a physical medium, most commonly air. When the pressure waves hit a person's eardrum, the mechanical energy of the wave is converted into what we perceive as sound. The pressure waves can have different frequencies, and the relative amplitudes at the various frequencies are what give different sounds their distinct characteristics. A bird call sounds like a bird call because of its particular frequency content.

The unit of frequency is the Hertz (Hz), 1 Hertz = 1 cycle/second. Humans can typically hear sounds between 20 and 20,000 Hz, but they don't hear all frequencies equally well. Human hearing is most acute between the frequencies of 1,000 and 6,000 Hz. At higher and lower frequencies, human hearing is not as good, so people tend to judge these frequencies as quieter than frequencies in the acute range even when the decibel level is equal. At low frequencies, people often confuse sound with perceptible vibration.

Experiments to quantify the human ability to hear different frequencies were conducted in the early part of the last century. In 1930s, this work culminated in the A-weighting curve that filters the different frequencies in a manner similar to the human ear. Low and high frequencies are discounted, while frequencies between 1,000 and 6,000 Hz are boosted slightly. After the frequencies have been filtered by the A-weighting curve, the remaining sound energy may be summed to obtain a single number decibel level that is intended to correlate well with human perceptions of loudness. This single number, A-weighted decibel level is denoted by "dBA", where the "A" represents the A-weighting.

A very common means to analyze the frequency content of a sound is by 1/3-octave bands. This analysis resolves the sound into bands on a logarithmically spaced scale. This is similar to the piano scale, but whereas there are eight musical notes in each octave, the acoustical analysis only uses three bands per octave.

Another common way to analyze the frequency content of a sound is by narrowband analysis. In this analysis, the frequencies are resolved into equally spaced bins, typically 1 Hz wide. This analysis is useful for determining the exact frequency of a tonal noise.

For this investigation, Wilson Ihrig provided the resident of 540 Winston Court, Mr. Brian Van Lehn, with calibrated audio recording equipment consisting of a Brüel & Kjær Model 2230 Type 1 Sound Level Meter and a Sony PCM-M10 digital recorder. The equipment was calibrated with a Brüel & Kjær Model 4230 Field Calibrator immediately prior to deployment; the signal of the Field Calibrator is itself traceable to the National Institute of Standards and Technology (NIST) through an annual calibration verification process.

Mr. Van Lehn was shown how to turn on and operate the equipment to make recordings. Upon retrieving the equipment, Wilson Ihrig downloaded the recordings and analyzed them.

Figure 1 shows two 1/3-octave band spectra obtained in the master bedroom of 540 Winston Court with the windows *closed* on April 8, 2013. Both of these spectra show sound levels averaged over

several minutes of time. The one at 5:04 AM does not contain any unusual components and sounds like the typical ambient in a suburban home.

In contrast, the spectrum at 5:14 AM contains a very strong tone about midway between the 40 and 50 Hz 1/3-octave bands (the ones between 31.5 and 63 Hz – only the main octave bands are labeled). The 50 Hz band level, 58 dB, is more than 20 decibels higher than the adjacent 63 Hz band level; and the 40 Hz band level is more than 10 dB higher than the adjacent 31.5 Hz band level. In general, when a tonal noise level exceeds the neighboring bands by more than 5 dB, it becomes distinctly audible and potentially annoying and disturbing. It is somewhat rare to have a tonal noise in a residence that is 20 dB higher than an adjacent band.

While this level analysis provides a strong indication that the tonal noise will be annoying and disturbing, it does not capture another element of the problem which is that the low frequency sound waves are imparting sufficient force on the home that they cause the windows and possibly the structure itself to vibrate. This is clearly audible in the recordings which could be played back to City officials or Leprino Foods representatives.

The source of the noise is clearly mechanical equipment as it can be heard starting and stopping in the recordings. Figure 2 shows the level in the 50 Hz 1/3-octave band over a 30 minute period on the morning of April 8, 2013. To be clear, whereas Figure 1 shows the spectra at frequencies in the 12.5 to 5,000 Hz bands averaged over several minutes, Figure 2 shows only the level in the 50 Hz band over a period of about 30 minutes. Initially, when the rumble sound is present, the level is about 60 dB. When the equipment shuts off for a few minutes, the 50 Hz sound level drops to 33 to 40 dB. Then, the machinery starts up again, the levels rise to near 60 dBA again, and the rumble and rattling are again clearly audible.

Figure 3 shows outdoor spectra at 540 Winston Court at various dates and times when the strong 40/50 Hz tone was present. These spectra establish that the tone occurs regularly. This figure also shows strong tone in the 80 Hz band (the one to the right of the 63 Hz band). This may be a harmonic of the 40/50 Hz tone or it may have a separate source. As this tone is also often 10 dB higher than the adjacent bands, it by itself would be potentially disturbing and annoying.

Figure 4 shows a limited amount of data collected at other residences in the neighborhood. These exhibit the 80 Hz tone, but not the 40/50 Hz tone. However, the 80 Hz tone is generally stronger in these spectra than it is in the Figure 3 spectra. These data substantiate that the Leprino plant generates tonal noises throughout the Colony Drive and Winston Court neighborhood.

DISCUSSION

Numerous studies document that A-weighted decibel readings often fail to adequately identify noise problems when low frequency noises are involved. In *Guidelines for Community Noise* by the World Health Organization, the general shortcoming of A-weighted noise levels is noted:

Thus, current practice is to reduce the assessment of environmental noise to a small number of quite simple quantities that are known to be reasonably well related to the effects of noise on people [e.g., A-weighted decibels]. These simple measures have the distinct advantage

that they are relatively easy and inexpensive to obtain and hence are more likely to be widely adopted. On the other hand, they may ignore some details of the noise characteristics that relate to particular types of effects on people.

"Some details of the noise characteristics" include, among other things, low frequency content. For example, one study compared noise with a peak at 250 Hz to that of a noise at 100 Hz and found that – at the same A-weighted level – the noise with the lower frequency tone was more annoying. The study concluded that, in general, A-weighted noise levels underestimate annoyance for sounds below 200 Hz. (Persson et al, 1985)

Other studies investigated the effect of low frequency content by comparing the C-weighted noise level with the A-weighted noise level. For the purposes of this discussion, it suffices to know that C-weighting does not de-emphasize the 40, 50, or 80 Hz 1/3-octave bands nearly as much as A-weighting.¹ These studies have concluded a C-weighted noise level more than 20 dB greater than the A-weighted level is a good indicator of a low frequency noise problem. (Broner, 1979; Kjellberg et al, 1997). In this matter, the dBC level in the Van Lehn's bedroom is 26 dB higher than the dBA level (based on spectrum in Figure 1; dBC level not shown on figure), a strong indication of the low frequency noise problem there.

A physiological study by Ising and Ising related low frequency noise content with the abnormal secretion of cortisol, thereby affecting a person's normal sleeping patterns. The study used a noise source for which the C-weighted level was 26 dB higher than the A-weighted level (which, coincidentally, is the difference in the Van Lehn's bedroom based on the spectrum in Figure 1), and found that the low frequency noise stimulated the release of cortisol during sleeping hours when cortisol levels would normally be low. (Ising and Ising, 2002). This study concluded that A-weighted noise levels are inadequate for assessing the impact of low frequency noises at night.

The World Health Organization's *Guidelines for Community Noise* also address the adverse effects of noise – including low frequency noise – on sleep:

Uninterrupted sleep is a prerequisite for good physiological and mental functioning, and the primary effects of sleep disturbance are: difficulty in falling asleep; awakenings and alterations of sleep stages or depth; increased blood pressure, heart rate and finger pulse amplitude; vasoconstriction; changes in respiration; cardiac arrhythmia; and increased body movements. The difference between the sound levels of a noise event and background sound levels, rather than the absolute noise level, may determine the reaction probability.

It should be noted that low-frequency noise . . . can disturb rest and sleep even at low sound pressure levels. When noise is continuous, the equivalent sound pressure level should not exceed 30 dB(A) indoors, if negative effects on sleep are to be avoided. For noise with a large proportion of low-frequency sound a still lower guideline value is recommended.

¹ The weights of the relevant bands are:

	40 Hz	50 Hz	80 Hz
A-weighting	-34.6 dB	-30.2 dB	-22.5 dB
C-weighting	-2.0 dB	-1.3 dB	-0.5 dB

The first passage points out that the "difference between the sound levels . . . may determine the reaction probability." As can be seen in Figure 2, the increase in sound levels in the 50 Hz band when the tonal noise comes on is the order of 20 dB. In the calibrated audio recording made on that day, the machinery can clearly be heard running, turning off, then turning back on again. In the same manner that the cycling of a hotel air conditioning unit disturbs the sleep of many people, so does the cycling of the Leprino plant low frequency noise disturbs the Van Lehns, a key difference being that the Van Lehns have no control over the situation they are in.

The second WHO passage provides some quantitative on this issue. It notes that for most noises, a limit of 30 dBA is appropriate for good sleep, but "[f]or noise with a large proportion of low-frequency sound a still lower guideline value is recommended." Unfortunately, the document does not provide any additional insight on what the "lower guideline value" might be, but it is very common for noise ordinances and other regulations to weight tonal noises by 5 dB, indicating that 25 dBA would at least be a good starting point. As Figure 1 shows, the noise level in the Van Lehn's bedroom when the tonal noise is present is 32 dBA.

In almost any situation, a tonal noise that exceeds the adjacent frequencies by 20 dB would be deemed highly annoying and disturbing by most people. On that basis alone, many commercial businesses would be compelled to reduce the tonal noise permeating the Winston Court and Colony Drive either through their own "good neighbor policy" or by the City in which they operate.

In this particular case, something associated with the 45 Hz tone sometimes causes the windows at 540 Winston Court to rattle audibly and for the intensity of the sound inside the home to increase perceptibly. It may be that this is caused by a fan at Leprino Foods operating near a stall condition, but that is conjecture at this point. The intensity of the disturbing phenomenon is not conjecture, however, as it is clearly and unmistakably evident in many of the recordings made by Mr. Van Lehn. These could be played back for others to hear for themselves, if desired.

CONCLUSIONS

1. Mechanical equipment in the vicinity of 540 Winston Court is generating a very strong tonal noise in the 40, 50, and 80 Hz 1/3-octave bands. The tones exceed adjacent bands by some 10 to 20 dB which is a strong indication that most people would find them highly annoying.
2. On occasion when the 40/50 Hz tone is present, the windows of 540 Winston Court rattle and the acoustic environment inside the bedrooms becomes particularly intense. The exact physical cause of this has not yet been found, but the phenomenon itself is captured on several calibrated audio recordings made in the home.
3. The A-weighting filter greatly discounts noise at 40, 50, and 80 Hz. Scientific research has determined that A-weighted measurements would be inadequate to properly address the annoyance, disturbance and health effects of this situation where strong tones are present in those frequency bands.

4. Scientific studies have found that a difference of more than 20 dB between dBC noise level and the dBA level was a strong indicator of a low frequency noise problem. This difference has been measured to be 26 dB in the bedroom at 540 Winston Court.
5. One scientific study has found that normal sleep patterns can be disrupted by abnormal cortisol secretion when the dBC level exceeds the dBA level by 26 dB (as it does in the bedroom at 540 Winston Court).
6. The World Health Organization, based on decades of research, recommends a noise limit in bedrooms lower than 30 dBA when a large proportion of low frequency sound is present. We take this to mean 25 dBA, if not lower. The noise level in the bedroom at 540 Winston Court when the strong 40/50 Hz tone is present is 32 dBA.
7. Though the exact source of the mechanical noise has not been identified, mechanical noise of this nature could be readily abated by standard noise control equipment and design techniques.

* * * * *

Please contact us if you have any question about these acoustical measurements or our analysis.

Very truly yours,

WILSON, IHRIG & ASSOCIATES, INC.



Derek L. Watry
Principal

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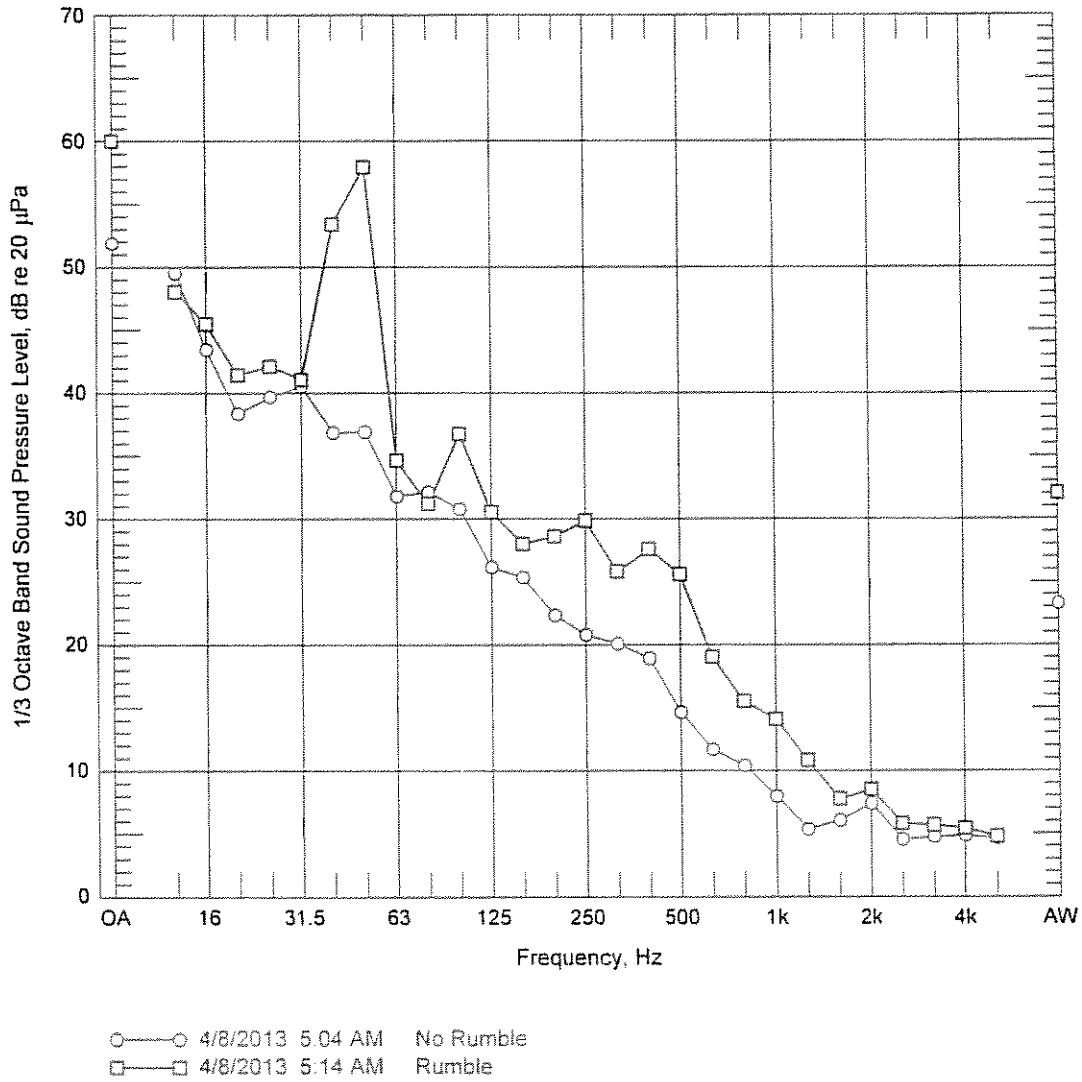


FIGURE 1 RUMBLE IN MASTER BEDROOM, 540 WINSTON CT.

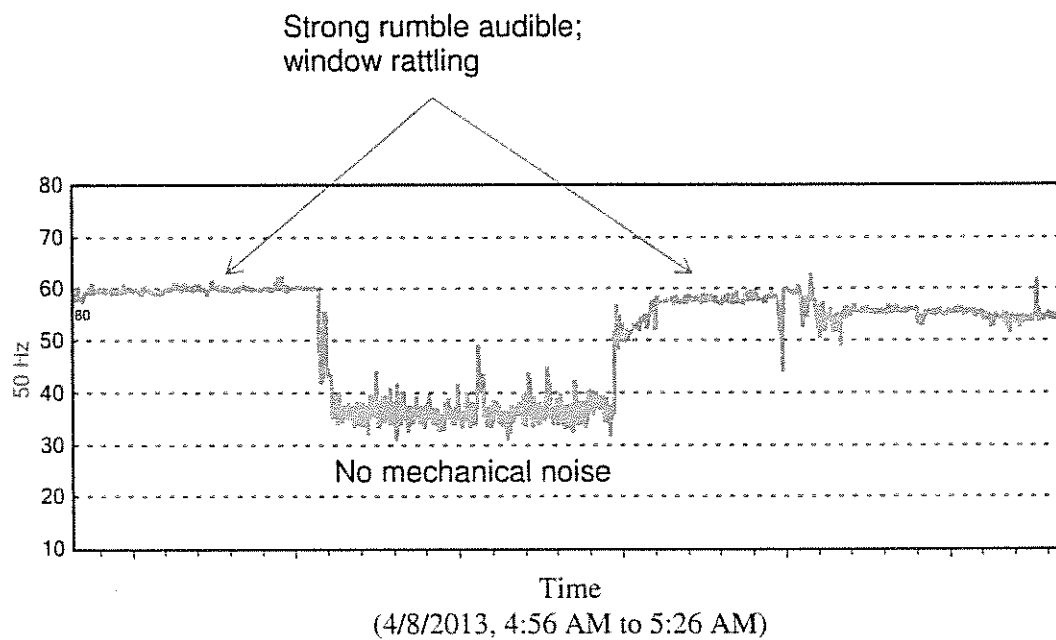


FIGURE 2 SOUND LEVEL IN 50 Hz 1/3-OCTAVE BAND
(Vertical scale in dB)

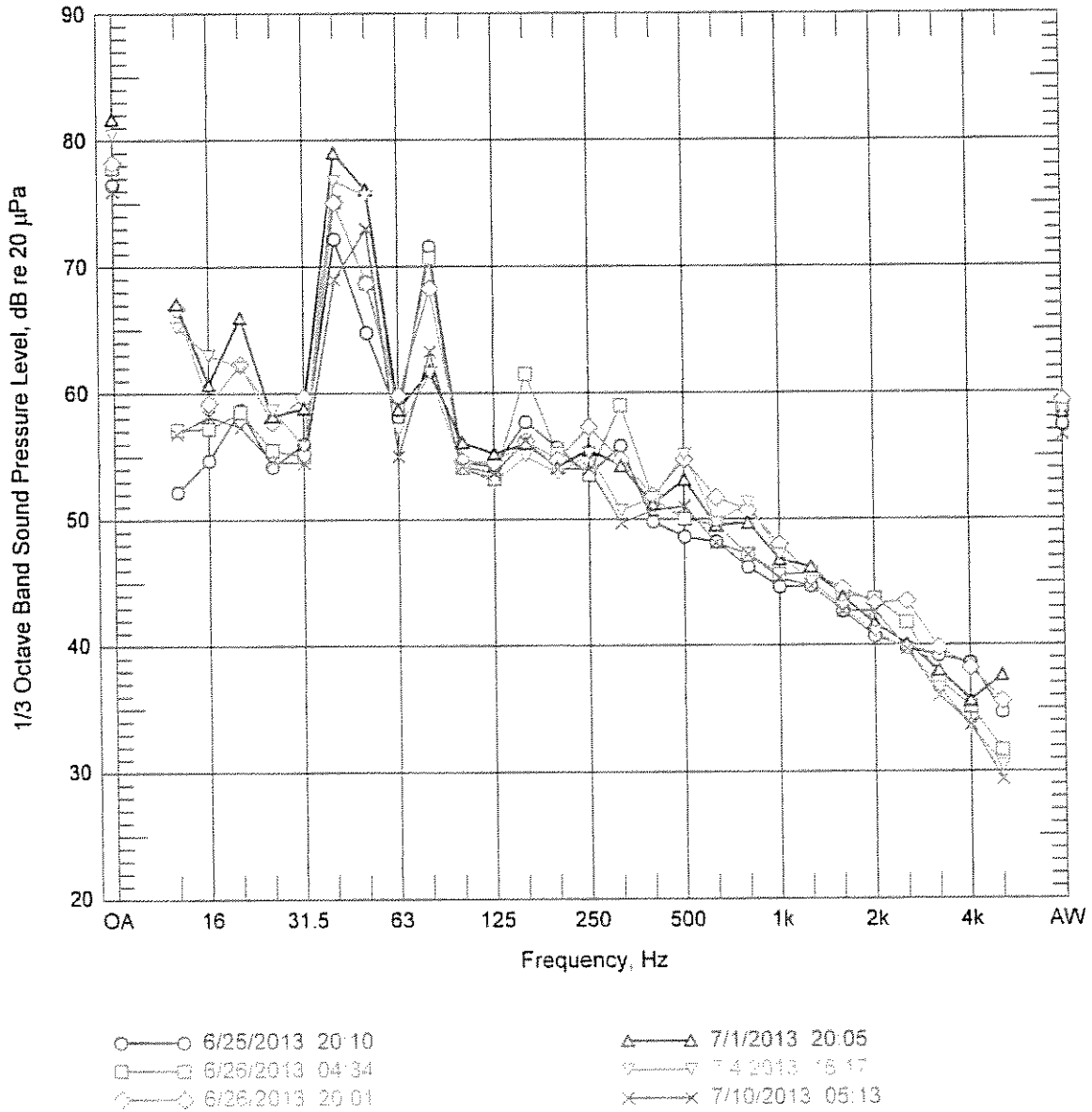


FIGURE 3 RECORDINGS AT 540 WINSTON CT ON VARIOUS DAYS

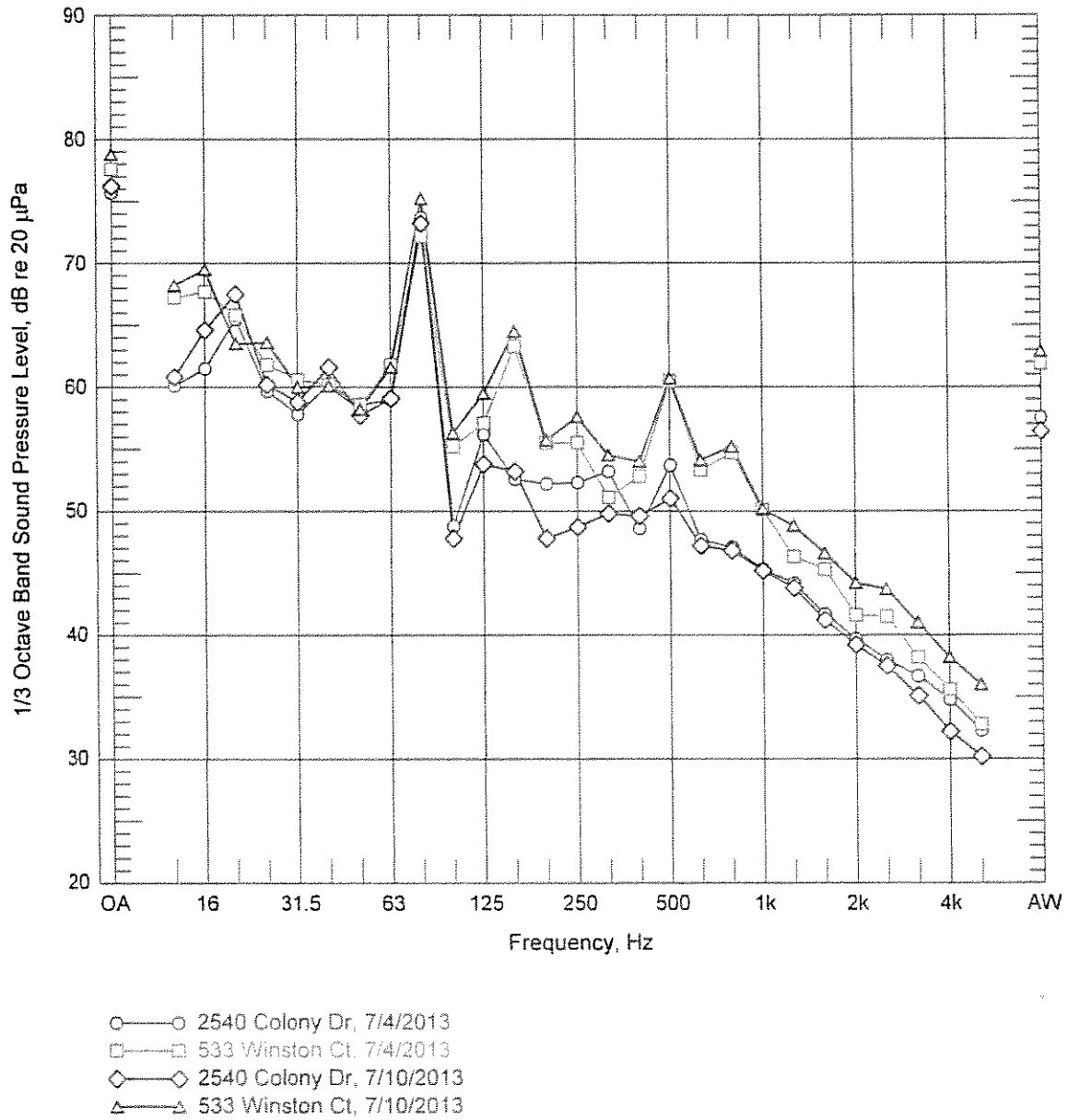


FIGURE 4 RECORDINGS AT OTHER RESIDENCES