



City of Tracy  
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Tracy, CA 95376

CITY COUNCIL

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September 2, 2014

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

Re: Grand Jury Report: 2013-2014 Case No. 1213 – Tracy Municipal Airport:  
*Development vs. Safety Zones*

Honorable Judge Holland:

This letter responding to the above referenced Grand Jury Report is submitted in accordance with California Penal Code Sections 933 and 933.05. The City of Tracy's response relates only to the findings and recommendations contained in the Grand Jury Report.<sup>1 2</sup>

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<sup>1</sup> The Grand Jury Report concluded that its "... investigation discovered no evidence to substantiate the complainant's allegations of a secret and illegal business agreement having officially been entered into between a local developer, City staff, and the City Council." However, in addition to the findings and recommendations outlined below, the Grand Jury Report includes a number of subjective and erroneous opinions. For example, in the conclusion of the report, the Grand Jury suggests that: there may have been a "*quid pro quo* between the City and the developer for political or other considerations;" the City had an "attitude of knowing what the results would be but 'wink-wink' we won't say anything;" the City somehow deceived the public; and the City Council and staff conducted City business in a less than transparent way. Because these are subjective opinions rather than fact-based findings and recommendations, the City will not be responding to these.

<sup>2</sup> As a point of clarification, the Background section of the Grand Jury Report references the 1947 deed from the United States Government (which only deeded roughly half of the Airport property to the City as the City already owned the other half), which provides in relevant part:

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

The regulation of obstructions, such as are referred to in this 1947 deed, have been subsequently detailed in adopted federal regulations. (See Title 14 of the Code of Federal Regulations, Part 77, Subpart C.) These federal regulations are also acknowledged in the State Aeronautics Act. (See Public Utilities Code, § 21659.) These regulations now control obstructions at or around the Airport.

Think Inside the Triangle™ 



- **Section 1.0 Staff Reports Provided to the City Council**

**Finding**

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

The City agrees with this finding. City staff provided inaccurate and incomplete information to the City Council relative to the information it had at the time.

**Recommendation**

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

This recommendation will be implemented by December 31, 2014. By that time, City staff will conduct a comprehensive review for the City Council of the FAA and Caltrans safety zone requirements related to development and mandated requirements on runway lengths at the Tracy Airport to insure the City is in compliance for future grant funds.

- **Section 2.0 Business Proposal to the City of Tracy**

**Findings**

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

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The City agrees that the Tracy City Council did not enter into any written contractual agreement related to any of the contingencies contained in the Airport Agreement Memorandum.

A majority of the City Council agrees that, based on the language in the AAM, a perception could be gleaned that there was an agreement between City staff and the local developer to undertake the contingencies in the memorandum.

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

The City agrees with this finding.

**Recommendation**

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

This recommendation will not be implemented as it is neither warranted nor reasonable.

Provisions of the state Planning and Zoning Law ensure that City actions on land use and development projects are adequately noticed and fully disclosed to the public. For example, any proposed changes to the General Plan, a specific plan, a zoning ordinance, or a development agreement require public notice and hearings before both the Planning Commission and the City Council. (Government Code, §§ 65353 and 65355 (general plan), 65453 (specific plan), 65854 and 65856 (zoning ordinance), and 65867 (development agreement).)

In addition, the Brown Act requires that the City post notice of all items appearing on a City Council agenda in a location that is freely accessible to members of the public and on the City's Internet Web site. (Government Code, §§ 54954.2 (notice for regular meetings), and 54965 (notice for special meetings).)

For development projects, City staff usually only presents the City Council with formal requests that are processed through the application, notice, and hearing process described above. City staff does not regularly present the City Council with informal requests that have not gone through this process. This is not only to use the City Council's valuable time more productively but also to avoid confusion over what action is actually before the City Council. City staff receives numerous informal requests and inquiries relating to development projects, many of which do not result in a formal application ever being filed.

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• **Section 3.0 City Acceptance of Third Party Payments**

**Finding**

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

The City disagrees with this finding. The City is subject to state law requirements relating to acceptance of checks. Government Code section 6157 provides that a city must accept certain personal checks and all corporate checks, cashier's checks, money orders, or other draft methods, drawn in its favor or in favor of a designated city official, in payment for any license, permit, or fee, or in payment of any obligation owing to the public agency.

For personal checks, a city can require the person issuing the check to furnish proof of residence in this state and that the check be drawn on a banking institution located in this state. Other than this limited instance, a city may not refuse to accept a check, money order, or other draft based on the person or corporation issuing the check or the banking institution involved.

### **Recommendation**

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

This recommendation will be implemented as soon as practicable. The City will include a reference to Government Code section 6157 in its Financial Policies the next time such policies are reviewed and updated.

- **Section 4.0 Airport Classification and Future Development**

### **Finding**

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

The City agrees with this finding.

The uses and densities contained in the Ellis Specific Plan are required to be consistent with the ALUP (unless overridden by the City Council). The length of an airport's runway does play a factor in establishing safety zones within an ALUP, however, it is not the only factor. For example, although the length of the Runway at issue here meets criterion for a median general aviation safety zone, the 2009 San Joaquin County ALUP established a "hybrid" safety zone for the Runway.<sup>3</sup> Therefore, even if the length of the

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<sup>3</sup> As explained in the 2009 San Joaquin County ALUC:

Tracy Municipal Airport's Runway 12-30 currently meets the length (4,002') criterion outlined in the *Airport Land Use Compatibility Planning Handbook* for medium general aviation safety zones and approach visibility criterion ( $\geq 1$  mile) for small general aviation safety zones. Runway 12-30 does not meet the complete criteria

Runway was somehow modified by the City, the Ellis Specific Plan would still have to be consistent with the current ALUP. The length of the Runway does not directly impact the uses and densities contained in the Ellis Specific Plan; such uses and densities are, however, directly impacted by the ALUP.

- **Section 5.0 City Review of Business Licenses**

**Finding**

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

To the extent the Grand Jury is referring to the operator's corporate status with the California Secretary of State's Office, the City agrees with this finding.

After a business entity is formed or registered with the California Secretary of State, it may need to obtain other necessary licenses and/or permits from other state agencies, the County, or the City. However, the Secretary of State does not issue any licenses or permits for business entities that were applicable in this instance.

A business entity can be formed in California by filing the applicable document or form with the Secretary of State. Business entities that can be formed through the Secretary of State include corporations and limited liability companies.

A Corporation, Limited Liability Company (LLC), or Limited Partnership's powers, rights and privileges, which include the right to use the entity's name in California, can be suspended or forfeited in California by: (1) the Secretary of State for failure to file required documents or forms; and/or (2) the Franchise Tax Board for failure to meet tax requirements (e.g., file a return, pay taxes, penalties, interest).

A contract entered into by a suspended business entity is not void but merely voidable by the other party. (Revenue and Taxation Code, § 23304.1(a).) The other party can have the contract declared voidable "only in a lawsuit brought by either party with respect to the contract in a court of competent jurisdiction." (Revenue and Taxation Code, § 23304.5.) Even then, the business entity must be "allowed a reasonable opportunity to cure the voidability" before the court's judgment is issued, and "in no event shall the court order rescission of a [business entity's] contract unless the

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for small or medium general aviation safety zones. Therefore, zones for Runway 12-30 are halfway between the medium and small general aviation zones. The zones for Runway 12-30 are a fair compromise between capturing a significant amount of accident data and potential urban development sought along the primary departure corridor from Tracy Municipal Airport . . . . A similar methodology was also used during the development of the current safety zones for Tracy Municipal Airport.

[business entity] receives full resititution of the benefits provided by the [business entity] under the contract.” (*Ibid.*)

Not all contracts the City enters into are with business entities that are required to file documents or forms with the Secretary of State and/or are subject to Franchise Tax Board requirements. Some contracts the City enters into are with individuals or other entities (e.g. General Partnerships, etc.), which are not required to file documents or forms with the Secretary of State and are not subject to Franchise Tax Board requirements pertaining to corporations and LLCs.

Additionally, the Secretary of State lists the status of corporations, limited liability corporations, and limited partnerships on its website (<http://kepler.sos.ca.gov/>). However, this information is not always current or correct. For example, in its report, the Grand Jury refers to the corporate status of Turlock Air Center, LLC. Although the Secretary of State’s website listed its status as “suspended,” it turned out that this was in error. (See Franchise Tax Board Entity Status letter attached as Exhibit A.)

For these reasons, the City believes that it is best practice to have entities that are entering into contracts with the City show that they have taken all steps to file the necessary documents with the Secretary of State and meet all Franchise Tax Board requirements, to the extent they may apply.

### **Recommendation**

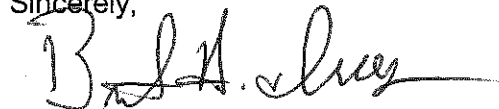
**R 5 The Tracy City Council adopt a policy by September 30, 2014, requiring the review of the current status of a business’ State license when any applicable City contract is proposed to be amended or renewed.**

This recommendation will not be implemented because it is not warranted and is not reasonable. However, the City will include the following language in all of its standard form contracts:

Contractor shall provide City proof that it has filed all required documents and/or forms with the California Secretary of State and has met all requirements of the Franchise Tax Board, to the extent such requirements apply to Contractor. By entering into this

Agreement, Contractor represents that is not a suspended corporation. If Contractor is a suspended corporation at the time it enters into this Contract, City may take steps to have this Agreement declared voidable.

Sincerely,



Brent H. Ives, Mayor  
On Behalf of the Tracy City Council

Exhibit A: Franchise Tax Board Entity Status Letter

cc: Members of the Tracy City Council  
Troy Brown, City Manager  
Maria Hurtado, Assistant City Manager  
Daniel G. Sodergren, City Attorney



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
PO BOX 942857  
SACRAMENTO CA 94257-0540

**EXHIBIT A**

### Entity Status Letter

TURLOCK AIR CENTER, LLC  
PO BOX 797  
TURLOCK, CA 95381

Date: 02/05/2014

ESL ID: 271

According to our records, the following entity information is true and accurate as of the date of this letter.

Entity ID: 200905610180

Entity Name: TURLOCK AIR CENTER, LLC

The entity was suspended in error on 3.1.2013 and is now in the process of being restored.

- 1. The entity is in good standing with the Franchise Tax Board.
- 2. The entity is **not** in good standing with the Franchise Tax Board.
- 3. The entity is currently exempt from tax under Revenue and Taxation Code (R&TC) Section 23701 .
- 4. We do not have current information about the entity.

The above information does not necessarily reflect:

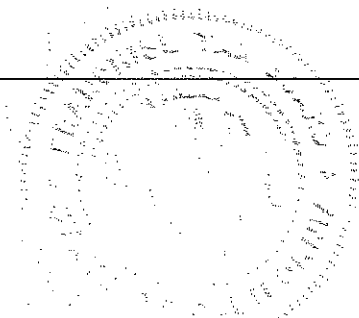
- The entity's status with any other agency of the State of California, or other government agency.
- If the entity's powers, rights, and privileges were suspended or forfeited at any time in the past, or the entity did business in California at a time when it was not qualified or not registered to do business in California:
  - o The status or voidability of any contracts made in California by the entity at a time when the entity was suspended or forfeited (R&TC Sections 23304.1, 23304.5, 23305a, 23305.1).
  - o For entities revived under R&TC Section 23305b, any time limitations on the revivor or limitation of the functions that can be performed by the entity.

#### Internet and Telephone Assistance

Website: [ftb.ca.gov](http://ftb.ca.gov)

Telephone: 800.852.5711 from within the United States  
916.845.6500 from outside the United States

TTY/TDD: 800.822.6268 for persons with hearing or speech impairments



*Lisa Vasquez*