March 19, 2015

Mr. Kevin McKeown
Mayor of the City of Santa Monica
2118 Wilshire Boulevard, Room 209
Santa Monica, CA 90403
kevin@mckeown.net

RE: Proposals Concerning Santa Monica Airport

Dear Mayor McKeown:

I write on behalf of the National Business Aviation Association (NBAA). As you may know, NBAA represents the interests of more than 10,000 member companies in promoting the interests of business aviation. NBAA members are located at, use, and/or have other interests in ensuring the continued accessibility and viability of the Santa Monica Municipal Airport (SMO).

We understand that the Santa Monica Airport Commission (SMAC) at its February 23, 2015 meeting endorsed several proposals to the City Council regarding SMO (specifically, leasing guidelines for SMO as well as a two-part "action plan"), which will be considered at the City Council's March 24 meeting, along with the proposed emissions ordinance previously endorsed at the SMAC's December 22, 2014 meeting. We strongly urge the Council to decline to adopt any of the SMAC's proposals, which generally are inconsistent with federal law.

As a preliminary matter, the City Council must understand that despite the pending expiration of the 1984 agreement between the City and the FAA, SMO (and the City as its sponsor) will continue to be subject to federal obligations. The grant assurances attached to Airport Improvement Program (AIP) grants will remain effective until 2023, and the conditions of the 1948 Instrument of Transfer (IOT), will remain effective in perpetuity.[1] Moreover, other federal statutes will be controlling so long as SMO is operated as an airport.[2] Accordingly, any actions taken by the City Council in regard to SMO must be carefully considered.[3]

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[1] See, e.g., In re City of Santa Monica, California, docket no. 16-02-08, Director's Determination, at 13 (regarding grant assurance-based obligations) and 15-20 (regarding Instrument of Transfer-based conditions) (May 27, 2008).

[2] See, e.g., 42 U.S.C. § 7571(a)(2) and § 7573 (sections of the Clean Air Act which provide that the EPA and FAA jointly have exclusive statutory jurisdiction over aircraft emissions).

[3] NBAA notes that the SMAC correctly has deleted from its leasing guidelines a prohibition on specific aeronautical uses (e.g., fueling and flight schools). Such a prohibition would be squarely incompatible with federal law; not only the grant assurances but a federal statute (49 U.S.C. § 40103(e)), in perpetuity, prohibits airports from granting an "exclusive right" to certain types of aeronautical activities by excluding other types of aeronautical activities. See, e.g., In re City of Santa Monica, California, docket no. 16-02-08, Director's Determination, at 53 (May 27, 2008).

- **Lease Terms.** Notably, airport tenants are legally entitled to – and in order to practically operate their businesses, must have – an opportunity to sign long-term leases. NBAA does not believe that the three-year term previously debated by the City Council in 2014 is adequate to meet that obligation – but the month-to-month terms (absent case-by-case Council approval) now proposed by the SMAC in sections 3(I) and 4(II) of the leasing guidelines certainly are non-compliant.[4] Indeed, NBAA notes that the City through its counsel previously represented to the FAA that it would offer SMO tenants three-year leases, through June 30, 2018.[5] Accordingly, at a bare minimum the City Council should approve three-year terms – but also consider whether those terms are facially inadequate and extensions through at least 2023 should be on offer.

- **Market Rents.** The SMAC has proposed in sections 4(I), 4(XI), and 9 of the leasing guidelines that "market" rents be charged to aeronautical tenants at SMO, with the market defined as "office, light industrial, and vacant land" in Santa Monica. The FAA generally does allow aeronautical tenants of an airport to be charged "market" rents – but the underlying "market" is airport-specific and does not allow the consideration of alternate property uses.[6] Moreover, any rent adjustments cannot result in a substantial airport budget surplus, which would violate the City's federal obligations.

- **Emissions Restrictions.** Additionally, the SMAC has proposed that the City Council impose emissions-based restrictions on operations at SMO, in the form of an emissions limitation ordinance. As discussed in greater detail in my February 4, 2015 letter, this proposal would not only violate the City's grant/deed-based obligations, but other federal obligations that unquestionably will remain effective at SMO.[7] Any notion of implementing emissions-based access restrictions at SMO should be abandoned.

- **Environmental Responsibility.** The SMAC also has proposed – in sections 3(III) and 3(IV) of the leasing guidelines – that leases be conditioned on "environmental responsibility"

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[4] See, e.g., Santa Monica Airport Association v. City of Santa Monica, California, docket no. 16-99-21, Director's Determination, at 22 (November 22, 2000) (airport tenants generally are entitled to long-term leases commensurate with the outer limits of an airport's federal obligations). The SMAC also appears to have proposed that each whole building lease be subject to an RFP process for each month (see section 4(V) of the leasing guidelines), which is obviously impractical as well as non-compliant.

[5] See National Business Aviation Association, Krueger Aviation, Inc., Harrison Ford, Justice Aviation, Kim Davidson Aviation, Inc., Aero Film, Youri Bujko, James Ross, Paramount Citrus LLC and Aircraft Owners and Pilots Association v. City of Santa Monica, California, City of Santa Monica's Motion to Dismiss the Part 16 Complaint, docket no. 16-14-04, Director's Determination, at 3 (August 14, 2014). If that representation was untrue, the City and its attorneys have an obligation to correct the record before the agency; to date, they have not done so.

[6] See, e.g., Valley Aviation Services, LLP v. City of Glendale, Arizona, docket no. 16-09-06, Director's Determination, at 52-53 (May 29, 2011). Cf. City of Los Angeles v. DOT, 165 F.3d 972, 978 (D.C.Cir. 1999) (holding that airport landing fees cannot be premised on the opportunity cost of non-aeronautical uses of the airport property).

[7] See supra footnote 2; 49 U.S.C. § 47524 (implementing the Airport Noise and Capacity Act of 1990); and 49 U.S.C. § 40103(e) (prohibiting exclusive rights at airports that have ever accepted federal funds, in perpetuity).

requirements, with reference to the City zoning ordinance for studios and light manufacturing (§ 9.04.08.35). This language unfortunately appears to be nothing more than a smokescreen for the imposition of requirements that are beyond the City's authority. SMO's federal obligations allow only those restrictions that are rationally related to actual environmental problems at the airport and otherwise are consistent with those obligations. Tenants of an airport cannot legally be subjected to environmental standards claimed to be implicit in zoning regulations that do not and were never intended to encompass aeronautical uses.[8]

- **West Parcel.** The SMAC also has suggested in its "action plan" that the City seek FAA permission to close a portion of the SMO runway (the so-called "west parcel") because it was transferred to the City in 1949 by a different deed and on different terms than the remainder of the airport. As above, the City's grant-based obligations endure until 2023 and require the entire facility to remain in operation, so any discussion of the closure of the west parcel – or any portion of SMO – is premature. Moreover, the perpetual obligations of the 1948 IOT encompass "the entire landing area" at SMO; thus the SMAC simply is wrong to suggest that the west portion of the SMO runway could be closed, at any date.[9]

Accordingly, we are hopeful that as responsible representatives of the City's residents – again with refreshed insight into the federal legal requirements applicable to SMO – the Council will adopt leasing guidelines for SMO that offer appropriate lease terms to airport tenants, and otherwise reject SMAC proposals that are flatly inconsistent with federal law, and could lead to legal action against the City – as well as federal sanctions, including the suspension of all DOT transportation funding for City projects.

NBAA expects to have a representative present when this matter is scheduled for discussion by the Council, and would be pleased to address any questions or provide any further information that would be of assistance.

Sincerely,

Steven J. Brown

Steve Brown
NBAA, Chief Operating Officer

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[8] See, e.g., Centennial Express Airlines v. Arapahoe County Public Airport Authority, docket no. 16-98-05, Director's Determination, at 20 (August 21, 1998).

[9] However, the SMAC is correct to acknowledge that the City is obligated to seek the permission of the FAA pursuant to 14 C.F.R. Part 155 to close any portion of SMO; the City cannot do so on its own initiative.

CC:

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