



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Airport Safety  
and Standards

800 Independence Ave., SW.  
Washington, DC 20591

original

AUG 23 2006

Mr. Andrew T. Souza, City Manager  
Fresno City Hall, Second Floor  
2600 Fresno Street  
Fresno, California 93271-3600

Dear Mr. Souza:

I would like to thank you and your staff for the professional and courteous support provided to my staff during their on-site review of the Fresno Yosemite International Airport (Airport) between January 23<sup>rd</sup> and February 10<sup>th</sup>.

The following are the results of our review and suggested corrective actions, which we believe to be necessary and reasonable. We would like to discuss the suggested corrective action with you by conference call, once you and your staff have had the opportunity to review this letter.

The corrective action focuses on three separate issues: the Disposal of Airport Land, the Loan to Fresno Redevelopment Agency, and the Accounts Receivable for Air 21 .

### **DISPOSAL OF AIRPORT LAND**

#### **Background**

The City transferred 220.31 acres from the Airport, selling 200.91 acres to the GAP Inc. (GAP) and using 18.93 acres for the widening of East Airways Boulevard Avenue and .47 for Leyte Avenue. It did this without first obtaining Federal Aviation Administration (FAA) authorization as required by the Airport Improvement Program (AIP) grant assurances. The 200.91 acres was sold to the GAP in four parcels. Each parcel was sold for \$1.

In addition to the nominal sales price, the City also provided other incentives. The GAP distributes much of its merchandise by truck using California State Route (SR) 99, the main north/south highway in central California. As part of the agreement, the City promised to facilitate roadway improvements to the freeway. In return, the GAP agreed to build its Pacific Distribution Center on the site. Its initial plan was to construct two buildings and to staff them with 470 employees. It planned a future expansion of two additional buildings. The GAP met its initial obligation but has not built the two additional buildings. For 2006, the GAP will pay the City \$1.8 million in real estate taxes, which places the GAP among the City's top ten payers of real estate tax. The agreement between the City and the GAP provided no direct benefit to the Airport.

The land originally became attached to the Airport when the State of California transferred the land to the City, which came about in the following way:

- a. Between March 19, 1942 and October 25, 1945, the War Department purchased 531 acres for the Hammer Army Base. The 531 acres became the Northeast corner of the base. The entire base consisted of 1,600 acres made up of the Fresno Municipal Airport and other War Department purchases.
- b. On March 2, 1948, the War Assets Administration transferred 360 acres of the 531 acres to the State of California. The deed stipulated that for 10 years the State was to use the land for the Fresno State College.
- c. On September 5, 1969, the State of California Department of General Services transferred 352.5 of the 360 acres to the City. The deed required the City to use the land for public purposes. After 1969, the City included the 352.5 acres on its Airport Layout Plan.
- d. On September 14, 1976, the State of California Attorney General issued an opinion that said the City could develop the land for air cargo. The Attorney General cautioned the City would violate the deed restrictions if it leased the land for uses unrelated to the Airport.
- e. In 1978, the State issued a new deed, which modified the stipulation that a public agency must hold the land.
- f. In 1984, the State amended its 1969 and 1978 statutes to delete the public use and public agency requirements, but the City has no record of a deed that reflects the 1984 change, so the deed continued to require public use.
- g. On November 16, 1988, the Fresno City Attorney issued an opinion to the Airport Director that stated the City has a legal obligation to use the land for airport purposes. The City Attorney stated the inclusion of the acreage on the ALP, the issuance of two bonds, and the City's acceptance of FAA grants binds the land to the Airport.
- h. On December 11, 1990, the City dedicated East Airways Drive, 18.93 acres, for public street purposes, removing it from the Airport.
- i. Between 1997 and 2002, the City sold 200.91 of the 352 acres to the GAP Inc.

Grant Assurance number 5, *Preserving Rights and Powers*, requires airport sponsors that receive FAA grant funding to obtain authorization from the FAA before transferring its rights or interests in airport property. It states the sponsor will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interest in property shown on Exhibit A (the property map that is attached to the FAA grant documentation) without first obtaining written approval from the Secretary. To date, the FAA has not granted the City authorization to release or dispose of the 200.91 acres of what is now GAP property.

The FAA considers the transfer of the land with payment below fair market value to be an unlawful diversion of airport revenue. Federal statute requires airport revenues to be used for airport capital and operating costs. This requirement is at 49 U.S.C. 47107(b) and 47133. The FAA *Policy and Procedures Concerning the Use of Airport Revenue* (Policy), 64 Federal Register 7695, February 16, 1999, defines airport revenue (Section II (B)(1)(a)(ii)) as the revenue received for the sale, transfer, or disposition of airport real property.

An airport sponsor is to depict all of the land that constitutes the airport on a document called the "Exhibit A." The Exhibit A defines the airport land obligated under the FAA grant assurances. It is attached to each grant application and becomes part of each grant. Any land identified on the Exhibit A may not be disposed of without FAA consent. Such consent requires a documented process of releasing the Federal obligations from the land. The Exhibit A attached to grants awarded to the City after the sale of the 200.91 acres to the GAP still identified this land as being part of the Airport. A subsequent Exhibit A submitted in 2003 excluded the land sold to the GAP but has not been accepted by FAA. The FAA still considers the land sold to the GAP to be obligated under the grant assurances.

On January 30, 2003, the FAA sent a letter to Noah Lagos, Director of Transportation of the City of Fresno. The letter requested documents pertaining to the disposition of the 200.91 acres; a copy to the letter is included as Enclosure 3.

#### **City Proposed Value of GAP Property with Stigma and Other Offsets**

The City presented a list of proposed offsets against the market value of the GAP property including a consideration for stigma:

<b>Proposed Value of GAP Property with Stigma</b>	<b>Amount</b>
Appraised value of Airport property transferred to GAP, Inc	\$4,600,000
Less 40% for stigma associated with unknown environmental risks	<u>(1,840,000)</u>
Net value of Airport property transferred to GAP	<u>\$2,760,000</u>
<b>Proposed Offsets</b>	
Cost of on-Airport projects constructed by the RDA	\$3,988,937
Capital cost of construction on Airport "Leaky Acres" property	53,322
City's share of roadway projects than enhance the Airport	35,237
"Measure C" funds invested in City highways that enhance Airport	818,795
	<u>\$4,896,291</u>

#### **Stigma Appraisal**

An appraisal submitted by the City cited unknown environmental risks associated with the former military use of the GAP property as the cause for an "Environmental Stigma" discount on the market value of the property. The appraisal report, in support of the 40% discount, cites the City's indemnification of clean-up costs on the sale of the property, the potential third party liability to adjoining property owners and the potential for munitions that may remain buried on the property. The appraiser states that lenders and investors would not purchase such property without substantial discount from the market value.

However, our review of the appraisal and supplemental information finds that the Stigma discount of 40% is not supported. No analysis or proof is provided that verifies a potential for migration of contamination from the GAP Property (i.e. third party liability) or any significant or notorious presence of buried munitions on the property.

The only verifiable evidence of any Stigma discount on the property would be due to the City's indemnification provided the GAP. At the time of sale, the development potential and location for development were clearly very valuable site attributes. The FAA considers the extensive development of the property and the City's support for the development as contradicting the proposed 40% discount for Environmental Stigma. No actual underground contamination has been identified on the GAP property. The contamination plume under other Airport property apparently is not and did not affect the GAP's use and development of its property; nor has there been a requirement for monitoring of the GAP property for migration of the contamination. The GAP property itself may continue to be used and marketed and sold at its full market value. At best, at the time of City's sale to the GAP, a reasonable Stigma discount at no more than 5% of the appraised value may be accepted as reasonable given the City's indemnification provided to the GAP.

#### **Other Proposed Offsets**

The City submitted a list of capital projects, which it stated benefited the Airport and offsets amounts the City owed the Airport from its taking of the GAP property. The offsets total \$4.9 million.

The largest offset is \$3,988,937 proposed for Airport projects constructed by the Fresno Redevelopment Agency (RDA). The Airport funded a large amount of these projects through a loan. Projects completed with the Airport loan cannot be used to offset the sale of the GAP property. This is discussed in the next section, *Loan to Fresno Redevelopment Agency*.

Both the proposed Measure "C" funds offset for \$818,795 and the proposed City's local share of roadway projects offset of \$35,237 were used for major arterial highway improvements not directly related to the Airport. The Policy (Section V.A.9.) allows the use of airport revenue for "those portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees." The FAA Airport Improvement Program Handbook recognizes funding eligibility for an access road only to the nearest public highway and only if used exclusively for airport traffic. Highway projects located off-Airport do not meet the Policy standard and are not accepted as an offset. We note that in part these projects were funded by State or Federal grants.

The proposed Leaky Acres offset for \$53,322 does not fit the use of airport revenue under the Policy and cannot be considered an offset. It is a percolation field for the aquifer that provides water to much of Central California.

A summary of the proposed offsets, along with a map that shows the location of the roadway improvements in relation to the Airport, is included as Enclosure 1.

### Summary Position on Land Disposal

In summary, the City disposed of 200.91 acres of Airport land without first obtaining the FAA's authorized release. The disposal violated Federal statutes on revenue diversion (49 U.S.C. 47107(b) and 49 U.S.C. 47133)), and the prohibition on using airport revenue for general economic development (49 U.S.C. 47107(l)(2) (B)), and the Policy on airport revenue use. The offsets the City proposes are not eligible as offsets. The FAA will agree to a 5% reduction of the appraised fair market value of the property due to possible environmental stigma.

The FAA values the 200.91 acres at \$4,797,900 based on the May 27, 2004, appraisal performed by the City's independent appraiser. The FAA updated that appraisal allowing a 5% stigma. United States Treasury rates of interest, applied to the updated appraisal amount bring the total to \$6,214,255 through June 2006. See computations below:

Parcel Color	Acres	Date of Valuation	Market Value	5% Stigma	Base Value	Treasury Rate	No. of Years	Interest	Total Due
Purple	135.14	30-Sep-97	\$ 2,649,000	\$ 132,450	\$ 2,516,550	5%	8.75	\$ 1,100,991	\$ 3,617,541
Pink	56.38	19-Jun-00	\$ 1,719,000	\$ 85,950	\$ 1,633,050	5%	6.00	\$ 489,915	\$ 2,122,965
Yellow	7.71	20-Jun-02	\$ 353,000	\$ 17,650	\$ 335,350	4%	4.00	\$ 53,656	\$ 389,006
Medium Blue	1.68	13-Jun-02	\$ 76,900	\$ 3,845	\$ 73,055	4%	4.00	\$ 11,689	\$ 84,744
	<u>200.91</u>		<u>\$ 4,797,900</u>	<u>\$ 239,895</u>	<u>\$ 4,558,005</u>			<u>\$ 1,656,250</u>	<u>\$ 6,214,255<sup>1</sup></u>

### LOAN TO FRESNO REDEVELOPMENT AGENCY (RDA).

The Fresno RDA has two redevelopment project areas that impact the Airport: the Fresno Air Terminal Redevelopment Area (FATRA) and the Airport Area Revitalization Redevelopment Project (Airport Revitalization Area). Three problems were found associated with these two project areas. First, the FATRA has over \$6 million of Airport money tied up in a loan for which no payment of interest or principal has been received in over 13 years. Second, airport revenue should not be used for economic development, which is the focus of the RDA. Finally, the RDA has provided little financial benefit to the Airport in comparison to what the Airport has provided the RDA.

#### **Background**

The RDA is established under the State of California, Health and Safety Code and governed by the Fresno City Council. The mission statement of the Fresno RDA is as follows:

*"To remove blight and encourage growth, vitality, renewal and rehabilitation of deteriorated areas beset by social, physical, environmental and economical conditions."*

RDA projects begin when the RDA identifies a project, designs a development plan, and obtains financing with bonds, advances, and loans. As an area improves, incremental tax revenues accrue to the RDA to pay for project financing. FATRA's funding sources are, in part, loans from the Airport and the incremental tax revenues generated by possessory interest taxes. The Airport Revitalization Area is funded through incremental tax revenues on the GAP property, industrial sites, and residential neighborhoods.

<sup>1</sup> Land valued at \$660,000 donated to the Airport from the Airport Revitalization Area may be considered an offset if its value is supported by an appraisal and evidence is provided of the transfer of title to the Airport.

## FATRA

In 1988, the RDA established FATRA for the purpose of revitalizing Fresno's blighted areas, reverse the trend of economic stagnation, and ensure the realization for aviation-related light industrial growth. Some of the projects to ready the FATRA for this economic industrial growth were to widen streets and intersections, and demolish old buildings and infrastructure. These projects were seeded with loans, in part, from the Airport.

## FATRA Loans

The City and the RDA Director entered into a loan agreement with the RDA agreeing to repay the Airport for any loans. The agreement did not provide an explicit interest rate or specify the term of the loans. California law allows up to 40 years to repay. Of the amount owed, very little has been repaid. In fact, there have been no payments of either principal or interest since 1993. Theoretically, according to redevelopment philosophy, this might not be unexpected. As the area improves, eventually (within 40 years) the tax increments should increase until the loans can be repaid. However, the FATRA has ceased improving the area; therefore no growth can be projected. The City's audited Comprehensive Annual Financial Report (CAFR) for 2005 reports an Advance to Other Funds (a receivable to the Airport) in the amount of \$6 million. The RDA's audited financials<sup>2</sup> agree with the amount and the interest rates reported in the CAFR.

### **Airport Loans to FATRA @ FYE 2004**

<b>Date</b>	<b>Description</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
6/30/89	Advance	\$2,260,514	\$2,154,322	\$4,414,836
6/30/89	In-Kind	350,000	407,190	757,190
6/30/90	Shields Ave. Diagonal	11,500	14,714	26,214
6/28/91	Project Loan 1	180,000	183,066	363,066
6/28/91	Project Loan 2	175,500	178,489	353,989
<b>Total</b>		<b>\$2,977,514</b>	<b>\$2,937,781</b>	<b>\$5,915,295</b>

Note: The City reports \$6.2 advanced from the Airport in its FYE 2005 CAFR.

The City argues the Airport receives significant benefit from the FATRA because the FATRA contributed to the Airport environmental remediation. There is no evidence that the City paid for the remediation other than from the proceeds of the loans from the Airport or the incremental tax revenue generated by the FATRA. The source of the contamination comes from a building located on the Airport used to clean aircraft engines during the 1950s. At the time, North American Grumman was rebuilding the engines under contract with the U.S. Department of Defense. Later the Boeing Company purchased North American Grumman. The City is hopeful the Boeing Company and the United States will take full responsibility for the contamination and reimburse the City for the costs the Airport contributed to the remediation.

However, certain City and FATRA contributions may be considered as offsets against the loans. These contributions include amounts paid for demolition of the old military type buildings on the Airport and environmental cleanup and remediation costs on the Airport

<sup>2</sup> The RDA's financial statement at fiscal year end 2005, report \$84 million in long-term debt. About half of this or \$45 million is from Advances from the City of Fresno. The Airport's amount of \$6 million (with no interest or principal payments in 13 years) makes up 13% of the Advances from the City. Also, the RDA reported a deficit of \$64 million in net assets. Liabilities were roughly twice the amount of assets. Since there have been no repayments to the Airport, the RDA's financial strength is a concern on its ability to repay the loan.

paid for from the proceeds of the loans or from incremental tax revenue<sup>3</sup> or amounts paid from City funds. The City will need to specifically identify and certify the amounts for these proposed offsets.

#### FATRA Revenues Used for Housing

Not all money generated by the FATRA is used for commercial redevelopment projects. The State requires the FATRA to pay 20% of the incremental tax receipts to fund housing projects. On August 5, 2004, the State passed an additional requirement to shift money in fiscal years 2005 and 2006 to augment education as a way to reduce the California state budget deficit.

The FAA *Policy and Procedures Concerning the Use of Airport Revenue* (Policy), 64 Federal Register 7695, February 16, 1999, prohibits airport sponsors from using airport revenue for general economic development (Section VI.B.3.). The prohibition against general economic development comes from 49 U.S.C. 47107(1)(2)(B). Incremental tax receipts from the Airport should not pay for housing or educational costs to help reduce the California deficit.

The total amount spent on housing from 1989 through 2006 is unknown, but four years of FATRA revenues spent directly on housing are shown on the following table.

#### **FATRA Revenues and Payments to Housing<sup>3</sup>**

<b>Fiscal Year</b>	<b>Tax Receipts</b>	<b>20% to Housing</b>	<b>Other</b>	<b>Total</b>
2001	\$226,261	\$45,252		\$45,252
2002	231,830	45,366		46,366
2003	473,028	94,606		94,606
2004	442,581	88,516	\$39,035	127,551
<b>Total</b>	<b>\$1,373,700</b>	<b>\$273,740</b>	<b>\$39,035</b>	<b>\$313,775</b>

Note: We estimate payments to housing from the FATRA to date to be about \$700K.

#### RDA Project Parameters

The rules for an RDA maintain that incremental tax revenues generated by one designated RDA area cannot be used for another designated RDA area. When the Airport lost 200.91 acres of Airport land that was sold to the GAP, the parcels were aligned with the Airport Revitalization Area. So the incremental tax revenues generated by the GAP property only benefited those areas not located on the Airport and included in the Airport Revitalization Area. Some of those locations are miles from the Airport and the GAP. In February 2006, a piece of land valued at \$660,000 and included in the Airport Revitalization Area was donated to the Airport. With the exception of this donated land, none of the revenue generated by the Airport Revitalization Area goes to the Airport. Enclosure 2 shows the two RDA areas in relation to the Airport.

Because of the project area drawn for the FATRA, the tax increment it receives is significantly smaller than the tax increment of the Airport Revitalization Area. One Airport tenant pays incremental taxes for occupying a WWII era hangar, which did not come into being because of a FATRA development project. The former Airport property, sold to the GAP, but not included in the FATRA, generates a significant tax increment

<sup>3</sup> Dollar amounts are from Exhibit A-1 of the Redevelopment Housing Activities for the subject fiscal years presented by the Department of Housing and Community Development of the State of California

for the Airport Revitalization Area. The schedule below shows the disparity between the Airport Revitalization Area and the FATRA tax increments over four years.

#### **Gross Project Area Tax Increments for Four Years<sup>4</sup>**

<b>Project Area</b>	<b>FYE 2001</b>	<b>FYE 2002</b>	<b>FYE 2003</b>	<b>FYE 2004</b>	<b>Total</b>
Airport Revitalization (includes GAP)	\$718,594	\$1,043,046	\$1,459,148	\$2,318,730	<b>\$5,539,518</b>
FATRA	\$226,261	\$ 231,830	\$ 473,028	\$ 442,581	<b>\$1,373,700</b>

#### **Summary of FATRA and Airport Revitalization Area**

The two RDA project areas do not benefit the Airport in proportion to the Airport's contribution to those areas. Airport land valued at \$6.2 million was sold for \$4 and then included in the Airport Revitalization Area that, notwithstanding its title, did not include the Airport until the recent 2006 donation of land valued at \$660,000. Other than the recent land donation, the Airport has received no benefit from the Airport Revitalization Area. Loans were made by the Airport to a different RDA project area, the FATRA, but never repaid. Plus, a portion of revenues generated by the FATRA goes to support funding for housing and augment educational costs to reduce the State's budget deficit, all explicitly prohibited as a use of airport revenue. As of January 1, 2005, the FATRA debt to the Airport for the five loans plus interest totaled \$5.9 million, on which the FATRA has not paid anything in over 13 years.

The FAA finds the City unlawfully diverted Airport revenue when it loaned Airport funds for the FATRA. In particular, 49 U.S.C. 47107(1)(2)(B) does not permit the use of airport revenue for general economic development. Nor does 47107(1)(2)(C) permit the use of airport revenue for payments that exceed the value of services provided. At this point, the incremental tax revenues do not appear to be able to cover the normal operating or administrative costs associated with the FATRA. The FATRA is not making interest payments on the loans. Without financial resources, the FATRA appears not able to make improvements to the Airport and without improvements there will be no growth in future Airport incremental tax revenues.

Consequently, the FAA requests the City to take corrective action by indicating how and when it will repay the FATRA loan. It is proposed that the tax incremental revenue from on-Airport sources be restricted for Airport use only to retire the outstanding loan balance and that City and FATRA contributions for the demolition of on-Airport buildings and environmental remediation be identified and certified for possible offset against the outstanding loan balance.

In regard to the Airport Revitalization Area, as the \$660,000 value land donation is now part of the Airport, it should be recognized that a parcel of the Airport is part of the Airport Revitalization Area. Therefore, with the certification of the value of the \$660,000 property donation, it may be offset against what is due from the GAP property and the tax increment from the GAP property may be restricted to the Airport enterprise fund and/or a combination of the tax increment and City debt be utilized to retire the remaining amount due for the 200.91 acre GAP property.

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<sup>4</sup> See footnote 3.



### ACCOUNTS RECEIVABLE FOR AIR 21

On October 29, 1996, the Fresno City Council approved a surety of \$132,891. The surety guaranteed the Airport payment in the event Air 21, a new start-up airline, discontinued service, filed bankruptcy, or defaulted on its lease. On January 6, 1997, Air 21 filed a Chapter 11 bankruptcy petition, which was well within the 6-month period covered by the surety. On September 22, 2004, the Fresno City Attorney issued an opinion stating the debt was uncollectible and may be written off.

There is a difference between “uncollectible” and a refusal to pay. The surety was not contingent upon the City collecting money from the bankrupt airline. The purpose of the surety agreement was to ensure payment to the Airport in case of bankruptcy. The City provided an assurance that upon default or bankruptcy the guarantor (the City) would pay the Airport. The Airport carries the surety as a receivable. As of December 31, 2005, the receivable plus interest stood at \$346,975.

The FAA finds the City unlawfully diverted Airport revenue when it failed to pay the surety. Consequently, the FAA requests the City to submit a corrective action plan to pay the Airport for the surety.

### COST ALLOCATION PLAN

A review of the City’s charges to the Airport disclosed two areas that need improvement:

#### **Documented Cost Allocation Plan**

In accordance with OMB Circular A-87 (Circular) and the related Enclosure C, the City needs to maintain a documented file and certify that the cost allocation plan and Internal Service Departments are in compliance with OMB Circular A-87, describing the method of charging by Internal Service Departments and the method of allocating costs.

Budgeted costs should be adjusted to actual cost. The timing of this adjustment should be addressed for each Department billing the Airport.

#### **Cost Included as Both Direct and Indirect Cost**

The Fixed Interdepartmental Reimbursement to the General Fund Budgeted amounts is based on actual costs from prior years. Because of timing differences, there is a two-year lag in actual cost compared to budget. When an overcharge occurs, credits are provided as a carryforward amount credited to the current year budget. However, in FY 2000 and 2001, an organizational change in the transit department accounted for transit administration costs to be included in both the indirect rate (because it was developed using two year old actual cost) and also charged to the Airport as a direct cost (the new organizational change). This amount was recovered over a three-year period via the carryforwards and no costs were budgeted or charged to the Airport during this time period. However, this was a large overcharge which took the Airport three years to recover through credits. Very informal hand written cuff records were maintained to track these credits. We recommend the City monitor its budget process closer and provide more timely and documented credits for large adjustments. Because the carryforward line in both the old and new on-line budget system is a manual entry, we recommend the City maintain a well-documented electronic spreadsheet to track these carryforward amounts. The City concurred.

## CORRECTIVE ACTION

**Corrective Action:** The FAA requests the City take the following corrective action.

1. Submit to the FAA a written request for release by the City from its Federal obligations for the 200.91 acres. As a condition of approving the release and disposal, the FAA will require the City to pay the Airport the fair market value of the property based on the City's independent appraisal and adjusted for the 5% stigma for the 200.91 acres, plus interest from the date of sale.

As proposed on page 9, the FAA suggests the \$660,000 value land donation which is now part of the Airport, be recognized as part of the Airport Revitalization Area. Therefore, with the certification of the value of the \$660,000 property donation, it may be offset against what is due from the GAP property. The tax increment from the GAP property may be restricted to the Airport enterprise fund. Alternatively, or in addition, a combination of the tax increment and City debt may be utilized to retire the remaining amount due for the 200.91 acre GAP property. The value of the land donation will need to be certified by an appraisal along with evidence of a transfer of title to the Airport.

2. Pay the Airport the Air 21 surety, plus interest. This is included as part of a net current receivable on the Airport's financial statements.

3. Provide a plan for a course of action to repay the outstanding loans to the FATRA owed to the Airport. The plan needs to include a realistic look at the projected incremental tax revenues that will go to the Airport, the timely repayment of the loan and interest, and any projected improvements that will benefit the Airport. Some of the amount due may be offset by legitimate costs paid by the City and the FATRA on the Airport's behalf for demolition of old buildings and environmental remediation on the Airport.

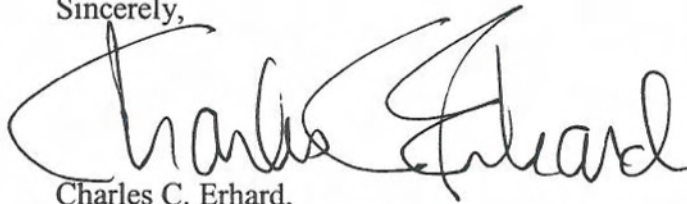
4. Document the Cost Allocation Plan and Internal Service Department's Plans in accordance with OMB Circular A-87. Maintain an electronic record of detailed carryforward adjustments with directions on the use of the electronic file. Make adjustments annually to the Internal Service Departments. Put in process a method to ensure that costs are only included in the budget once, as either direct or indirect.

We look forward to working with the City to implement a resolution and repayment plan.

Please take our comments and concerns into account as your decisions could adversely impact the availability of future AIP grants and new PFC approvals. Please call me at (202) 267-3187 if you have any questions regarding the contents of this letter and to set up the conference call.

I propose that we attempt to schedule the call some time during the third week of September.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles C. Erhard". The signature is fluid and cursive, with a large initial "C" and "E".

Charles C. Erhard,  
Manager, Airports Compliance  
Division

cc: Russell C. Widmar, Director of Aviation  
Fresno Yosemite International Airport

Below is a schedule of projects provided by the City to offset the GAP purchase. The notes explain the disposition of these proposed offsets.

Map No.	Description	Amount	Note
<b>City's Local Share of Roadways:</b>		<b>\$35,237</b>	
A	Peach/Shields Connector	29,527	1
B	McKinley and Peach Traffic Signal	1,532	2
C	McKinley between First and Fresno	1,837	3
D	Clinton from Millbrook to Winery	2,340	3
<b>Measure "C" Funds for Highways:</b>		<b>\$818,795</b>	3
E	I-180 East from Hwy 41 to Chestnut		3
F	I-168 from Hwy 180 to Shields		3
G	I-168 from Shields to Gettysburg		3
H	I-168 from Gettysburg to Bullard		3
J	I-168 from Bullard to Temperance		3
<b>DPW Leaky Acres</b>		<b>\$53,322</b>	4
<b>FATRA Projects</b>		<b>\$3,988,937</b>	5
<b>TOTAL</b>		<b>\$4,896,291</b>	

Legend: DPW = Department of Public Works  
 RDA = Redevelopment Agency  
 FATRA = Fresno Air Terminal Redevelopment Area (a component of the RDA)

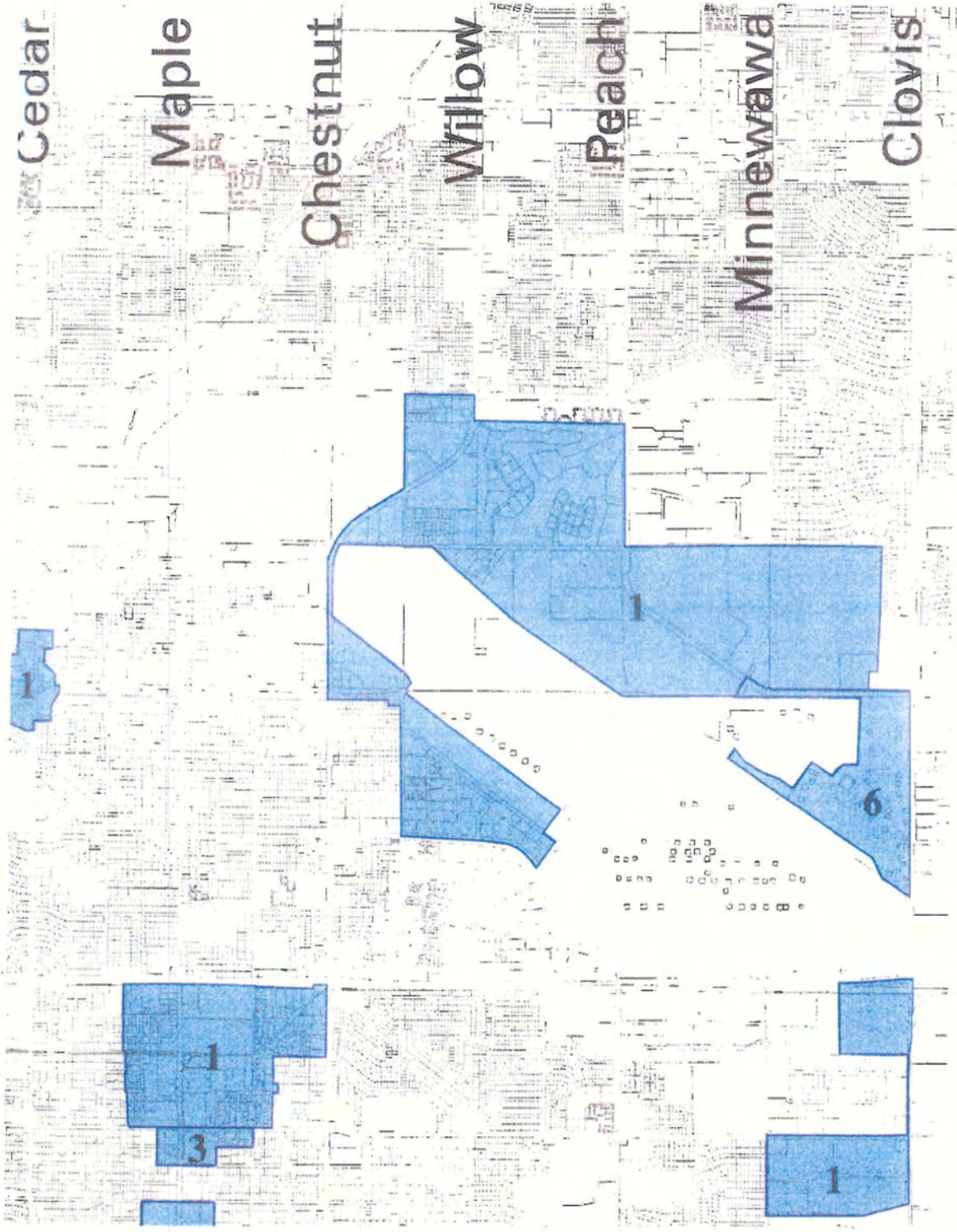


**Notes:**

1. The Peach/Shields Connector was dedicated for Public Street Purposes on December 11, 1990. All street work is shown on a schedule submitted by the City as complete in 1997. This offset falls outside the 6-year statute of limitations (49 U.S.C. 47107(1)(5)), which requires a sponsor to file its claim for reimbursement within 6-years of incurring the cost or advancing the funds.
2. The completion date for the McKinley and Peach traffic signal is 1994 as shown on a schedule submitted by the City. This is time-barred by the statute of limitations from qualification of an offset.
3. The map (on page 1) shows the placement of these street locations in relationship to the Airport. The Policy (Section V.A.9.) allows the use of airport revenue for "those portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees." The FAA Airport Improvement Program Handbook recognizes funding eligibility for an access road only to the nearest public highway and used exclusively for airport traffic. None of the projects located off-Airport meet the Policy standard to be considered as an offset.

Any offsets are dependent on the City certifying that funds were expended by the City and not part of any Federal or State grant program. The City must certify that the offsets comply with the Policy standard.

4. Leaky Acres is a water-recharge basin comprised of 26 ponds covering approximately 200 acres. It is located off Airport and stores water percolated into the aquifer. This aquifer provides water for much of Central California.. This is not an offset for the sale of property nor would it be considered a use of airport revenue.
5. FATRA projects were funded with a loan from the Airport revenues and incremental tax revenues generated by those improvements paid for with the Airport loan. These projects are unrelated to the sale of property to the GAP.



- 1. Airport Area Revitalization
- 6. Fresno Air Terminal

Enclosure 3



U.S Department  
of Transportation  
  
Federal Aviation  
Administration

Western-Pacific Region  
Airports Division  
San Francisco Airports District Office

831 Mitte  
Burlingame

January 30, 2003

Mr. Noah Lagos, A.A.E.  
Director of Transportation  
City of Fresno  
Fresno International Airport  
4995 East Clinton Avenue  
Fresno, CA 93727

Dear Mr. Lagos:

**RE: Investigation of Airport Property Land Use and Compliance with  
Notification of Sale or Long Term Lease Agreement for Airport Revenue  
Reporting**

The Federal Aviation Administration (FAA) has been notified of an alleged sale of dedicated airport property without a formal release of the federal agreement obligations secured to the title of Exhibit A, Airport Property Map. On December 13, 2002 I conducted an on-site investigation of airport property land use and review of title documentation for the Fresno Yosemite International Airport (FAT). A search of the San Francisco Airports District Office (ADO) records dating from 1990 to the present time was conducted to establish the current dedicated airport property boundary line prior to the site visit.

The ADO has also obtained records from the Fresno County Assessors Office to evaluate the public ownership status of the airport property. A review of the County Assessor records dated 9/13/02 and 7/23/02 indicates that a change of title interest has been recorded for the northeastern portion of the airport property bounded by East Airways Boulevard. The apparent owner of record is *The Gap Incorporated (GAP Parcels)*. A private commercial use of the property and not a public use/airport property leasehold. The enclosed Fresno County Assessors office records indicate that parcels 42 and 47, totaling 199.92 acres, (Gap Parcels) are recorded as property subject to assessment for real property taxes

I met with you and Mr. Dan Card, Assistant airport Director, and requested airport records for historic ALPs and Exhibit A Property Maps. Your staff complied with the request and provided a copy of the FAA approved 1994 Airport Layout Plan (ALP) along with copies of the approved 1990 and 1988 ALPs. A copy of the Exhibit A, Property Map for AIP grant number 3-06-0087-19 dated November 31, 1994 was also provided. The November 1994 Exhibit A Property Map provides an accurate record the legal description for airport property. The city of Fresno title certification accompanying grant applications is based on the 1994 Exhibit A Property Map. The FAA has no record of a notification of sale or long-term lease agreement for the GAP Parcels. The city of Fresno has not reported sale or lease revenue for the use of the property. We note the following facts that have been depicted on the ALPs:

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- The land was labeled as "proposed golf course site" on the 1994 ALP.
- The same area was labeled as "city of Fresno future commercial and industrial facilities parcel" on the 1997 ALP.
- The area has been labeled "commercial and industrial facilities" on the 2001 ALP.

The 1997 and 2001 ALP graphics for the airport boundary line have been changed and are not consistent with the 1994 Exhibit A Property Map airport property line. The FAA approval stamp on ALP is not approval or release of federal obligations for reporting airport revenue and compliance with satisfactory title requirements as stipulated by the Part V Airport Sponsor Assurances (Part V Assurances) 4, 5, 25, 26, and 29. The city of Fresno is in violation of the assurances and must submit a corrected property map.

The city of Fresno is also required to report revenue received from the property exchange. Based on the review of the records a change in property rights appears to have occurred in 1996-1997. A sale to the Gap Incorporated occurred conveying fee simple title to 199.92 acres of federally obligated airport property. The city of Fresno has not complied with the terms of the grant agreements to depict accurate information on the ALP. The FAA records for FAT indicate that the city of Fresno's certification of compliance with Part V Assurance number 5, Preserving Rights and Powers for the property is in error as stated in grant applications submitted subsequent to AIP 3-06-0087-19. The FAA has approved no formal modification of the Airport Property Map.

Failure to report accurate information will result in a finding of non-compliance with the Part V Assurances and future grant funding will be withheld pending satisfactory performance of the federal agreement obligations. The obligation to maintain good title, reservation of rights and powers, and ability to derive revenue to make the airport as self-sustaining as possible must not be damaged by the sale of the parcel; reference Airport Sponsor Assurances 4, 5, and 24. The conveyance of the federal/local interest in the land made effective by a grant deed must have sufficient conditions, covenants and restrictions to assure the continuation of normal operations of the airport.

#### Documentation Required

##### Net Sale Proceeds Reinvestment

The FAA must receive documentation that commits the City to invest the net sale proceeds from the sale of the property to capital improvements that benefit the airport. The FAA must receive a final settlement cost report or record of the benefits that accrue to civil aviation or tangible valuable consideration received for a civil aviation purpose.

##### Appraisal

The sale of property interest must be based on a fair market value appraisal. The FAA requirements for a certified appraisal are contained in Advisory Circular (AC) 150/5100-17, *Land Acquisition and Relocation Assistance for Airport Improvement Projects*. The City must obtain a certified appraisal in accordance with the current law for California Real Estate practice. The appraisal instructions must be submitted to this office for review and comment to assure compliance



with FAA policy and procedure. We note that the property contains improvements that may not have been present at the time of the sale. The City appraisal must state an opinion of value for the land and the improvements. The City must support the decision to use either a cost approach, income approach, or market data approach to determine an opinion of the fair market value of the property. The appraisal report must clearly state characteristics of the property at the time of the sale. The highest and best use of the property must be based on zoning or controlling City codes in effect at the time of sale. The appraisal must identify possible defects in the property or other restrictions, (exclusive of the Part V Assurances limiting development for an airport purpose), that affect the value of the real property. Adjustments made to the opinion of value must be supported by an objective written evaluation of market value.

#### **Exhibit A and Airport Layout Plan (ALP)**

The City must revise the Exhibit A, Property Map to depict the parcel(s) sold. A principal concern for this evaluation is land use compatibility before and after the transfer of property interest. The City should have recorded to the benefit of aviation the necessary covenants and restrictions to assure the continuation of normal airport operations. The City is reminded to refer to Assurance 34 for Airport Design standards; refer to Federal Aviation Regulations (FAR) Parts 77 and Advisory Circular (AC) 150-5300-13, *Airport Design*, for the required airport airspace requirements. In order to remain in compliance with Part V Assurances 19, 20, and 21 the City should have reserved sufficient rights and powers to remove hazards to aviation.

A revised ALP must be submitted to this office to reflect current as built conditions. Any changes to the airport access roads not previously recorded must be depicted. An airport roadway must be dedicated for the exclusive use of the airport.

The construction of a public surface street that uses airport property without the review and approval of the FAA as to the benefits to accrue to civil aviation; or partial use for an airport purpose is also subject to a compliance review of the FAA. Records obtained from the County Assessors office and on-site inspection of East Airways Boulevard indicate a change of land use for a 110-foot wide strip parcel recorded on the enclosed Assessors records. The use of airport revenue for the construction of a dedicated right-of-way connecting to the City's public use street/highway system must be limited to only that portion of the right-of-way serving existing or future airport tenants and/or air terminal passengers. We have no record a release of airport property for East Airways Boulevard. Additional records must be provided to clarify City property and dedicated airport property rights.

#### **Report to Congress & FAA Regulations**

Land purchased with federal funds (obligated land) and un-obligated land (land transferred by the City for an airport purpose) is subject to inspection and reporting requirements pursuant to Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century. Current FAA requirements mandate an annual report to Congress to disclose the results of a land use inspection. The FAA must disclose the scope of the unauthorized use of airport property and the corrective action taken to assure accurate reporting of airport revenue based on applicable Federal obligations. Current investigation and enforcement procedures regarding airport compliance matters are set

forth, in part, in *FAA Rules of Practice for Federally-Assisted Airport Proceedings*, Title 14 Code of Federal Regulation (CFR) Part 16. Additional FAA compliance procedures are covered by 14 CFR Part 13, *FAA Investigative and Enforcement Procedures*. Revenue reporting requirements are contained in AC 150/5100-19, *Guide for Airport Financial Reports Filed by Airport Sponsors*, published September 10, 1998 and AC 150/5100-18, *Guide for Audit Certification by Airport Sponsors*, published August 31, 1998.

If you or a member of your staff have questions regarding airport financial reporting, appraisal report requirements, and compliance obligations specified by the Part V Assurances you may contact me at (650) 876-2805, or Mr. Racior Cavole, Compliance Specialist, at (650) 876-2804.

Sincerely,

**ORIGINAL SIGNED BY  
JOSEPH R. RODRIGUEZ**

Joseph R. Rodriguez  
Supervisor, Environmental Planning and Compliance Section

Enclosures