



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

Airport Compliance and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

April 13, 2022

Mr. Ivar Satero
Airport Director
San Francisco International Airport
International Terminal G
North Shoulder Building 5th Floor
Airport Commission Administrative Offices
San Francisco, California 94128

Re: Transmittal of Financial Compliance Review

Dear Mr. Satero:

Thank you for your October 14, 2021, response to our draft report on the Federal Aviation Administration's (FAA) compliance review of San Francisco International Airport (SFO). We appreciate the fact that your letter recognizes the SFO's full commitment to address recommendations proposed by the Office of Airport Compliance and Management Analysis.

The findings, your responses in part, and the FAA's final response are as follows:

San Francisco Community College

FAA Recommendation: The FAA requests SFO complete the environmental review at the earliest opportunity and begin its plans to recover the property. Since SFO is only receiving \$1 per year for City College's use of the property, providing the space to a tenant at fair market value rent or developing the property for a capital program provides the best optimal advantage for the airport. In addition, Grant Assurance 24 states the airport "will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."

Please provide an update on the status of the City College parcel.

SFO Response:

The lease agreement between the City and City College for use of Plot 20 was terminated effective December 31, 2020, and City College is no longer a tenant at the Airport.

FAA Response:

We consider the matter closed.

Noise Remediation:**Follow up:**

SFO should continue to consult with the SFO Airport District Office (ADO) when providing acoustical insulation for residential properties outside the 65 Day-Night Average Sound Level (DNL) using airport revenue. Please provide our office documentation of the disapproval from the ADO for Airport Improvement Program (AIP) funding of the 10 properties and justification for the use of airport revenue for properties located outside the 65 DNL and in contiguous neighborhoods.

SFO Response:

As stated in the Airport's letter dated November 13, 2013, the Airport moved forward with these 10 properties because the owners had already agreed to participate and had granted the associated avigation easements to the Airport. These properties had otherwise met the criteria for insulation, and the Airport did receive a real property right in the form of an avigation easement in exchange for the treatment work. That said, this was an unusual circumstance that the Airport does not expect to recur in the future.

The Airport agrees that it will continue to consult with the SFO ADO prior to using Airport revenue for any acoustical insulation for residential properties outside the 65 dB DNL contour.

FAA Response:

The FAA accepts your response and supporting documentation. The SFO ADO confirmed that they allowed airport revenue to be used because the homes were still impacted by SFO noise. We consider the matter closed.

SFO Grandfathering

Follow-up: The FAA will continue to militate against SFO's discretionary funding when statutory limits are exceeded.

SFO Response:

SFO urged the FAA to refer to the Charter provision, not the airline agreements, when discussing the basis for SFO's grandfathered status. In addition, SFO requested "that the FAA consider these mitigating circumstances before making any finding that a reduction in

discretionary ATP grant funds to SFO is warranted should SFO's ASP exceed the baseline amount, after adjusting for inflation, in future years.”

FAA Response:

The final report on SFO will refer to the 1980 Charter provision when discussing the basis for SFO's grandfathering. In addition, the FAA must continue to take SFO's overages as a factor militating against discretionary funding; however, we agree, the overage is one factor to be considered. We noted SFO did not exceed statutory limits in their most recent grandfather payment filing for June 30, 2021. SFO was below the cap by \$13,645,407, therefore no mitigation was required.

We consider all matters closed in the final audit report. Should you have any further questions, please contact Compliance Specialist, David Duchow at (202) 267-9605.

Sincerely,

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Kevin C. Willis
Director of Airport Compliance
and Management Analysis

**Federal Aviation Administration
Office of Airports Compliance and Management Analysis
Financial Compliance Review**

**SAN FRANCISCO INTERNATIONAL AIRPORT
March 25, 2019 – April 11, 2019**



**Federal Aviation Administration
Office of Airports Compliance and Management Analysis
Financial Compliance Review**

The Federal Aviation Administration (FAA) Office of Compliance and Management Analysis (ACO), conducted a financial compliance review at the San Francisco International Airport (SFO or Airport) to evaluate compliance with Federal statutes and FAA requirements. The FAA conducted this review at the SFO administrative office from March 25, 2019 through April 11, 2019. SFO is located 13 miles south of downtown San Francisco. SFO had over 26 million boardings (enplanements) in 2017.

SFO is managed by the sponsor, City/County of San Francisco. The City/County is responsible ensuring compliance with Federal statutes, the Airport Improvement Program (AIP) Grant Assurances, and the FAA policies for federally obligated airports. Airport sponsors agree to certain obligations when they accept Federal grant funds or Federal property transfers for airport purposes. The FAA enforces these obligations through its Airport Compliance Program. The FAA conducts a financial compliance review of several airports each fiscal year.

Unlawful revenue diversion, as defined section II, C of the *Policy and Procedures Concerning the Use of Airport Revenue* (Revenue Use Policy) 64 Fed. Reg. 7697 (Feb 16, 1999), as "the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to air transportation or property." The FAA is responsible for ensuring that airports adhere to this policy as well as to FAA Grant Assurances and the Revenue Use Policy.

We reviewed the following areas at SFO and noted no irregularities:

- Form 126 & 127 Reporting
- Financial transactions between the City/County of San Francisco and SFO
- Police
- Fire Fighting (ARFF)
- Cost Allocations
- Attorney Fees
- SFO Museum
- Annual Service Payments (SFO Grandfathering)
- Fleet Services
- Utilities
- Marketing/Air Carrier Incentives

We noted the following areas require additional information and follow-up:

- Uses of Airport Property
- Noise mitigation outside the 65 DNL

The following section addresses the FAA's concerns about the use of airport revenues. Accordingly, the FAA requests SFO and the City/County, as airport sponsor, provide additional information, and submit a corrective action plan. The Federal statute of limitations is 6 years, so a corrective action plan must include the period of April 30, 2011 through May 31, 2017, plus any occurrences thereafter.

Uses of Airport Property

Each federally assisted airport owner/operator is required by statute and grant assurances to have an airport fee and rental structure that will ensure the airport is as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge fair market value (FMV) commercial rates for nonaeronautical uses of airport property. (Grant Assurance 24)

San Francisco Community College

On July 19, 1977, SFO entered into a lease agreement between the City and County of San Francisco, and the San Francisco Community College District ("City College") of Plot 20 for use by City College as an aviation school or other airport related educational activities. The term commenced on July 1, 1977 for a period of 40 years with an expiration date of June 30, 2017. Due to the aeronautical nature of the programs offered, the City College received a nominal rate of a \$1.00 per year. The lease agreement did not indicate a right to renew. On June 29, 2016, SFO notified the City College that SFO would not be renewing the lease beyond its expiration date of June 30, 2017 due to the airport's need to recapture the space for its capital program. In November, the airport rescinded its demand and is allowing the City College to occupy the space on a month to month basis. SFO has initiated an environmental review, which is projected to take two years. It is unclear as to when or if the review has been completed.

Current Status: City College is exploring options for a potential relocation of its facilities at the Airport, including a potential sublease arrangement. Although the Airport anticipates receiving a request from City College to extend the term of the 1977 lease past June 30, 2019, the Airport has not received such a request to date.

FAA Recommendation: The FAA requests that SFO complete the environmental review at the earliest opportunity and begin its plans to recapture the property. Since SFO is only receiving \$1 per year for the City College's use of the property, providing the space to a FMV rent tenant or developing the property for a capital program provides the best optimal advantage for the airport. In addition, Grant Assurance 24 states the airport "will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as

self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection."

Follow-up: Please provide an update on the status of the City College parcel.

Parks Located on Airport Property

There are three small parks located on SFO property: Bayside Manor, Bayfront, and Marina Vista. Bayside Manor Park is located 0.75 miles west of the airport on the other side of Highway 101 and offers some limited recreation facilities for visitors. Bayfront is located next to the airport and has walking trails, benches and places for people to watch planes land.

Prior to May 2014, the City of Millbrae had a permit to maintain Bayside Manor. This agreement was terminated by the City of Millbrae, therefore, there is no one else besides the SFO that can provide routine maintenance. The City of Millbrae currently maintains the grounds at Marina Vista. SFO currently maintains Bayside Manor and Bayfront Parks. Bayfront Park appears to have an intangible benefit to the airport by allowing users to watch the airport operate.

Follow-up: None



Noise Remediation

SFO offered acoustical insulation for a residential property within the 65 Day-Night Average Sound Level (DNL) contour and contiguous neighborhoods under its Noise Remediation Program. The acoustical treatment program included replacing doors and windows. The program was implemented from the 1980s to early 2000s and insulated more than 15,000 properties. Initially some owners refused to participate. As a result, in early 2010, SFO offered a second chance program so new owners could participate. According to SFO management, the FAA SFO Airport District Office (ADO) approved of the second chance program and AIP funding was used for the remediation.

The 2012-2014 Phase of SFO's noise insulation program included a total of 28 properties. Of these, 18 dwellings were identified as eligible for FAA funding. The remaining 10 properties were located inside adjacent contiguous neighborhoods, but outside the FAA accepted 2001 65 DNL noise contour or contiguous neighborhoods. The FAA SFO Airport District Office denied AIP funding for these 10 properties. SFO decided to use airport revenue to fund the 10 properties. The ADO allowed the use of airport revenue for these properties because they felt they were still impacted by noise from SFO operations.

Follow-up: SFO should continue to consult with the SFO ADO when providing acoustical insulation for residential properties outside the 65 DNL using airport revenue. Please provide our office documentation of the disapproval from the ADO for AIP funding of the 10 properties and justification for the use of airport revenue for properties located outside the 65 DNL and in contiguous neighborhoods.

SFO Marketing Program

The Marketing Office has numerous marketing projects in progress to attract people to fly through SFO. In the last five years, there has been a 45% increase in international traffic at SFO. The Office uses websites, traditional and social media platforms, community outreach and other external communications to promote SFO. SFO conducts cooperative advertising with Visit California and Brand USA. In addition, SFO has some involvement with Familiarization Tours and works with the local tourist board. SFO costs are limited to the cost associated with tours of the airport and its facilities. The tourist board covers all other costs.

An air carrier incentive program is in place to bring new service to SFO with assistance provided for airline marketing. SFO has two levels of incentives:

- Level one is for new nonstop destination year round service which is offered to all carriers.
- Level 2 is for a new carrier and the airline must commit for two years.

FAA performed an additional review of SFO marketing expenses and determined the expenditures were well supported and noted no irregularities.

Follow-up: None

SFO Grandfathering

Title 49 of the United States Code (U.S.C.) section 47107(b)(1) requires all airport sponsors receiving Federal assistance to use airport revenue for the capital and operating costs of the airport, the local airport system, or other facilities that are owned and operated by the airport and are substantially and directly related to the actual transportation of passengers and property. Any other use is considered illegal airport revenue diversion. However, there is a "grandfather" provision that permits the use of airport revenue for non-airport purposes if assurances, agreements, or governing laws that existed before September 3, 1982, allowed such use. (49 U.S.C. § 47107(b)(2))

The June 1980 Charter Provision allows SFO to make payments to the City and County of San Francisco's general fund. Since the Charter Provision was enacted prior to Sept 3, 1982, the payments qualify for grandfather status. Further, an agreement exists between the City and the Airlines. As a result of a legal dispute, on July 1, 1981, a Lease and Use/Settlement agreement was made between the City and the Airlines, wherein the City would receive an annual service payment (ASP) as compensation for indirect services, management and facilities provided to the airport. The agreement was renewed in 2011. The FAA opposed the renewal, but did not formally object to the continuation of the agreement.

The ASP is considered SFO's grandfather payment to the City's general fund. The ASP consists of 15% or \$5 million, whichever is greater of the concession revenues at SFO. In the revised 1996 Charter, the City may take up to 25%, but does not currently exercise this provision.¹ Concession revenue includes all terminal activity; specifically, advertising displays, duty free, restaurants, gift shops, curbside transportation, car rental, public parking, and traffic fines. The remaining 85% of the concession revenues helps offset the airlines rates and charges. The concession revenue ultimately reduces overall airline cost at SFO.

The 1981 Agreement in part states:

"Concession Revenues" means (1) the fees and rentals collected by Commission acting on behalf of City for the right to provide and operate restaurants, bars, car rental services, newsstands, gift shops, specialty shops, advertising displays, insurance, public telephones and other similar or dissimilar merchandising concessions and consumer services in the Terminal Area;

(2) the fees and rentals collected by the Commission acting on behalf of City for the right to provide and operate courtesy vehicles, ground transportation services, hotels, service stations and other similar or dissimilar concessions and services in the Groundside Area; and

(3) the fees and rentals collected by Commission acting on behalf of City for other activities and services in the Groundside Area such as public automobile parking and traffic fines.

At present, we believe the concessions activities at SFO aligns with the definitions in the 1981 Agreement.

¹ SF Charter Section 6.408 (Airports Revenue Fund)

In 1994, Congress restricted the amount sponsors could grandfather (lawfully divert) to the amount of revenue it used for nonairport purposes as of the first fiscal year ending after August 23, 1994, plus adjustment by the Consumer Price Index. When a sponsor exceeds the limit (cap), the FAA must consider this as a militating factor against the sponsor's discretionary AIP fund request. Since 1995, SFO has exceeded statutory limits on grandfathering on 20 occurrences for a total overage of approximately \$171M.

Follow-up: The FAA will continue to militate against SFO's discretionary funding when statutory limits are exceeded.