

## **Palomar Airport: The C4FA-County Court Battle, #286**

Has the County No Shame?

By Raymond Bender, Sat, Feb 20, 2021 at 8:11 am - Updated Sun, Feb 21, 2021 at 8:11am PT



### **January 2021 History**

Last week's article noted that Superior Court Judge Pollock in a suit filed by Citizens for a Friendly Airport (C4fa) against the county agreed with two C4fa positions.

First, the county's 2018 McClellan-Palomar Master Plan EIR (which wants to more than triple annual Palomar flights) failed to properly assess noise.

Second, county had to live up to the promises county made when it asked Carlsbad in the 1970s to annex (include) the county-owned Palomar Airport within the Carlsbad city borders. Specifically, county had to ask Carlsbad to amend Carlsbad Conditional Use Permit [CUP] 172 whenever county wanted to expand the airport and/or convert the airport from its use as a general aviation basic transport airport – as the original CUP 172 terms expressly require.

### **February 2021 County's Return to Court**

Last week, county marched back to court. Why? Because, said county, federal law barred Carlsbad from imposing conditions on county airports. The court agreed with C4fa that county's claim was procedurally too late.

Moreover, County never told the court that the federal Airport Noise and Capacity Act of 1990 (ANCA) recognizes the enforceability of noise and access restrictions in government agreements in force prior to 1990.

The Carlsbad-county CUP 172 agreement started in 1979/1980 shortly after county begged Carlsbad to annex Palomar Airport and provide city services to Palomar. The county was not a defenseless arctic seal pup clubbed into a Carlsbad-county agreement. Rather, county itself prepared an initial draft of

Table 1 to the CUP 172 Agreement and then accepted the Carlsbad modified Table 1 which deleted county language which would have allowed county to extend its runway without prior Carlsbad review.

### **County's Shameful Conduct**

We expect kids, not grownups, and certainly not elected officials to make promises with their fingers crossed behind their backs. Yet that is precisely what county, Palomar's owner and operator, has repeatedly done.

Carlsbad and county got permission from the State-created Local Agency Formation Commission (LAFCO) to annex the airport into Carlsbad. In return, County accepted CUP 172 thereby voluntarily entering into a legally binding contract. State immunity provisions do not prevent local entities such as the county from voluntarily assuming contract obligations they might not otherwise have.

Or so Carlsbad and its residents thought. Then county whipped out its crossed fingers from behind its back. County, citing the Government Code, claimed that California counties need not bow to city laws. But Judge Pollock found that while that general rule usually applies, county waived that protection when it requested the annexation, accepted city services, agreed to the LAFCO process, and accepted CUP 172.

Having failed on its claim of state immunity, county then fished the federal immunity waters, faltering as noted above.

And yet, county continues to flaunt the law. Since 1980, county has claimed that extending the Palomar runway does not expand the airport and hence does not trigger the right of Carlsbad residents pursuant to Carlsbad Municipal Code § 21.53.015 to vote on an airport expansion. Carlsbad adopted that MC section after thousands of Carlsbad residents supported an initiative petition circulating to prevent county from adding a second Palomar Runway.

Yet the California Aeronautics Act in Public Utility Code § 21664.5 expressly says that runway extensions do constitute an airport expansion. When asked to explain its unsupportable position, the county remains mum.

Oh, but the county history of flaunting California and federal law runs much deeper. As deep as the 30 acres of landfill that county filled with combustible trash during a 14 year period in the 1960s and 70s just a few hundred feet from the Palomar runway.

Palomar was built primarily with federal FAA grants. Those grants expressly provide that county was not to use the airport for non-airport purposes without first receiving the written permission of the Secretary of Transportation. Federal aviation law mandates the grant conditions.

Our search of FAA records pursuant to multiple Freedom of Information Act requests has failed to disclose any federal consent for county to use Palomar airport property for landfills. Over the last few decades the federal government has recognized that such landfills endanger aviation because landfill trash attracts birds, which can bring down aircraft – as Sully Sullenberger found out in his famous, miraculous landing into the Hudson river after a bird strike crippled his aircraft.

Then there is the county claim that the county would like to comply with the Carlsbad landscaping requirements along Palomar Airport Road but can not because its FAA-Grant-violating landfill slopes cannot be watered or the water will spread underground landfill contaminants. Of course, county fails to note that county landfills occupy only the northwest corner of Palomar Airport Road and El Camino Real and that there are no landfills on the northeast corner of Palomar and ECR. Yet the county farmer grows weeds not scenic corridor plants on the Palomar airport property east of ECR.

You get the idea. If you breach an agreement you have with the county, you get fined, sued, or go to jail. If the county breaches agreements it has entered into with Carlsbad, California, or the federal government, the Board of Supervisors turns a deaf ear. But then the supervisors really don't hear the projected 500,000 Palomar aircraft over Carlsbad, Vista, Encinitas, San Marcos, and Oceanside in the County Building 31 miles away. It is no wonder that recall petitions again circulate in California.

If county abuse of power concerns you, go to [C4fa.org](http://C4fa.org) to help Citizens for a Friendly Airport protect your community, your home, and your business. As famous radio commentator Paul Harvey used to say: Find out the rest of the story.