



City of North Bend

P.O. Box B • North Bend, OR 97459-0014 • 541.756.8500 (o) • 541.756.8527 (f)

Tuesday, July 19, 2022

Theresa Cook
Executive Director
Coos County Airport District
1100 Airport Lane
North Bend, Oregon 97459

Dear Ms. Cook:

The City of North Bend (“City”) remains committed to supporting continued and expanded commercial aviation services at the Southwest Oregon Regional Airport. The City continues to support the Airport through grant support letters, assistance with state archeological permits, free police and fire services, and a financial commitment for its Alaska Airlines pitch for more direct flights to Portland.

However, the City is considering exercising the 30-day termination clause in the 2012 Intergovernmental Agreement (“IGA”) that former City Administrator Terence O’Connor signed after the Law Enforcement Services Agreement terminated on September 30, 2012, with the Coos County Airport District (“CCAD”). This is because the City disagrees that the CCAD has fulfilled its responsibilities under the IGA, which requires both parties “to establish a long-term, cooperative relationship between the parties that will serve the best interests of the CCAD, the City, the citizens of North Bend, Oregon, and individuals using the services of the Airport.”

The City is mindful that federal regulations require specific law enforcement coverage at airports with commercial aviation services. As stated in the IGA, “unless circumstances outside the City’s control dictate otherwise, the City shall respond to the Airport to provide law enforcement support within fifteen minutes of a TSA request.”

At 12:09 pm on April 14, 2022, the Coos North 911 Dispatch Center received a false report of a “firearm in the X-ray” from Josh Scarberry. He identified himself as being with the Transportation Security Administration (TSA). During the recorded call, Mr. Scarberry acknowledged the “passenger” was compliant and for the officer to meet him at the screening checkpoint. A North Bend Police Officer (Badge No. 323) abandoned a call at the North Bend High School and arrived at the Airport at 12:15 pm. The officer cleared the Airport at 12:20 pm and told dispatch that “this was just a TSA test to test our response times.” The officer then headed back to the legitimate call at the high school.

I recognize the Federal Aviation Administration (“FAA”) and TSA require airports to test operational procedures and security readiness. However, I am unaware of any requirement to make a false report to a law enforcement agency to test readiness. Just the opposite: airports know they must perform simulated live and tabletop exercises where emergency responders react in good faith. So, I hope a statement attributed to airport personnel is false, specifically: “We will just say there is a gun at the airport, and they will come whether they have a contract or not.”

It further concerns the City that North Bend has provided fire and law enforcement services at no cost to the CCAD. Yet, the City of Coos Bay and the Oregon State Police were recently contacted by airport administration to provide police services for a fee. What do you think the North Bend taxpayers would say about the Airport circumventing their City, which has been providing free services for nearly a decade? Does the Airport’s policy not require a public process for any agency capable of providing law enforcement services to respond to an open and transparent bid process?

So, why this letter? The City believes it is paramount that we engage in a dialogue with the CCAD Board to seek a resolution to our concerns that involves a good-faith effort toward establishing a true long-term, cooperative relationship. The most recent Senior Center lease agreement is an example of the opposite. The FAA does require a fair market value ("FMV") for non-aeronautical leases. There are some exceptions to this rule, however, one of which is for "Property for Community Purposes" (see Section 17.14 and Section 17.15 in the Airport Compliance Manual):

- https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.current/documentNumber/5190.6
- https://www.faa.gov/airports/aip/grant_assurances/media/assurances-airport-sponsors-2022-05.pdf

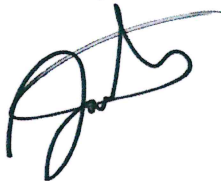
As you know, the Senior Center was closed to the public throughout the coronavirus pandemic. The City twice requested that CCAD abate the rent but never got the courtesy of a response. The Senior Center was built with federal grant dollars and volunteer elderly sweat labor. The building has meticulously been maintained by the seniors, and insured by the City. Yet, with no advance notice, the CCAD last year verbally informed North Bend it was taking ownership of the building and issued the City a nonrenewable one-year lease. The City was recently presented with a new lease with a 90-day opt-out clause, which turns a five-year lease into one the Airport can terminate anytime. The Senior Center is clearly "Property for Community Purposes" as it serves all of our Coos County seniors. Furthermore, the property cannot serve as an aeronautical service as it is located on a primary road to the airport terminal.

In closing, the City is putting forth some discussion points it wishes to have with the CCAD Board to hopefully foster a long-term, cooperative relationship with the Airport and ensure the Airport has good relations with the community it serves.:

- Establish quarterly collaborative briefings, to include City and CCAD Board representatives, that alternate between North Bend City Hall and the Airport;
- The City will continue to support the CCAD with grant support letters and other initiatives and requests a pledge of support from the Airport to reciprocate when North Bend seeks grants that benefit the Airport, such as the pursuit of a new ladder truck; and
- Request CCAD considers returning ownership to North Bend of the Senior Center and Airport Heights Park, inclusive of land and all improvements, so that the City can incorporate both properties into its master parks and land-use plans. This will give residents peace of mind as the community will be significantly and negatively impacted if either ceases to operate. In consideration, the City will agree to continue supporting the existing IGAW with law enforcement and firefighting services at no cost.

I look forward to open and transparent communication with the Airport Administration and CCAD Board to forward what is in the best interest of all taxpayers in North Bend and Coos County.

Sincerely,



David A. Milliron
City Administrator
dmilliron@northbendcity.org

cc: North Bend City Council
Coos County Airport District Board

David Milliron

From: Theresa Cook <Theresa@flyoth.com>
Sent: Monday, August 1, 2022 9:02 AM
To: David Milliron
Cc: Helen Mineau; Jessica Engelke
Subject: Re: North Bend Senior Center lease

CAUTION: This email originated from outside The City of North Bend Offices. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Milliron,

This is to confirm that I have received your email. The District will be providing you with a response after legal counsel has reviewed. That response should occur within 14 days.

Theresa Cook
Executive Director
Coos County Airport District
North Bend, Oregon 97459
541-404-2161

On Jul 20, 2022, at 10:31 AM, David Milliron <dmilliron@northbendcity.org> wrote:

Dear Ms. Cook:

The City of North Bend ("City") remains committed to supporting continued and expanded commercial aviation services at the Southwest Oregon Regional Airport. The City continues to support the Airport through grant support letters, assistance with state archeological permits, free police and fire services, and a financial commitment for its Alaska Airlines pitch for more direct flights to Portland.

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“passenger” was compliant and for the officer to meet him at the screening checkpoint. A North Bend Police Officer (Badge No. 323) abandoned a call at the North Bend High School and arrived at the Airport at 12:15 pm. The officer cleared the Airport at 12:20 pm and told dispatch that “this was just a TSA test to test our response times.” The officer then headed back to the legitimate call at the high school.

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•

https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.current/documentNumber/5190.6

• https://www.faa.gov/airports/aip/grant_assurances/media/assurances-airport-sponsors-2022-05.pdf

As you know, the Senior Center was closed to the public throughout the coronavirus pandemic. The City twice requested that CCAD abate the rent but never got the courtesy of a response. The Senior Center was built with federal grant dollars and volunteer elderly sweat labor on land donated by the City to the Airport. The building has meticulously been maintained by the seniors, and insured by the City. Yet, with no advance notice, the CCAD last year verbally informed North Bend it was taking ownership of the building and issued the City a nonrenewable one-year lease. The City was recently presented with a new lease with a 90-day opt-out clause, which turns a five-year lease into one the Airport can terminate anytime. The Senior Center is clearly “Property for Community Purposes” as it serves all of our Coos County seniors. Furthermore, the property cannot serve as an aeronautical service as it is located on a primary road to the airport terminal.

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Sincerely,

/s

David A. Milliron
City Administrator
dmilliron@northbendcity.org

cc: North Bend City Council, Coos County Airport District Board

David Milliron

From: Thomas, John R. (POR) <JRThomas@perkinscoie.com>
Sent: Monday, August 8, 2022 4:36 PM
To: David Milliron
Cc: Jessica Engelke; Larry Garboden; Bill Richardson; Dr. Eric Gleason; Pat Goll; Susanna Noordhoff; Timm Slater; Theresa Cook
Subject: Coos County Airport District
Attachments: Letter to D. Milliron - City of North Bend - Coos County Airport District.pdf

CAUTION: This email originated from outside The City of North Bend Offices. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Milliron,

Please see the attached letter, responding to your email to Theresa Cook, Executive Director of the Coos County Airport District, on July 20, 2022.

Regards,

John

John Thomas | Perkins Coie LLP

1120 N.W. Couch Street Tenth Floor

Portland, OR 97209-4128

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F. +1.503.346.2144

E. JRThomas@perkinscoie.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

John R. Thomas
JRThomas@perkinscoie.com
D. +1.503.727.2144
F. +1.503.346.2144

August 8, 2022

David A. Milliron
City Administrator
835 California Avenue
North Bend, OR 97459

Re: Coos County Airport District

Dear Mr. Milliron:

Our firm represents the Coos County Airport District (the “CCAD”), and I have reviewed email you sent to Theresa Cook, Executive Director of the CCAD, on July 20, 2022. In your email you state that the City of North Bend (the “City”) is considering terminating the 2012 Intergovernmental Agreement (the “IGA”) between the CCAD and the City because the City takes the position that the CCAD is not fulfilling its responsibilities under the IGA. We disagree with the City’s position. The sole duties and responsibilities of the CCAD under the IGA are set out in section 3.2 of the IGA. The CCAD has complied with those duties and responsibilities, and you have not identified any failure to so comply. The recital in the IGA that you cite regarding the “desire to establish a long-term, cooperative relationship between the parties” is a statement of just that, a statement that the parties wish to establish such a relationship, but imposes no obligations on the parties to take any specific actions; the parties’ only obligations under the IGA are those set out in Article II of the IGA. The City is free to terminate the IGA under section 2.2 of the IGA, but it could not be on the basis you claim.

As for the incident that occurred on April 14, 2022, we do not disagree substantially with the facts that you have reported in the fourth paragraph of your email. We do, however, disagree with your characterization of those facts. In response to your prior claims relating to this incident, the CCAD, among other things, initially terminated the access to the CCAD of the TSA employee involved, pending further investigation into the matter. Upon investigation and further communication with the TSA, we have determined that, contrary to your allegations, no criminal violation occurred. We have attached the correspondence from U.S. Department of Homeland Security setting out the basis of our determination. We further note that the City’s Chief of Police was notified in advance of the law enforcement incident response test on two occasions, including a notice on the day of the test informing the City’s

Chief of Police that the test would be occurring later that same day. We also note that the City's Chief of Police did not object to the test, but instead expressed appreciation for the notice and opportunity to raise any questions regarding the tests. This key context is missing from your formulation of the facts and, we believe, demonstrates the CCAD's efforts at maintaining a cooperative relationship with the City, contrary to your allegations.

Despite no violation of any relevant rules in connection with the law enforcement incident response test, the CCAD has proposed a directive that would require notice of any law enforcement incident response test be provided not only to the City's Chief of Police, but also to any other affected personnel, including responding police officers. In addition, the call initiating the test would be required to indicate that (i) the call is a test, not an actual emergency, (ii) a response to the test call is not mandatory, and (iii) if emergency services are otherwise engaged, the relevant personnel or officers should not respond to the test call. The TSA is reviewing the CCAD's proposed directive, and we hope to have a response from the TSA by mid-August. We believe the CCAD's proposed directive further demonstrates the CCAD's continuing efforts to maintain a cooperative relationship with the City.

Your concerns about the City providing police services to the CCAD at no cost is misplaced. Under Oregon law, cities are responsible for providing emergency services in their jurisdiction at no cost. Since the CCAD is within the City's jurisdiction, the City is legally required to provide emergency services to the IGA, even without the existing IGA.

Your pivot to the discussion of the Senior Center lease agreement has nothing to do with the IGA, and mischaracterizes and fails to recognize the long-standing arrangements and agreements between the City and the CCAD regarding the Senior Center. We do not believe it is appropriate for the City to attempt to use the incident involving the TSA reviewed above as a means to gain leverage to engage in renegotiations of previously agreed arrangements. Nonetheless, as you know, the CCAD has offered to remove the 90-day "opt out" clause from the proposed new lease agreement, again as a demonstration of the CCAD's continuing efforts to maintain a cooperative relationship with the City.

Finally, the CCAD respectfully declines your proposals intended, you claim, to foster a long-term, cooperative relationship. We will not permit what we believe are manufactured claims to coerce the CCAD to renegotiate long-standing, previously agreed arrangements. As illustrated above and in other activities the CCAD has undertaken and is undertaking, we believe the CCAD has and is continuing to expend efforts to maintain a cooperative relationship, and the CCAD will suggest meetings with the City to discuss topics of mutual interest when appropriate. We believe the CCAD provides valuable services to the residents of the City and Coos County generally, the CCAD operates in the best interests of those residents, and we hope the City recognizes the value of these services to its stakeholders, too.

David A. Milliron
August 8, 2022
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We believe we have addressed the concerns you raise in your email. If you or the City's counsel have any additional concerns regarding the CCAD, please direct them to me.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Thomas", with a stylized flourish at the end.

John R. Thomas

cc: Jessica Engelke
Larry Garboden
Bill Richardson
Dr. Eric Gleason
Pat Goll
Susanna Noordhoff
Timm Slater
Theresa Cook
Coos County Airport District Board of Directors



U.S. Department of Homeland Security
Transportation Security Administration
Portland International Airport
7240 NE Airport Way, Floor 2
Portland, OR 97218

July 21, 2022

Theresa Cook
Executive Director
Coos County Airport District
North Bend, OR 97459

RE: OTH Action against TSA Employee

Dear Ms. Cook:

This letter is in response to your email dated July 21, 2022, that you sent TSA Assistant Federal Security Director (AFSD) Don Wilson. In that email, you informed AFSD Wilson that you were terminating the airport access media of TSA STSO Josh Scarberry, effective immediately. This regrettable incident provides an excellent opportunity to educate OTH personnel about the limitations placed upon them for enforcing airport rules against TSA employees.

In your email, you claim specific violations of the Oregon Revised Statutes (ORS). Specifically, you stated that North Bend City Manager David Milliron had made accusations that our TSA employee had made "a false 911 report, and under state law ORS 162.375; Initiating a false report is a Class A misdemeanor; and under ORS 165.570 - Improper use of emergency communications Systems is also a Class A misdemeanor." No such criminal violations occurred.

Please be advised that on April 14, 2022, STSO Josh Scarberry was performing his duties and responsibilities within the scope of his TSA employment and pursuant to authorities granted to TSA by Title 49 of the Code of Federal Regulations. Also, both OTH Airport Security Coordinator (ASC) Russell Corona and North Bend Chief of Police Gary McCullough were notified in advance of the Law Enforcement Incident Response Test scheduled to be performed on April 14, 2022 as required by TSA's testing protocols. The Transportation Security Inspector (TSI) contacted Chief McCullough by email on April 13, 2022 regarding the test that was going to be performed. On the following morning, April 14, 2022, the same TSI met in person with OTH ASC Corona and Chief McCullough, informing them both of the test that was scheduled to occur later that same day and to answer any questions. The TSI reviewed the testing protocols with both individuals, and they raised no objections, but instead expressed appreciation for the information.

The Supremacy Clause of the U.S. Constitution dictates that federal Transportation Security Administration (TSA) employees who are acting within the scope of their employment, are immune from criminal prosecution and regulatory actions by non-Federal entities. As such, there is no authority for a regulated entity to take an adverse action against a Federal employee who is acting within the scope of their employment.

TSA and its employees followed testing protocols and conducted them within the scope of the authority granted by Congress in 49 U.S.C. § 114(f) and TSA's federal regulations. Under the authority of 49 CFR 1542.5, TSA has inspection and testing authority over airport operators, in this instance Southwest Oregon Regional Airport (OTH). 49 C.F.R. 1542.5(a) provides that "each airport operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants" with any security program under subchapter 1542. (emphasis added).

Moreover, 49 C.F.R. 1542.5(d) provides that "at the request of TSA and upon the completion of SIDA training as required in a security program, each airport operator promptly must issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, secured areas, AOA's, and SIDA's."

Based on the information provided in this email, and the authority granted to TSA by Congress and through its federal regulations, it is our expectation that OTH will swiftly reinstate the access media of STSO Josh Scarberry. We appreciate this opportunity to provide this clarifying information to OTH and trust the matter will be resolved expeditiously. My team is happy to discuss further with OTH personnel if needed. I appreciate your continued partnership in transportation security.

Sincerely,

Mathew Ketchum

Acting Federal Security Director

State of Oregon

Cc: Kathleen McDonald, FSD-Oregon; Judith Crowell, Senior Counsel, TSA; Bob Scott AFSD-Regulatory Oregon; Donald Wilson AFSD Generalist, Jeffrey Ley AFSD-Law Enforcement – Oregon.