

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, DECEMBER 11, 2024**

MINUTE ORDER NO. 10

SUBJECT: MCCLELLAN - PALOMAR AIRPORT - APPROVE LEASE WITH AMERICAN AIRLINES, REPEAL, WAIVE, OR AMEND BOARD POLICY F-44, AND RELATED CEQA FINDINGS (DISTRICTS: 3 AND 5)

OVERVIEW

The County of San Diego (County) Department of Public Works (DPW) operates eight airports: Agua Caliente Springs Airport, Borrego Valley Airport, Fallbrook Community Airpark, Gillespie Field, Jacumba Airport, McClellan-Palomar Airport, Ocotillo Airport, and Ramona Airport. McClellan-Palomar Airport (Palomar) has been in operation in Carlsbad since 1959 and is designated by the Federal Aviation Administration (FAA) as a Commercial Service Airport. Aside from San Diego International Airport, Palomar is the only other airport in the County providing access to commercial flights. The airport has a terminal building and supporting infrastructure for commercial service with available space. As the operator of a Commercial Service Airport with available facilities, the County is obligated by federal law and FAA regulations to review and negotiate in good faith with aeronautical service providers wishing to lease space from the County to provide passenger service. The FAA certifies individual airlines for commercial operations, and as part of that process determines if proposed operations are compatible with an airport chosen by a carrier to support operations.

American Airlines is seeking a lease agreement (Attachment B) with the County to use the County's terminal building to begin passenger service at Palomar Airport. American Airlines proposes to operate the Embraer 175 aircraft (EMB 175), which is a dual-engine jet with a maximum of 76 seats. As part of the certification process, the FAA will certify that the EMB 175 can safely operate from Palomar using existing facilities approximately 30-60 days prior to the start of service. American Airlines proposes to operate two departures and two arrivals per day to Phoenix, AZ, and commence service on February 13, 2025.

The County Airport system is operated, maintained, and improved using lease revenues and federal and State grant funding. The County accepts federal grant funding from the FAA Airport Improvement Program (AIP) and, as a condition of receiving funding from the FAA, the County must comply with a list of Airport Sponsor Assurances. Grant Sponsor Assurance 22 (Grant Assurance 22) prohibits the County from discriminating against any type, kind, or class of aeronautical user. The FAA in Order 5190.6B of the FAA Airport Compliance Manual, explains the reach of Grant Assurance 22:

“[Airport sponsors are required to] make [the] airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities including commercial aeronautical activities offering services to the public at the airport.”

Both the airline's commercial service operating certificate and Grant Assurance 22 guide the review of American Airlines' lease proposal. If the County were to deny an airline the right to use this commercial facility the FAA may seek to revoke, deny or withhold grants to compel compliance, which would, if imposed, negatively impact the entire County Airport System making critical infrastructure improvements challenging and depleting the Airport Enterprise Fund. It is also possible that American Airlines, the FAA, or other interested party could sue in federal court or bring an administrative enforcement action to challenge denial of the lease agreement.

The proposed lease would accommodate commercial passenger services using the existing passenger terminal, parking facilities, aircraft ramp space, and infrastructure. To support commercial service, the County obtained funds and completed over 20 million dollars of improvements from 2008-2011, underscoring the County's significant improvement and investment in the airport which have largely been underused for the last nine years. Resuming commercial service to Palomar Airport allows the County to maximize the return on these investments, as well as strengthens the economy through job creation, increased access to air travel, and additional infrastructure investments.

This proposal is for a lease that would allow American Airlines to occupy two ticket counter spaces, a kiosk, and office space at the passenger terminal totaling about 479 square feet of exclusive use space. American Airlines estimates there would be about 150 employees and passengers entering the airport on an average day. This lease proposal is consistent with the historical use outlined in the County's Airport Master Plan (Master Plan) and Program Environmental Impact Report (PEIR). No additional facilities would need to be constructed to support the lease as the proposed uses are within the scope of uses the existing facilities were designed and built to accommodate. As an established commercial airport, any airline can seek a lease to utilize Palomar airport's facilities for commercial flights. The County is prohibited by federal law and grant assurances from discriminating against American Airlines and is obligated to negotiate in good faith with the airline for the use of available space.

Approving the lease with American Airlines is consistent with FAA grant assurances, aligns with the existing Conditional Use Permit 172 (CUP), and represents an implementation of the County's Airport Master Plan and PEIR which outlines the use of commercial service at Palomar Airport. Specifically, the County would not require an amendment to the existing CUP issued by the City of Carlsbad as limited commercial airline service at Palomar is consistent with the facilities and uses allowed by right under the current CUP. Additionally, the Master Plan Update and PEIR approved by the Board of Supervisors for Palomar on December 8, 2021, included a facilities review and a 20-year forecast of anticipated aviation activity at the airport. The Master Plan update anticipated the continuation of commercial service at the airport and identified safety improvements to continue to support these activities over the planning period.

American Airlines has proposed that one of its flights occur at 6:15 am which is within the quiet hours recommended in the Voluntary Noise Abatement Program (VNAP) approved by the FAA for Palomar. In 1992 and 2006 the County sought FAA permission to establish mandatory noise restrictions, including a curfew at Palomar, in accordance with the Airport Noise and Compatibility Act of 1990 (ANCA) and FAA implementing regulations. The FAA rejected the County's request and approved only the voluntary program in the VNAP. Consistent with ANCA and Grant Assurance 22, the County does not have the authority to impose what would amount to a curfew on American Airlines by prohibiting the airline from flying before 7:00 am. Consistent with the voluntary nature of the VNAP, the County informed American Airlines of the VNAP and requested that American Airlines comply

with it. American Airlines cannot meet the VNAP quiet hours requirement for its first flight because of the need to timely connect passengers with its regional hub facilities at Phoenix, AZ. In accordance with ANCA, only the FAA can establish flight curfews. Imposition of a curfew at Palomar is unsupported by federal requirements set forth in ANCA and federal regulation.

However, County Airports takes the concerns of area residents about noise seriously. To support our commitment to being a good neighbor, the County has expanded its noise monitoring efforts by installing additional noise monitors in local communities, increased our educational outreach to pilots, added staff to support noise complaints, created a public dashboard to track and log concerns, and continue to work with air traffic controllers to encourage compliance with our voluntary noise abatement program. County Airports will continue to engage with pilots, aviation businesses, and the FAA about noise on behalf of area residents and seek voluntary compliance with the VNAP whenever possible.

Additionally, approving the lease with American Airlines is consistent with the forecasted economic impact in 2026 and 2036 under the Full Development model detailed in the Airport Economic Impact Analysis (2021) representing the least constrained economic scenario to facilitate current and forecasted aviation activity and accommodate commercial air service. This analysis provided baseline data outlining the Airport's current economic contribution as well as the potential benefit to the region under various growth scenarios and timeframes as discussed in the Master Plan Update. The Airport's operational and capital expenditure, tenant activity, and passenger spending supported 2,590 jobs, drove \$460.6 million in industry activity, and generated \$72.2 million in federal, State, and local tax revenue. In 2019, the off-airport business park activity generated an additional 622 jobs, \$82.6 million in industry activity, and \$14.9 million in tax revenue. The economic impact associated with the addition of future American Airlines services at Palomar Airport will continue to expand Palomar Airport's regional economic impact and critical role in supporting the growth of economic activity in the region.

Total fees and charges the County Airports is anticipated to receive from American Airlines in the first year of operations is \$606,678. Moreover, approving the lease and re-establishing commercial service at Palomar Airport will help Palomar Airport's annual FAA entitlement funding to increase from \$150,000 to \$1.0M once the airport exceeds 10,000 enplaned passengers. This represents an \$850,000 entitlement increase for the County to receive through FAA grants to utilize for eligible capital improvement projects. Additional entitlement funding would allow for improved infrastructure at any County airport facility, further strengthening the Airport System and benefiting the San Diego County aviation community through access to improved facilities and the general public through increased economic activity. Consistent with industry standards, County Airports recommends partially waiving fees for the first year of its operations. Fee Waivers are a common practice across the industry for an airport to incentivize new services bringing economic and transportation benefits to the region. Additionally, commercial airports are expected to offer incentives to airlines to attract new service. The total fees proposed to be waived for the first year are \$351,428, reducing the year one revenue to \$255,250. The total revenue County Airports will receive in the second year American Airlines operating at Palomar is about \$606,678. Additionally, to meet Transportation Security Administration (TSA) safety requirements, the County will also be adding armed law enforcement during service departure times. However, the projected lease revenue and FAA grant funding are anticipated to substantially exceed the amounts waived and operational costs during the term of the proposed lease to facilitate the commencement of operations.

Lastly, Airports requests that the Board repeal, waive, or amend Policy F-44. The need to repeal, waive, or amend Policy F-44 was identified in the Master Plan under section 2.10.5 POLICY F-44 “DEVELOPMENT OF MCCLELLAN-PALOMAR AIRPORT.” Addressing Policy F-44 is a necessary action regardless of the approval of the American Airlines lease as it is necessary to eliminate the ambiguity created by the two conflicting documents (i.e., the Policy and Master Plan), and bring the Policy into conformance with FAA Grant Assurance 22 relating to seat restrictions. The 70-seat restriction outlined in Policy F-44 is contrary to FAA Grant Assurance 22 prohibiting discrimination between any type, kind, or class of aeronautical activity. Policy F-44 was established in the 1980s and amended over the years including revising the number of seats allowed to provide guidelines for the operation and development of the airport. The Policy states that the role of Palomar Airport shall be to provide air transportation and to facilitate aviation support activities; however, the Master Plan, which was adopted in 2021, decades after F-44 was established, lays out a comprehensive plan for the development of the airport making Policy F-44 unnecessary. The Board could choose to repeal, waive, or amend Policy F-44. Staff recommends repealing Policy F-44 to bring Board Policy into alignment with the Palomar Airport Master Plan and to ensure compliance with federal requirements. Alternatively, the Board could choose to waive or amend Policy F-44, as shown in Attachment C.

This is a request for the Board of Supervisors to authorize the Director of Airports to execute a two-year lease agreement and partially waive fees during the first year with American Airlines, in compliance with the FAA regulations. If approved, revenues from this lease on airport property would be placed into the County’s Airport Enterprise Fund to be used to develop, operate, maintain, and improve the County’s airport system. Additionally, this is a request for the Board of Supervisors to repeal, waive, or amend Policy F-44 to eliminate the discrepancy with the Palomar Airport Master Plan, to ensure compliance with FAA Grant Assurance 22, and make required CEQA findings.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

1. Find that the Final Program Environmental Impact Report (PEIR) for the McClellan-Palomar Airport Master Plan Update, certified by the Board of Supervisors on December 8, 2021 (06), State Clearinghouse #2016021105 on file with the Department of Public Works, was completed in compliance with the California Environmental Quality Act (CEQA) and state CEQA Guidelines, that the decision-making body has reviewed and considered the information contained therein and the Findings thereto dated December 11, 2024 before approving the project, that the PEIR reflects the independent judgment and analysis of the Board of Supervisors; and

Find that there are no substantial changes in the project or in the circumstances under which it is undertaken which involve significant new environmental impacts that were not considered in the previously certified PEIR, that there is no substantial increase in the severity of previously identified significant effects, and that no new information of substantial importance has become available since said PEIR was prepared in accordance with CEQA Guidelines Section 15168.
2. Approve the County entering into a two-year lease with American Airlines, in compliance with the FAA regulations, and authorize the Director of Airports to execute, upon receipt, three copies of the lease. **(4 VOTES)**
3. Waive approximately \$351,428 of partial fees and charges the County Airports is anticipated to receive from American Airlines in the first year of operations.

4. Take one of the following actions with regard to Board Policy F-44 (choose one):
 - A) Repeal the Policy to eliminate the discrepancy with the Palomar Airport Master Plan, to ensure compliance with federal requirements, and allow for approval of the proposed lease with American Airlines; or
 - B) Waive Section 2 of the Policy to allow American Airlines to use the 76 seat EMB 175 for commercial service at Palomar; or
 - C) Amend the Policy in accordance with Attachment C to remove inconsistencies with the proposal from American Airlines, the adopted Master Plan for Palomar, and federal requirements related to airport operations.

EQUITY IMPACT STATEMENT

The County of San Diego (County) has eight airports that are owned and operated by the County which provide vital air transportation hubs, emergency response facilities, and serve as economic engines. The County pursues delivery of these services in a fair and equitable manner and actively works to remove barriers by providing airport guests with general airport information in the County's threshold languages, encouraging participation, and providing competitive opportunities for small businesses, businesses that traditionally have less working capital, and business owners and managers who may be socially and economically underserved.

SUSTAINABILITY IMPACT STATEMENT

This request to authorize the Director of Airports to execute the lease with American Airlines has economic and social sustainability benefits. The base monthly rent from these leases help support economic and social sustainability by providing services for the region. The revenue that County Airports will receive from the commercial aviation and continue to receive from the current charter airlines will help operate, maintain, and improve the County Airport System consistent with the County sustainability goal of providing just and equitable access to County services and resources in support of sustainable communities.

FISCAL IMPACT

Funds for this request are included in the Fiscal Year 2024-25 Operational Plan in the Airport Enterprise Fund. If approved, today's recommendation will approve a lease agreement with County Airports. Total fees and charges the County Airports is anticipated to receive from American Airlines in the first year of operations is \$606,678. If the lease with American Airlines is approved, County Airports recommends a partial fee waiver for the first year of its operations beginning on February 13, 2025. Fee waivers are a common practice across the industry for an airport to incentivize new services. The total fees proposed to be waived for the first year are \$351,428, reducing the year one revenue to \$255,250. However, commencing commercial service at Palomar Airport will help Palomar Airport's annual FAA entitlement funding to increase from \$150K to \$1.0M once the airport exceeds 10,000 enplaned passengers. This represents an \$850,000 entitlement increase for the County to receive through FAA grants to utilize for eligible capital improvement projects, helping to offset any fees waived. The total revenue County Airports will receive in the second year American Airlines operating at Palomar is approximately \$606,678. To meet Transportation Security Administration (TSA) safety requirements, the County will also be adding armed law enforcement during service departure times. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

Leases at airports benefit the local business community by creating jobs, increasing economic activity, providing business opportunities, and supporting infrastructure development. They attract visitors, generate revenue, and help small businesses grow, thus stimulating the local economy and improving the quality of life for residents. Airports connect individuals to jobs and local communities to the world. Revenue derived from airport leases allows DPW to operate and maintain the eight County airports, airstrips, and airpark safely, efficiently, and cost-effectively. Today’s action of authorizing the Director of Airports to execute a lease agreement with American Airlines promotes self-sufficiency by enhancing the economic viability of the County airport system.

ACTION:

ON MOTION of Supervisor Desmond, seconded by Supervisor Montgomery Steppe, the Board of Supervisors continued the item to January 8, 2025.

AYES: Vargas, Montgomery Steppe, Desmond
NOES: Lawson-Remer
ABSENT: Anderson

State of California)
County of San Diego)

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter