



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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First District

DIANNE JACOB
Second District

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Third District

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Fourth District

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Fifth District

DATE: **October 16, 2019**

11

TO: Board of Supervisors

SUBJECT

**GENERAL SERVICES – SET HEARING - MCCLELLAN-PALOMAR AIRPORT
PURCHASE OF REAL PROPERTY FROM DURKIN-CAC LOT 24, LLC -
ASSESSOR’S PARCEL NUMBER 212-091-02-00 (DISTRICT: 5)**

OVERVIEW

The County of San Diego’s Department of Public Works (DPW) owns and operates a system of eight airports. McClellan-Palomar Airport (Airport) is in the city of Carlsbad and serves the northern portion of San Diego County. The Airport provides facilities and services for commercial, corporate, and general aviation operations.

To protect people and property on the ground from the effects of an aircraft incident, areas known as Runway Protection Zones (RPZ) are created to keep the areas immediately off the end of the runways clear of activities that would attract people into those RPZs. The Federal Aviation Administration (FAA) encourages airport operators to own the property affected by the RPZ, where appropriate. One such property, summarized below, exists in Carlsbad to the west of the Airport. The purchase of this property will allow DPW to own and control additional land in the RPZ as encouraged by the FAA and to prevent previously dismissed litigation relating to the property from being reinstated.

Durkin-CAC Lot 24, LLC, a California limited liability company (Durkin) owns a property located at 5817 Dryden Place in Carlsbad (Property) that is situated within Safety Zone 1 of the Airport Land Use Compatibility Plan for the Airport. The Property consists of 3.13-acres of land with an approximately 29,900-square-foot building and is also identified as Assessor’s Parcel Number 212-091-02-00. Last month, the County entered into an option agreement to secure the right to purchase the Property from Durkin and will pay \$75,000 as option consideration within 15 days of the Board approving today’s request to set a hearing to consider the purchase.

Today’s request is for the Board of Supervisors (Board) to set a hearing for November 20, 2019 to consider the purchase of the Property, to direct the Clerk of the Board of Supervisors to publish public notice of the hearing, and to authorize the appropriations of funds to pay the \$75,000 option payment based on available prior year fund balance in the Airport Enterprise Fund. If the Board takes today’s requested action, then on November 20, 2019, after making the necessary environmental findings, the Board will be requested to approve and authorize the

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necessary appropriations for and purchase of the Property for the appraised value of \$6,000,000 plus escrow, title, and related acquisition expenses.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Find that the proposed action to set a hearing is an administrative action that is not approval of a project as defined by the California Environmental Quality Act (CEQA).
2. Set a hearing for November 20, 2019, at which time the Board of Supervisors may consider authorizing the purchase of Assessor’s Parcel Number 212-091-02-00 from Durkin-CAC Lot 24, LLC for \$6,000,000.
3. Direct the Clerk of the Board of Supervisors to provide notice of the hearing in accordance with California Government Code Sections 6063 and 25350.
4. Amend the Fiscal Year 2019-20 Airport Enterprise Fund Spending Plan by \$75,000 to provide funds for the option to purchase the Durkin-CAC Lot 24, LLC Property, Assessor’s Parcel Number 212-091-02-00, based on available prior year fund balance in the Airport Enterprise Fund. **(4 VOTES)**

FISCAL IMPACT

Funds for this request are not included in the Fiscal Year 2019-20 Operational Plan in the Airport Enterprise Fund. The cost for the option to purchase the Durkin-CAC Lot 24, LLC Property, is \$75,000 in Fiscal Year 2019-20. The funding source is available prior year fund balance in the Airport Enterprise Fund. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

McClellan-Palomar Airport (Airport) is owned and operated by the County of San Diego (County) and is located in the City of Carlsbad. The Airport provides general aviation, corporate and commercial services to the north San Diego County area. Ensuring that the Airport is safe for all stakeholders and the surrounding community is a key County priority. To protect people and property on the ground from the effects of an aircraft crash, areas known as Runway Protection Zones (RPZ) exist to keep the areas immediately off the end of the runways clear of activities that attract people into those RPZs. The Federal Aviation Administration (FAA) encourages airport owners to own, where practical, the property under the runway approach and departure areas to at least the limits of the RPZ.

The land within the RPZ on the west end of the Airport is located within the City of Carlsbad but is not owned by the County. In the mid-1990s, the County sought to purchase Assessor’s Parcel Number 212-091-02-00, now also known as 5817 Dryden Place (Property), from a previous owner. Ultimately, the parties did not reach agreement on the Property’s purchase price.

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Thereafter the property transferred ownership to Durkin-CAC Lot 24, LLC (Durkin) and over the County’s objection, an approximately 29,900-square-foot commercial building was built on the Property by Durkin; and was later rented out as office space. Subsequently, Durkin filed two lawsuits against the County regarding the Property but the County prevailed in both cases.

While the first legal action was pending, Durkin, on behalf of the United States government, again sued the County (Durkin lawsuit) relating to the Property. The Durkin lawsuit alleges the County presented false claims to the FAA when it applied for and obtained certain FAA Airport Improvement Grants. The amount of damages sought by Durkin on behalf of the United States could have been sizeable, potentially in the tens of millions of dollars or more; however, the federal trial court granted the County’s motion to dismiss the complaint. Durkin then appealed that dismissal order to the Ninth Circuit Court of Appeals.

In late 2018, while the appeal was still pending, Durkin approached the Department of Public Works (DPW) with an offer to sell the Property for its appraised fair market value. Since it is the County’s preference to own the land within the FAA-established RPZ areas at all of its airports, DPW was open to the idea. DPW appraised the Property and in good faith began negotiating with Durkin over the terms of purchase. After coming to terms with Durkin, and under the authority granted by County Administrative Code Section 73, the Director, Department of General Services executed an option agreement last month to secure the right to purchase the Property (Option).

Prior to the County and Durkin entering into the Option, Durkin dismissed its appeal at the Ninth Circuit Court of Appeals; however, under the terms of that dismissal, the appeal may be reinstated by Durkin if the Property is not purchased by the County on or before January 15, 2020. The purchase of the Property will allow DPW to start the process of gradually removing incompatible office and business activities from the parcel as intended, thereby enhancing safety in the area and furthering the County’s efforts to fulfill FAA guidance by owning RPZ property surrounding the Airport, where practical. While adhering to use restrictions within the RPZ, DPW will place the property into revenue generating use for the Airport Enterprise Fund. The purchase will ensure the Durkin lawsuit will never be reinstated against the County.

The Property consists of 3.13-acres of land improved with a 29,900-square-foot industrial building. The building is partially occupied by one tenant under a lease for approximately 18,760-square-feet of space that expires on August 31, 2024. A second tenant leases space in the parking lot for automobile storage on a month-to-month basis. The parking lot lease can be terminated with a 14-day advance notice. The appraised value of the Property is \$6,000,000.

Under provisions of the Option, the County will pay Durkin \$75,000 as consideration for the right to purchase the Property. If the County purchases the Property, a \$45,000 portion of the Option consideration fee would be credited towards the \$6,000,000 purchase price.

Today’s request is for the Board of Supervisors (Board) to set a hearing for November 20, 2019 to consider purchasing the Property from Durkin and to authorize the appropriation of funds to pay the option consideration fee. If the Board takes today’s requested actions, then on November

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20, 2019, the Board will be requested to make the appropriate environmental findings and approve the necessary appropriations for and purchase of the Property. If the Board approves the purchase of the Property, County control of the Property will be subject to the existing leases.

ENVIRONMENTAL STATEMENT

The proposed action to set a hearing is an administrative action that is not approval of a project as defined by the California Environmental Quality Act (CEQA) and does not commit the County to a definite course of action under sections 15352 and 15004(b)(2)(A).

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today’s proposed actions support the Living Safely Strategic Initiative of the County of San Diego’s 2019-2024 Strategic Plan by improving safety at a County-owned airport.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah E. Aghassi".

SARAH E. AGHASSI
Deputy Chief Administrative Officer

ATTACHMENT(S)

Attachment A – Location Map

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: ☒ Yes ☐ No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

☐ Yes ☒ No

PREVIOUS RELEVANT BOARD ACTIONS:

N/A

BOARD POLICIES APPLICABLE:

F-44, Development of McClellan-Palomar Airport

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION
NUMBER(S):**

N/A

ORIGINATING DEPARTMENT: General Services

OTHER CONCURRENCE(S): Public Works

CONTACT PERSON(S):

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