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## McCain aided developer's bargain-price purchase of Fort Ord land

### Developer/friend bought SunBay site for mere \$250,000

By JULIA REYNOLDS

Herald Staff Writer

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An Arizona businessman with help from Sen. John McCain's office paid the federal government a mere fraction of the market value when he bought a Fort Ord land parcel in 1999, an Army appraisal obtained by The Herald shows.

Donald R. Diamond, an 80-year-old real estate developer, lobbyist and top fundraiser for McCain's presidential campaign, bought the land for \$250,000, though it was valued at \$7.2 million, according to Pentagon appraisals made three years before the sale.

He held on to the parcel for a little more than two years before selling it and the buildings on it for an estimated profit of more than \$18 million.

When negotiating with the Army over the no-bid sale, Diamond had more than one advantage on other potential buyers. He held a lease on the land that would have made it difficult for the Army to find another buyer. When Rep. Sam Farr, D-Carmel, later criticized the Army for "giving away" Fort Ord land during the 1990s, Deputy Assistant Secretary of the Army Paul "PJ" Johnson said, "That was a very complicated realignment and closure at Fort Ord."

But it was McCain's office, as reported earlier this year by The New York Times and The Herald, that Diamond credited with helping smooth out problems he encountered. At the time, McCain served on the Senate Armed Services Committee.

The appraisal documents were obtained under a Freedom of Information Act request. Diamond and McCain's Senate office declined to comment for this story.

Where the land is

The Fort Ord property in question is home to the SunBay apartments and condominiums — an enterprise whose history dates to the 1980s savings and loan crisis.

Now rented to a mostly civilian population, 297 apartments are set in attractive, Spanish-style clusters on 24 acres bordering the Bayonet and Black Horse golf courses and the Seaside Highlands development. The units were built by a private developer in the 1980s, when the Army desperately needed housing and, as a result, offered the builder a generous \$1 lease on the land for 50 years. For five decades, the builder could own the structures — not the land — and collect market-rate rents. When the lease expired, ownership of the apartment buildings was to revert to the Pentagon — in other words, to U.S. taxpayers. The appraisal of the buildings and land together totalled \$21 million.

But when Fort Ord was dismantled in the 1990s, everything changed.

How the deal began

About that time, Diamond was introduced to SunBay.

Fellow Arizonan Cary Marmis — the apartments' builder — had been ordered to dispose of his holdings. Federal court filings show Marmis defaulted on loans from Sunbelt Savings, a Texas bank that ultimately collapsed because of shaky real estate investments.

With Marmis' real estate holdings to be sold off by the congressionally mandated Resolution Trust Corp.,

Diamond bid on and bought several properties that included SunBay, said Dick Fitzgerald, the onsite project manager for Diamond's developments in Fort Ord.

Saying it was a private business matter, Fitzgerald declined to state how much Diamond paid for the lease and a mortgage on SunBay's buildings, but Diamond has publicly estimated his total investment in the land and buildings at about \$10 million.

In a court deposition, Diamond said a deal was struck so that 10 percent of SunBay's ownership reverted to Marmis and his wife. County real estate documents confirm that Marmis' company became part owner of the apartments with Diamond.

These and other details of the SunBay transactions — including discussion of McCain's involvement — were included in transcripts of depositions for a 2002 Monterey County lawsuit filed against Diamond and others by competing developer Danny Bakewell Sr.

That dispute, about a resort project on another Fort Ord property, was settled with no admission of wrongdoing by Diamond, Fitzgerald and the other defendants.

As Fort Ord began dismantling, Diamond, as leaseholder, was interested in buying the land under his apartments. But in his deposition in the Bakewell case, he talked of complications in the deal. Diamond said he wasn't pleased with the terms offered by the Army, and said there were problems with negotiations.

#### How McCain's office helped

With the likelihood looming that Washington would insist the Army sell off nearly all its Fort Ord acreage, the Pentagon ordered an independent appraisal of the SunBay site by the Sacramento firm of Smith Denton Associates Inc. In a report dated July 15, 1996, the appraisers said the goal was to determine a range of estimates to better negotiate with the leaseholder, Diamond.

Though the Army appeared willing to accept a discounted price, there were a number of sticking points. A February 1997 "negotiators' report" by the Army indicated Diamond's company had concerns about the price, future water allocations and whether more apartments could be added to the complex.

Under oath in a taped interview as part of the Bakewell lawsuit, Diamond said McCain came to his assistance after the purchase negotiations became "bogged down."

"I asked him if he could help expedite it," Diamond said.

Although McCain's Senate office did not respond to questions from The Herald, earlier this year a McCain spokeswoman told The New York Times that the senator "had done nothing for Mr. Diamond that he would not do for any other Arizona citizen."

#### Not your ordinary citizen

But Diamond is no ordinary constituent.

Besides being a leading developer in McCain's home state, he is a pro-Israel lobbyist in Washington, D.C., and is among the elite "innovators" group whose members have individually raised \$500,000 or more for McCain's presidential bid, according to the candidate's campaign Web site.

Diamond served as national finance co-chairman for McCain's presidential exploratory committee, and in court documents he describes himself as a longtime friend of the Republican senator.

Farr found it more than a little unusual an Arizona senator would become involved in a land deal in California. "This, to me, was just sort of out of the box," Farr said recently. "Senators don't usually mess around in other states."

Diamond said McCain assigned Ann Sauer, a senior aide to McCain, to the case.

Sauer was well known around the Pentagon and previously worked as a staff member for the Senate Armed

Services Committee. She is a vice president in charge of Washington operations for Lockheed Martin Corp. Sauer declined to comment for this story.

Fitzgerald said Sauer set up a meeting for him with Johnson, then deputy assistant secretary of the Army. "That was the extent of her involvement to the best of my knowledge," he said.

But in his deposition, Diamond said Sauer stepped in after the initial meeting and "got the thing resolved" when negotiations reached a stalemate.

Years later, he thanked her for the help "because it was taken care of," Diamond said in deposition. "Sen. McCain — in some way, she showed up and got the thing resolved, and at some time when I was in Washington, I met her ... to thank her."

In a tough place

The recently released Army documents show that after the independent appraisal was turned in, some in the Pentagon reasoned the government couldn't get full market price for the land because it was encumbered by Diamond's lease, which had 40 years left.

While the independent appraisers supplied estimates in the millions, the Army reappraised the land taking into consideration the lease and assuming the land and buildings would still be worth \$21 million when the lease ran out 42 years later. Taking into consideration those factors, they figured the plot was worth less than \$300,000 at the time.

The premise that the land and buildings would be worth \$21 million 42 years later was incorrect. Given an appreciation rate of, for example, 4 percent, the property could actually be worth several hundred million dollars in four decades.

Even so, the documents show Army officials were not eager to accept Diamond's original offer made in a draft purchase agreement. A Feb. 14, 1997, government memo states that Diamond at first offered \$125,000 for the land, an offer the Army refused.

Johnson ultimately signed a memo approving the \$250,000 SunBay sale in 1999.

In 2001, just over two years after he bought the land, Diamond sold SunBay — the land, the buildings and the lease — to a Northern California developer for \$28 million.

Diamond's Ord land deal \$1 The price of the 50-year lease from the Army for the land SunBay apartments sit on \$21M Appraised value of SunBay buildings and land in 1996 \$10M Estimated total price Don Diamond paid for SunBay buildings and land \$28M Price Diamond sold SunBay for in 2001