



Legislation Details (With Board Report)

**File #:** SARDAG 17-003      **Name:** SARDAG EG Ph 3 Avigation Easement

**Type:** Successor General      **Status:** Consent Agenda

**File created:** 11/29/2017      **In control:** Successor Agency to the Redevelopment Agency of the County of Monterey

**On agenda:** 12/12/2017      **Final action:** 12/12/2017

**Title:** Approve the grant of an Avigation Easement to the City of Marina as it relates to the flight path of the runway at the Marina Municipal Airport over property owned by the Successor Agency to the Redevelopment Agency at the East Garrison development.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Board Report, 2. Attachment 1 – Map of Affected Property, 3. Attachment 2 – Avigation Easement, 4. Completed Board Order, 5. Recording Page Avigation Easement

Date	Ver.	Action By	Action	Result
12/12/2017	1	Successor Agency to the Redevelopment Agency of the County of Monterey	approved	Pass

Approve the grant of an Avigation Easement to the City of Marina as it relates to the flight path of the runway at the Marina Municipal Airport over property owned by the Successor Agency to the Redevelopment Agency at the East Garrison development.

RECOMMENDATION:

It is recommended that the Board of Directors of the Successor Agency to the Redevelopment Agency of the County of Monterey approve the grant of an Avigation Easement to the City of Marina as it relates to the flight path of the runway at the Marina Municipal Airport over property owned by the Successor Agency to the Redevelopment Agency at the East Garrison development.

SUMMARY:

The recommended action will grant to the City of Marina an Avigation Easement which will give the City certain rights on behalf of the public to the airspace over, and place certain land use restrictions on portions of property owned by the Successor Agency to the Redevelopment Agency of the County of Monterey within the East Garrison development.

This easement is required by the County of Monterey as a condition of approval precedent to the County’s approval of the Final Subdivision Map for Phase 3 of the East Garrison development.

DISCUSSION:

The Avigation Easement will affect two properties owned by the Successor Agency:

- APN 031-161-021, also called “Historic District Carve-Out Parcel B”, is a 0.78-acre parcel containing several existing historic buildings which will be rehabilitated and used as art studios as part of the future Arts-Historic District. 31,209 sf of this property lies within the proposed Avigation Easement boundary.
- APN 031-161-022, also called “Historic District Carve-Out Parcel C”, is a 2.39-acre parcel also containing a number of existing historic mess-hall buildings which will be rehabilitated and used as art

studios as part of the future Arts-Historic District. 9,844 sf of this property lies within the proposed Avigation Easement boundary.

In 2004 an Environmental Impact Report was prepared for the proposed East Garrison Subdivision. A comment letter submitted by the Monterey County Airport Land Use Commission (ALUC) noted the northeast portion of the development site, planned for development of a storm drain basin, landscaped open space and park, a parking lot, and about six live-work units, was within the “airport planning area” as depicted in the *Marina Municipal Airport Comprehensive Land Use Plan (CLUP)*. The ALUC’s letter recommended an avigation easement be placed over the entire East Garrison Specific Plan area, and specifically over the affected property which should not be used for public assembly.

In response to this comment, the Monterey County Board of Supervisors included Condition of Approval #151 in its October 4, 2005 approval of the East Garrison Specific Plan, Vesting Tentative Map, and Conditional Use Permit: “The Applicant shall convey an overflight easement to the Marina Municipal Airport owner.” The “Action to be Performed” for this condition states, “Include language as a note on each final map and include in the CC&Rs. The easement language shall be agreed to by the airport owner, Airport Land Use Commission and applicant. An easement deed shall be recorded on the property prior to subdivision, if required by the Redevelopment Agency.”

Compliance with this condition for the 2007 Phase 1 and 2015 Phase 2 Final Subdivision Maps was provided by note on the Phase 1 and Phase 2 Final Subdivision maps as required.

The proposed Avigation Easement will restrict use of the airspace over the subject properties which “...lies above an imaginary plane, as such plane is defined in accordance with the applicable provisions of Federal Aviation Administration regulations set forth in 14 C.F.R. §§77.21-77.29, to an indefinite height above said imaginary plane...” as it relates to the flight path of the runway at the Marina Municipal Airport.

The easement will grant to the Marina Municipal Airport the following rights:

- The right of all aircraft to fly through the subject airspace.
- The right of lawfully-operated aircraft flying through the subject airspace to create noise, vibration, fumes, lights, electrical and electromagnetic emissions, communication signals, fuel, fuel particles, air currents, and other effects of air, illumination and fuel consumption.
- The right of the Marina Municipal Airport to clear and keep clear from the subject airspace any portions of buildings, structures, trees, or other objects.
- The right to mark and light, as obstructions to air navigation, any buildings, structures, trees or other objects which extend from the property into the subject airspace.
- The right to enter the subject property for these purposes, after providing reasonable notice.

The easement will restrict the property owner’s use of the property as follows:

- Height Restriction. The property owner may not construct any building, structure, improvement, tree or other object that extends vertically into the subject airspace.
- Limitation on Public Assembly. The property may not be used for public assemblies of more than 1,000 people. This is defined as groups of people for scheduled or organized events for which a permit, license or other approval from a public entity is required; scheduled or organized events to which members of the public are invited by any means of communication; and events organized by any organization or entity. This does not apply to a solely private gathering of people held by or for one or more residents at their places of residence.

California Assembly Bill 1X 26, enacted on June 28, 2011, and upheld by the California Supreme Court on

December 29, 2011, dissolved all California redevelopment agencies effective February 1, 2012 through amendments to the California Health and Safety Code (the “Amended Code”). Pursuant to Sections 34173, 34175, and 34176 of the Amended Code, and by operation of law, the Successor Agency to the Redevelopment Agency of the County of Monterey has assumed the rights, duties, and obligations pertaining to all functions of the Original Agency, and as such has assumed the rights, duties, and obligations pertaining to the subject property.

OTHER AGENCY INVOLVEMENT:

The office of the County Counsel, acting on behalf of the Successor Agency, has reviewed this report and the proposed Avigation Easement as to form and legal effect.

On December 5, 2017, the City of Marina City Council is scheduled to consider acceptance of the three Avigation Easements from the Successor Agency, the East Garrison Community Services District, and UCP East Garrison, LLC (the developer), subject to the review of the Monterey County Airport Land Use Commission, and approvals by Boards of Directors of the Successor Agency and the East Garrison Community Services District.

On December 11, 2017, the Monterey County Airport Land Use Commission is scheduled to consider whether the language of the proposed Avigation Easements conform to the ALUC’s recommendation and Condition of Approval #151.

By separate action on this date, the Board of Directors of the East Garrison Community Services District will consider a similar Avigation Easement over adjacent property owned by the District. UCP East Garrison, LLC has approved an Avigation Easement over adjacent properties that it owns.

FINANCING:

The recommended action will have no financial impact to budget of the Successor Agency.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The recommended action complies with the Board of Supervisors’ FY 2015-16 Strategic Initiative for Infrastructure, “Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results,” by improving the quality of life of County residents through management of parks and open spaces within the East Garrison development.

Check the related BOS Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:  
Attachment 1 - Map of affected property

Attachment 2 - Avigation Easement