

RESOLUTION NO. 2025-41

A RESOLUTION OF THE CITY OF MARINA ACCEPTING THE GRANT OF
AVIGATION EASEMENT FOR THE MARINA STATION DEVELOPMENT
PROJECT SUBDIVISION PHASES 1 AND 2, AND AUTHORIZING THE
CITY CLERK TO EXECUTE THE GRANT OF AVIGATION EASEMENT ON
BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL
BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of March 4, 2008, the City Council adopted Resolution No. 2008-45, approving the Vesting Tentative Map for the Marina Station Development Project Subdivision, located at northern property boundary of the City;

WHEREAS, at the regular meeting of March 4, 2008, the City Council adopted Resolution 2008-41, approving and certifying the Marina Station Specific Plan Environmental Impact Report;

WHEREAS, on March 4, 2008, the City Council of the City of Marina certified the final environmental impact report for the Marina Station Project (SCH No. 2005061056). The FEIR served as the environmental review for the Development and the Project Approvals and entitlements. Section 15162 of the CEQA Guidelines states that if an FEIR or negative declaration has been adopted for a project, no subsequent FEIR is to be prepared unless there have been substantial changes to the project, substantial changes with respect to the circumstances under which the project is undertaken or new information of substantial importance shows that the project would have significant effects not discussed in the FEIR, and;

WHEREAS, the developers have submitted Grant of Avigation Easement Agreement (“Agreement”) (“EXHIBIT A”) to the City for review and approval. After review, staff has determined that the conditions of approval have been met for the Avigation Easement;

WHEREAS, the developers are the owner in fee of that certain parcel of land situated within the City/County, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, as incident to the conducting of airport operations by the City, properties situated in close proximity to the Marina Municipal Airport (the “Airport”) may be subject to noise, the flight of low-flying aircraft within their airspace, and other effects associated with the operation of an airport;

WHEREAS, the Property is situated within close proximity of the Airport. The execution of the Agreement shall satisfy Condition of Approval and Mitigation Measure #35 for the Marina Station project;

WHEREAS, should the City Council approve this request, the Developer has provided payment to cover the costs associated with the production, review, and recording of the Avigation Easement Agreement;

WHEREAS, the findings and conclusions made by the City Council in this resolution are based upon the oral and written evidence presented as well as the entirety of the administrative record for the proposed Avigation Easement Agreement, which is incorporated herein by this reference. The findings are not based solely on the information provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that:

1. Accept the Grant of Avigation Easement for the Phases 1 and 2 of Marina Station Development Project Subdivision, and;
2. Authorize the City Clerk to execute the Grant of Avigation Easement Agreement, on behalf of the City subject to final review and approval by the City Attorney Authorize the City Clerk to certify the Final Map on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 20th day of May 2025, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Biala, Delgado, Visscher

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Liesbeth Visscher, Mayor Pro Tem

Anita Sharp, Deputy City Clerk

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Marina
209 Cypress Avenue
Marina, CA 93933
ATTN: Alyson Hunter - Community Development

THIS SPACE FOR RECORDER'S USE ONLY

GRANT OF AVIGATION EASEMENT AGREEMENT

THIS GRANT OF AVIGATION EASEMENT AGREEMENT (this "Agreement") is made by and between Marina Station, LLC, and Marina Station Phases 1 and 2, LLC ("Grantors"), and the City of Marina, a political subdivision of the State of California ("Grantee").

WHEREAS, Grantor is the owner in fee of that certain parcel of land situated within the City/County, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property");

WHEREAS, as incident to the conducting of airport operations by the Grantee, properties situated in close proximity to the Marina Municipal Airport (the "Airport") may be subject to noise, the flight of low-flying aircraft within their airspace, and other effects associated with the operation of an airport;

WHEREAS, the Property is situated within close proximity of the Airport;

WHEREAS, in order to minimize the effects associated with the operation of an airport, properties situated in close proximity to the Airport have historically been used for agricultural and other low-intense uses;

WHEREAS, Grantor desires to develop the Property for an industrial, commercial or residential use of substantially greater intensity than the existing one; and

WHEREAS, the execution of this agreement shall satisfy Condition of Approval and Mitigation Measure #35 for the Marina Station project; and

WHEREAS, the uses and development standards contained in Tables 7-1, 7-2, 7-3 and 7-4 of the approved Specific Plan and included herein by reference are consistent and allowable under this agreement, and

WHEREAS, as a condition of granting permission to develop the Property for the commercial or residential use desired by Grantor the parties hereby agree as follows:

1. Aviation Easement. Grantor hereby grants, and Grantee hereby accepts a perpetual avigation easement and right-of-way, and certain rights appurtenant to said easement as set forth below, for the free and unobstructed aerial passage and flight of aircraft, of any and all kinds now known or hereinafter invented, used or designed for aerial navigation, in connection with the operation of the airport. Said easement and right-of-way shall be for the public benefit and use. Said easement and right-of-way shall be in, over, above and across the airspace of the Property.

2. Noise Element. Said easement and right-of-way shall include the right to cause, make and emit, in or about the airspace of the Property, such noise, light, vibrations, fumes, exhaust, smoke, air currents, dust, fuel particles, radio, television and other electromagnetic interferences, and all other effects as may be inherent in the operation, use, flight, maintenance, taking off, land and navigation of aircraft in connection with the present or future operation of the Airport (collectively, the "Effects").

3. Noise Level. Notwithstanding the foregoing, the level of aircraft noise to which the Property may be continuously subject by Grantee shall be no greater than 70 CNEL as determined in accordance with Section 5050 of Title 21 of the California Administrative Code. In the event that the State of California shall convert to the "Ldn" or "DNL" standard or any other standard used to calculate community noise exposure levels, the CNEL equivalent noise level of such standard shall be used in lieu of CNEL for purposes of this paragraph. In the event that the 65 CNEL standard (of the CNEL-equivalent standard, as applicable) shall judicially or administratively be deemed to be invalid, the Agreement shall continue in full force and effect subject to the highest permissible CNEL or CNEL-equivalent standard. This Agreement shall not be considered overburdened by unreasonable use if the noise which impinges on the Property exceeds the easement by an amount less than 1.5 db CNEL.

4. Mitigation. Grantee shall have no duty to avoid or mitigate any of the Effects by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, altering approach zones (including without limitation altering elevation of approaching aircraft, erecting sound or other barriers, establishing curfews, noise or other regulations, except to the extent, if any, such actions are validly required by governmental authority.

5. Release. Grantor hereby forever fully waives, surrenders, and releases any right, claim or cause of action that it may have now or in the future against Grantee and hereby covenants not to sue, file a complaint, claim or action in or before any federal, state or local judicial or quasi-judicial court or tribunal or administrative board, panel, commission or body or seek any form of alternative dispute-resolution relief (including, but not limited to, arbitration) against Grantee for an invasion of its airspace in connection with this Agreement or for being subject to any of the effects. Said release includes, but is not limited to, claims, whether known or unknown, for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, diminution of property values, lost profits, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. Grantor shall defend, indemnify and hold harmless Grantee from and against any and all lawsuits, complaints, claims or actions asserted by any of Grantor's lessees, sublessees or assignees of all or any part of the property against Grantee with respect to the flight or aircraft in or about the airspace of the property or the effects. In the event that Grantor shall sell or subdivide any part of the property, Grantor shall reference this Agreement and each grant deed or other deed of sale with respect to any part of the property or subdivision and shall indicate therein that the transferee's interest in the property shall be subject to this Agreement.

6. Third Parties. This Agreement shall not operate to deprive the Grantor of any rights that it may from time to time have against any individual or entity other than Grantee for the negligent or unlawful operation of aircraft, or the effects.

7. Obstruction to Navigation. Grantor shall not at any time construct or permit the construction, enlargement or growth of any building, structure, tree or other object that (1) constitutes an obstruction or hazard to air navigation under FAR Part 77; (2) obstructs or interferes with the use of the easements and rights-of-way herein granted; (3) creates electrical interference with radio communication between any installation upon said Airport and aircraft; (4) diminishes the ability of pilots to distinguish between

Airport lights and other lights; (5) impairs the general visibility in or around the vicinity of the Airport; or (6) otherwise endangers or impairs the landing, take-off or maneuvering of aircraft.

8. Runs With Land. The easements and right-of-way granted herein are for the benefit of the Airport and such other property as shall be subsequently acquired from time to time by Grantee as constituting a part of the Airport. All of the provisions of this Agreement shall run with the land which constitutes the property and shall bind Grantor to the maximum extent now or hereafter permitted by law. It is the intent of the parties that this Agreement shall comply with and satisfy California Civil Code Section 1468. The property shall be the subservient tenement and the Airport shall be the dominant tenement.

9. Successors and Assigns. The term "Grantor" as used herein shall include Grantor and all of its lawful heirs, successors, assigns, officers, agents, devisees, administrators, lessees, representatives, employees and all other entities or persons acquiring an interest in any part of the property. The term "Grantee" shall include the City in its present form or in any later reorganized, consolidated, or enlarged form, and any political subdivision, agency or entity of the City, any entity under contract with the City with respect to the management of its airport operations, and all of the City's officers, agents, representatives, employees and officials (whether elected, appointed or otherwise).

10. Attorney's Fees. In the event of a dispute arising between the parties hereunder, the prevailing party shall be entitled to its reasonable attorney's fees and costs (including, without limitation, expert witness fees and costs).

11. Captions. The caption headings herein are strictly for the convenience of the parties and are not intended to be used in the interpretation or construction of this Agreement.

12. Severability. It is the intent of the parties that in the event that any provision herein is held to be invalid, the remaining provisions shall continue in full force and effect unless enforcement of the Agreement so modified would frustrate the purposes of this Agreement.

13. Termination: This Agreement shall continue in full force and effect until such time as the Airport shall be abandoned and shall cease to be used for public airport purposes.
IN WITNESS WHEREOF, the undersigned have executed this Agreement.

City of Marina:

MARINA STATION PHASE 1 AND 2 LLC,
a Delaware limited liability company

City Council

By: Dustin Bogue
Title: Authorized Signatory

ATTEST:

MARINA STATION , LLC,
a Delaware limited liability company

Council Secretary

By: Dustin Bogue
Title: Authorized Signatory

EXHIBIT 'A'

AVIGATION EASEMENT AGREEMENT

Impacted parcels will be defined with future Final Maps. Current parcel map recorded October 21, 2024 in Volume 24 of Parcel Maps at Page 36 divides subject project area into three large parcels.

Description of Easement

See the following Legal Descriptions and Plat Maps

**LEGAL DESCRIPTION
OF AN AVIGATION EASEMENT
IN AIRPORT SAFETY ZONE 4**

An easement over certain real property situate in the City of Marina, County of Monterey, State of California, being portions of Parcel A and Parcel C as shown on that certain map filed in Volume 24 of Parcel Maps at Page 36 in the Records of said County, described as follows:

A strip of land 1,000 feet wide, lying 500 feet on each side of the following described centerline:

Beginning at a point on the southeasterly boundary of said Parcel C, that bears South 18°44'28" West, 2568.04 feet from the most easterly corner of Parcel B, as shown on said map; thence

1) North 55°40'00" West, 2683.86 feet to the POINT OF TERMINATION.

Containing 61.61 acres, more or less.

The sidelines of said strip of land shall be shortened or prolonged to commence on said southeasterly boundary.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof.

The bearing of South 18°44'28" West along the southeasterly boundary of Parcel B and Parcel C, shown on said map filed in Volume 24 of Parcel Maps at Page 36, in the Records of said County, is the basis of bearings cited in this description.

END OF DESCRIPTION.

PREPARED BY:
WHITSON ENGINEERS



RICHARD P. WEBER P.L.S.
L.S. NO. 8002
PROJECT NO. 4105

05/02/2025
DATE



500 0 500
SCALE: 1" = 500'

PARCEL B
24-PM-36

MOST EASTERLY
CORNER OF PARCEL B

POINT OF
TERMINATION

PARCEL C
24-PM-36

AIRPORT SAFETY
ZONE 4

S18°44'28"W 2568.04' (TIE)
BASIS OF BEARINGS

500'

N55°40'00"W 2683.86'

DESCRIBED AREA:
±61.61 ACRES

PARCEL A
24-PM-36

DESCRIBED
CENTERLINE

POINT OF
BEGINNING

PARCEL 2
23-PM-90

THE BEARING OF SOUTH 18°44'28" WEST ALONG THE
SOUTHEASTERLY BOUNDARY OF PARCELS B, AND C, SHOWN ON
VOLUME 24, PARCEL MAPS, PAGE 36, IN THE RECORDS OF
MONTEREY COUNTY, IS THE BASIS OF BEARINGS SHOWN HEREON.

PL - PROPERTY LINE

PLAT TO ACCOMPANY DESCRIPTION

AVIGATION EASEMENT - AIRPORT SAFETY ZONE 4
PORTIONS OF PARCELS A & C, VOL. 24, PARCEL MAPS, PG. 36

CITY OF MARINA, MONTEREY COUNTY, CALIFORNIA

MAY 2, 2025



Civil Engineering +
Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

**LEGAL DESCRIPTION
OF AN AVIGATION EASEMENT
IN AIRPORT SAFETY ZONE 6**

An easement over certain real property situate in the City of Marina, County of Monterey, State of California, being portions of Parcel A, B and C as shown on that certain map filed in Volume 24 of Parcel Maps at Page 36 in the Records of said County, described as follows:

All of that portion of said Parcels lying southeasterly of following described line:

Beginning at a point on the northeasterly boundary of said Parcel B, that bears North $66^{\circ}15'00''$ West 1611.96 feet from the most easterly corner of said Parcel B; thence

- 1) Southwesterly 3,334.65 feet along the arc of a curve to the left, of which the radius point lies South $34^{\circ}23'15''$ East, a radial distance of 6,000.00 feet, through a central angle of $31^{\circ}50'37''$, to a point on the southwesterly boundary of said Parcel A.

Excepting therefrom:

A strip of land 1,000 feet wide, being radial to the aforementioned curve, and lying 500 feet on each side of the following described centerline:

Beginning at a point on the southeasterly boundary of said Parcel C, that bears South $18^{\circ}44'28''$ West, 2568.04 feet from the most easterly corner of said Parcel B; thence

- 1) North $55^{\circ}40'00''$ West, 2683.86 feet to a point on the aforementioned curve.

Containing of total area of 143.31 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof.

The bearing of South $18^{\circ}44'28''$ West along the southeasterly boundary of Parcel B and Parcel C, shown on said map filed in Volume 24 of Parcel Maps at Page 36, in the Records of said County, is the basis of bearings cited in this description.

END OF DESCRIPTION.

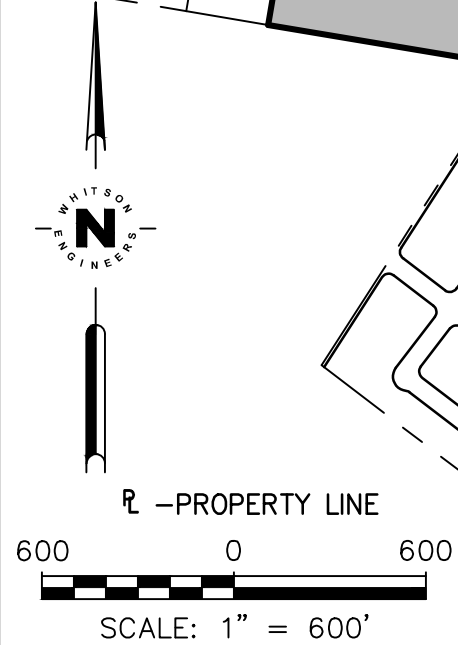
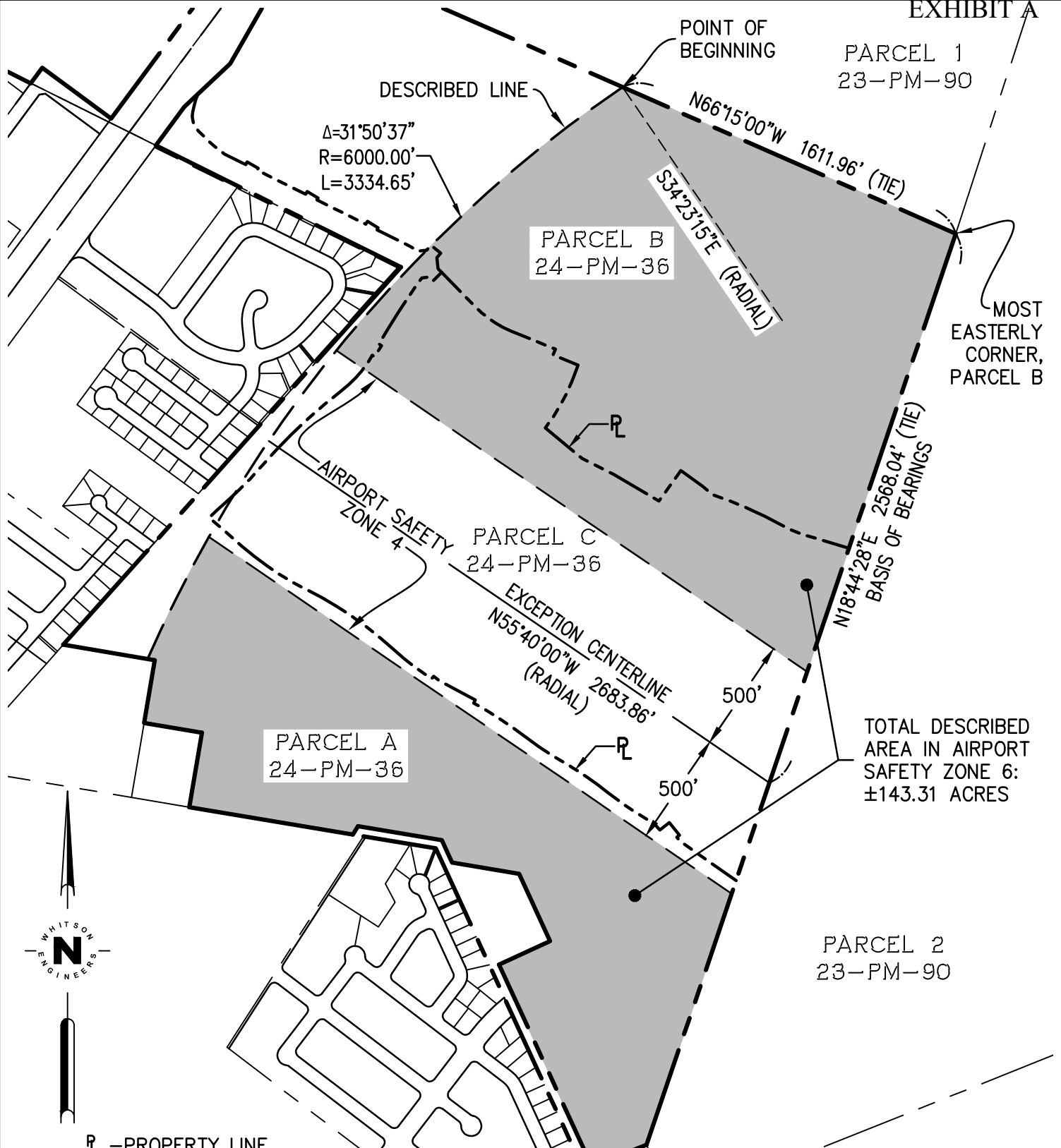
PREPARED BY:
WHITSON ENGINEERS



RICHARD P. WEBER P.L.S.
L.S. NO. 8002
PROJECT NO. 4105

05/02/2025
DATE





THE BEARING OF SOUTH 18°44'28" WEST ALONG THE SOUTHEASTERLY BOUNDARY OF PARCELS B, AND C, SHOWN ON VOLUME 24, PARCEL MAPS, PAGE 36, IN THE RECORDS OF MONTEREY COUNTY, IS THE BASIS OF BEARINGS SHOWN HEREON.

PLAT TO ACCOMPANY DESCRIPTION
AVIGATION EASEMENT - AIRPORT SAFETY ZONE 6
PORTIONS OF PARCELS A, B & C, VOL. 24, PARCEL MAPS, PG. 36
 CITY OF MARINA, MONTEREY COUNTY, CALIFORNIA
 MAY 2, 2025



Whitson
ENGINEERS

Civil Engineering +
Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

May 14, 2025

Item No. **10g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of May 20, 2025

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2025-, ACCEPTING THE GRANT OF AVIGATION EASEMENT FOR THE MARINA STATION DEVELOPMENT PROJECT SUBDIVISION AFFECTING PHASES 1 AND 2, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT OF AVIGATION EASEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2025-, accepting the Grant of Avigation Easement affecting Phases 1 and 2 of Marina Station Development Project Subdivision, and;
2. Authorizing the City Clerk to execute the Grant of Avigation Easement Agreement, on behalf of the City, subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of March 4, 2008, the City Council adopted Resolution No. 2008-45, approving the Vesting Tentative Map for the Marina Station Development Project Subdivision located at northern property boundary of the City.

At the regular meeting of March 4, 2008, the City Council adopted Resolution 2008-41, approving and certifying the Marina Station Specific Plan Environmental Impact Report. As part of the certification of the Final Environmental Impact Report ("FEIR"), the City adopted certain mitigation measures to reduce significant environmental impacts identified in the FEIR and adopted a Mitigation Monitoring and Reporting Program ("MMRP"). The mitigation measures addressed a variety of issues including traffic impacts and measures to address the biological impacts of the Marina Station Project.

ANALYSIS:

The developers have submitted the Grant of Avigation Easement Agreement ("Agreement") (**"EXHIBIT A"**) to the City for review and approval. After review, staff has determined that the conditions of approval have been met for the Avigation Easement.

The Developers are the owner in fee of that certain parcel of land situated within the City, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("Property").

As incident to the conducting of airport operations by the City, properties situated in close proximity to the Marina Municipal Airport (the "Airport") may be subject to noise, the flight of low-flying aircraft within their airspace, and other effects associated with the operation of an airport.

The Property is situated within close proximity of the Airport. The execution of the Agreement shall satisfy Condition of Approval and Mitigation Measure #35 for the Marina Station project.

FISCAL IMPACT:

Should the City Council approve this request, the Developer has provided payment to cover the costs associated with the production, review, and recording of the Avigation Easement Agreement.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie De Los Santos, P.E.
Engineering Division
City of Marina

REVIEWED/CONCUR:

Ismael Hernandez
Public Works Director
City of Marina

Layne P. Long
City Manager
City of Marina