

TO: James L. App, City Manger
FROM: Ron Whisenand, Community Development Director
SUBJECT: Acceptance of Grant of Avigation Easement (Rosilez)
DATE: July 5, 2006

Needs: That the City Council authorize the acceptance of a Grant of Avigation Easement provided by Joseph and Whitney Rosilez at 4889 Dry Creek Road and 4540 Highway 46E in the unincorporated area of the County.

Facts:

1. The San Luis Obispo County Building Department has approved a permit for construction of a single family residence and winery at 4889 Dry Creek Road and 4540 Highway 46 East, located north of Highway 46 and west of Jardine Road.
2. The building permit was conditioned upon offering an avigation easement in accordance with the County Airport Land Use Plan.
3. The City has received a Grant of Avigation Easement from Joseph and Whitney Rosilez, owners of the property located at 4889 Dry Creek Road and 4540 Highway 46 East.

**Analysis
and**

Conclusion: In order for their proposed development to be consistent with the Airport Land Use Plan, the County conditioned the building permit application filed by Joseph and Whitney Roseliz to provide an avigation easement. The purpose of the easement is to inform all future owners of their property of the potential of noise associated with the proximity of the Airport and to provide clearance for the continued operation of the Airport.

Policy

Reference: Airport Master Plan

Fiscal

Impact: none

Options: Upon receipt of Grant of Avigation Easement and proper guarantee of title:

- a. That the City Council adopt Resolution No. 06-xxx accepting the Grant of Avigation Easement from Joseph and Whitney Roseliz for 4889 Dry Creek Road and 4540 Highway 46 East, located in the unincorporated area of the County, north of Highway 46, south of Dry Creek Road and west of Jardine Road.
- b. Amend, modify or reject the above option.

Attachments: (3)

1. Vicinity Map
2. Grant of Avigation Easement – Exhibit “A”
3. Resolution

Recording Requested by and When
Recorded Return to:

City of Paso Robles
Community Development
1000 Spring Street
Paso Robles, CA 93446

Attn.: City Engineer

FOR RECORDER USE ONLY

GRANT OF AVIGATION EASEMENT

No Fee Document
(Public Entity Grantee,
Govt. Code Section 27383)

For a valuable consideration, receipt of which is hereby acknowledged, Joseph P. & Whitney Rosilez.(owner) ,hereinafter referred to as "Grantor(s)", HEREBY GRANT(S) TO the City of Paso Robles, a municipal corporation of the State of California, hereinafter referred to as "City", for the use and benefit of the public, a perpetual and assignable easement and right-of-way, and certain rights appurtenant to said easement as hereinafter set forth, in, on and over the following described real property situated in the County of San Luis Obispo, State of California in which Grantor(s) hold(s) a fee simple estate, lying above, in whole or in part, the horizontal limits of the civil airport imaginary surfaces described in Federal Aviation Regulations, Part 77.25 (14 CFR 77.25), as applicable to the *Paso Robles Municipal Airport*, situated in the City of Paso Robles, County of San Luis Obispo, State of California, hereinafter referred to as "Airport", which parcel of real property is described as follows:

Portion of Section 19 T26S R13E in the unincorporated area of the City of Paso Robles, State of California.

That portion of said real property lying below the Imaginary Surfaces described above and incorporated herein as though set forth in full.

IT IS AGREED by Grantor(s) that he/they shall not hereafter erect, enlarge or grow, or permit the erection, enlargement or growth of, or permit or suffer to remain, any building, structure, or other object, or any tree, bush, shrub or other vegetation, within or into the airspace above said Imaginary Surfaces overlying said real property.

IT IS FURTHER AGREED by Grantor(s) that the easement and rights hereby granted to City are for the purpose of ensuring that occupants of the real property burdened by this easement are aware that the quiet enjoyment of this real property may be interrupted by noise generated by over-flying aircraft and by aircraft operations at the Airport, and for the additional purpose of ensuring that said Imaginary Surfaces shall remain free and clear of any building, structure or other object, and of any tree, bush, shrub or other vegetation, which is or would constitute an obstruction or hazard to the flight of aircraft landing at and/or taking off from said Airport. These rights shall include, but not be limited to the following:

1. The continuing and perpetual right of City, at Grantor(s)' sole cost and expense, to cut off, trim, and/or prune those portions of any tree, bush, shrub and/or other vegetation extending, projecting or infringing into or upon the airspace above said Imaginary Surfaces.
2. The continuing and perpetual right of City, at Grantor(s)' sole cost and expense, to remove, raze or destroy those portions of any building, structure or other object, infringing, extending or projecting into or upon said Imaginary Surfaces.

3. The right of City, at Grantor(s)' sole cost and expense, to mark and light, as obstructions to air navigation, any building, structure or other object, any tree bush, shrub or other vegetation, that may at any time infringe, project or extend into or upon said Imaginary Surfaces.
4. The right of City for ingress to, egress from, and passage on or over said real property of Grantor(s) for above purposes. City shall exercise said right of ingress and egress only after City gives Grantor(s) twenty-four (24) hours notice of City's intent to enter Grantor(s) property. City shall not be precluded from exercising its right of ingress and egress by the failure of Grantor(s) to receive notice if City has made a reasonable effort to notify Grantor(s). If, in the opinion of the Airport Manager, an obstruction or hazard exists within or upon said Imaginary Surfaces overlying said real property, which creates an immediate danger to the flight of aircraft landing and/or taking off from the Airport such that immediate action is necessary, City may exercise its right of ingress and egress for the above purposes without notice to Grantor(s).
5. The right of flight for the unobstructed passages of aircraft, for the use and benefit of the public, in the airspace above said Imaginary Surfaces, together with the right to cause in or about said airspace such noise, lights, electromagnetic emissions, vibrations, fumes, dust, fuel particles, and all other effects as may be inherent in the navigation or flight of aircraft now or hereafter used or known, using said airspace for landing at, taking off from, or operating from, to, at, on, or over said Airport.

Note: Noise from over flying aircraft and from aircraft operations on the airport may be considered to persons residing and/or working on this real property.

6. The continuing and perpetual right of the City to allow aircraft flight and ground operations at the Municipal Airport at all times.

IT IS FURTHER AGREED by Grantor(s) that he/they fully realize that any negative effects of aircraft operations at the Municipal Airport, as they pertain to this real property, are not expected to diminish from the level at the time of granting this easement.

The easement granted herein and all rights appertaining thereto are granted unto the City, its successors and assigns, until said Airport shall be abandoned and ceased to be used for airport purposes.

If any item, covenant, condition or provision of this easement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

IT IS UNDERSTOOD AND AGREED by Grantor(s) that this easement and the covenants and restrictions contained herein shall run with the land described above and shall be binding upon the heirs, successors and assigns of Grantor(s). For purposes of this instrument, the above-described property shall be the servient tenement and the Airport shall be the dominant tenement.

Dated: 1-30-06

GRANTOR (S):

TRUST DEED BENEFICIARIES
and/or MORTGAGEES

Joe Rosalez
Print Name: Whitney Rosalez

x [Signature]
For.

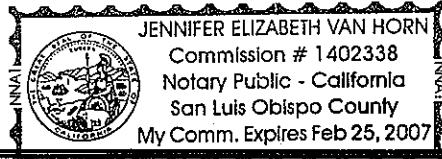
[Signatures must be notarized]

ACKNOWLEDGMENT

State of California
County of San Luis Obispo } ss.

On January 30, 2006, before me, Jennifer Elizabeth Van Horn a Notary Public, appeared De Rosier personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.
Jennifer Elizabeth Van Horn
Signature of Notary Public

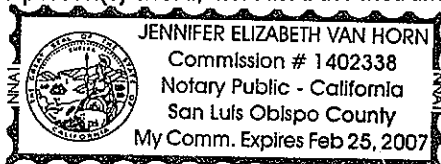


ACKNOWLEDGMENT

State of California
County of San Luis Obispo } ss.

On January 30, 2006, before me, Jennifer Elizabeth Van Horn a Notary Public, appeared Whitney Rosier personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.
Jennifer Elizabeth Van Horn
Signature of Notary Public



ACKNOWLEDGMENT

State of _____ }
County of _____ } ss.

On _____, before me, _____, a Notary Public, appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature of Notary Public

RESOLUTION NO. 06 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
ACCEPTING A GRANT OF AVIGATION EASEMENT
(ROSILEZ - 4889 DRY CREEK ROAD & 4540 HWY 46 EAST)

WHEREAS, the City has received a Grant of Avigation Easement from Joseph and Whitney Rosilez for the property located at 4889 Dry Creek Road and 4540 Highway 46 East, north of Highway 46 and west of Jardine Road.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. That the City Council accept the Grant of Avigation Easement provided by Joseph and Whitney Rosilez for property known as 4889 Dry Creek Road and 4540 Highway 46 East, located in the unincorporated area of the County north of Highway 46 and west of Jardine Road and authorize its execution and recordation.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 5th day of July 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk