



June 2, 2023

Teton County Planning & Zoning Commission
c/o Jade Krueger, Planning & Zoning Administrator
Teton County Courthouse
1510 Courthouse Drive
Driggs, Idaho 83422
Via email to Jkrueger@co.teton.id.us

Re: J&G Peacock Ranch, Public Agency Review

Planning & Zoning Commissioners,

The proposed J&G Peacock Ranch Subdivision is located within the Airport Traffic Pattern Overlay. The Airport Traffic Pattern Overlay is defined in the City of Driggs Land Development Code as *"encompassing all land on and around the airport to a distance of 14,000 feet from the runway centerline surface, except on the southeast side, where the boundary is 3,700 feet from the runway centerline surface. This difference accounts for the prescribed turning movements being on the north side of the airport."* The City's code requires that an Avigation Easement be executed for the unobstructed passage of aircraft, as a condition of any land use application. This definition and associated requirements are recommended by the Idaho Department of Transportation, Division of Aeronautics¹ and are adopted by the City in accordance with the Federal Aviation Administration (FAA) mandate that the airport operator, in this case the City of Driggs, adopt reasonable measures to ensure the best interest of the airport and safety².

We recognize that the Airport Traffic Pattern Overlay is not an overlay that is adopted by the County. However, we would like to respectfully request that the Planning & Zoning Commission and Board of County Commissioners consider including as a condition of approval of this subdivision that the applicant enter into an Avigation

¹ [Idaho Airport Land Use Guidelines](#)

² [FAA Airport Improvement Program Grand Assurances for Airport Sponsors](#), specifically Assurances No. 20 and 21.



208-354-2362 ext 2106
M-TH 8:30am - 5pm
F 8:30am - 1pm



lbernstein@driggsidaho.org
DRIGGSIDAHO.ORG



60 South Main Street
PO Box 48
Driggs, ID 83422



Easement with the City of Driggs. I have included a boilerplate Avigation Easement as an exhibit to this letter. In short, an Avigation Easement allows for the unobstructed passage of aircrafts and an understanding that aircrafts will be using the airspace.

Please reach out with any questions regarding the airport overlays or this request.

Thank you for your consideration and your service to Teton County.

Sincerely,

Leanne Bernstein, AICP CFM
Planning & Zoning Administrator
City of Driggs Planning and Building Department

Exhibit A – Airport Overlays
Exhibit B – Drafted Avigation Easement



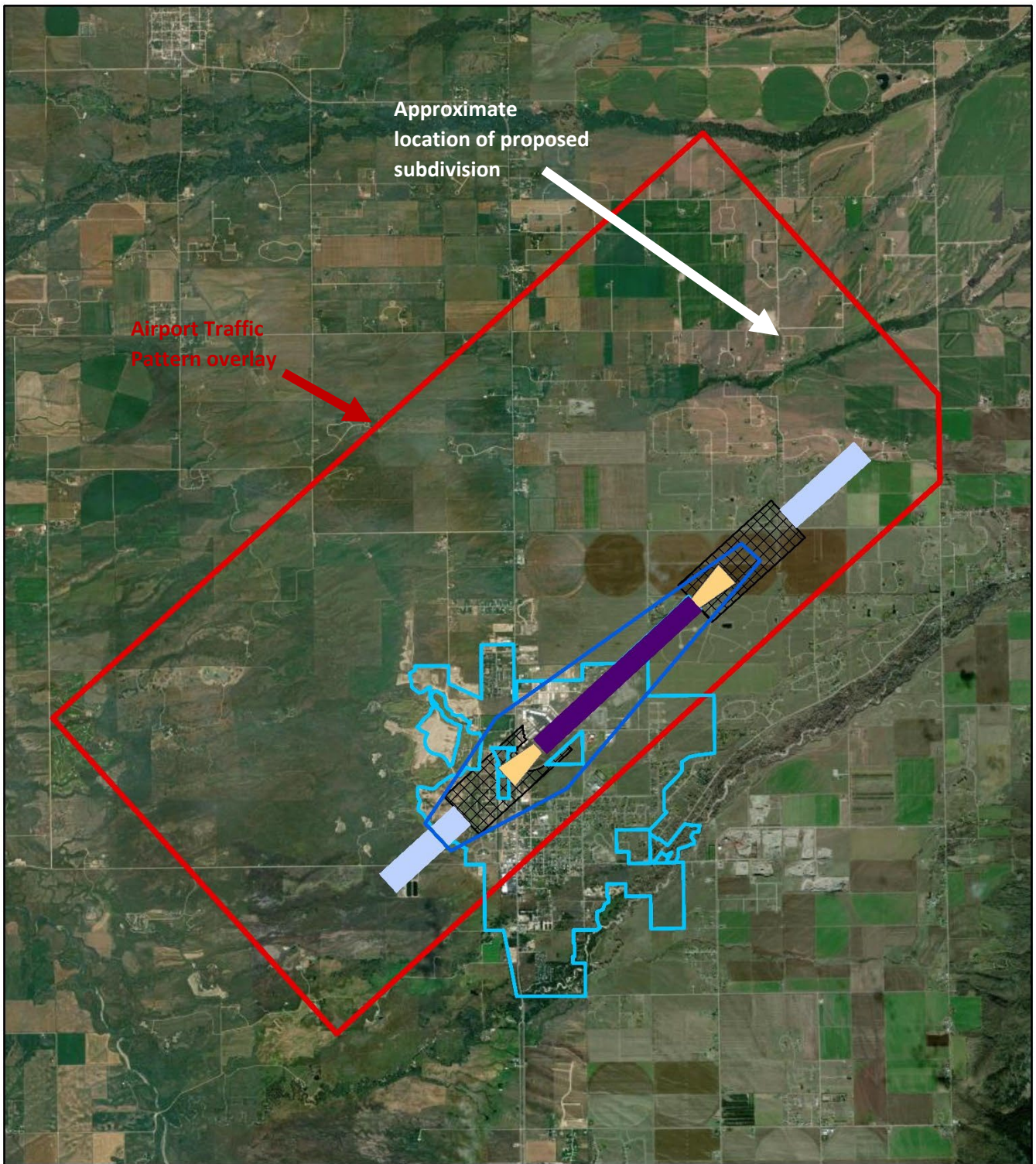
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Airport Overlays

- | | | |
|--|---|--|
|  Airport Object Free Area |  Airport Outer Critical Zone |  Airport Traffic Pattern Area |
|  Airport Runway Protection Zone |  Driggs City Boundary | |
|  Airport Protection Overlay |  Airport Inner Critical Zone | |

AVIGATION EASEMENT AGREEMENT – [Grantor Property]_____

THIS AVIGATION EASEMENT AGREEMENT (this "Agreement") is made as of the ____ day of _____ 20____, by and between _____ ("Grantor"), the address of which is _____ and the City of Driggs, a municipal corporation of the state of Idaho ("Grantee"), the address of which is 60 S Main St, Driggs, ID, 83422.

RECITALS

- A. Grantor owns certain real property, proposed to be developed in Teton County, Idaho ("Grantor's Property"), legally described as _____ as per the recorded plan thereof, Teton County, Idaho.
- B. Grantor's Property lies within the Traffic Pattern Area of the Driggs-Reed Memorial Airport, as defined by the 2022 Driggs Airport Master Plan.
- C. Grantor's Property is subject to regulations of the Zoning Chapter of the Driggs City Code ("Zoning Regulations"), and to 14 C.F.R. § 77 (the "Federal Regulations").
- D. The Driggs Airport Master Plan recommends acquisition of avigation easements as a condition of approval on residential development within the airport traffic pattern area.
- E. As of the date hereof, Grantee has conditionally approved the development of the property, with one condition being the recordation of an avigation easement over the Grantor's Property.
- F. Grantor is willing to grant Grantee an avigation easement over Grantor's Property in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Avigation Easement. Subject to the provisions of this Agreement, Grantor hereby grants to Grantee a non-exclusive, easement and right of way, appurtenant to the property on which Driggs-Reed Memorial Airport is located (the "Airport Property"), for the unobstructed passage of all aircraft, ("aircraft" being defined for the purposes of this Agreement as any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air) in the air space above Grantor's Property to an infinite height (the "Avigation Easement").
2. Scope of Easement. The Avigation Easement shall apply only to those portions of the airspace above the land surface of the Grantor's Property which are above the "imaginary surfaces" defined in the Federal Regulations and depicted on the Driggs-Reed Memorial Airport Layout Plan (the "Airspace"), as the same may apply to Grantor's Property as of the date hereof. The Airspace shall not be invaded or used by Grantor, nor shall Grantor authorize the use of the Airspace by others, without Grantee's prior written approval; provided however that this restriction shall apply only to physical obstructions and not to telecommunication, electrical or similar waves or transmissions to and from areas below the Airspace. Grantor will not construct, install, erect, or grow upon the applicable portions of Grantor's Property any structure, building, tree, or other object which extends into the Airspace, without the prior written approval of Grantee, which approval shall not be unreasonably withheld. Grantee shall have a continuing

right to keep clear from the Airspace buildings, structures, or improvements of any kind, trees, or other objects, including the right to remove or demolish any portions of such obstructions which extend into the Airspace which Grantee has not previously approved.

3. Waiver of Claims. Grantor hereby waives, remises and releases any right or cause of action it may now have or which it may have in the future against the City of Driggs, as the initial grantee under this Agreement, pertaining to or resulting from the passage of aircraft in the airspace above Grantor's Property. However, nothing stated in the foregoing waiver, grant and release shall release any other person, including, without limitation, any assignee, transferee, apportionee or successor of Grantee, from (i) any cause of action pertaining to or resulting from the operation of aircraft outside the scope of this Avigation Easement, or (ii) liability for damages to any person or property resulting from the unlawful or negligent operation of any aircraft above Grantor's Property.

4. Term. The term of this Agreement shall commence as of the date hereof and continue to and including the date upon which airport operations are no longer conducted at the Airport Property. Upon such date that airport operations are no longer conducted at the Airport Property, this Agreement shall become void. Following any apportionment and/or transfer of the Avigation Easement by Grantee, Grantor, or Grantor's successors or assigns, may terminate this Agreement as to such transferee by delivering written notice to such transferee, if such transferee permits, or fails to take all reasonable actions to prohibit, the operation of aircraft above the Grantor's Property, which operation violates the scope of the Avigation Easement. Upon such termination, the Avigation Easement shall become void as to such transferee only.

5. Severability. The enforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid or illegal, but rather the unenforceable, invalid or illegal provisions of this Agreement shall be deemed severed from this Agreement and this Agreement shall continue in full force and effect to the greatest extent permitted by applicable law. Notwithstanding the foregoing, in the event of any such severance that would prevent either party hereto from enjoying the benefit of its bargain for which this Agreement was negotiated, the parties hereto shall revise or modify this Agreement so as to exclude any unenforceable, invalid, or illegal provision, yet allow each party to enjoy the benefit of their respective bargains.

6. Attorney's Fees. In the event of any litigation, controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement, or the breach hereof, or the interpretation hereof, the prevailing party, whether by judgment or out of court settlement, shall be entitled to recover from the losing party, reasonable expenses, attorney's fees and costs incurred in connection therewith, for the enforcement of any judgment or award rendered therein.

7. Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below, or at such other addresses as may be specified by written notice:

If to Grantor:

If to Grantee:

Chairperson
Driggs Airport Board
PO Box 48
Driggs, ID 83422

Any communications so mailed shall be deemed delivered three (3) business days after mailing or when personally delivered.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

9. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

10. Recordation. This agreement may be recorded in the real property records of the clerk and recorder of the County of Teton, State of Idaho.

11. No Oral Amendments or Modifications. No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing and executed by the party to be bound thereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

CITY OF DRIGGS, IDAHO

ATTEST:

By: Mayor
City of Driggs
PO Box 48
Driggs, ID 83422

By: City Clerk

By: _____

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was subscribed, sworn and acknowledged before me by _____ on this _____ day of _____, 20____.

WITNESS my hand and official seal.

Notary Public
My commission expires: