



Board of Supervisors Memorandum

October 17, 2017

A Deed of Easement between Pima County and the United State Air Force for Conveyance of Restrictive Easements to the United State Air Force on County Properties within the Approach/Departure Flight Corridor

Background

The Federal Readiness and Environmental Protection Integration (REPI) program was established to prevent, remove or mitigate encroachment that can restrict training and operations of military installations. As you know, Davis-Monthan Air Force Base (DMAFB), in partnership with the County, submitted a project proposal to REPI and was awarded a \$1.5 million grant, with the opportunity to apply and receive additional funding over the next four fiscal years. As part of their submittal, the County proposed using past 2004 Bond acquisitions within the Base Approach/Departure Corridor (ADC) to leverage these federal funds. In July, the Board unanimously approved an Encroachment Management Agreement between the County and the United State Air Force (USAF) under REPI, setting the terms for the County to act on behalf of DMAFB to acquire property interests from willing sellers within identified priority areas to be conveyed to the USAF, at no additional cost to the County. Recently, the County was notified that DMAFB was given an additional \$2 million under REPI, bringing their total award to \$3.5 million, with a County match of \$1.5 million.

The County is able to match the \$1.5 million grant award by valuing restrictive easements on County properties acquired with bond funds earmarked for Base encroachment prevention and conveying them to USAF. The County identified several County properties within the Accident Potential Zone in the ADC, a sensitive and high priority area for the Base, for grant match consideration. Seventeen parcels, totaling 52 acres, were appraised for restrictive easements prohibiting development at a value of \$1,575,000 (Exhibit A). The USAF determined that conveyance of these restrictive easements would meet the REPI grant match requirement.

Recommendation

I recommend the Board of Supervisors approve the Deed of Easement to convey restrictive easements on the County-owned parcels identified in Exhibit A to the USAF, as the County match to the Federal REPI grant awarded to DMAFB.

Sincerely,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", is written over a horizontal line.

C.H. Huckelberry
County Administrator

CHH/dr

c: Diana Durazo, Special Projects Manager, County Administrator's Office
Neil Konigsberg, Manager, Real Property Services

(Leave blank for required recording information)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of ___, 2017, by Pima County, a political subdivision of the State of Arizona, 130 W. Congress Tucson, Arizona 85701, the "Grantor," and The United States of America, acting by and through the Secretary of the Air Force pursuant to delegated authority (the "Grantee"). When used in this Easement, unless the context otherwise specifies, "Grantor" includes Grantor's successors and assigns, and "Grantee" includes the assigns of The United States of America and the successors of the Secretary of the Air Force. The Grantor and the Grantee may be collectively referred to as "Parties," or each may be referred to as a "Party."

WITNESSETH

Grantor and Grantee are parties to that certain Encroachment Management Agreement, the "Agreement", dated July 21, 2017, concerning Installation Encroachment Management Plan in the vicinity of Davis-Monthan Air Force Base, Tucson, Arizona, which was entered into under the authority of 10 U.S.C. § 2684a. Under the Agreement, Grantor, as the "Eligible Entity," has agreed to share 50% in the Acquisition Costs for Real Property Interest(s), (as those terms are defined in the Agreement) acquired under that Agreement. Grantee has agreed that Grantor's donation to Grantee of Real Property Interests on property already owned by Grantor in the environs of the Installation can be used to satisfy Grantor's Acquisition Cost share obligation(s). This Deed of Easement is being entered into for that purpose. The Easement being conveyed by this Deed of Easement over the Property (as defined below) is valued at \$1,575,000.00 as evidenced by an appraisal (as defined in the Agreement, 8.4.1.1.)

For good and valuable consideration and the mutual covenants, terms, and conditions contained in this Easement, the Grantor hereby grants and conveys to the Grantee a restrictive use easement in perpetuity (this "Easement") on and over the land described in Exhibit A (the "Property"), on terms and conditions as set forth in this Easement.

The acquiring Federal agency is the Department of Defense, United States Air Force pursuant to 10 U.S.C. § 2684a.

1. Purpose. It is the purpose of this Easement to limit any development or use of the Property that would be incompatible with the mission of Davis-Monthan Air Force Base, Tucson, Arizona (the "Installation"), or that might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or near the Installation. The Easement rights granted to Grantee in this Deed of Easement will revert back to the Grantor if the Installation is closed.

2. Rights of the Grantee. To accomplish the purpose of this Easement, the Grantor conveys the following rights to the Grantee:

- a. To limit any development or use of the Property that would be incompatible with the mission of the Installation;
- b. To enter upon the Property at reasonable times in order to monitor compliance with, and enforce the terms of this Easement; provided, the entry shall be made after giving reasonable notice to the Grantor as each circumstance may permit, and the Grantee shall not unreasonably interfere with use and quiet enjoyment of the Grantor of the Property; and
- c. To prevent any activity on, or use of, the Property inconsistent with the purpose of this Easement, and to require the restoration of areas or features of the Property which may be damaged by any inconsistent activity or use, pursuant to Section 4 below.

3. Prohibited Uses. The Grantor is prohibited from any activity or use of the Property inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Subdivision or development, or any residential or household use at greater density than current residential use. Active recreational uses and Commercial activities are prohibited on the Property except for agriculture (as that term is defined below).

"Agriculture" means all methods of production and management of livestock, crops, trees, and other vegetation, as well as aquiculture, provided that the use complies with all other limitations in this section 3. This includes the related activities of tillage, fertilization, pest control, and harvesting as well as the feeding, housing, training and maintenance of animals such as cows, sheep, goats, hogs, horses, and poultry. It does not include the sale of agricultural products produced on the Property.

- b. No structure or tree may exceed 80 feet above ground level.
- c. No lighting shall be permitted that may be dangerous, distracting, or misleading to aircraft operating from the Installation. This type of lighting includes, but is not limited to, strobe lights, non-emergency vehicle rotating beacons, or light sources above 16,000 lumens. Light sources above 16,000 lumens must be angled 15 degrees below the horizon.

d. No operations of any type shall be permitted that produce smoke, glare, or other visual hazards, or that encourage large concentrations of birds that may be dangerous for aircraft operating from the Installation.

e. Processing, storage, wholesale trade, or distribution of chemical, petroleum, and rubber products and other hazardous or highly flammable materials.

4. Enforcement and Remedies. Upon any breach of a term of this Easement, the Grantee may institute suit to enjoin any breach or enforce any term by injunction and require the Property be restored promptly to the condition required by this Easement. The remedies of the Grantee shall be cumulative, and shall include any other rights and remedies available to the Grantee at law or in equity.

5. Discretion of the Grantee. Enforcement of the terms of this Easement shall be undertaken at the discretion of the Grantee. No failure on the part of the Grantee to enforce any term of this Deed on one occasion shall discharge or invalidate that term or any other term of this Deed, or affect the enforcement right of the Grantee in the event of a subsequent breach or default.

6. Notices. Any notice, approval, or communication that either Party is required or desires to give related to this Easement must be given in writing and may be served personally, including by recognized courier service, or sent by certified mail, return receipt requested, by the U.S. Postal Service, to:

Grantor: Pima County Administrator
130 W. Congress, 10th Floor
Tucson, AZ 85701 (520)724-8661

Real Property Services
Public Works Center
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701 (520)724-6313

Department of the Air Force: Ms. Kacey Carter, Base Community Planer
3775 S. Fifth St., Building 4201
Davis-Monthan AFB, AZ 85707-9853
520-228-3291

Or to any other address a Party may designate by written notice to the other Party.

7. Grantor's Rights. Grantor retains all rights to use the Property in any manner not inconsistent with the rights granted hereunder to the Grantee.

8. Subsequent Transfers. The Grantor further agrees to give written notice, by the means specified in Section 6, to the Grantee of the transfer or assignment of any interest in the Property at least twenty (20) days prior to it. The Grantor agrees to make any such transfer or assignment subject to the terms of this Easement.

9. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of the invalid provision to persons or circumstances other than those in favor of which it is found to be invalid, as the case may be, shall not be affected.

10. Runs with the Land. The covenants, terms, conditions, and restrictions of this Easement shall be deemed to touch and concern, and run with, the land.

11. Rights of Third Parties. This Easement is being made subject to existing utility and other public and private easements, and rights, restrictions, covenants, and conditions affecting or pertaining to the Property. If Grantor grants any other easements to third parties, it will notify the Grantee(s) and require such third party grantees to coordinate their use of the property with the Grantee(s).

12. Entire Agreement. This Easement sets forth the entire agreement of the Parties for the conveyance of a restrictive easement on the Property, and supersedes all prior discussions, negotiations, understandings, or agreements, oral or written, relating to this Easement, all of which are merged into this Deed of Easement, with the exception of the Management Agreement.

IN WITNESS WHEREOF, the Grantor has affixed its signature on the day and year written above.

(SIGNATURES ON NEXT PAGES)

Executed this day by the duly authorized officer of the Grantor:

PIMA COUNTY, a political subdivision of the State of Arizona


By: _____
Sharon Bronson, Chair
Pima County Board of Supervisors

ATTEST:

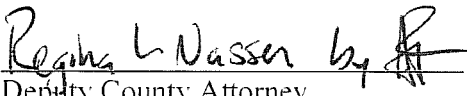
Clerk of the Board of Supervisors

Date: _____

Approved as to Content:

By: 
C.H. Huckelberry
Pima County Administrator

Approved as to Form:


Regina L. Nasser
Deputy County Attorney

This Easement is hereby accepted as Grantee.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have caused this Easement to be executed in their names as of the day and year indicated below.

THE UNITED STATES OF AMERICA, acting
by and through **THE SECRETARY OF THE AIR
FORCE**

By:

ROBERT E. MORIARTY, P.E.

Director

Installations Directorate

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF BEXAR §

This instrument was acknowledged before me on _____, 2017, by
ROBERT E. MORIARTY, personally known to me to be the Director, Installations Directorate
of the Air Force Civil Engineer Center.

Notary Public, State of Texas

Printed Name

Commission Expiration Date

Exhibit A

Below are the Properties Pima County will restrict through easements, located in Pima County, and within the Davis-Monthan Air Force Base identified Accident Potential Zones, totaling approximately 51 acres. Map of properties included as Exhibit B.

PARCEL	ACRES	OWNERSHIP	LEGAL
141030310	2.12	PIMA COUNTY	N280.5' M/L OF W330' M/L OF E660' M/L OF SW4 SE4
141030320	2.12	PIMA COUNTY	N280.5' M/L E2 SW4 SE4 EXC W330' M/L
141030330	4.25	PIMA COUNTY	S280.5' M/L N561' M/L E2 SW4 SE4 4.25 AC
141030520	4.22	PIMA COUNTY	E2 SE4 SE4 EXC N1008' & EXC E30' & EXC S50' OF E280' 4.22 AC SEC 7-15-15
141031000	1.49	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 13
141031010	3.94	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 14
141031020	1.89	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 15
141031030	1.94	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 16
141031040	2.23	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 17
141031050	3.36	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 18
141031060	1.26	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 19
141031070	0.85	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 20
141031080	0.99	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 21
141031090	0.74	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK LOT 22
141031250	9.93	PIMA COUNTY	RINCON VALENCIA INDUSTRIAL PARK COMMON AREA A
14103049A	5.05	PIMA COUNTY	E2 SW4 SE4 SE4 5.00 AC SEC 7-15-15
14103049B	4.55	PIMA COUNTY	W2 SW4 SE4 SE4 EXC W30' 4.55 AC

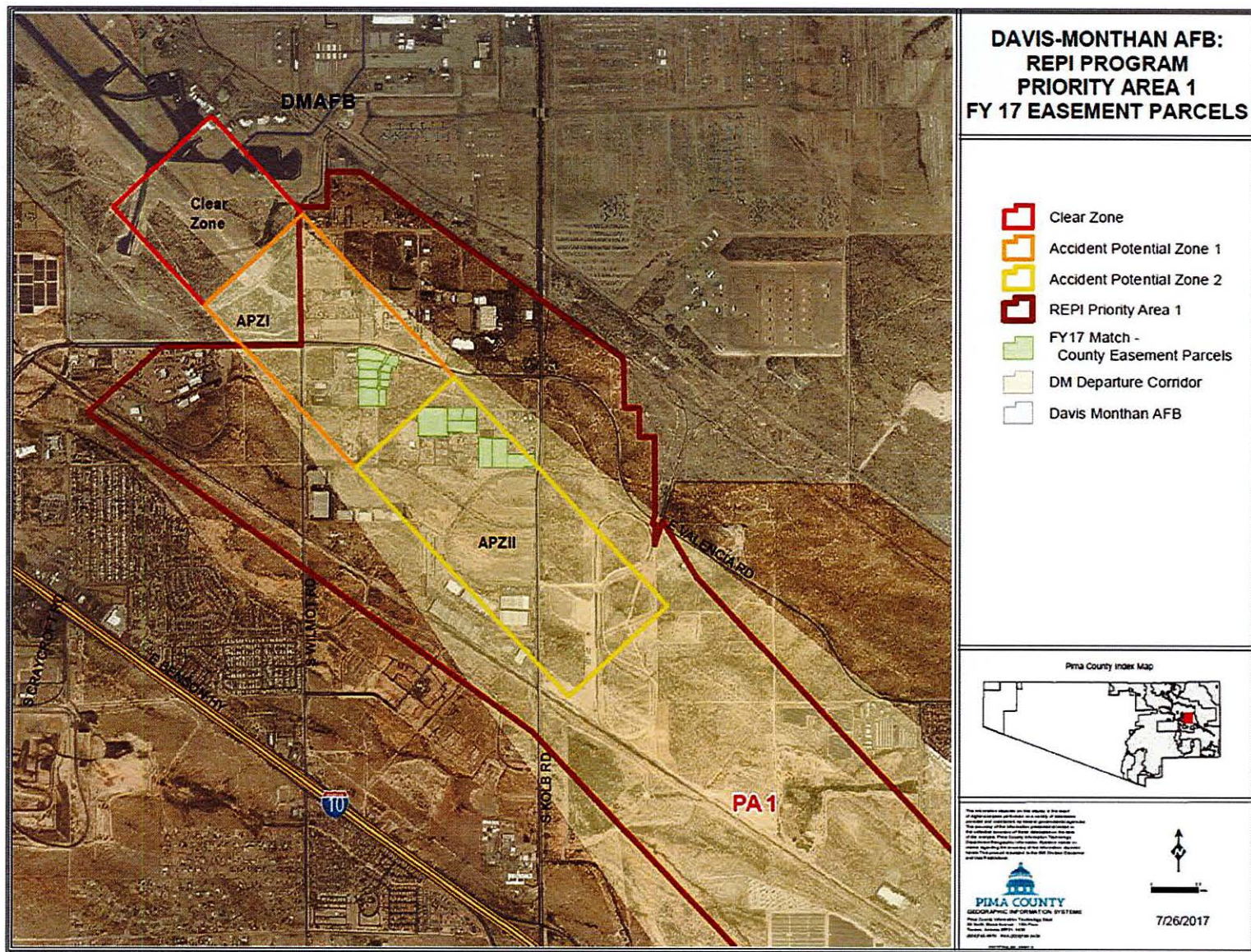


Exhibit B