

RESOLUTION NO. 2019-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A SLOPE EASEMENT BETWEEN THE CITY OF MARINA AND
MARINA DEVELOPERS, INC., AND; AUTHORIZING THE CITY MANAGER TO
EXECUTE THE EASEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT
TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, on February 5, 2019, City staff approved the mass grading plans for Phase 5A of the Sea Haven subdivision. The mass grading scope included overall site slopes and retaining walls necessary for construction. The Developer construction team for the Sea Haven subdivision has found that the construction of residential Phase 5A will require the grading within City-owned property, and;

WHEREAS, on April 1, 2019, the City of Marina entered into an agreement with WCP Developers, LLC, for a right to enter the City-owned property (Assessor Parcel Number 031-271-010) currently used by Marina Coast Water District (MCWD) for a water tank site through a utility easement established in 2001. The agreement allows the Developer to grade within the City-owned property and requires an easement to establish the grading necessary for construction, and;

WHEREAS, on September 4, 2019, staff brought the slope easement to the City Council for consideration of approval. Council directed staff to review the item regarding questions on the entities requesting the easement and the value of the easement, and;

WHEREAS, staff has evaluated the easement documents and have revised it in accordance with Council direction and Developer discretion. The ownership of the easement will be established with WC Marina, LLC with the easement valued at \$4,100. The valuation of the easement has been compared to recent property valuation that are comparatively similar in nature and location. Both MCWD and City staff have reviewed the easement and find it acceptable and recommend for approval, and;

WHEREAS, should the City Council approve this request, the developer will be providing payment to the City for the value for the easement. The Developer shall inspect, maintain, repair or replace improvements within the easement.

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

1. Approve a slope easement between the City of Marina and Marina Developers, Inc. (“Developer”), and;
2. Authorize the City Manager to execute the Easement Agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 3rd day of December 2019, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, O’Connell, Morton

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Urrutia, Delgado

ABSTAIN: COUNCIL MEMBERS: None

Gail Morton, Mayor Pro-Tem

ATTEST:

Anita Sharp, Deputy City Clerk

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

WC Marina, LLC
c/o Wathen Castanos
1446 Tollhouse Road, Suite 103
Clovis, CA 93611
Attn: Josh Peterson

Space Above This Line Reserved for Records' Use

**AGREEMENT
FOR
SLOPE EASEMENT**

This Agreement for Slope Easement ("Easement Agreement") is made this ____ day of December, 2019 by and among the city of Marina, a California municipal corporation ("Grantor"), on the one hand, and Grantor Fresno Clovis Investments, LLC, a California limited liability company, Wathen Castanos Peterson Coastal, LP, a California limited partnership, and Wathen Castanos Peterson Homes, Inc., a California corporation, together as tenants in common, on the other hand (collectively, "Grantee"), (hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties") for the purpose of establishing a slope easement over, upon and across a portion of Grantor's real property for the benefit of Grantee's property and their successors and assigns. This Easement Agreement is effective as of the date of execution by the last of the parties to execute this Easement Agreement ("Effective Date").

RECITALS

WHEREAS, Grantor is the owner of certain real property located in city of Marina, California, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter, "Grantor's Property");

WHEREAS, Grantee is the owner of that certain real property in the city of Marina, California, more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof ("Grantee's Property");

WHEREAS, Grantee has entered into a contract to sell Grantee's Property to a third party intending to develop Grantee's Property with a residential subdivision; and

WHEREAS, the development of Grantee's Property will result in an elevated grade separation requiring a slope on Grantor's Property to support the development on Grantee's Property.

WHEREAS, Grantee has requested, and Grantor, subject to the conditions set forth herein, has agreed to grant and convey to Grantee, a non-exclusive slope easement over, upon and across that portion of Grantor's Property described in Exhibit "C" and illustrated in Exhibit "D" (collectively hereinafter "Easement Area"), for the specific and limited purposes hereinafter set forth herein.

NOW THEREFORE, for and in consideration of the foregoing premises, and of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Section 1. Recitals. The above recitals are true and correct, form a material part of this easement and are incorporated herein by reference.

Section 2. Grant of Easement. In consideration of Grantee's payment to Grantor of Four Thousand One Hundred and 00/100 (\$4,100.00), which payment shall be made at the time of mutual execution of this Easement Agreement, Grantor hereby declares, creates, grants, conveys and imposes to Grantee, a non-exclusive slope easement, over, upon and across the Easement Area within the boundaries of Grantor's Property for the purposes hereinafter stated, all subject to the terms, conditions and limitations set forth within (the "**Easement**").

Section 3. Slope and Slope Purpose. Subject to the terms and conditions set forth in this Easement Agreement, Grantee, and Grantee's agents, contractors, employees, consultants, successors and assigns shall have the right to enter upon the Easement Area for purposes of creating, constructing, maintaining, repairing, inspecting and replacing an earthen slope within the Easement Area ("Slope") for the purpose of supporting any and all improvements constructed, erected, or placed on Grantee's Property as part of the development of Grantee's Property, together with the rights, easements, privileges and appurtenances in or to said Easement Area which may be required for the full enjoyment of the rights herein granted ("Slope Purpose").

Section 4. Grantor's Use of Easement Area. Nothing in this Easement Agreement shall limit in any way Grantor's present or future use of the Easement Area, consistent with all applicable laws, rules, ordinances and regulation, provided that Grantor's use of the Easement Area in no way interferes with or destroys the structural integrity of the slope and its intended purpose of providing support to the improvement and development of Grantor's Property. Notwithstanding the foregoing, nothing in this Easement Agreement prevents or otherwise prohibits Grantee from entering upon the Easement Area for purposes of inspecting, maintaining, repairing or replacing said slope.

Section 5. Incidental Rights. The Easement hereby created and granted include the creation of all incidental rights reasonably necessary for the use and enjoyment of the Easement for its intended purposes, including, specifically, the right of entry for purposes of maintenance, operation, repair and construction within the Easement Area.

Section 6. Conveyance. With or without specific reference thereto, the conveyance of an interest in any portion of the Easement Area and the Grantee's Property shall be subject to the respective burdens and benefits of the Easement hereby created and granted to the same extent as if all of the terms of this instrument were set forth in such conveyance in full.

Section 7. Runs With The Land. The easements, covenants, agreements and conditions contained or expressed herein shall not be personal (except as otherwise expressly provided herein) but shall run with the land and shall be binding upon and inure to the benefit of the owners of all portions of Grantee's Property and the Easement Area, their mortgagees, any purchaser at a foreclosure sale, each of

the successors and assigns of all such parties, as well as the tenants, agents, licensees, guests and invitees of each of them.

Section 8. Indemnification. Each party (the “Indemnifying Party”) shall indemnify, save, defend and hold harmless the other party, as well as its parent company, subsidiaries, affiliates and successors (and each of those companies’ shareholders, officers and directors) as the (“Indemnified Party”) from and against any and all third party actions, claims, demands, suits damages, losses, liabilities (including court costs and reasonable attorneys’ and experts’ fees) to the extent resulting from Indemnifying Party’s (a) breach of this Easement Agreement; (b) negligent action or omission of Indemnifying Party or any of its employees, contractors, subcontractors, agents or representatives, or any intentional misconduct by any of them; (c) any claim of warranty; or (d) violation of any applicable federal, state, and/or local code, law, statute, rule, regulation and/or ordinance. Notwithstanding the preceding sentence, Indemnifying Party shall have no such indemnification obligations to the extent any such action, claim, demand, suit, damage, loss or liability is caused by the negligence or intentional misconduct of the Indemnified Party

Section 9. Damage Caused by Negligence or Misconduct. Notwithstanding anything to the contrary contained in this Easement Agreement, if any repair is required by reason of the negligence or willful misconduct of a Party or such Party’s agent, representative, guest, relative, licensee, employee, contractor (or any other person whose presence in the Easement Area was permitted by such Party), then that Party, at his or her sole cost and expense, shall promptly make any and all repairs necessary to restore the Slope to its condition immediately preceding such damage.

Section 10. Hazardous Materials. No Party to this Easement Agreement shall use, dispense, store, transport, expose Hazardous Material to or upon the Easement Area, or authorize or direct the use, dispensing, storage, transportation or exposure of Hazardous Materials to or upon the Easement Area. For purposes of this Easement Agreement, the term “Hazardous Materials” means any material or substance which is (i) defined as a “hazardous waste,” extremely hazardous waste,” “restricted hazardous waste,” “hazardous material,” “hazardous substance,” or any similar formation under or pursuant to any California or Federal statute or common law rule; (ii) petroleum and natural gas liquids as those terms are used in Section 109(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 6901, et seq. (41 U.S.C. Section 6903); (iii) asbestos; (iv) polychlorinated biphenyls; (v) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C., Section 1251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (vi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903); or (vii) defined as a “hazardous substance” pursuant to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (41 U.S.C. Section 9601).

Section 11. Termination and Amendment. This Easement Agreement may be terminated, changed, modified or amended, in whole or in part, only by a written and recorded instrument executed by all of the then-owners of record of the parcels encumbered by this Easement Agreement. Notwithstanding the foregoing, because the Slope and Easement are conditions imposed by the City of San Luis Obispo for the development thereof, this Slope Easement may not be terminated, modified or amended without the prior written consent of the City of San Luis Obispo. Neither Party herein, nor any successor in interest or

assign, shall have any right to claim abandonment or termination of easement, adverse possession, or any other prescriptive right.

IN WITNESS WHEREOF, this Easement Agreement is executed by Grantor and Grantee and effective on the Effective Date.

GRANTOR

CITY OF MARINA
a California municipal corporation

By: _____
Name: _____
Title: _____

Dated: December __, 2019

GRANTEE

GRANTOR FRESNO CLOVIS INVESTMENTS,
LLC, a California limited liability company

By: _____
Neema Assemi, Manager

Dated: December __, 2019

WATHEN CASTANOS PETERSON COASTAL,
LP, a California limited partners

By: Assemi Group, Inc.,
a California corporation

By: _____
Farid Assemi, President

Dated: December __, 2019

WATHEN CASTANOS PETERSON HOMES,
INC., a California corporation

By: _____
Joshua E. Peterson, President

Dated: December __, 2019

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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 upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

This area for official notarial seal

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____, before me, _____,
Notary Public, personally appeared _____,
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) 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 upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

This area for official notarial seal

Exhibit "A"
Legal Description of Grantor's Property

That certain real property situated in the City of Marina, County of Monterey, State of California, described as follows:

MCWD Parcel as shown on Tract No. 1465 Marina Heights Phase 1 Final Map recorded in Volume 23 Cities & Towns Page 29, Official Records of Monterey County, California.

Exhibit “B”
Legal Description of Grantee’s Property

That certain real property situated in the City of Marina, County of Monterey, State of California, described as follows:

Parcel 1 Remainder as shown on Tract No. 1478 Marina Heights Phase 2 Final Map recorded in Volume 23 Cities & Towns Page 42 Official Records of Monterey County, California.

Exhibit “C”
Legal Description of Easement Area

LEGAL DESCRIPTION

Situate in the lands of former Fort Ord

A slope easement over and across a portion of the MCWD Parcel described in Document #2001090792, as shown on Sheet 3 and labeled "not a part of this subdivision" near the westerly portion of Parcel 1 on the map "Tract No. 1465, Marina Heights Phase 1" filed in Volume 23 of "Cities & Towns" at Page 29, Official Records of Monterey County, said easement being more particularly described as follows:

A strip of land 60 (sixty) feet wide lying along, contiguous to and on the Northwesterly side of the following line:

Beginning at the most easterly corner of said MCWD Parcel; thence along the boundary of said MCWD Parcel, South 40°36'05" West, 368.78 feet.

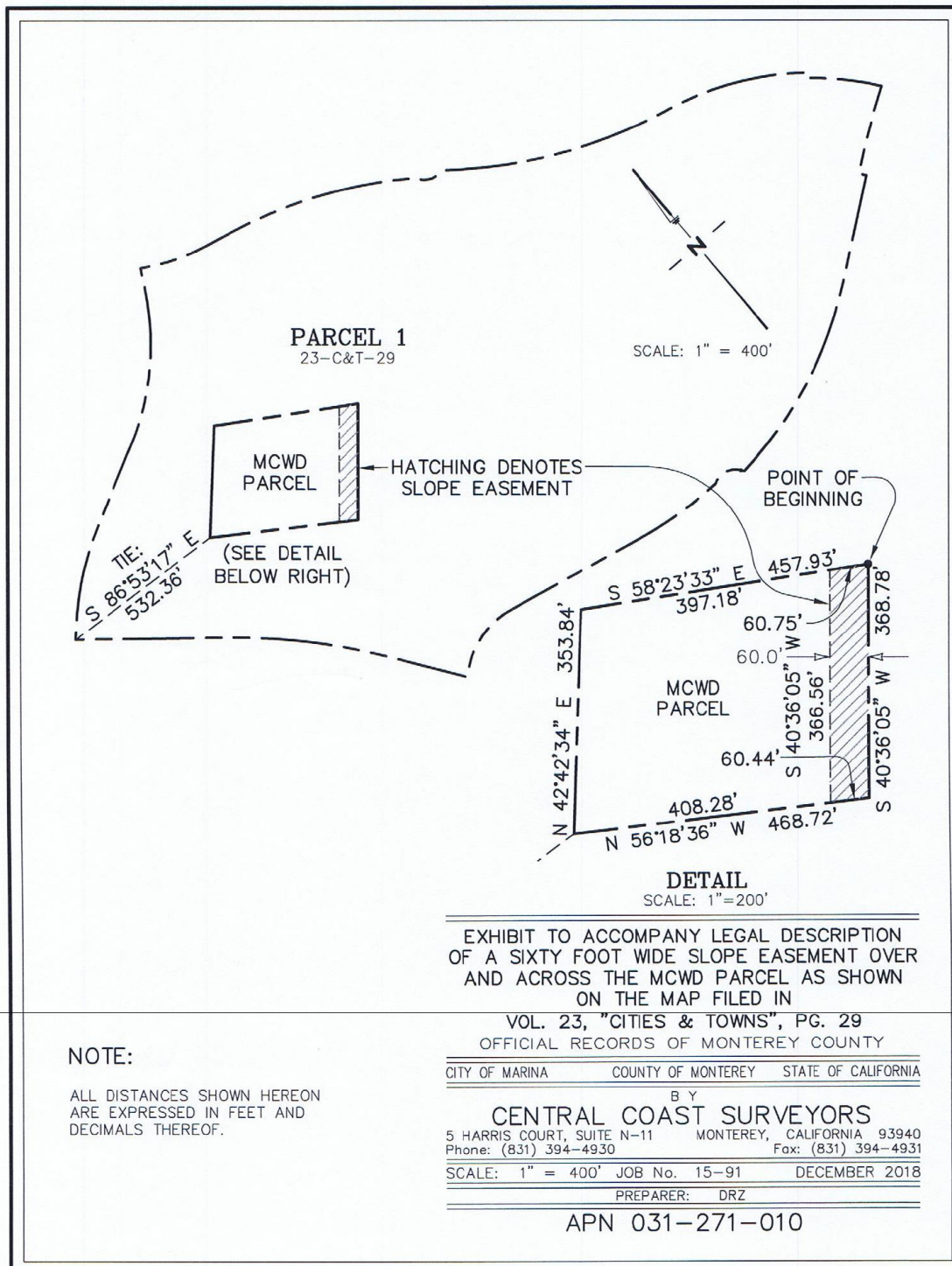
Said strip of land being extended or foreshortened to the boundary of said MCWD Parcel.

Containing 22,060 square feet, more or less.



12/20/13

Exhibit "D"
Illustration of Easement Area



Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 3, 2019

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2019-, APPROVING A SLOPE EASEMENT BETWEEN THE CITY OF MARINA AND MARINA DEVELOPERS, INC., AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE EASEMENT AGREEMENT 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. 2019-, approving a slope easement between the City of Marina and Marina Developers, Inc. (“Developer”), and;
2. Authorizing the City Manager to execute the Easement Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

On February 5, 2019, City staff approved the mass grading plans for Phase 5A of the Sea Haven subdivision. The mass grading scope included overall site slopes and retaining walls necessary for construction. The Developer construction team for the Sea Haven subdivision has found that the construction of residential Phase 5A will require the grading within City-owned property.

On April 1, 2019, the City of Marina entered into an agreement with WCP Developers, LLC, for a right to enter the City-owned property (Assessor Parcel Number 031-271-010) currently used by Marina Coast Water District (MCWD) for a water tank site through a utility easement established in 2001. The agreement allows the Developer to grade within the City-owned property and requires an easement to establish the grading necessary for construction.

On September 4, 2019, staff brought the slope easement to the City Council for consideration of approval. Council directed staff to review the item regarding questions on the entities requesting the easement and the value of the easement.

ANALYSIS:

Staff has evaluated the easement documents and have revised it in accordance with Council direction and Developer discretion. The ownership of the easement will be established with WC Marina, LLC with the easement valued at \$4,100. The valuation of the easement is based upon a square foot cost of a little over 18 cents determined in a recent appraisal for the Imjin Parkway Project with the same open space zoning.

Both MCWD and City staff have reviewed the easement and find it acceptable and recommend for approval.

FISCAL IMPACT:

Should the City Council approve this request, the developer will be providing payment to the City for the value for the easement. The Developer shall inspect, maintain, repair or replace improvements within the easement.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina