

RESOLUTION NO 2016-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ACTING ON BEHALF OF THE CITY OF MARINA AND ON BEHALF OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY APPROVING DESIGNATING WATHEN CASTANOS HOMES AS A PRE-APPROVED HOMEBUILDER FOR PURPOSES OF THE OPTION AGREEMENT

WHEREAS, The City of Marina and the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, the Redevelopment Agency of the City of Marina was dissolved in accordance with State law effective February 1, 2012 and the Successor Agency succeeded to the former Redevelopment Agency's rights and obligations under the Option Agreement; and

WHEREAS, At the regular meeting of March 4, 2004, the City Council adopted Ordinance No. 2004-06 adopting the Final Development Agreement for the Marina Heights Project, and;

WHEREAS, the Option Agreement includes a list of homebuilders that are pre-approved transferees of the Developer's rights and obligations under the Option Agreement and the Final Development Agreement;; and

WHEREAS, Cypress Marina Heights has requested that Wathen Castanos Homes be added to the list of Pre-Approved Homebuilders; and

WHEREAS, the City and the Successor Agency have determined that Wathen Castanos is comparable to the Pre-Approved Homebuilders with respect to financial capability, experience, reputation, integrity, purchaser satisfaction and quality of design and construction.

NOW THEREFORE, BE IT RESOLVED BY THE City Council of the City of Marina acting on behalf of the City and the Successor Agency to the Marina Redevelopment Agency thereby

1. Determines that Wathen Castanos Homes is comparable to the Pre-Approved Homebuilders with respect to financial capability, experience, reputation, integrity, purchaser satisfaction and quality of design and construction.
2. Approves adding Wathen Castanos Homes to the list of Pre-Approved Homebuilders pursuant to the Option Agreement and Development Agreement.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th day of February 2016, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, City Clerk

RESOLUTION NO. 2016-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
ISSUING A NOTICE OF COMPLIANCE TO CYPRESS MARINA HEIGHTS, LP RELATED
TO THE DEVELOPMENT AGREEMENT REGARDING THE MARINA HEIGHTS
PROJECT

WHEREAS, The City of Marina and the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. entered into an Option Agreement dated November 14, 2002, and;

WHEREAS, At the regular meeting of March 4, 2004, the City Council adopted Ordinance No. 2004-06 adopting the Final Development Agreement for the Marina Heights Project, and;

WHEREAS, In accordance with the terms of the Final Development Agreement, the City is to conduct an annual review of the Developers good faith compliance with the Final Development Agreement; and

WHEREAS, the City has reviewed the Developer's actions and activities related to the development and construction of the Marina Heights Project and has determined that the Developer has demonstrated good faith compliance with the Final Development Agreement; and

WHEREAS, the staff report accompanying this resolution provides additional information on the Developer's good faith compliance with the Final Development Agreement;

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

1. Determines that Cypress Marina Heights, LP has demonstrated good faith compliance with the Final Development Agreement and the City Council directs the staff to issue a Notice of Compliance to the Developer as set forth in the Final Development Agreement

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 17th day of February 2016, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, City Clerk

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016-,
ISSUING A NOTICE OF COMPLIANCE BY CYPRESS MARINA
HEIGHTS, LP RELATED TO THE DEVELOPMENT AGREEMENT
FOR THE MARINA HEIGHTS PROJECT**

**CITY COUNCIL ACTING BOTH ON BEHALF OF THE SUCCESSOR
AGENCY TO THE MARINA REDEVELOPMENT AGENCY AND THE
CITY CONSIDER ADOPTING RESOLUTION NO. 2016-, APPROVING
DESIGNATING WATHEN CASTANOS HOMES AS A PRE-APPROVED
HOMEBUILDER PURSUANT TO THE MARINA HEIGHTS OPTION
AGREEMENT**

REQUEST:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2016-, issuing a notice of compliance by Cypress Marina Heights, LP related to the Development Agreement for the Marina Heights Project.
2. Consider adopting Resolution No. 2016-, approving designating Wathen Castanos Homes as a Pre-Approved Homebuilder pursuant to the Marina Heights Option Agreement.

BACKGROUND:

The City of Marina and the Redevelopment Agency of the City of Marina and Cypress Marina Heights, L.P. (“Developer”) entered into an Option Agreement dated November 14, 2002. The Option Agreement provided Cypress Marina Heights with the option to acquire a 248-acre site comprised of a portion of the Abrams Park and Upper Patton Park sections of the former Fort Ord. The Option Agreement stipulated the terms and conditions for development of the property. At the time the Option Agreement was entered into the City of Marina and the Developer entered into an initial statutory development agreement pursuant to Government Code Section 65864. The initial statutory development agreement was replaced by the final development agreement approved by the City Council on March 3, 2004 (“Development Agreement”). At the regular meeting of March 3, 2004, the City Council approved the Final Environmental Impact Report, General Plan Amendments, Zoning Ordinance and Map Amendments, Tentative Map, and Final Development Agreement for the Marina Heights Project. The former Redevelopment Agency transferred the Property to the Developer in accordance with the Option Agreement terms in 2006. Upon dissolution of the Marina Redevelopment Agency in accordance with State law, the Option Agreement transferred to the Successor Agency to the Marina Redevelopment Agency. The City Council acts as the governing board of the Successor Agency.

The Final Development Agreement establishes the development rights for the Marina Heights project. The Final Development Agreement and the Option Agreement also address project timing and fees. The Final Development Agreement and the Option Agreement include a Schedule of Benchmarks setting out the expected time frames for development of the property. The original Schedule of Benchmarks was amended by the First Implementation Agreement that was approved by the City Council in October 2007.

As required by the Tentative Map Conditions of Approval, at the regular meeting of September 9, 2004, the Planning Commission approved the Marina Heights Community Design Guidelines. The Design Guidelines contain concepts and specifications for the design of the housing units for the Marina Heights Project.

The project, as originally contemplated was to be developed in four phases. The 1,050 residential units contemplated for the property were to be developed as follows: Phase 2 comprised of 299 units, Phase 3 comprised of 295 units, Phase 4 comprised of 288 units, and Phase 5 comprised of 168 units. Phase 1 consists of the construction of major roads and utilities to support the four residential phases.

At the regular meeting of March 21, 2006, the City Council adopted Resolution No. 2006-56, approving the Phase 1 Final Map and a Subdivision Improvement Agreement for the major roads and utilities for the Marina Heights Project. At the regular meeting of September 6, 2006, the City Council adopted Resolution No. 2006-228, approving the Phase 2 Final Map and a Subdivision Improvement Agreement for the first 299 residential units for the Marina Heights Project.

After responding to and the settlement of litigation that delayed the project for eighteen (18) months, Marina Heights began construction in 2006 on Phase 1 and Phase 2 subdivision improvements. Cypress Marina Heights entered into negotiations with various homebuilders to construct the homes, but as the economy slowed down and eventually collapsed, all negotiations ceased. Cypress Marina Heights stopped construction on the Phase 1 and Phase 2 subdivision improvements that were approximately 80% complete. Although Cypress Marina Heights continued to reach out to homebuilders, due to the continued weak housing market, none of these transactions closed and the Phase 1 and Phase 2 subdivision improvements remain uncompleted at this time. As part of Cypress Marina Heights efforts to find homebuilders for the project, an amendment to the Option Agreement was proposed in 2008 to expand the list of Pre-Approved Builders from the original list of 4 homebuilder to include an additional 10 homebuilders. The City Council approved the Amendment to the Option Agreement in 2008.

The Developer is now in the process of negotiating with homebuilders for the first phase of residential construction. As part of those negotiations, the homebuilders have requested that the City provide estoppel certificates stating that there are no defaults under the Option Agreement or the Development Agreement. Both agreements call for the City to grant requested estoppel certificates within a limited time period. The Development Agreement, in accordance with the Government Code, requires an annual review of the Developer's compliance with the Development Agreement. Section 4.5 of the Development Agreement states that as part of the annual review of the Developer's compliance with the Development Agreement the City shall make a finding regarding whether the Developer is in good faith compliance with the Agreement and issue either a notice of compliance or a notice of non-compliance.

The Developer is negotiating with homebuilders, some of whom are not on the list of Pre-Approved Builders. The Developer has requested that Wathen Castanos be added to the list of Pre-Approved Homebuilders.

ANALYSIS:

Development Agreement Compliance.

The Development Agreement grants to the Developer vested rights to develop the project as contemplated in the Specific Plan and other City approvals for the project for the term of the

Development Agreement. The Development Agreement expires on November 30, 2018. The Government Code provisions granting cities authority to enter into development agreements requires that cities periodically but at least once every 12 months, review the development agreement, at which time the applicant is to demonstrate good faith compliance with the requirements of the development agreement. The Marina Heights Development Agreement includes language consistent with the statute requiring an annual review of the Developer's compliance with the terms of the Agreement. If the Developer is found to be in compliance the City is to issue a notice of compliance. The City and the Developer completed the annual review of the Developer's compliance with the Development Agreement in the early years of the Agreement. However, once project construction stopped, the annual reviews also ceased.

The essential elements of the Development Agreement are that the Developer is required to develop the project consistent with the City approvals granted at or prior to the approval of the Development Agreement, the City is prohibited from applying any statutes or ordinances adopted after the approval of the Development Agreement to the project except in limited circumstances and the Developer is required to pay certain impact fees to the City as set out in the Agreement.

The Development Agreement does include the Schedule of Benchmarks for the development of the Project, as amended by the Implementation Agreement. The Development Agreement, at Section 2.6 provides that the "Developer shall use all commercially reasonable efforts to develop and construct the Project within the time frames shown in the Benchmarks, a listing of which is attached as Exhibit D." Section 2.6 goes on to state that if the Developer fails to perform within the time period set forth in the Schedule of Benchmarks, the City can declare the Developer in default but Developer shall not be default for as long as the Developer makes all reasonable efforts to diligently, continuously and in good faith work toward such performance. Thus the Development Agreement does not require that the Developer complete the Project in accordance with the timing set out in the Schedule of Benchmarks but rather requires that the Developer use commercially reasonable efforts to construct the Project within the timeframes.

The Developer has made significant efforts toward development of the Project including undertaking significant site work, the expenditure of substantial sums of money and negotiations with homebuilders. These efforts were proceeding until the economy slowed down and eventually came to a standstill. Although construction on the Project has essentially stopped since the worldwide economic meltdown, the Developer has continued to make efforts to attract homebuilders to the Project. Based on these efforts it appears that the Developer has made commercially reasonable efforts to develop the Project.

The Development Agreement also sets out the processing and impact fees to be paid by the Developer to the City. The fees to be charged to the Developer for processing building permits are frozen by the Development Agreement. The Development Agreement also makes clear that the fees that are required to be paid are due at the time of a building permit application. To date, Marina Heights is in compliance with all the fee payments for project costs as required by the Option Agreement and the Final Development Agreement. It should be noted that Cypress Marina Heights has made advanced payments to the City in the amount of \$804,566 for grading permits, subdivision improvement plan checks and inspections, and project management and administrative costs. These advance payments are to be credited against future building permit fees as building permits are issued.

Based on a review of the Development Agreement and the Developer's efforts to develop and construct the Project, the Developer seems to be in good faith compliance with the terms of the Development Agreement and the City, in accordance with the Development Agreement, should issue a Notice of Compliance.

Inclusion of Wathen Castanos as Pre-Approved Homebuilder.

The Option Agreement includes a list of Pre-Approved Homebuilders that Cypress Marina Heights can transfer portions of the project. Under the terms of the Option Agreement and the Development Agreement, Cypress Marina Heights does not have to obtain the City or the Successor Agency's consent to a transfer to a Pre-Approved Homebuilder. The current list of Pre-Approved Homebuilders consists of John Laing Homes, Standard Pacific Homes, William Lyon Homes, Monterey Development Group, Richmond American, Centex Homes, Pulte Homes, Taylor Morrison, Warmington Homes, Lennar Homes, Toll Brothers, DR Horton, the Ryland Group and Phil Rafton. This list was compiled by the Developer in late 2008 and some of the homebuilders on the list are no longer active in the area.

The Developer has requested that the City and the Successor Agency add Wathen Castanos Homes to the list of Pre-Approved Homebuilders. The Developer has submitted the information attached as **Exhibit A** to demonstrate Wathen Castanos' comparability to the Pre-Approved Homebuilders. Wathen Castanos is a Central Valley company that has been developing homes since the late eighties. They have developed over 5,000 homes. They appear to have experience comparable to the homebuilders on the Pre-Approved Homebuilder list.

FISCAL IMPACT:

Development of the Project will increase the property tax available to the City thereby increasing general fund revenues. The Developer has advanced funds for some of the permit fees required to be paid as the homes develop. The City will be required to process approvals consistent with the Development Agreement and at least for the initial permits, the fees already paid will be credited to fees owed causing the City to expend funds for the processing without receiving funds in this fiscal year. Over time, if all of the homes are developed, the City will recover the costs associated with the permit processing, but there may be an initial cash shortfall as a result of the Developer's credit toward permit fees.

CONCLUSION:

The staff report is submitted for City Council review and possible direction.

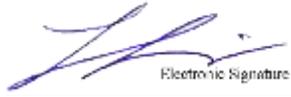
Respectfully submitted,

Layne Long
City Manager
City of Marina

SOURCE OF FUNDING:

None.

NOTED FOR FISCAL IMPACT:



Electronic Signature

Lauren Lai, CPA
Finance Director
City of Marina