

## MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

TO: Board of Education

DATE: March 19, 2007

ITEM: **INFORMATION:** Review Proposed Agreement with Owner of 150 Stephens Place Subdivision (adjacent to Colton School) to Amend Existing Easement and Create New Storm Water Drainage Easement

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### **BACKGROUND:**

MPUSD staff has worked with the City of Monterey and the owner of the recently approved five-lot subdivision on Stephens Place to identify a long-term solution to the storm water drainage problem adjacent to Colton School. In brief, storm water from the 68 acre watershed zone above Colton School plus runoff from the 20 acre school flows through the very steep historic drainage path on the west side of Colton, through the property formerly owned by the Diocese of Monterey and recently subdivided for new homes, and then out to join the City's storm drain system.

### **DISCUSSION:**

This was the location of a major flood in 1998 that damaged a private home. Recent studies by the City have shown that the existing system is not suited to the potential volume and velocity of storm runoff after an intense rainfall.

The proposed Agreement sets forth general terms for modifications to the existing easement and a proposed new easement. A series of changes are proposed.

1. Eliminate surface flow above Walter Colton Drive by installing a new underground drain pipe that will connect to the City's existing inlet drain pipe.
2. Install new, larger drain pipes under Walter Colton Drive.
3. Connect the new pipes to the existing surface-mounted drain pipes running down the slope.
4. At the bottom of the slope, connect these to a new underground drain pipe that will carry runoff under the new subdivision to a new outflow at Quarry Park where water will join the City's system.
5. The existing drainage system built after 1998 on property then owned by the Diocese of Monterey and accompanying easement will be abandoned to the new owners of the parcels. After the new system is operational, public ownership will not be needed once the runoff is diverted to the new piped system.


6. Appropriate easements for use and maintenance of the new system will be created.
7. The completed system will be offered for dedication to the City of Monterey so that the appropriate government agency will own and control the system.

**RECOMMENDATION:**


Review the proposed agreement setting forth terms for future easements and related actions that will address storm water runoff concerns at and below Colton School.

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**PREPARED BY:**

 3/19/07  
Thomas Woodruff,  
Chief Business Officer

**APPROVED BY:**

  
Marilyn Shepherd, Ed.D.,  
Superintendent

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

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EASEMENT AGREEMENT

Monterey Peninsula Unified School District ("School District"), the City of Monterey ("City") and Christopher Dinner ("Mr. Dinner") hereby enter into this Easement Agreement ("Agreement"), subject to formal approval by the governing Board of the School District and the City Council of the City, based on the following recitals:

A. The School District and the Roman Catholic Bishop of Monterey ("Diocese"), a corporation sole, entered into a certain Easement Agreement dated August 13, 1999 ("August 13, 1999 Easement Agreement"), a copy of which is attached as Exhibit 1 to an Acknowledgment and Amendment of Easement Agreement recorded January 1, 2005, a copy of which is attached hereto as Exhibit A, including a copy of said August 13, 1999 Easement Agreement attached thereto as Exhibit 1;

B. The School District is the owner of the District Parcel defined in the August 13, 1999 Easement Agreement and more particularly described in the legal description attached thereto as Exhibit B;

C. Mr. Dinner is the successor in interest of the Diocese under the August 13, 1999 Easement Agreement (as acknowledged and amended in said Acknowledgment and Amendment of Easement Agreement), and is the owner of the Diocese Parcel defined in the August 13, 1999 Easement Agreement (and more particularly described in the legal description attached thereto as Exhibit A), and desires to record a subdivision map to permit subdivision of Parcel II of the Diocese Parcel, which contains the Easement Area (defined in the August 13, 1999 Easement Agreement and more particularly described in the legal description attached thereto as Exhibit C);

D. Following discussions which also included representatives of the City of Monterey, the School District and Mr. Dinner now desire to relocate the easement for that portion of the drainage from the District Parcel which would otherwise enter and flow through the watercourse in the Easement Area to a storm drain to be constructed on another portion of Parcel II (as indicated preliminarily by an engineer retained by both the School District and Mr. Dinner on a tentative subdivision map and to be described more particularly in the final recorded subdivision map), to extinguish the School District's obligations under the August 13, 1999 Easement Agreement (as acknowledged and amended in said Acknowledgment and Amendment of Easement Agreement), and to have Mr. Dinner and his successors in interest assume such obligations with respect to any drainage through the former Easement Area not diverted to the new storm drain;

NOW THEREFORE, in consideration of the covenants and conditions of this Agreement, and subject to formal approval of the governing Board of the School District and the City Council of the City, the School District, the City and Mr. Dinner (collectively hereinafter the "Parties") agree as follows:

1. Upon approval by the City and recording of the final subdivision map reflecting said relocation of the easement for that portion of the drainage from the District Parcel which would otherwise enter and flow through the watercourse in the Easement Area to a storm drain to be constructed on Parcel II, Mr. Dinner agrees to construct said storm drain in accordance with any and all applicable laws, rules, regulations and standards, including but not limited to any applicable standards of the City, concurrently with the construction of the subdivision improvements for Mr. Dinner's subdivision, and subject to appropriate inspection by the City to verify compliance with such laws, regulations, rules, regulations and standards, and the School District agrees to make normal percentage completion construction progress payments to Mr. Dinner for the actual and fairly allocated cost of construction of the new storm drain upon proper documentation of such costs and allocation and percentage completion reasonably satisfactory to the School District.

2. Upon completion of construction of said storm drain, which shall be offered in dedication to the City and which the City agrees to accept in dedication, the obligations of the School District under the August 13, 1999 Easement Agreement shall be extinguished and Mr. Dinner and his successors in interest owning property in the former Easement Area shall assume said former obligations of the School District, but the School District shall retain any common law easement or right to continue to drain into the existing ditch in the former Easement Area any existing drainage from the District Parcel not diverted to the new storm drain, such as drainage from the hillsides of the District Parcel which does not flow into the existing surface mounted pipes to be connected to the new storm drain, and the School District agrees not to divert any new drainage into the existing ditch in the former Easement Area.

3. The School District and Mr. Dinner agree to cooperate in obtaining and signing such further documents as may be appropriate or necessary to accomplish said purposes, including but not limited to cooperating in obtaining any consent from any third party which may prove appropriate or necessary.

4. It is the intent of the Parties that the covenants herein contained shall benefit the District Parcel and the Diocese Parcel and shall constitute covenants running with the land. Said covenants shall also burden the successors in interest to those parcels.

5. Nothing contained in this Agreement shall be construed or deemed to be any gift or dedication of any portion of the District Parcel or Diocese Parcel to the general public or for the general public.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date or dates indicated below.

Dated: \_\_\_\_\_ Monterey Peninsula Unified School District

By \_\_\_\_\_

Dated: \_\_\_\_\_ City of Monterey

By \_\_\_\_\_

Dated: \_\_\_\_\_ Christopher Dinner

By \_\_\_\_\_