



## REPORT TO CITY COUNCIL

**Approved by:**

  
\_\_\_\_\_  
Keith Helmuth, P.E., Department Director

  
\_\_\_\_\_  
Arnoldo Rodriguez, City Manager

**Council Meeting of:** March 15, 2023

**Agenda Number:** B-5

**SUBJECT:**

Encroachment into a Landscape and Public Utility Easement (PUE) for a Single-Family Home at 3 Via Cerioni (APN 009-460-002)

**RECOMMENDATION:**

Adopt a Resolution Approving the Covenant Agreement to Allow a Limited Encroachment into a Landscape and Public Utility Easement (PUE) at the Property Owner's Risk (Covenant)

**SUMMARY:**

Kamaljit Singh, the property owner, has submitted a request to construct a garage in the rear yard of a home that contains a PUE and a portion of a landscape easement within an existing masonry wall that divides it from the nearby street and sidewalk. The PUE was defined in the Title Report when the owner purchased the property, and the City does not have the authority to allow or approve construction within PUEs that are not for the exclusive use of the City. A PUE is an easement that is expressly dedicated to a public utility. PUEs define who may have an interest or right to use. It is common for parcels to have utility easements, such as:

- |         |             |            |               |
|---------|-------------|------------|---------------|
| ▪ Sewer | ▪ Cable     | ▪ Gas      | ▪ Drainage    |
| ▪ Water | ▪ Telephone | ▪ Electric | ▪ Landscaping |

If a PUE does not define a specific utility, the PUE is available to any entity that can be designated as a public utility.

PUEs often restrict an owner's ability to use a portion of the property. For example, if a rear yard has a drainage line easement, there may be an underground pipe; thus, the owner may not be able to dig or place anything at the surface, given that the utility company may require that the land remain clear from the ground to the sky.

Use of a portion of the public landscaping easement is also required. A public landscaping easement is typically an area (usually adjacent to the street right-of-way) providing required street trees and landscape material. Different from a PUE, which may be used by specific utility companies, a public landscape

easement commonly benefits the public generally, and encroachment would not usually be allowed. Here, however, the use of the landscaping easement is limited to just that portion enclosed by a masonry wall surrounding the site, which obstructs the view from the street and sidewalk. Further, that portion of the landscape easement is not subject to a landscaping and lighting maintenance district. Under these limited circumstances, a limited encroachment may be warranted.

## **DISCUSSION:**

Prior to property owners securing permits for the construction of garages or other permanent structures, the City typically reviews the proposal for any concerns that may exist with that construction, including mandatory setbacks from the property line or other structures. In addition, the City verifies if there are existing easements to ensure the property owner and the City are not subject to a demand to remove facilities and liability associated with the structure constructed under a permit approved by the City.

In this situation, a proposed garage extends 17 feet into a 40-foot-wide landscape and public utility easement depicted on subdivision map 00-S-05, recorded on April 13, 2001, in book 49, pages 72 and 73, Madera County Records. While this public utility easement remains unused, it does not:

- Relinquish rights to exercise the use of the easement
- Imply that the easement may not be needed at a later date

Per the owner's title report, an easement has been listed that conflicts with the proposed garage. The easement provides for access to "public utilities as shown on said map". A landscape easement is also included.

Given the 40-foot easement, the owner is requesting an encroachment permit. Should the Council approve their request, a Covenant, defined as a legal agreement, would be required. Under the terms of the Covenant, prior to constructing the garage, the property owner would be responsible for contacting the utility company(s) to seek consent to encroach within an easement and advisement as to whether there may be any intention for the easement to be used in the future. Alternatively, and preferably to the City, the owner would seek removal of the easement if there is no intention on the part of utilities to exercise rights to use the easement by a beneficiary. In a situation wherein the owner is not successful in removing the easement and only receives assurances from the utility which would constitute consent to allow a proposed improvement to encroach within the easement, the City would not be held liable on the basis of the Covenant for any damages the owner may accrue. With regard to the landscaping portion, there is no utility that can provide assurances. However, if required by (private) covenants, codes, and restrictions (CC&Rs), the City would prefer that the owner seek the removal of the easement required. If any easement cannot be removed, then the City will require a Covenant. As written, the Covenant:

- Provides indemnification language that would require that the property owner defend the City against litigation
- Will be recorded with the County on the title
- Will be listed on future title reports
- Run with the property; thus, should the current owner sell the property, any new owner would be subject to compliance with the agreement.

It should be noted that 6 properties on the south side of Sunset Avenue, all near the subject site, provide a 40-foot-wide easement. In 2014, the property immediately to the east obtained an easement

encroachment to develop a patio. In addition, the subdivision to the east, also on the south side of Sunset Avenue, only provides a MID easement that encroaches approximately 10 feet into the rear yards. The disposition of these encroachments is not considered relevant, given that the City cannot address current or future requests based on past actions unless the action can be determined to meet the current known requirements.

**FINANCIAL IMPACT:**

Approval of this Covenant Agreement imposes no impact or expense to City's General Fund. In addition, the applicant remitted a \$379.00 fee as part of the easement encroachment permit, while the applicant will also be required to obtain building permits from the City.

**ALTERNATIVES:**

The Council may request that the item be continued so that staff may conduct additional research.

**ATTACHMENTS:**

1. Resolution
  - a. Exhibit A – Covenant Agreement
2. Approximate location of the easement

## **Attachment 1**

Resolution

**RESOLUTION NO. 23-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA APPROVING THE COVENANT AGREEMENT TO ALLOW A  
LIMITED ENCROACHMENT INTO A LANDSCAPE AND PUBLIC UTILITY  
EASEMENT AT THE PROPERTY OWNER'S RISK**

**WHEREAS**, Kamaljit Singh is the Owner in fee title of that certain improved real property commonly known as 3 Via Cerioni (Property) in the City of Madera, County of Madera (APN 009-460-002-000); and

**WHEREAS**, the Owner proposes to construct a garage in the backyard of the Property and has applied to the City for a building permit to construct the same; and

**WHEREAS**, the proposed garage as designed will encroach into a landscape and public utility easement (PUE); and

**WHEREAS**, no utilities are currently using the PUE, but could do so at some future date.

**WHEREAS**, proposed use of the landscaping easement is limited to just that portion that is enclosed by a masonry wall surrounding the site and that obstructs the view from the street and sidewalk. Further, that portion of the landscape easement is not subject to a landscaping and lighting maintenance district.

**WHEREAS**, to accommodate Owner's proposal, the City, as for itself alone and no other Utility agrees to allow for a limited, temporary, encroachment by Owners into the landscape and PUE at the Owner exclusive cost and risk, and subject to Owners obtaining appropriate approvals from the other Utilities (such as a recorded covenant or agreement) and future use by the Utilities outside the active participation of the City.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY**, finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. That certain Covenant Agreement to Allow a Limited Encroachment into a landscape and Public Utility Easement at Property Owner(s)' Risk, attached hereto as Exhibit A, is hereby approved.
3. The City Clerk and City Engineer collectively are authorized to make any technical corrections to this resolution.
4. This resolution is effective immediately upon adoption.

**Exhibit A**

Covenant Agreement

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

City of Madera  
205 W Fourth Street  
Madera, CA 93637

APN. 009-460-002-000

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NO DOCUMENTARY TAX DUE – R&T 11922 (Amended)

Presented for Recordation by the City of Madera

Fee Waived Per Sections 27383 & 27388.1(a)(2)(D) of the Government Code.....No Fee Due \_0\_

**COVENANT AGREEMENT TO ALLOW A LIMITED  
ENCROACHMENT INTO A LANDSCAPE AND PUBLIC  
UTILITY EASEMENT  
AT PROPERTY OWNER(S)' RISK**

This Covenant Agreement to Allow a Limited Encroachment into a Landscape and Public Utility Easement at Property Owner(s)' Risk ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by Kamaljit Singh ("Owner") and the City of Madera ("City") for the purpose of allowing a limited encroachment into a public utilities easement.

**RECITALS:**

- A. Owner owns in fee title that certain improved real property commonly known as 3 Via Cerioni in the City of Madera, County of Madera (APN. 009-460-002-000) and legally described on Exhibit A attached hereto and incorporated herein by reference ("Property").
- B. Owner proposes to construct a garage in the backyard of the Property and have applied to the City for a building permit to construct the same. As designed the proposed garage will encroach into a landscape and public utility easement (PUE), as depicted in the diagram attached as Exhibit B.
- C. The landscape and PUE was previously dedicated and accepted by the City, and public utility easements are commonly used by utilities such as the City, Pacific Gas and Electric Company, Comcast, AT&T, and other authorized providers (collectively "Utilities" or singularly "Utility").
- D. The Utilities are not currently using the landscape and PUE but could do so at some future date. To accommodate Owners' proposal, the City, as for itself and no other Utility, desires to agree to allow for a limited, temporary, encroachment

by Owners into the landscape and PUE at the Owners' exclusive cost and risk, and subject to Owners obtaining appropriate approvals from the other Utilities (such as a recorded covenant or agreement) and future use by the Utilities.

- E. The proposed use of the landscaping easement is limited to just that portion that is enclosed by a masonry wall surrounding the site and that obstructs the view from the street and sidewalk. Further, that portion of the landscape easement is not subject to a landscaping and lighting maintenance district.

### **AGREEMENT:**

NOW, THEREFORE, the Parties agree as follows:

- 1. Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.
- 2. Effective Date; Duration.** This Agreement shall be effective upon delivery to the City of a copy executed by Owner ("**Effective Date**") which the City shall cause to be recorded in the Official Records of Madera County. This Agreement shall remain in full force and effect in perpetuity.
- 3. Owner's Representations and Warranties.** Owner represents and warrants to the Utilities and City that, as of the Effective Date, Owner is the fee owner of the Property, and has authority to execute this Agreement which shall be binding on the Property upon recordation in the official records of Madera County ("**Official Records**").
- 4. Covenants, Restrictions and Obligations.** The Parties agree as follows:
  - (a) At Owner's sole cost and expense and in accordance with all applicable City requirements, Owners are granted a temporary encroachment into the landscape and PUE, as to the City's right of use only, for the limited purposes of constructing, maintaining, and using a garage strictly in accordance with the permits and the plans as approved by the City.
  - (b) Owner shall not modify the garage nor construct or cause to be constructed any additional structures on the Property without first applying for and obtaining a permit from the City, at Owner's sole cost and expense. Upon approval, any additional permitted structure shall be subject to this Agreement, including, but not limited to, the covenants in this Section 4.
  - (c) Owner specifically acknowledges that the granting of a limited encroachment in the landscape and PUE under this Agreement is only



approval to do so from the City. Owner acknowledges that Owner will need to obtain the appropriate approval or consent of all other Utilities for encroachment into the landscape and PUE. Further, if the landscape easement is otherwise required by any covenants, codes and restrictions (CC&Rs) or other private agreement, the Owner acknowledges that Owner will need to obtain the appropriate approval or consent thereunder, and Owner agrees that the obligations of the Utilities set forth in Section 4(d) shall likewise apply any person or entity (such as a home owners association) that is a party to said CC&Rs or private agreement. The City encourages the recording of any such approval or consent.

- (d) Owner agrees that use of the landscape and PUE by the Utilities is paramount to the limited and temporary encroachment by Owner. Owner further agrees that any encroachment into the landscape and PUE is solely at Owner's risk, and Owner expressly acknowledges and agrees that any Utilities, including any utilities of the City, may disturb, remove, damage, or reconfigure the garage at any time to make use of the landscape and PUE or otherwise exercise their rights to the landscape and PUE, with or without notice. Further, any of the Utilities, including the City, may require Owner to remove the garage from the landscape and PUE at any time. Owner is solely responsible for any cost of removal, damages, reconfigurations, or any other disturbance of the garage by any Utilities, and under no circumstances shall Utilities be responsible to Owner for any damages or other relief, which are expressly waived by Owner. If Owner fail to promptly pay, any Utility may file and record a lien against the Property for the costs thereof, including attorney's fees. Owner agrees any Utility may pursue any other remedy under the law to enforce this Agreement.

- (e) At all times, Owner shall comply with all ordinances, regulations and standards applicable to the Property.
- (f) Owner agrees to indemnify and to hold the City harmless against any and all claims, demands, losses, liabilities, causes of action, obligations and claims of any kind for damages, lawsuits, costs, attorney's fees and expenses of every kind and nature whatsoever, filed against the City with respect to i) the City's approval of this Agreement; ii) the design, construction, approval, or use of the garage; and iii) related to the use of the landscape and PUE by Owner (collectively "Indemnified Obligations"). Owner will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and Owner agrees to save and hold the City, its officers, agents and employees harmless therefrom. If the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Owner for such damages or other claims arising out of the Indemnified Obligations, Owner agrees to promptly reimburse the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees. Any and all amounts due under this Section 4 shall be promptly paid to the City or its officers, agents or employees within ten (10) days of written demand is delivered to Owner. If any amounts are not paid when due, said amounts shall thereafter bear interest at the rate of ten percent (10%) per annum (but not in excess of the maximum rate permitted by law) until paid in full.

**5. Runs with the Land.** This Agreement shall run with the land binding the Property and all future owners, tenants, and occupants of the Property.

**6. Amendment or Modification.** This Agreement may not be amended or modified except (i) in writing executed by the then current owner(s) of the Property and the City, and (ii) recorded in the Official Records.

**7. Miscellaneous.**

**7.1. Notices.** Any notices, demands, or communications under this Agreement shall be in writing, and may be given either by (i) personal services, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return service requested, addressed as set forth on the signature page of this Agreement or such other address as may be furnished in writing by a party, and such notice or communication shall, if properly addressed, be deemed to have been given as of the date so delivered, or

three (3) business days after deposit into the United States mail. The addresses of the Parties are as follows:

CITY  
Office of the City Engineer  
428 E. Yosemite Avenue  
Madera, CA 93638

OWNER  
Kamaljit Singh  
1812 Sundance Lane  
Madera, CA 93637

- 7.2. Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
- 7.3. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California and any legal action shall be brought in a court of competent jurisdiction in Madera County.
- 7.4. Attorney's Fees.** In the event of any litigation or other legal proceeding arising from this Agreement, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses, including attorney's fees, incurred in the proceeding.
- 7.5. Final Agreement.** This Agreement contains the entire understanding and agreement with respect to the subject matter of this Agreement and all prior or contemporaneous documents, communications, understandings, representations, and statements shall be of no force or effect.
- 7.6. Construction.** This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- 7.7. No Waiver.** The failure to enforce any term, covenant, or condition of this Agreement shall not be construed as a waiver of the right to enforce this, or any other, term, covenant, or condition of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as set forth below.

**OWNER:**

**CITY OF MADERA**

\_\_\_\_\_  
\*Kamaljit Singh

\_\_\_\_\_  
Santos Garcia, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_, 2023

\* Signature must be notarized.

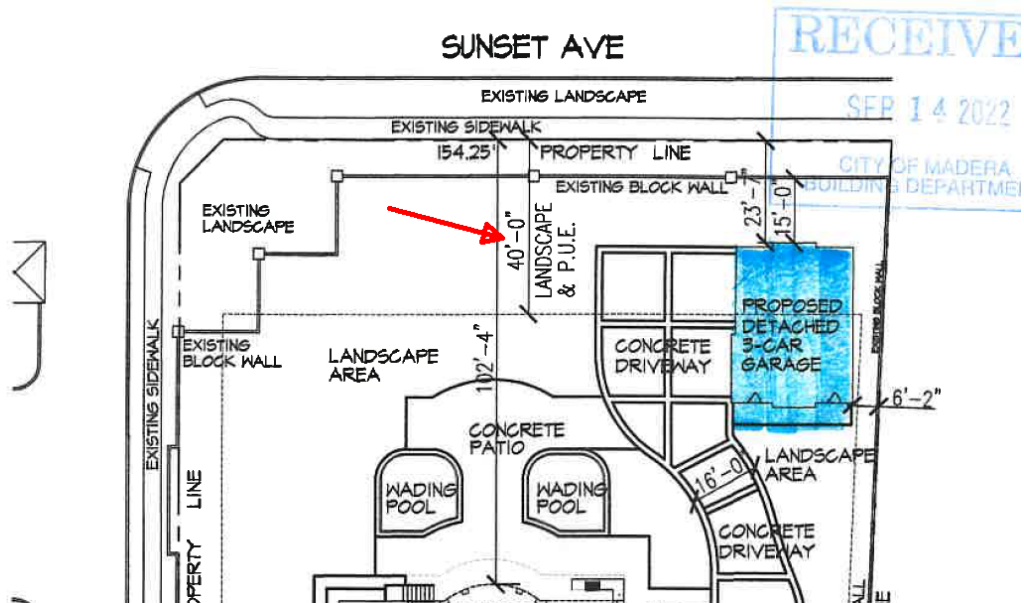
**Exhibit A**  
**Property Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MADERA, COUNTY OF MADERA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 1, SUBDIVISION NO. 00-S-05, VILLA PIEMONTE, ACCORDING TO THE MAP THEREOF RECORDED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF MADERA, STATE OF CALIFORNIA IN BOOK 49, PAGES 72 AND 73, MADERA COUNTY RECORDS.

APN: 009-460-002-000

**Exhibit B**  
**Depiction of Landscape and Public Utility Easement (Including Encroachment)**



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 California

County of \_\_\_\_\_

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person 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

SEAL

## **Attachment 2**

Approximate location of easement



## APPROXIMATE LOCATION OF EASEMENT

