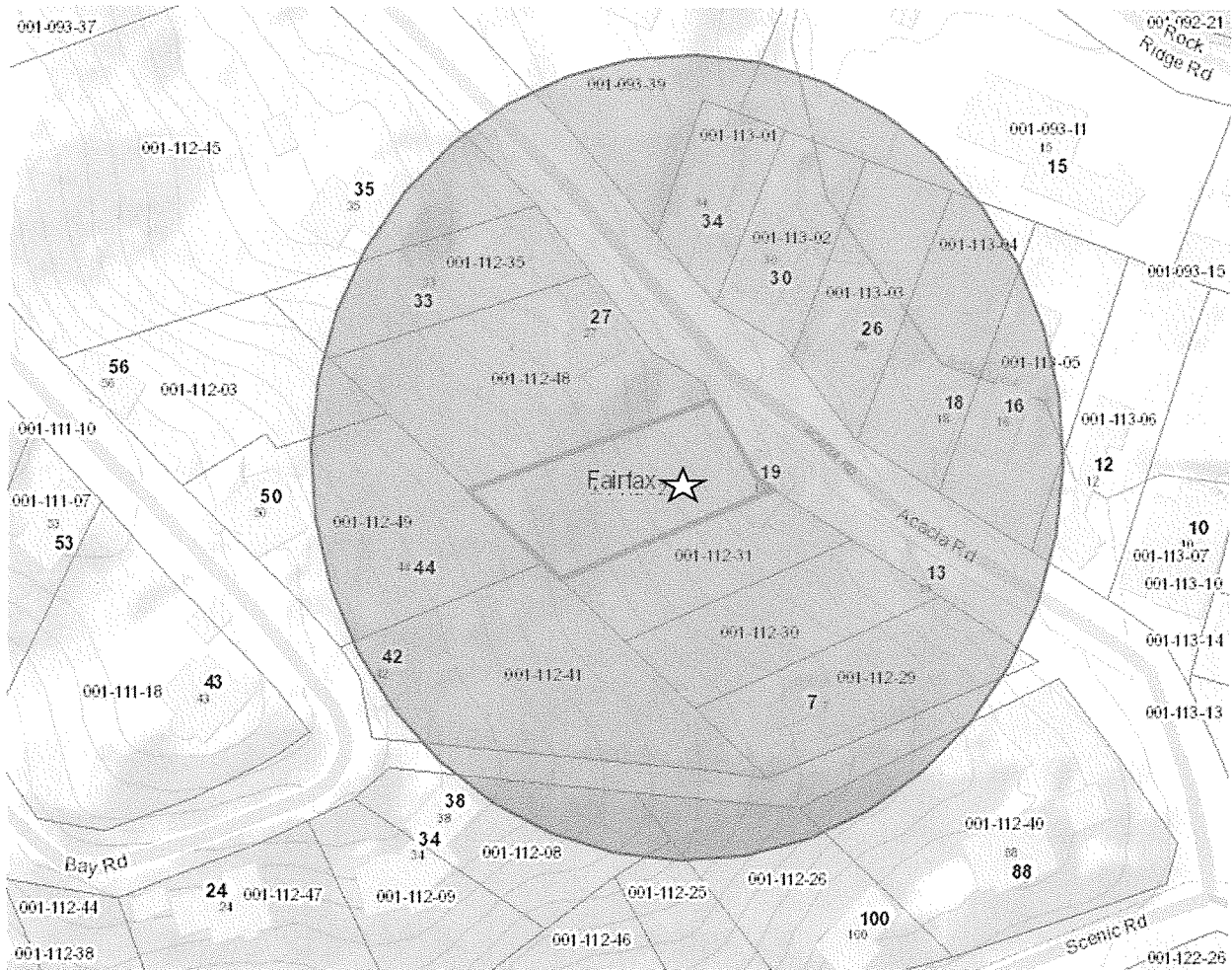


**TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: September 21, 2017
FROM: Michelle Levenson, Assistant Planner
LOCATION: 19 Acacia Road; Assessor's Parcel No. 001-112-32
ZONING: Residential RS 6 Zone
PROJECT: Replace a Retaining Wall and Remodel a Residence
ACTION: Encroachment Permit, Variance, Conditional Use Permit; Application # 17-33
APPLICANT: Thomas Derring
OWNER: Thomas Derring
CEQA STATUS: Categorically exempt, § 15305(a).



19 Acacia Road

BACKGROUND

The project site is 8,102 square feet in area and steeply sloped at 52-percent. The site is located within the Residential RS 6 Zone and is developed with a 1,296-square-foot single-family residence constructed in 1920 that contains 2 bedrooms and 3 bathrooms.

DISCUSSION

The proposed project would involve replacing an existing retaining wall located within the road right-of-way by removing the existing deteriorated wooden wall, and replacing it with a 5-foot tall concrete wall that would be moved to the southwest, 4 to 6 feet where most of the wall would be out of the right-of-way. In addition, the front entry steps, landing and decks would be reconfigured and replaced. Lastly, the interior of the residence would be renovated by replacing and slightly relocating a wall between the second-floor bedroom and bathroom and renovating the bathroom, reconfiguring the doorway between the dining room and kitchen and renovating the kitchen and other interior improvements (e.g., free standing gas stove, radiant panels, tankless water heater, etc.)

The project complies with the Residential Single-family RS-6 Zone District where the property is located, as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6 ft.	12 ft.	35 ft.	5 ft. & 5 ft.	20 ft.	.15	.35	35 ft., 3 stories
Existing	0 ft.	102 ft.	102 ft.	0 ft. & 20 ft.	20 ft.	.08	.15	22 ft., 2 stories
Proposed	same	same	same	same	same	same	.16	same

The existing site conditions do not comply with the required front or side setbacks for the RS 6 Zone. The proposed project would not result in further intrusions into the setbacks than existing conditions.

REQUIRED DISCRETIONARY APPROVALS

Encroachment Permit. Town Code Section 12.032.010 states, "Upon certain portions of public streets and public rights-of-way in the town, not being used for vehicular or pedestrian travel, temporary carports and other structures may be erected and maintained by the owners of adjoining property, upon terms and conditions and for the time prescribed in a permit issued to the property owner by the Planning Commission...." The retaining wall would encroach a maximum of 4 feet into the right-of-way and a paved, hardscaped area would be installed between the new retaining wall and the paved roadway for parking vehicles. Because the retaining wall and hardscape would be installed in the right-of-way, an Encroachment Permit is required.

Retaining Wall Height Variance. Town Code Section 17.044.080(B) states that, “Fences, walls and hedges may be located in required yards as follows: (1) If not exceeding at any point four feet in height above the elevation of the surface of the ground at such point, they may be located in any yard or court...”. The height of the proposed retaining wall would reach a maximum of five feet, therefore a variance to Town Code Section 17.0440.080(B) is required.

Conditional Use Permit. Because the site is steeply sloped at 52-percent, Town Code Section 17.080.050(A) requires a minimum lot area of 44,000 square feet and a minimum lot width of 176 feet. The site is 8,102 square feet in area with a minimum width of 57 feet, therefore a Conditional Use Permit is needed for any new construction on the site.

DISCUSSION

ENCROACHMENT PERMIT

Town Code Section 12.32.020 states that in considering an Encroachment Permit for a temporary structure in the public right-of-way, the public area shall not be currently used by the public and the applicant shall demonstrate that there is no suitable place for the structure on the owner’s property.

While the proposed retaining wall and hardscape would be installed in a portion of the right-of way, the new wall would be moved further outside of the right of way than the location of the existing wooden wall. Due to the steep topography of the site and siting of the residence, the proposed wall would need to be placed in the proposed location to secure and stabilize the landscaped area and residence behind the wall. The new wall location would improve vehicular and pedestrian access along Acacia Road by moving the wall further away from the right of way than the current configuration. Attachment A contains the sample “License Agreement to Permit Revocable Encroachment on Town Property” that the owner would be required to complete and record with the County to construct the wall and hardscape improvements in the right-of way. The License Agreement contains provisions that enable the Town to remove private improvements in the right-of-way if the public area is needed in the future.

RETAINING WALL HEIGHT VARIANCE

In approving a variance, the Planning Commission must find the following (Town Code Section 17.028.070): (A) Because of special circumstances applicable to the property the strict application of the title would deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zoning classification; (B) The variance will not constitute a special privilege, is consistent with the limitations upon other properties in the vicinity and under identical zoning classification; (C) The strict application of the title would cause unreasonable or excessive hardship; and (D) The granting of the variance will not be detrimental to the public welfare or injurious to other property in the vicinity.

Due to the steepness of the site and the topography of the front yard, it was determined that the height of the proposed wall should be five feet in order to stabilize the land behind the wall and retain some front yard area. Granting of a variance to allow a five-foot-high retaining wall would allow the owners to stabilize their property while moving an existing retaining wall further outside of the public right-of-way. In addition, the project would replace a failing retaining wall preventing a potential total wall failure and blockages or closures of Acacia Road from fallen soil and rock. Therefore, reconstruction of the wall would benefit the public by moving an existing structure further out of the right of way and preventing injury to the public and other property in the vicinity. If the replacement wall was limited to 4 feet in height, the wall would not be designed to sufficiently stabilize the slope, depriving the applicant of use of the property. Therefore, the issuance of a variance to the retaining wall height limit is consistent with Town Code Section 17.028.070.

CONDITIONAL USE PERMIT

In order to approve a Use Permit (CUP) for the project, the Commission must make the following findings (Town Code Section 17.032.060): (1) granting of the approval would not constitute a “special privilege” nor contravene the doctrines of equity and equal treatment; (2) the project would not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects or create undue or excessive burdens in the use or enjoyment of the property; (3) approval of the project is in keeping with the objectives, goals or standards set forth in the Town of Fairfax General Plan; and (4) approval of the project would result in equal or better development of the premises than would otherwise be the case and the approval is in the public interest and for the protection and enhancement of the community.

The proposed improvements to the residence consist of reconfiguring the stairs and landing to enable safe and direct access to the residence, and interior improvements including slightly relocating a wall and renovating a kitchen and bathroom. The improvements would not increase the square footage of the residence and the number of bedrooms and bathrooms would remain unchanged. Granting of a CUP to construct the improvements would not constitute a special privilege as neighboring property owners have received authorizations to renovate and upgrade their residences. While the stairs and landing would be relocated closer to the side property line, the adjacent residence at 27 Acacia is located a considerable distance from the proposed stairway. In addition, vegetation aids in screening the stairway and landing from the adjacent residence. The proposed project would improve the property by providing safe and improved access to the residence as well as an upgraded interior, resulting in better development of the premises. Therefore, the proposed project is consistent with Town Code Section 17.032.060-the finding for issuing approval of a CUP.

Other Agency/Department Conditions/Comments

Ross Valley Fire Department (RVFD)

RVFD submitted written requirements (dated June 29, 2017) which have been incorporated into Conditions of Approval in the attached Resolution and are summarized as follows: a fire sprinkler shall be installed throughout the entire building, a vegetation management plan is required, and smoke and carbon monoxide detectors are required.

Marin Municipal Water District

The project must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation, meet the District's backflow prevention requirements, comply with the District Ordinance 429 requiring the installation of gray water recycling systems and complete a High-Pressure Water Service Application prior to issuance of the occupancy permit.

Ross Valley Sanitary District and the Town of Fairfax Building, Public Works and Police Departments

The Ross Valley Sanitary District and the Town of Fairfax Building, Public Works and Police Department(s) did not provide comments on the project.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve Application No. 17-26.

ATTACHMENT

Attachment A – Resolution No. 17-31

Attachment B - Sample-License Agreement to Permit Revocable Encroachment on
Town Property

RESOLUTION NO. 17-31

A Resolution of the Fairfax Planning Commission Approving an Encroachment Permit and Height Variance for a Retaining Wall and Conditional Use Permit to Renovate a Residence at 19 Acacia Road

WHEREAS, the Town of Fairfax has received an application to replace a failing retaining wall, reconfigure and install entry steps and a landing, and renovate the interior of a 1,296-square-foot residence at 19 Acacia Road.

WHEREAS, the Planning Commission held a duly noticed meeting on September 21, 2017, at which time the Planning Commission determined that the proposed project and conditioned below, conforms with the Fairfax General Plan and Zoning Ordinance regulations; and

WHEREAS, based on the plans and other documentary evidence in the record, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the project.

WHEREAS, the Commission has made the following findings:

1. The proposed residence conforms to the regulations set forth in the Residential Single-family RS 6 Zone District.
2. The project involves the reconstruction of a retaining wall located within the road right-of-way that exceeds the height limits for such structures by 1 foot, the reconfiguration of entry stairs and a landing, and improvements to the interior of the residence that will not increase its square footage. Due to the siting of the stairs and landing and because the work to the residence will not increase its size, the project is in keeping with the residential character of the neighborhood and will not be out of scale with other residences in the immediate vicinity. The project will improve circulation and utility of the residence, and will stabilize soils on the site. In addition, the retaining wall work will move a structure further out of the right-of-way than the current failing structure. Therefore, the approval of the project shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment, and will not result in excessive hardship for the owners.
3. The proposed development is of a quality and character appropriate to, and serving to protect the value of, private and public investments in the area.
4. The development and use of property as approved herein will not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or

issuance of the project approvals.

5. The approval as conditioned herein will not be contrary to those objectives, goals or standards pertinent to the particular case and contained in the 2010 – 2030 Fairfax General Plan or set forth in the Town Code.
6. Approval of the project will result in equal or better development of the premises than would otherwise be the case and is in compliance with the Fairfax General Plan, Zoning Ordinance, accepted engineering techniques and the Uniform Building Code.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. This approval is limited to the development illustrated on the plans prepared by BHW Engineering, Inc., entitled, "Site Care Parking Walls and New Steps @ Tom Derring Residence", Sheets S1 through S2, dated April 25, 2017, and the plans prepared by Thomas Derring, Sheets A-1 through A-3, and Sheets 1 through 3, dated May 8, 2017. "
2. Secure written approval from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District noting that the development conforms with all of their recommendations and conditions.
3. All construction-related vehicles including equipment delivery, supply delivery and cement trucks, as well as all construction material shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the Building Official on a case-by-case basis with prior notification from the project sponsor.
4. Any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
5. The following Best Management Practices shall be employed:
 - a. The roadways shall be kept free of dust, gravel and other construction materials by sweeping these areas, daily, if necessary.
 - b. Every effort shall be made to minimize the disturbance of dust, sand or other particulate matter during construction.
6. Any changes, modifications, additions or alterations made to the approved set of plans will require a modification of Application No. 17-33. Any construction based on job plans that have been altered without the benefit of an approved modification of

Application No. 17-33 will result in the job being immediately stopped and red tagged.

7. Any damages to Acacia Road or other public roadways used to access the site resulting from construction activities shall be the responsibility of the property owner.

8. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

9. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to the following: Noise Control, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.

10. The applicant shall comply with any and all the conditions of the Marin Municipal Water District, Ross Valley Sanitary District, Ross Valley Fire Department, Fairfax Public Works Department and Fairfax Building Department. Other agency conditions can be waived by those agencies in writing to the Town Building Department.

11. The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services Department prior to issuance of the building permit.

12. Prior to issuance of the Building Permit for the project, the applicants shall submit an arborist report that details the potential effects construction of the project may have on on-site trees, in accord with Town Code Section 8.36.070. If construction of the project has the potential to affect on-site trees, the applicant shall implement protective measures, as described in the required arborist report.

13. Prior to the issuance of the Building Permit, the applicant shall submit an executed "License Agreement to Permit Revocable Encroachment on Town Property" that has been recorded with the Marin County Recorder's Office.

14. To ensure that the appearance of the concrete retaining wall harmonizes with its surroundings, an earth-colored concrete shall be used and cascading planting shall be planted on the interior of the wall to soften its appearance when viewed from Acacia Road.

Other Agency/Department Conditions/Comments

Ross Valley Fire Department (RVFD)

1. The project is located within a designated wildland urbane interface zone and all construction shall comply with the 2016 CRC Section R337 and 2016 CBC Chapter 7A requirements.
2. A fire sprinkler system shall be installed throughout the entire building that complies with National Fire Protection Association and local standards.
3. A vegetation management plan designed in accord with Ross Valley Fire Standard #220 is required.
4. All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.
5. Carbon monoxide alarms shall be provided in existing dwelling when a permit is required for alterations, repairs, etc., that exceed \$1,000. CO alarms shall be located outside of all sleeping areas and on every level of the dwelling including the basement.
6. Address numbers at least 4" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated (backlit), placed next to a light or be reflective numbers. If the project is a new house or a substantial remodel, they may only be internally illuminated or illuminated by an adjacent light controlled by a photocell and switched on only by a breaker so it will remain illuminated all night. If not currently as described, the numbers must be installed as described as part of this project.
7. Maintain around the structure an effective firebreak by removing and clearing all flammable vegetation and/or other combustible growth.

8. A Class A rated roof assembly is required for the project.

Marin Municipal Water District (MMWD)

1. The project must comply with all the indoor and outdoor requirements of District Code Title 13, Water Conservation, meet the District's backflow prevention requirements, comply with the District Ordinance 429 requiring the installation of gray water recycling systems and complete a High-Pressure Water Service Application prior to issuance of the occupancy permit.

Ross Valley Sanitary District and the Fairfax Police, Public Works and Building Departments

The Ross Valley Sanitary District, and the Fairfax Police, Public Works and Building Department(s) did not provide conditions of approval or comments on the project.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

- The approval of the Conditional Use Permit and Variance are in conformance with the 2010 – 2030 Fairfax General Plan and the Fairfax Zoning Ordinance, Town Code Title 17; and
- Construction of the project can occur without causing significant impacts on neighboring residences and the environment.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 21st day of September, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

Chair, Norma Fragoso

Attest:

Ben Berto, Director of Planning and Building Services

RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:

Town of Fairfax
Department of Public Works
142 Bolinas Road
Fairfax, CA 94930

_____ /

LICENSE AGREEMENT TO PERMIT

REVOCABLE ENCROACHMENT ON TOWN PROPERTY

This License Agreement is entered into on _____, between the Town of Fairfax, a municipal corporation, hereinafter referred to as "Licensor" and _____, of _____, Fairfax, CA, hereinafter referred to as "Licensee", and is made with reference to the following facts:

RECITALS

A. Licensee is the owner of the real property located at _____, Fairfax, California.

B. Adjacent to the _____ property line of said real property owned by Licensee, there exists a right-of-way owned by Licensor, which is owned by Licensor for roadway purposes.

C. Licensee desires to construct a certain development project on the real property and as part of that construction desires to include certain improvements, which will encroach upon, and be located in the above-referenced right-of-way owned by Licensor.

D. Licensor is agreeable to permitting said encroachment upon the terms and conditions expressed herein below.

AGREEMENT

In consideration of the foregoing, and subject to the terms and conditions set forth herein below, the parties agree as follows:

1. Grant Licensor hereby grants to Licensee, subject to the terms and conditions contained herein, the right to construct, maintain and install the following described improvements on the following described right-of-way owned by Licensor and shown on the diagram attached hereto as Exhibit "A".

ATTACHMENT B

a. The improvements permitted to be constructed, maintained and installed by this License are described as follows: _____, as shown in **Exhibit "B"**.

b. The right-of-way and/or property owned by the Licensor permitted to be burdened by said improvements is described a follows: _____

_____, as shown in **Exhibit "A"**.

2. License Fee In consideration for the license herein granted, Licensee agrees to pay Licensor a one-time lump sum payment of \$ -0-, payable upon execution of this license.

3. Construction and Maintenance Expenses Licensee shall bear the cost and expense of constructing, reconstructing and maintaining the improvements described above. Licensee further agrees that all work upon or in connection with said improvements shall be done at such times and in such manner as is approved by Licensor and shall be done in accordance with plans and specifications approved by Licensor.

a. Licensee shall not modify or in any fashion change the improvements, once constructed, without the written permission of Licensor.

b. Licensee agrees to construct said improvements in a workmanlike fashion and to religiously maintain said improvements in a good and sound condition and in a condition that remains aesthetically and visually pleasing and acceptable to the Licensor. If Licensee fails to maintain said improvements in said condition, Licensee hereby grants to Licensor the right to either remove said improvements or to maintain them. If Licensor is required to remove and/or maintain said improvements, Licensee agrees to reimburse the Town for the cost thereof within 30 days after receipt of an invoice and, if such invoice is not so paid, the remaining balance shall accrue interest at the rate of 10% per year until paid. Furthermore, if said invoice is not paid, Licensee agrees to permit Licensor to impose a lien upon the real property described in **Exhibit "B"** without notice to Licensee.

4. Removal of Improvements Licensee expressly acknowledges that the improvements covered by this agreement are being allowed to be constructed in a public right-of-way and that, from time to time, said right-of-way will require improvement, relocation, destruction and/or removal. In the event of said events occurring, Licensee expressly consents to the Licensor removing and/or replacing said improvements, at the unfettered and complete discretion of Licensor, and Licensee further agrees to effect the removal and replacements at its cost within 60 days of receipt of written notice to do so from Licensor or, in the event that Licensee declines to effect said removal and/or replacement, Licensee grants to Licensor the right to remove and/or replace said improvements and the cost thereof shall be paid in accordance with the immediately preceding subparagraph.

a. Licensee hereby waives any/or all claims against Licensor for any and all damage or injury done to the real property described in **Exhibit "B"** and/or the structures located thereon caused as a result of the removal and/or replacement described in the immediately preceding paragraph and Licensee indemnifies and holds Licensor

harmless for any and all such damages or injuries, irrespective of the passive or active negligence of Licensor.

5. Indemnification and Hold Harmless

a. Licensee shall assume all risks of damage to the improvements and any appurtenances thereto and to any other property of Licensee or any property under the control of Licensee while upon or near Licensor's right-of-way described at paragraph 1(b).

b. Licensee further agrees to indemnify and save harmless Licensor, its officers, employees, agents, successors, and assigns, from any and all claims, liabilities, damages, failure to comply with any current or prospective laws, attorney's fees, for loss or damage to property and for injury to or death of any person arising out of the construction, maintenance, removal, replacement, rehabilitation, repair, or the location of the improvements or out of Licensee's activities on Licensor's right-of-way described hereinabove.

6. Insurance Licensee, at its sole cost, shall maintain property damage insurance in the amount of \$1 million combined single limit for bodily injury and property damage with insurers which are acceptable to Licensor, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of the property.

All general liability insurance and property damage insurance shall insure performance by Licensee of the indemnity provisions of paragraph 6.

Each policy, or a certificate of the policy, shall be deposited with Licensor at the commencement of the term of this agreement, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy. Licensee shall provide evidence of said insurance, the certificate and endorsements in the forms attached hereto as **Exhibit "C"**.

Licensee shall make arrangements with the insurers that the insurers shall provide Licensor with notice of cancellation or termination of the insurance at least thirty (30) days in advance of cancellation or termination.

7. Term This agreement and the rights granted hereunder may be terminable by Licensor upon giving written notice to Licensee at least six (6) months prior to the termination.

a. Should Licensee, its successors and assigns, at any time abandon the use of the property described in **Exhibit "B"** or any part thereof, or fail at any time to use the same for the purpose for which development of said property was approved for a continuous period of six months, the rights and obligations hereby created shall cease to the extent of the use so abandoned and/or discontinued, and Licensor shall have the right to declare this license terminated to the extent of the use so abandoned or discontinued.

b. Upon termination of the rights and privileges hereby granted, Licensee, at its own cost and expense, agrees to remove said improvements for which this license is granted and to return the right-of-way to the condition it was in prior to the execution of this License. Should Licensee in such event fail, neglect, or refuse to remove said improvement or return the right-of-way to such condition, such removal and restoration may be performed by Licensor at the expense of Licensee, which expense, including any attorney's fees, Licensee agrees to pay upon demand and, if not so paid, said expenses shall be paid in accordance with paragraph 3(b), above.

8. Notices Any and all notices and demands required or permitted to be given hereunder, shall be in writing and shall be served either personally or by certified mail, return receipt requested, to the following addresses:

If to Licensor, to: Town of Fairfax
Attention: Public Works Director
 142 Bolinas Road
 Fairfax, CA 94930

If to Licensee, to: _____

 Fairfax, CA 94930

9. Waiver The waiver by Licensor of any breach or any term, covenant, or condition herein shall not be deemed to be a waiver of such term, covenant, condition or any subsequent breach of the same, or any other term, covenant or condition herein contained.

10. Authority of Parties Each individual executing this agreement in behalf of a corporation or other private entity shall represent and warrant and that he/she is duly authorized to execute this agreement on behalf of the corporation and/or entity, in accordance with the duly adopted resolution of the Board of Directors of such corporation, and/or entity, a copy of said resolution shall be provided to Licensor, along with the executed original of this agreement.

11. Attorney's Fees In the event that either party is required to bring an action to enforce or interpret terms and conditions of this agreement, the prevailing party shall be entitled to payment of its attorney's fees, as well as expert witness fees.

12. Assigns and Successors This agreement shall inure to the benefit and be binding upon each party's assigns and successors, and it is the intent of the parties that this license and its terms and conditions shall run with the land and be binding upon all successors in interest to the real property described in **Exhibit "B"** attached hereto.

IN WITNESS WHEREOF, the undersigned have executed this agreement the day and year first written above.

TOWN OF FAIRFAX

Date: _____

By _____
Public Works Director

Date: _____

By _____

Date: _____

By _____