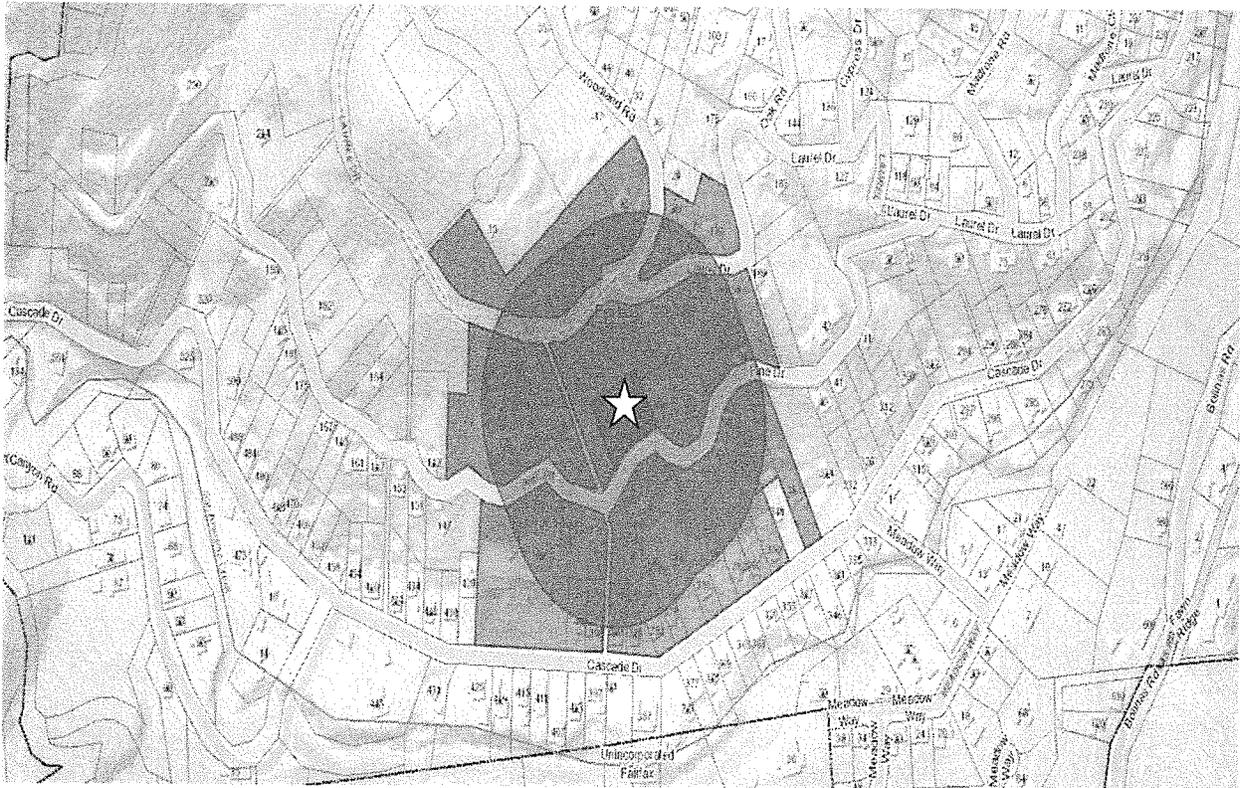


**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission
DATE: February 18, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 84 Pine Drive; Assessor's Parcel 003-092-35
ZONING: Residential Single-family RS 6 Zone District
PROJECT: Driveway widening and deck
ACTION: Use Permit and Encroachment Permit; 16-03
APPLICANT: Charles Wright
OWNER: Fiona Gillan and Chuck Wright
CEQA STATUS: Categorically exempt, § 15301(a) and 15305(b)



84 PINE DRIVE

BACKGROUND

The 20,550-square-foot site slopes up from Pine Drive at a rate of 43% and is developed with a 1,849-square-foot, single family residence containing 3 bedrooms and 2 bathrooms. The residence was constructed in 1962, at a time when covered parking was not a requirement of the Town Code, therefore there is no garage or carport on the site.

Another single-family home was built to the east of this site in 1996. The construction of this adjacent residence included the improvement of what had previously been a dirt access drive that extends to the top of the lot. One of the conditions of approval for the adjacent residence requires that the owner record a maintenance deed restriction for the area of the right-of-way that the proposed project would impact. Further discussion regarding the maintenance deed restriction and the proposed project can be found below.

On September 15th, 2015, the Department of Planning and Building Services issued a building permit for a project to, "Improve and resurface an existing driveway" on the project site... The plans indicated that the driveway would be widened by the construction of retaining walls on both sides of the driveway (Attachment B).

In early November of 2015, the owner of the neighboring house located at 82 Pine Drive contacted the Town regarding the substantial driveway improvements that encroached into the right-of-way along his property frontage and inquired as to whether there was a public hearing scheduled for the project (Attachment C).

Staff investigated the matter and determined that the uphill wall of the driveway was not simply a replacement wall and believed that the project involved more than a minor widening of the driveway, as originally described by the property owner. In late November, the Building Department required that the work on the project cease ("red tagged") and that the owner was notified that he was required to obtain an encroachment permit from the Planning Commission for the project.

DISCUSSION

In order to achieve a navigable slope, the proposed project involves the construction of 2 retaining walls to widen the previously existing driveway. The applicant is also proposing to rebuild and expand an existing deck on the southern front and eastern side of the residence. The new deck, if approved, would be 594 square feet in size.

The deck addition complies with the regulations set forth in the Residential Single-family Zone District (RS 6) 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.	.40	.35	28.5 ft., 2 stories
Existing	78 ft.	5 ft.	83 ft.	60 ft. & 27 ft.	87 ft.	.09	.11	19 ft., 1 story
Proposed	73 ft.	5 ft.	78 ft.	60 ft. & 29 ft.	89 ft.	same	same	same

Use Permit

Town Code § 17.080.050 requires that a Use Permit be obtained prior to any improvements to a site or structure located on a site failing to meet the minimum size and width requirements based on its average slope. The site has a 43% slope and in order to comply with the minimum size and width requirements would have to be 35,000 square feet in size and 149 feet wide. The site is 20,000 square feet and is thus considered substandard in size. Therefore, the deck addition and new driveway retaining walls require the approval of a Use Permit.

The provisions contained in a Conditional Use Permit are intended to allow the proper integration of uses and/or improvements into the Fairfax which may be suitable only if the uses are designed or laid out on the site in a particular way.

A deck may negatively impact a neighboring property if it extends too close to a property line or is at an elevation above an adjacent property such that the neighboring property no longer has yard area that is not visible from the neighboring deck. In this case, the proposed deck would maintain setbacks much greater than required by the Code and would be constructed at an elevation lower than that of the nearest house at 82 Pine Drive. The houses are 75 feet apart and that distance is forested with bays and other tree species that screen the 2 houses from each other. The deck would not be visible from 82 Pine Drive nor will the residents of 84 Pine Drive be able to look into the windows or level yard areas of 82 Pine Drive from the deck.

Fence Height Variance

Town Code § 17.044.080(B)(1) limits the height of fences and retaining walls within the 6-foot front setback area to 4 feet. While most of the driveway retaining walls are 4 feet or less in height within the front setback, there is one small section that reaches 4.5 feet in height, requiring the approval of a fence height variance. Due to the steep upslope of the site from the public road and the driveway grade, the project cannot be completed without this section of the southern driveway retaining wall reaching 4.5 feet in height above grade.

A neighbor has expressed concern that the appearance of the large round concrete pillars used for the retaining walls of the driveway do not fit in with the residential character of the neighborhood. Staff has included in the recommended conditions of approval submission of a landscaping plan that would require the installation and irrigation of native, drought tolerant landscaping to screen the lower retaining wall from view. The landscaping plan would be subject to staff review and approval prior to the lifting of the "red tag" from the project.

Encroachment Permit

Town Code § 12.32.020 requires a property owner to obtain an encroachment permit from the Planning Commission prior to building any structures within the public right-of-way along their property frontage. The Code §12.32.020(A) gives the Planning Commission the authority to allow adjacent private property owners revocable use of vacant or underutilized areas of the public right-of-way when not immediately needed for use by the public. Typically if an encroachment permit is granted by the Commission, one of the conditions of approval is that the owner sign and notarize a Revocable Encroachment Permit (Attachment D) that is then recorded with the Town. The document makes the property owner responsible for those improvements installed in the public easement and holds the Town harmless from any negative impacts from their installation.

It is not evident from the record why the owner of 82 Pine Drive was required to record a "Maintenance" document instead of the standard "Revocable Encroachment" document (Attachment E). The effect of the maintenance agreement was to make the owner of 82 Pine Drive entirely responsible for the maintenance of the hillside along his frontage where private improvements for other properties existed, instead of having him sign and record the standard encroachment permit. When the driveway for 84 Pine was only a narrow, graded and paved access road this approach may have been appropriate. However, now that the owner of 84 Pine has constructed significant retaining wall improvements that encroach into the right-of-way along the 82 Pine Drive frontage, the maintenance agreement is no longer applicable.

Staff recommends that the Town remove the recorded maintenance deed from 82 Pine Drive and have both the owner of 84 Pine Drive and 82 Pine Drive sign, notarize and record the standard "Revocable Encroachment Document". The portion of the right-of-way improved with the 2 driveways is currently not being used by the general public nor is there a need for the public to use this area any time in the near future.

OTHER AGENCY/DEPARTMENT COMMENTS/CONDITIONS

Marin Municipal Water District

1. The District owns and maintains water facilities within the Pine Drive right-of-way.

No work shall encroach upon or encumber access to District facilities. The applicant must have District facilities located and marked prior to construction to avoid potential conflicts.

2. All indoor and outdoor requirements of District Code Title 13 – Water Conservation, is a condition of water service. Indoor plumbing fixtures must meet specific efficiency requirements. Landscaping plans shall be submitted and be reviewed and approved by the District. The Code requires submittal of a landscape plan, an irrigation plan and a grading plans.
3. Should backflow protection be required, it shall be installed, inspected and approved by the District prior to the project final inspection.
4. On November 3, 2015, the District adopted Ordinance 429 requiring installation of gray water recycling systems for all projects undergoing substantial remodel that necessitates an enlarged water service.

Police/Building/Public Works/Ross Valley Fire Department/Ross Valley Sanitary District

The Fairfax Police, Building and Public Works Departments and the Ross Valley Fire Department and Sanitary District had no comments on, or conditions for, the project.

RECOMMENDATION

Move to approve application # 16-03 by adopting Resolution No. 16-01 making the findings and conditions for the project.

ATTACHMENTS

- Attachment A – Resolution No. 16-01
- Attachment B – Photo of site prior to construction and approved building plans
- Attachment C – Letter from owner of 82 Pine Drive
- Attachment D – Agreement to Permit Revocable Encroachment on Town Property
- Attachment E – Maintenance Agreement for 82 Pine Drive
- Attachment F – Slope map for 82 and 84 Pine Drive from Marin Map

OTHER AGENCY CONDITIONS

Marin Municipal Water District

1. The District owns and maintains water facilities within the Pine Drive right-of-way. No work shall encroach upon or encumber access to District facilities. The applicant must have District facilities located and marked prior to construction to avoid potential conflicts.
2. All indoor and outdoor requirements of District Code Title 13 – Water Conservation, is a condition of water service. Indoor plumbing fixtures must meet specific efficiency requirements. Landscaping plans shall be submitted and be reviewed and approved by the District. The Code requires submittal of a landscape plan, an irrigation plan and a grading plans.
3. Should backflow protection be required, it shall be installed, inspected and approved by the District prior to the project final inspection.
4. On November 3, 2015 the District adopted Ordinance 429 requiring installation of gray water recycling systems for all projects undergoing substantial remodel that necessitates an enlarged water service.

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

The approval of the Use Permit, Retaining Wall Height Variance and Encroachment permit for construction of the deck addition and driveway improvements at 84 Pine Drive can be made without causing significant impacts on neighboring residences and the environment and is in compliance with the 2010 to 2013 Fairfax General Plan and Fairfax Zoning Ordinance.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on February 18th, 2016 by the following vote:

AYES:
NOES:
ABSTAIN:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services

RESOLUTION NO. 16-01

A Resolution of the Fairfax Planning Commission Approving a Deck Expansion and Driveway Encroachment Permit for the Property at 82 Pine Drive

WHEREAS, the Town of Fairfax has received an application to construct a deck addition and driveway improvements on a site developed with a single-family residence, also designated Assessor's Parcel No. 003-042-35; 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 with certain condition of approval listed below; and

WHEREAS, the Commission has made the following findings:

1. The plans show that the driveway improvements will be located within a portion of the Pine Drive right-of-way not being used by the general public in accordance with Town Code § 12.32.020.
2. Upon compliance with the conditions listed below the improvements can be constructed without having negative impacts on the neighboring properties, general public or on vehicles or pedestrians using Pine Drive.
3. The proposed deck will not change the single-family residential character of the neighborhood.
4. The deck is similar to other decks found throughout the neighborhood and it will maintain the required setbacks from the property lines. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
5. The development and use of property as approved under the use permit shall 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 use permit.
6. Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in the 2010-2030 Fairfax General Plan.
7. Approval of the use permit will result in equal development of the premises than would otherwise be the case.
8. Because of the steep slope of the driveway and property, the strict application of a 4 foot front fence height regulation will prohibit the lowering of the driveway slope to improve vehicular

accessibility which is a privilege enjoyed by other property owners in the vicinity and under an identical zone classification.

9. The variance or adjustment will not constitute a grant of special privilege and is the minimum necessary to allow the proposed driveway improvements.

10. The strict application of the fence height restriction would result in excessive or unreasonable hardship for the owner.

11. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated

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

Recommended Conditions of Approval

1. The red tag will be lifted from the property and the building permit reactivated only after a landscaping and irrigation plan showing installation of native, drought tolerant landscaping, in size and numbers adequate to screen the lower portion of the driveway retaining wall, is approved by staff.
2. Prior to the lifting of the red tag, the owner shall complete the Revocable Encroachment Permit and submit it to the Town for review and approval. Once approved, the owners shall sign and notarize the document and return it to the Town for recording.
3. The applicant shall comply with any conditions of the Fairfax Building Official, Public Works Director/Manager, Town Engineer, Ross Valley Fire Department, Marin Municipal Water District and Ross Valley Sanitary District.
4. This approval is limited to the development illustrated on the plans prepared by McCoy Architecture, dated 4/10/15, pages A0, A0.1, A0.1a, A1.0, A2.0 and engineered driveway plans by Sean Brown, Civil Engineer, dated 4/12/15, page 1 of 1.
5. Prior to issuance of a building permit, the applicant or his assigns shall submit a bond, cash deposit or letter of credit to the Town in an amount that will cover the cost of grading, weatherization and repair of possible roadway damage. The applicant shall submit contractor's estimates for any grading, site weatherization and improvement plans for approval by the Public Works Director. Upon approval of the contract costs, the applicant shall submit a cash deposit, letter of credit or bond equaling 100% of the estimated construction costs.
6. Prior to issuance of the building permit, the applicant shall provide the Town with a video of the access streets to be used during construction. The Public Works Director shall make a decision prior to the project final, regarding street resurfacing and repair that may be required as a result of damage and wear and tear from project vehicles.

7. Prior to issuance of the building permit, the applicant shall submit a Construction Management Plan subject to review and approval by the Building Official/Public Works Manager. The plan shall include:

- Construction delivery routes approved by the Department of Public Works;
- Construction schedule (deliveries, worker hours, etc.);
- Notification to area residents;
- Emergency access routes; and
- Parking plan to minimize the impacts of contractor/employee vehicles and construction equipment on neighborhood parking

8. During the construction process the following shall be required:

- a. The project engineer shall be on-site during the grading process and shall submit written certification to the Town staff that the grading has been completed as designed and recommended prior to installation of retaining forms.
- b. The project engineer shall field check the grade of the driveway and provide written certification to the Town staff that the work to this point has been completed in conformance with the approved building plans and recommendations.
- c. All construction related vehicles including equipment delivery, cement trucks and construction materials 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 contractor.
- d. Additionally, 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.

9. Prior to the project final inspection the following shall be completed:

- a. The project engineer shall field check the completed project and submit written certification to Town Staff stating that the retaining, grading and drainage elements have been installed in conformance with the approved building plans.
- b. The Building Official shall field check the completed project to verify that the work has been installed as per the approved plan.
- c. The Planning Department shall field check the completed project to verify that all conditions of the Planning Commission have been complied with including installation of landscaping and irrigation prior to the final inspection.

10. Excavation shall not occur between October 1st and April 1st of any year. The Town Engineer has the authority to waive this condition depending upon the weather.
11. During construction, the developer and all employees, contractors and subcontractors must comply with all requirements set forth in Ordinance # 673 (Chapter 8.26 of the Town Code) "Storm Water Management and Discharge."
12. The applicant shall comply with Ordinance 656, an Ordinance of the Town of Fairfax Amending Section # 12.24.050 of the Fairfax Town Code relating to the "Issuance of Permit For Excavations in Streets And Public Thoroughfares".
13. The applicant shall comply with the Town Noise Ordinance Chapter 8.16 of the Fairfax Town Code.
14. Any changes, modifications, additions or alterations made to the approved set of plans will require approval by the Town Engineer and the Director of Planning and Building Services. Any construction based on project plans that have been altered without the benefit of an approved modification will result in the job being immediately stopped and red tagged.
15. Any modification of these Conditions of Approval must be approved by the Fairfax Planning Commission.
16. 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, Design Review Board 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.

Sanitary District

- 1. A sewer connection permit is required and the owner must file an application with the District prior to issuance of the project building permit.

Miscellaneous Conditions

- 1. The applicant must comply with any all conditions listed above unless a specific agency waives their conditions in a written letter to the Department of Planning and Building Services.
- 2. Planning Conditions acted upon by the Planning Commission may only be waived by the Commission at a future public hearing.
- 3. The applicant shall comply with any and all conditions placed upon the project by the Building Official/Public Works Manager.

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

The approval of the Use Permit and Variances can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 18th, day of February, 2016, by the following vote:

AYES:
 NOES:
 ABSTAIN:

 Chair, Laura Kehrlein

Attest:

 Jim Moore, Director of Planning and Building Services

Google Maps 82 Pine Dr



Google

ATTACHMENT **B**

October 5, 2015

Mark Lockabay, Building Inspector

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

SUBJECT: Application of the Hillside Maintenance Agreement (1997)

Dear Linda,

A permit has been issued and work has started on a project to widen the driveway at 84 Pine Drive. This project includes an excavation in the public-right-of-way (PROW) adjacent to my property. I am concerned that the work now in progress, especially if it rains, will impact the stability of the PROW, my property, and most importantly my driveway. This work by others in the PROW has caused my concern because according to the Town Staff Report of 8/12/96, attached, I am responsible for the stability of the PROW in this area. Therefore, I request the Town to review this matter as soon as possible and come up with a properly engineered solution for this potentially disastrous situation.

I have a couple of questions:

1. Why was I not notified in advance of the permitting of this project?
2. Was the Agreement between the Town and me reviewed?
3. Has the Town decided to ignore the Agreement? If so, let me know.

Sincerely,


Michael Sturtevant

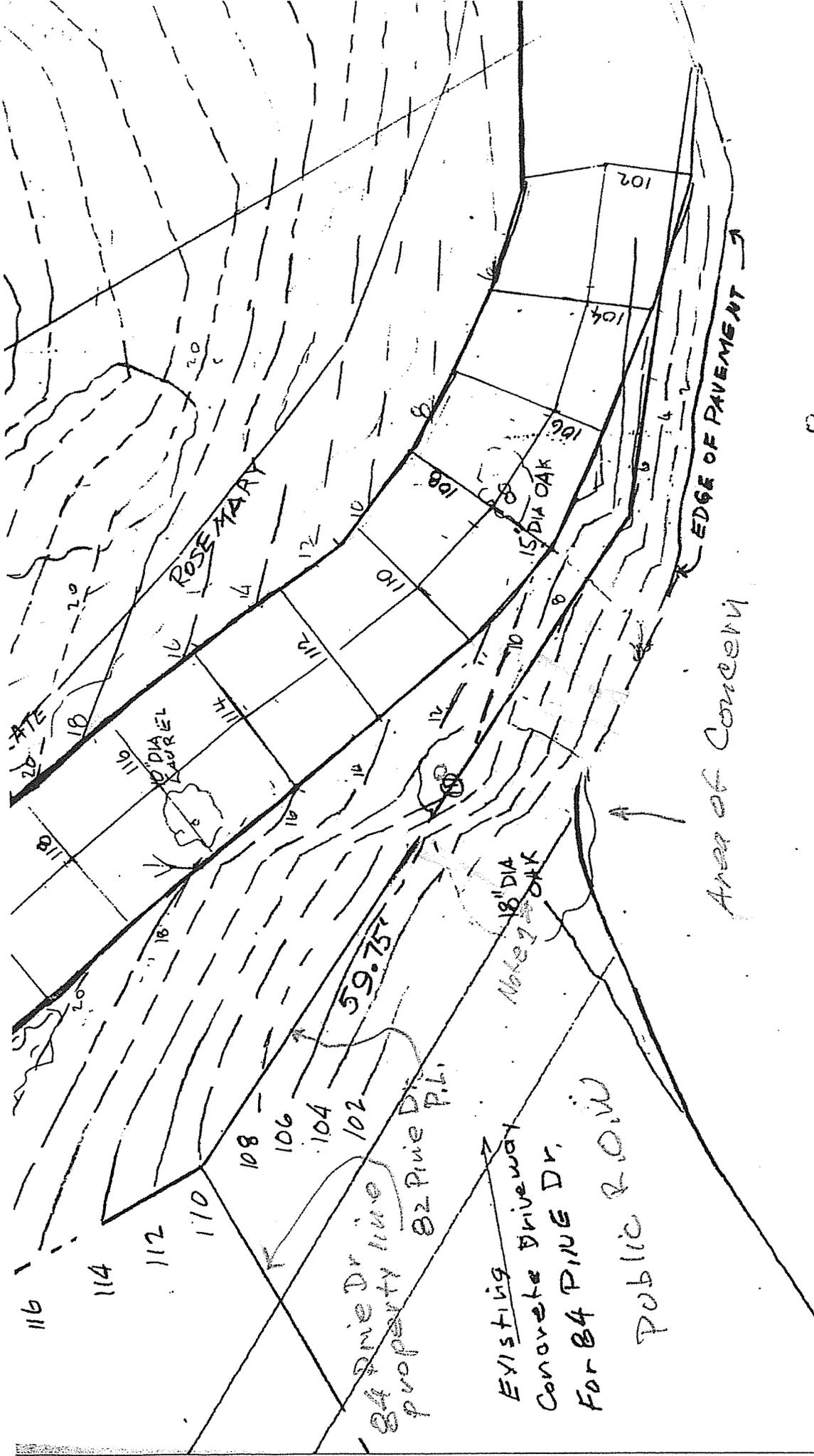
Attachments: 1. Staff Report from Linda Neal to Town Council 8/12/1996

2. Hillside Maintenance Agreement 8/6/1996.

3. Site map. A section of the 82 Pine Drive site drawing per permit 97075 3/19/1997

Cc Linda Neal

ATTACHMENT C



PINE

Area of Concern

Note: This oak removed/seed bay laurel adjacent is 1-2' inside R.O.W.

Section of 82 Pine
Site Plan Sheet A1
Permit # 97075

Existing Driveway
Concrete Driveway
For 84 PINE DR.
Public R.O.W.

84 Pine Dr line
property line
82 Pine Dr
P.L.

59.75'

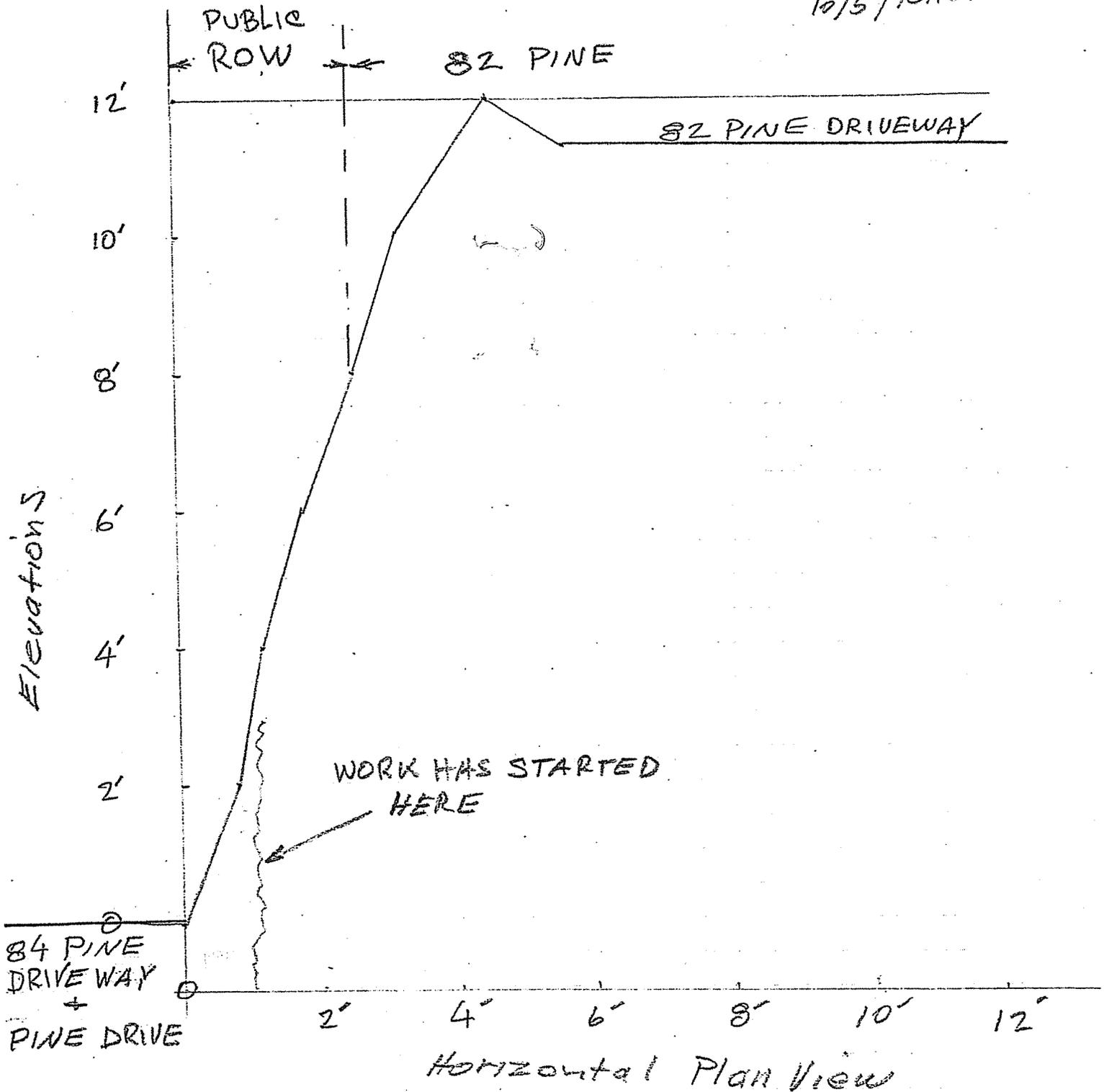
Noted 18" DIA
OAK

15 DIA OAK

EDGE OF PAVEMENT

0'

MRS 10/6/2015
Part of my
10/5/letter



PROFILE OF BANK
at 82/84 PINE Drive
From Site Plan Sheet A1
Permit # 97075

1997

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"**.

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 as 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 _____

RECORDING REQUESTED BY:

AND

WHEN RECORDED MAIL TO:

Michael Stortevant
P.O.B. 561
Fairfax CA 94978

97-022347

Rec Fee 19.00
Cash 19.00

Recorded
Official Records
County of
MARIN
JOAN C THAYER
Recorder
8:01am 1-May-97

XX 5

THIS SPACE FOR RECORDERS USE ONLY

Maintenance Agreement

THIS PAGE IS ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
ADDITIONAL RECORDING FEE APPLIES

ATTACHMENT E

HILLSIDE MAINTENANCE AGREEMENT

This Agreement is made and entered into this ^{MJS} 15th day of April, 1998, by and between Michael J. Sturtevant ("Owner" hereafter) and the Town of Fairfax, a municipal corporation, ("Town" hereafter) and is based upon the following facts:

- (a) Owner holds title to that certain real property ("the property" hereafter) more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.
- (b) Owner has applied to Town for various entitlements, including a Hillside Residential Development Permit, excavation and encroachment permits and a driveway variance for the purpose of permitting Owner to develop the property.
- (c) Owner's proposed development of the property will include excavation for, and construction of, a driveway traversing a steep hillside slope lying easterly and northeasterly of the right-of-way of Pine Drive.
- (d) Town has granted the development entitlements sought by Owner on condition that Owner enter into an agreement, binding upon Owner and his successors in interest, whereby Owner assumes full responsibility for the future stability of said hillside slope.

NOW, THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. In consideration of the grant to Owner of the development entitlements referred to herein, Owner, on behalf of himself, his heirs, successors and assigns, agrees to maintain the stability of the hillside slope of the property lying easterly and northeasterly of Pine Drive, including that portion of the hillside slope lying within the right-of-way of Pine Drive. In the event of the occurrence of any earth movement (slides, mud flows, etc.), or threat of such earth movement, in said hillside slope, Owner agrees to correct such earth movement and the causes thereof at Owner's sole cost. Owner shall further indemnify and hold harmless Town, and its officers, agents and employees from any damage, injury or liability which may arise as the result of the occurrence of any such earth movement or threat thereof. Provided, however, that the provisions of this paragraph shall not apply to any earth movement occurring after the date of this Hillside Maintenance Agreement and resulting from actions of the Town of Fairfax in maintaining or improving Pine Drive or by the actions of persons not a party to this Agreement.
2. Owner agrees that the property shall at all times be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the obligations undertaken by Owner herein

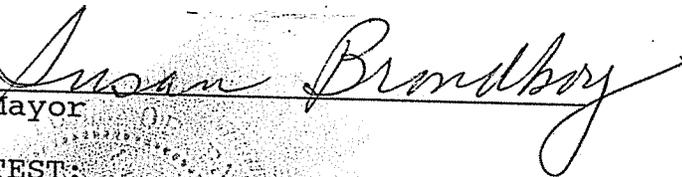
and that such obligations shall run with the property and shall be binding on all parties having or acquiring any right, title or interest in the property.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THE DAY AND YEAR FIRST ABOVE WRITTEN.

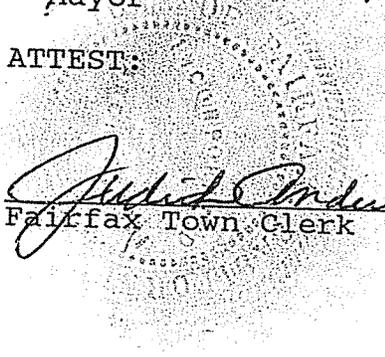


Michael J. Sturtevant, Owner

TOWN OF FAIRFAX

By 
Mayor

ATTEST:



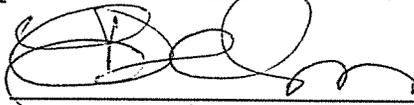

Fairfax Town Clerk

State of California
County of Marin

On 4-15-97 before me, the undersigned, a Notary Public in and
for said State, personally appeared Michael J. Sturtevant * *

personally known to me (or 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.

WITNESS my hand and official seal.

Signature 

Name C. De Lorenzi
(typed or printed)



(Seal)

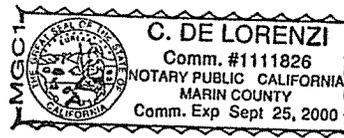
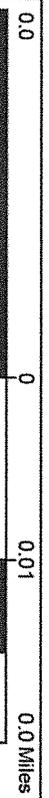


EXHIBIT "A"

The real property situated in the Town of Fairfax, County of Marin, State of California, described as Lots 24 and 26 in Block 12 as shown on that certain Map entitled, "Amended Map No. 2 of the Cascades, Marin County, California," which Map was recorded in the office of the County Recorder of Marin County, California, on October 11, 1921, in Volume 5 of Maps at page 14, Marin County Records.

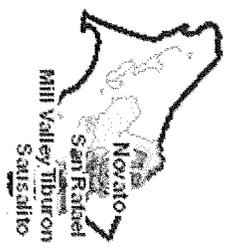


NAD 1983_HARN_StatePlane_California_III_FIPS_0403_Feet
 © Latitude Geographics Group Ltd.

This map is a user-generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 719



Legend

- Address
- Parcel
- Condominium Common Area
- Mobile Home Pad
- City
- Community
- Marin County Legal Boundary
- Other Bay Area County
- 2-foot Elevation NAVD88
- Interior
- Index

Notes