



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Encroachment Agreement for Driveway, Stairs, Landscaping, and Retaining Walls at 919, 921, and 923 Bridgeway (VAR/DR/TM/TP/EP 06-069).

### RECOMMENDED MOTION:

The Planning Commission and Staff recommend that the City Council adopt the attached resolution approving an encroachment agreement to allow a driveway, stairs, landscaping, and retaining walls at 919, 921, and 923 Bridgeway to encroach into the Bridgeway public right-of-way fronting the subject property.

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### SUMMARY

The applicant, James Malott, on behalf of property owner, Michael McLaughlin, requests City Council approval of an Encroachment Agreement to allow a driveway, stairs, landscaping, and retaining walls for the three new residences which encroach into the public right-of-way located at 919, 921, and 923 Bridgeway as shown in the attached site plan.

### BACKGROUND

On March 26, 2008 and May 28, 2008, the Planning Commission reviewed and approved a design review permit, variance, tentative subdivision map, and tree removal permit (VAR/DR/TM/TP/EP 06-069) for the removal of an existing residential duplex and construction of three new detached cottages with an underground garage at 919, 921, and 923 Bridgeway (APN 065-063-07). The Planning Commission also recommended City Council approval of an Encroachment Agreement to allow the driveway, stairs, landscaping, and retaining wall to encroach into the public right-of-way on Bridgeway adjacent to the site.

### ISSUES

#### Encroachment Review

Chapter 10.56 of the Zoning Ordinance provides that the Planning Commission must review encroachment of structures in the public right-of-way, such as those included in the subject application, and forward a recommendation to the City Council for approval of an encroachment agreement.

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The encroachments are shown on the attached site plan and include the following:

- A 17-foot wide driveway encroaches 20 feet into the public right-of-way;
- Stairs to the cottages encroach approximately 2 feet into the public right-of-way;
- A 180 square-foot landscaped area encroaches approximately 15 feet into the public right-of-way; and
- Three 2-foot high landscape retaining walls encroach approximately 3 feet into the public right-of-way.

The City Engineer has reviewed the subject application and supports approval of the subject encroachment agreement. The Planning Commission reviewed the proposed encroachment and recommended approval of the subject encroachment agreement based on the findings provided in **Exhibit A** of the **Attachment**.

### FISCAL IMPACT

No fiscal impact.

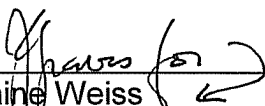
### RECOMMENDATION

The Planning Commission and Staff recommend that the City Council adopt the attached resolution (**Attachment**), approving an encroachment agreement to allow a driveway, stairs, landscaping, and retaining walls at 919, 921, and 923 Bridgeway to encroach into the Bridgeway public right-of-way fronting the subject property.

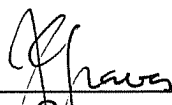
### ATTACHMENT

Resolution Approving an Encroachment Agreement for 919, 921, and 923 Bridgeway  
[Draft]

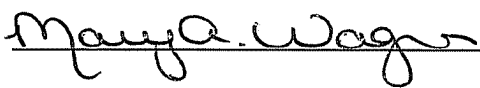
PREPARED BY:

  
\_\_\_\_\_  
Lorraine Weiss  
Contract Planner

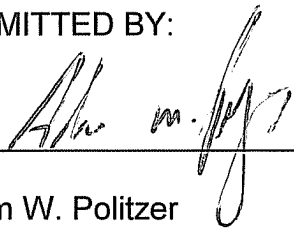
REVIEWED BY:

  
\_\_\_\_\_  
Jeremy Graves  
Community Development Director

REVIEWED BY:

  
\_\_\_\_\_  
Mary Wagner  
City Attorney

SUBMITTED BY:

  
\_\_\_\_\_  
Adam W. Politzer  
City Manager

CDD\Projects- Address\919, 921, 923 Bridgeway ccsr encroachment agreement 07-01-08

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# DRAFT

## RESOLUTION NO. XXXX

### A RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT TO ALLOW A DRIVEWAY, STAIRS, LANDSCAPING, AND RETAINING WALLS TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY FRONTING 919, 921, AND 923 BRIDGEWAY. (VAR/DR/TM/TP/EP 06-069)

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**WHEREAS**, James Malott on behalf of property owner Michael McLaughlin, requested Planning Commission approval of a Design Review Permit, Variance, Tentative Map for Condominium Subdivision, Tree Permit, and recommendation of approval to the City Council for an Encroachment Agreement to allow a driveway, stairs, landscaping, and three two-foot high retaining walls to encroach into the Bridgeway public right-of-way for three new residences located at 919, 921, and 923 Bridgeway (APN 065-063-07); and

**WHEREAS**, on March 26, 2008, and May 28, 2008, the Planning Commission conducted public hearings, and considered the information contained in the staff reports as well as the plans titled "McLaughlin Cottages" and design Alternate "A" date-stamped received May 1, 2008; and

**WHEREAS**, the Planning Commission found that, as conditioned, the proposed project complies with requirements of the Zoning Ordinance and the General Plan and is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303(b) of the State CEQA Guidelines; and

**WHEREAS**, on May 28, 2008, the Planning Commission adopted Resolution No. 2008-17 which approved a Variance, Design Review Permit, Tentative Map, and Tree Permit (VAR/DR/TM/TP/EA 06-069) and recommended City Council approval of the requested encroachment agreement for improvements in the public right-of-way; and

**WHEREAS**, on July 1, 2008, the City Council reviewed and considered the project plans for the proposed encroachment agreement titled "McLaughlin Cottages, Sidewalk Improvements," date-stamped received June 12, 2008; and

**WHEREAS**, the City Council considered written testimony on the subject application; and

**WHEREAS**, the City Council agrees with the Planning Commission that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15303(b) of the State CEQA Guidelines.

**ATTACHMENT**  
( 11 PAGES )

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NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AS  
FOLLOWS:

**Section 1. Approval of Encroachment Agreement**

Based upon the findings provided in **Exhibit A**, the Encroachment Agreement provided in **Exhibit B** is approved to allow improvements in the public right-of-way along the Bridgeway property frontage at 919, 921, and 923 Bridgeway

**Section 2. Judicial Review**

The time within which judicial review of this decision may be sought is governed by the provisions of section 65009 of the Government Code, section 1094.6 of the Code of Civil Procedure and all other applicable law.

**THIS RESOLUTION WAS PASSED AND ADOPTED** at the regular meeting of the City Council of the City of Sausalito on the 1st day of July 2008, by the following vote:

AYES:            Councilmember:  
NOES:            Councilmember:  
ABSENT:        Councilmember:  
ABSTAIN:       Councilmember:

\_\_\_\_\_  
MAYOR AMY BELSER

ATTEST: \_\_\_\_\_  
CITY CLERK

Exhibit A: Encroachment Agreement Findings  
Exhibit B: Encroachment Agreement

CDD\Projects-Address\919, 921, 923 Bridgeway cc resol encroachment agreement 07-01-08

EXHIBIT A

ENCROACHMENT AGREEMENT FINDINGS  
919, 921, 923 Bridgeway (VAR/DR/TM/TP/EP 06-069)

Pursuant to the Sausalito Municipal Code Section 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at 919, 921, and 923 Bridgeway based upon the following findings:

- A. The proposed encroachment is compatible with the surrounding area and will either improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.**

The proposed encroachments along Bridgeway will enhance the streetscape along the frontage of this site and provide for safe ingress and egress to and from the residential development proposed on the property.

- B) The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.**

The proposed encroachments in front of the property on Bridgeway are improvements to the streetscape, and do not impede use of adjacent parcels.

- C) The encroachment is necessary to the reasonable use and enjoyment of the property and the extent of the encroachment is justifiable.**

The encroachments along Bridgeway are necessary for access to the subject property and provide improvements in a safer manner than presently exists as it improves the sight distance.

- D) The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.**

The proposed encroachments will improve access and circulation in a safer manner than presently exists.

- E) The value of the proposed improvements will not prejudice a policy decision to terminate the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.**

The public right-of-way in front of the property along Bridgeway Boulevard and beyond the curb has enough room to make future modifications and not impede on the ability to provide continued access to the private property at 919, 921, and 923 Bridgeway.

**EXHIBIT B**

**CITY OF SAUSALITO  
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** (“Agreement”) is entered into this \_\_\_ day of \_\_\_, 2008 (the “Effective Date”) by and between **MICHAEL McLAUGHLIN** (“Owner”) of the property at 919, 921, and 923 Bridgeway (APN 065-063-07), and the **CITY OF SAUSALITO**, a municipal corporation (“City”).

**RECITALS**

The following Recitals are a substantive part of this Agreement:

A. Improvements in the public right-of-way along the Bridgeway property frontage located at 919, 921, and 923 Bridgeway, require City Council approval of an Encroachment Agreement (VAR/DR/TM/TP/EA 06-069). In accordance with Chapter 10.56 of the City’s Municipal Code, the Planning Commission has reviewed the proposed encroachment and has recommended that the City Council approve the encroachment.

B. The City has the authority to regulate the use of the public right-of-way and is willing to allow Owner the encroachments as shown in the attached site plan and in accordance with Titles 10 and 17 of the Sausalito Municipal Code under certain terms and conditions as set forth below.

**NOW, THEREFORE**, Owner and City hereby agree as follows:

1. Description of Encroachments. The encroachments covered by this Agreement are improvements in the public right-of-way along the Bridgeway property frontage at 919, 921, and 923 Bridgeway including the driveway, stairs, landscaping, and retaining walls as shown in the attached site plan (see **Exhibit 1**) which is incorporated herein (the “Encroachments”).
2. Term. The term of this Agreement is one (1) year after which it shall be automatically renewed on an annual basis unless City issues a notice of non-renewal.
3. Condition of Encroachments and Right-of-Way. Owner shall maintain all Encroachments and the City-owned property affected thereby in good and safe condition and free from any nuisance to the satisfaction of the City Engineer. In addition, the project’s Covenants, Conditions, and Restrictions (CC&Rs) shall include that the homeowner’s association shall be responsible for maintaining the Encroachments.
4. Removal or Relocation. Owner acknowledges and agrees that it shall remove or relocate the Encroachment(s) at its sole cost and expense if the Encroachment(s) interferes with any lawful governmental or proprietary purpose of the City of Sausalito; is detrimental to governmental activities; and/or the right of way or street is being vacated. If the Owner fails to remove the Encroachment(s) within the time specified by the City Engineer, City may cause the work to be done at the Owners’ expense.

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5. Taxes. Owner shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in the Encroachments.

6. Indemnification. Owner hereby agrees to indemnify, defend (with counsel reasonably acceptable to City and hold harmless City and its elected and appointed officials, officers, employees, consultants, agents, volunteers and successors in interest from any and all claims, demands, causes of action, damages, liabilities and obligations arising from or in any way related to this Agreement and/or Owner's use of the right of way.

7. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice. Upon such termination, the Encroachment(s) must be removed as specified by and within the time required by the City Engineer. In addition, the City owned right of way must be restored to the condition required by the City Engineer. In the event that Owner fails to remove the Encroachment(s) and/or restore the right of way as required by the City Engineer within the specified time, City shall have the right to perform the work and charge Owner.

8. No Grant. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the right of way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress along, over, across and in the right of way. No use of any right of way or other interest under this Agreement shall create or vest in Owner any ownership interest in the right of way; nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

9. Condemnation. If the right-of-way is taken totally by condemnation, this Agreement shall terminate on the date of the taking with no compensation to Owner therefore. If a portion of the right of way is taken by condemnation, then this Agreement shall remain in effect as to the part not taken.

10. Standard Conditions. Owner shall comply with any and all Standard Conditions for Encroachment Permits required by the City Engineer, including the Conditions of Approval (see **Exhibit 2**) which are incorporated herein.

11. Compliance with Laws. Owner shall comply with all applicable laws, any permit issued by the City pursuant to this Agreement and any general or specific conditions required by the City Engineer.

12. Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit in the United States mail, postage prepaid, by register or certified mail, return receipt requested, addressed as follows:

**Owner:**

Michael McLaughlin  
2506 West 29<sup>th</sup> Avenue  
Denver, CO 80211

**City:**

City Engineer  
420 Litho Street  
Sausalito, CA 94965

13. Assignment. This Agreement is not assignable unless City consents in writing, which consent shall be withheld unreasonably. Such consent to assignment shall bind and insure to the benefit of the respective successors and assigns of the parties. This requirement for consent shall not apply to: (a) any disposition of all or a portion of the Property; or (b) any collateral assignment, security interest or pledge of this Agreement by Owner to any lender.

14. Waivers. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

15. Severability. If one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such provision shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity or constitutionality of the remaining portions of the Agreement.

16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein.

17. Modification. This Agreement may not be amended unless made in writing and signed by each party.

18. California Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

19. Attorneys' Fees. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.



20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

21. Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

22. No Personal Liability. No member, official or employee of City shall be personally liable to Owners or any successor in interest in the event of any default or breach by City or on any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereto set their signatures as of the date first above named herein.

OWNER:

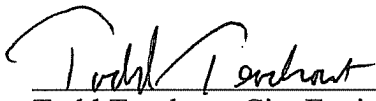
CITY:

\_\_\_\_\_  
Michael McLaughlin

\_\_\_\_\_  
Amy Belser, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Todd Teachout, City Engineer

\_\_\_\_\_  
Mary Wagner, City Attorney

EXHIBITS:

1. Site Plan, entitled "McLaughlin Cottages, Sidewalk Improvements," date stamped June 12, 2008
2. Encroachment Agreement Conditions of Approval

**EXHIBIT 1**

**SITE PLAN, ENTITLED  
"McLAUGHLIN COTTAGES, SIDEWALK IMPROVEMENTS,"  
DATE STAMPED JUNE 12, 2008**

L-2

DATE: 11/09/03  
 DRAWN BY: [illegible]  
 CHECKED BY: [illegible]  
 PROJECT: SIDEWALK IMPROVEMENTS  
 CLIENT: [illegible]  
 ADDRESS: 11800 S. [illegible] (10) 455-5984

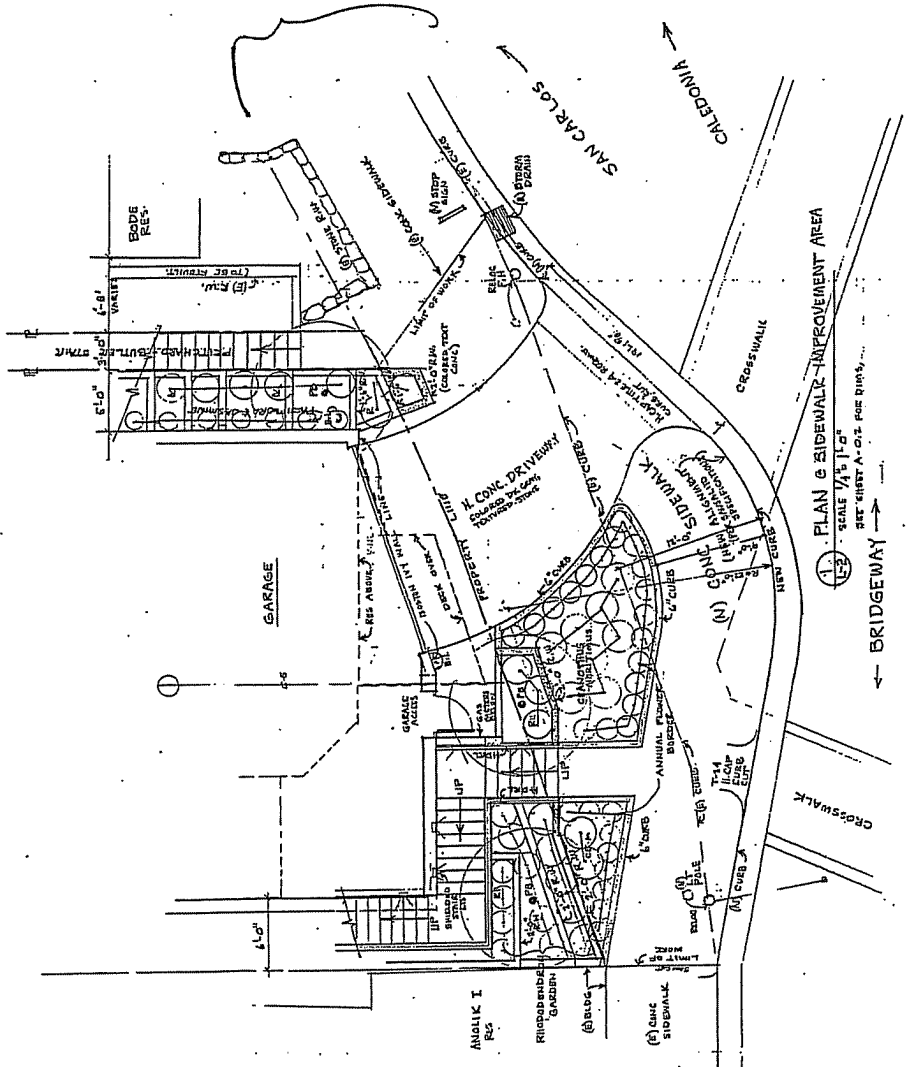
McLAUGHLIN COTTAGES

RECEIVED

FEB 12 2000

CITY OF SALSALITO  
COMMUNITY DEVELOPMENT DEPT.

Area of Encroachment



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## EXHIBIT 2

### ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

1. Approval of this Agreement is limited to the project plans titled "McLaughlin Cottages, Sidewalk Improvements" date-stamped received June 12, 2008.
2. The encroachment agreement is predicated on construction of the improvements. If the improvements are not constructed, the encroachment agreement is void.
3. Construction materials, equipment, vehicles, and debris boxes shall be placed to minimize obstruction of roads and gutters, shall be maintained in a clean and safe condition, and shall not be maintained in a manner that becomes a nuisance to the neighborhood.
4. Pursuant to Ordinance 1143, the operation of construction, demolition, excavation, alteration, or repair devices within all residential areas or within a 500 foot radius of residential zones shall be limited to the following hours:
  - a. Weekdays – Between 8 a.m. and 7 p.m.
  - b. Saturdays – Between 9 a.m. and 5 p.m.
  - c. Holidays – Between 9 a.m. and 7 p.m.

Such operation is prohibited on Sundays except by a homeowner residing on the property. Such work shall be limited to 9 a.m. to 7 p.m.

5. Dumping of residues from washing of painting tools, concrete trucks and pumps, rock, sand, dirt, agricultural waste, or any other materials discharged into the City storm drain system that is not composed entirely of storm water is prohibited pursuant to Sausalito Municipal Code (SMC) Chapter 11.17. Liability for any such discharge shall be the responsibility of person(s) causing or responsible for the discharge. Violations constitute a misdemeanor in accordance with SMC Section 11.17.060.B.
6. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or interior alterations and/or renovations not specified in the project plans, or alterations approved by the City Engineer, shall be performed on the project site. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
7. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal or final resolution of such action. If any condition is invalidated

by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.

8. In accordance with Ordinance No. 1160, the applicant shall pay any and all City costs arising out of or concerning the proposed project, including without limitation, permit fees, attorneys' fees, engineering fees, license fees and taxes, whether incurred prior to or subsequent to the date of this approval. Applicant acknowledges and agrees that City's costs shall be reimbursed prior to this approval becoming valid.
9. The applicant shall indemnify the City for any and all costs, including without limitation attorneys' fees, in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.
10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
11. The City Engineer is authorized to administratively approve minor modifications to the approved plans.

Prior to issuance of a building permit:

12. The applicant shall submit a Geotechnical (Soils) Report for review prepared by a State of California licensed civil engineer qualified in geotechnical engineering, except as otherwise approved by the Building Inspector.
13. A construction traffic control, parking, and staging plan and construction schedule shall be submitted for review and approval by the City Engineer. The applicant shall inform the City Engineer on the extent of traffic on San Carlos Avenue during construction, and the number of workers to be transferred to and from the site. The staging plan shall show where dumpsters, equipment, and construction material are to be stored during construction and any areas within the street right-of-way to be used for off-loading material and equipment. An encroachment permit is required for any such storage in the City right-of-way.
14. Any exterior security lighting to be installed shall be downward facing and must be submitted for review and approval by the Community Development Department.
15. The owner shall obtain an encroachment permit from the Engineering Division for any construction work or storage of construction materials in the right-of-way.
16. Demolition and excavation activities shall only occur between April 1 and October 15.