



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE

Bruce Staircase and Encroachment Agreement/ DR/EA 08-011

### RECOMMENDATION

- Authorize the construction of a concrete staircase in the South Street right-of-way between Edwards Avenue and Marion Avenue; and
- Approve the attached resolution which approves an encroachment agreement to allow a new driveway to encroach into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way.

### SUMMARY

On January 20, 2010 the Planning Commission took the following actions regarding a parcel at 109/111 Marion Avenue owned by applicant Paula Bruce:

- Approved an Initial Environmental Study/Mitigated Negative Declaration;
- Approved a Tentative Parcel Map to subdivide the existing parcel into two parcels;
- Approved a Design Review Permit to construct a new three-story residence single-family residence approximately 2,504 square feet in size;
- Approved a Tree Removal Permit to remove three protected trees; and
- Recommended City Council approval of a Encroachment Agreement to allow a proposed driveway to encroach into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way.

In addition, the Planning Commission required the applicant to obtain City Council approval for installation of a staircase which would complete a partially-installed walkway in the South Street right-of-way between Edwards Avenue and Marion Avenue.

This staff report addresses the staircase and encroachment agreement. On March 5, 2010 a courtesy notice of the Council's consideration of the staircase and encroachment agreement was send to all property owners and occupants within 300 feet of both the South Street right-of-way between Edwards and Marion Avenue and the property at 109/111 Marion Avenue.

### DISCUSSION

#### Staircase

During review of the project Staff recommended installing a public staircase as a frontage improvement in the Marion Avenue right-of-way adjacent to property to fulfill General Plan Policy CP-4.6 and Program CP-4.6.3, which encourages the improvement and extension of existing public paths for use by residents and the establishment of new pathway connections. During the Planning Commission's review of the project, the partially-improved South Street right-of-way was brought to the Planning Commission's attention as an alternative location for the staircase. The project applicant indicated she favored the off-site South Street location over the Marion Avenue location, and the project proceeded with the South Street right-of-way as the site for the improved pathway connection.

The applicant submitted a conceptual staircase plan for the South Street right-of-way (see **Attachment 1** for the plan) which indicates that poured-in-place concrete stairs will be installed to make the connection between the existing concrete stairs in the South Street right-of-way and Edwards Avenue (see **Attachment 2** for photographs). The new staircase will replace existing dilapidated timber and earth stairs located uphill from Edwards Avenue. On January 20, 2010 the Planning Commission approved the conceptual staircase plan (see Condition of Approval 28 in Planning Commission Resolution No. 2010-04, provided as **Attachment 3**). The applicant was also required to install signage indicating that the stairs are open to the public. A description of the nexus for the required staircase for the approved tentative parcel map and design review permit is provided in **Attachment 6**.

Condition of Approval 27 in Resolution No. 2010-04 reads:

*Prior to recordation of the Parcel Map, the Developer shall obtain City Council approval for installation of stairs in the South Street right-of-way between Edwards Avenue and Marion Avenue. If the City Council does not grant approval of the installation of stairs in the South Street right-of-way between Edwards Avenue and Marion Avenue, the Developer shall either:*

- *Submit construction drawings, obtain a building permit, and install poured-in-place stairs in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and north of the curb of Marion Avenue (where the pavement ends) prior to recordation of the Parcel Map; or*
- *Submit an in-lieu fee comparable to the cost of the design, all associated permitting fees, and installation of stairs in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and the north of the curb of Marion Avenue.*

Staff recommends that the City Council authorize the construction of the staircase in the South Street right-of-way between Edwards Avenue and Marion Avenue as recommended by the Planning Commission.

### **Encroachment Agreement**

On January 20, 2010 the Planning Commission recommended City Council approval of an encroachment agreement to allow construction of a new driveway which would encroach into the Sausalito Boulevard right-of-way to access the new single family residence. In addition, the Planning Commission discussed the existing unauthorized and unpermitted encroachments in the Marion Avenue right of way adjacent to the site (i.e., brick patios, stone stairs, pathways, fencing, landscaping, and irrigation). The Planning Commission viewed the existing encroachments as a privatization of public right-of-way with the exception an entry staircase which provides access the existing duplex. Therefore the Planning Commission recommended City Council approval of an Encroachment Agreement to allow the entry staircase (see **Attachment 4** for a photograph of the area). In addition, the Planning Commission recommended City Council authorize a Landscaping Maintenance Agreement to allow the applicant to maintain existing landscaping in the Marion Avenue right-of-way. See **Attachment 5** for the draft resolution approving an Encroachment Agreement.

**CORRESPONDENCE**

Correspondence received prior to the writing of this staff report is included in **Attachment 7**. Correspondence submitted after the writing of this staff report will be posted on the City's website (<http://www.ci.sausalito.ca.us>) and available at the City Council meeting.

**RECOMMENDATIONS**

The Planning Commission and Staff recommend the City Council take the following actions:

- Authorize the construction of a concrete staircase in the South Street right-of-way between Edwards Avenue and Marion Avenue; and
- Approve the attached resolution which approves an encroachment agreement to allow a new driveway to encroach into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way.

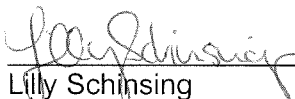
Alternatively, the City Council may:

- Require the applicant to install the staircase in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and north of the curb of Marion Avenue (where the pavement ends) prior to recordation of the Parcel Map; or
- Submit an in-lieu fee comparable to the cost of the design, all associated permitting fees, and installation of stairs in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and north of the curb of Marion Avenue; or
- Deny the encroachment agreement

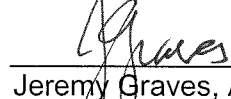
**ATTACHMENTS**

1. South St. Stair Concrete Plan, date stamped received January 12, 2010
2. Photographs of the South Street right-of-way between Edwards Avenue and Marion Avenue (submitted by Paula Bruce)
3. Planning Commission Resolution No. 2010-04, adopted January 20, 2010
4. Staff Photograph of the Marion Avenue Entry Step
5. Draft Resolution Approving an Encroachment Agreement for 109/111 Marion Avenue
6. Description of Nexus for Staircase
7. Letter from Mr. Fraser, date stamped March 10, 2010

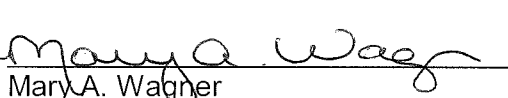
PREPARED BY:

  
Lilly Schinsing  
Associate Planner


REVIEWED BY:

  
Jeremy Graves, AICP  
Community Development Director

REVIEWED BY:

  
Mary A. Wagner  
City Attorney

SUBMITTED BY:

  
Adam W. Politzer  
City Manager



*D.J. Matteson*  
D.J. MATTESON CIVIL ENGINEER AND SURVEYOR

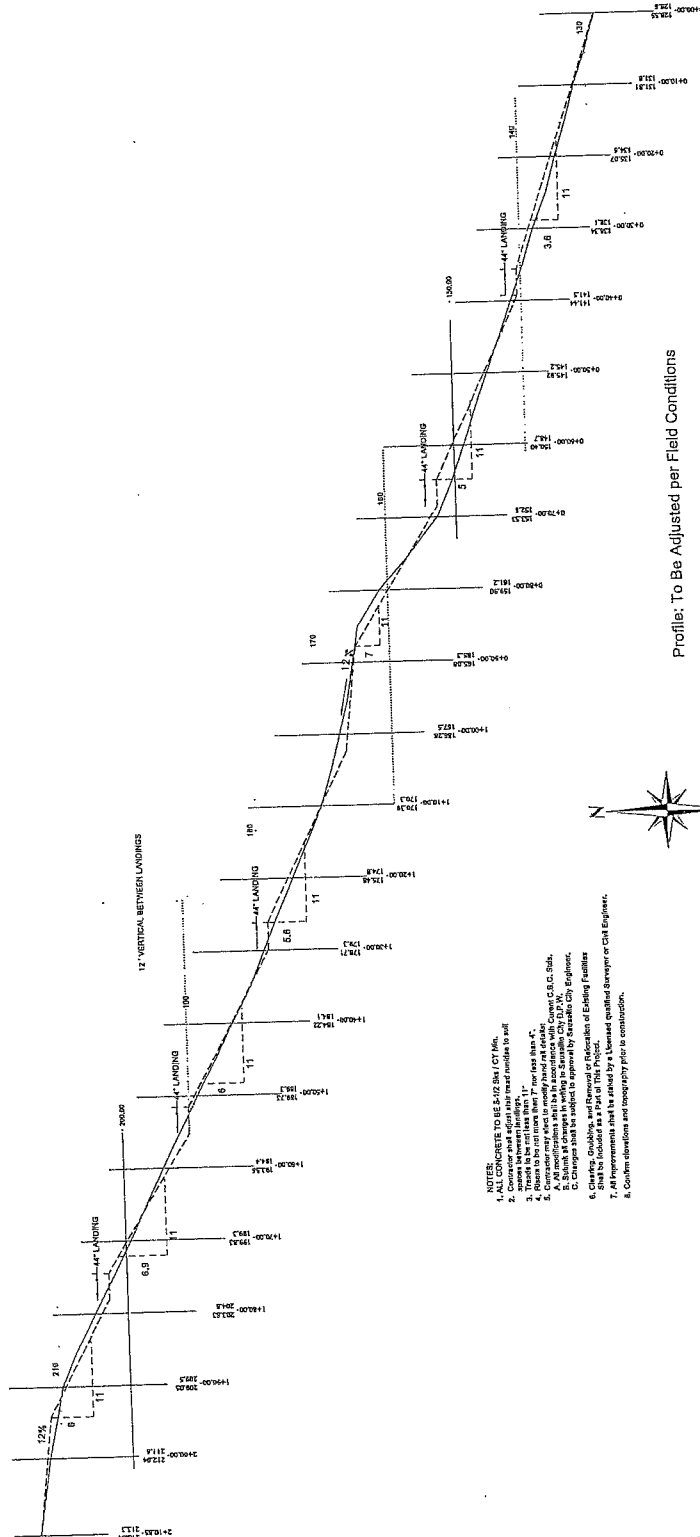
SOUTH ST. STAIR CONCEPT PLAN

155-157 EDWARDS AVE  
SOUTH ST. PKY  
SAUSALITO, CA

SCALE 1" = 10'

D.J. MATTESON CIVIL ENGINEER AND SURVEYOR  
200 GATE FIVE RD # 210A SAUSALITO CA  
5 HERON CT, SAN RAFAEL CA 94901

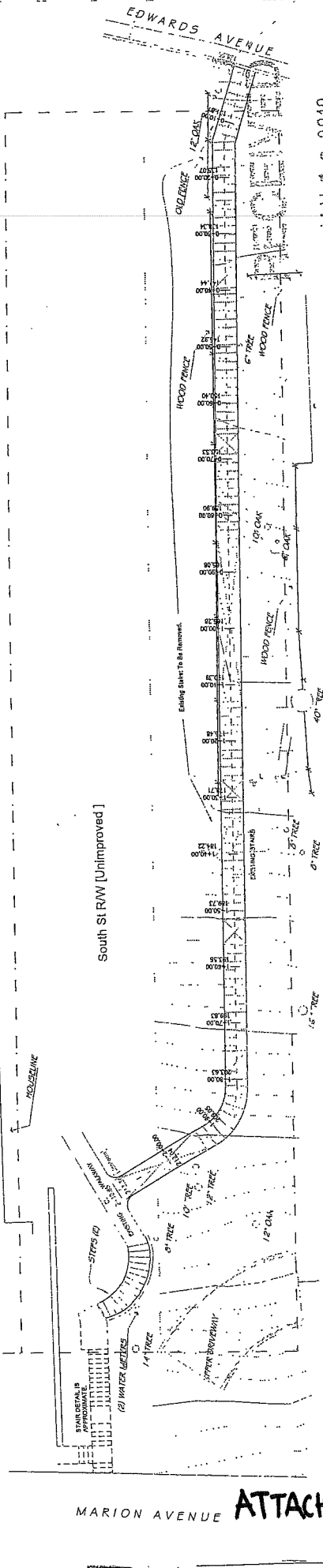
COORDINATES ARE AT THE 2011 DATUM



Profile; To Be Adjusted per Field Conditions



- NOTES:
1. CONCEPT PLAN TO BE USED FOR CITY PERMITS.
  2. CONCEPT PLAN IS FOR INFORMATION ONLY. THE CITY ENGINEER SHALL BE RESPONSIBLE FOR THE DESIGN OF THE STAIR AND SHALL BE RESPONSIBLE FOR THE DESIGN OF THE STAIR AND SHALL BE RESPONSIBLE FOR THE DESIGN OF THE STAIR.
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South St RW [Unimproved]

JAN 12 2010

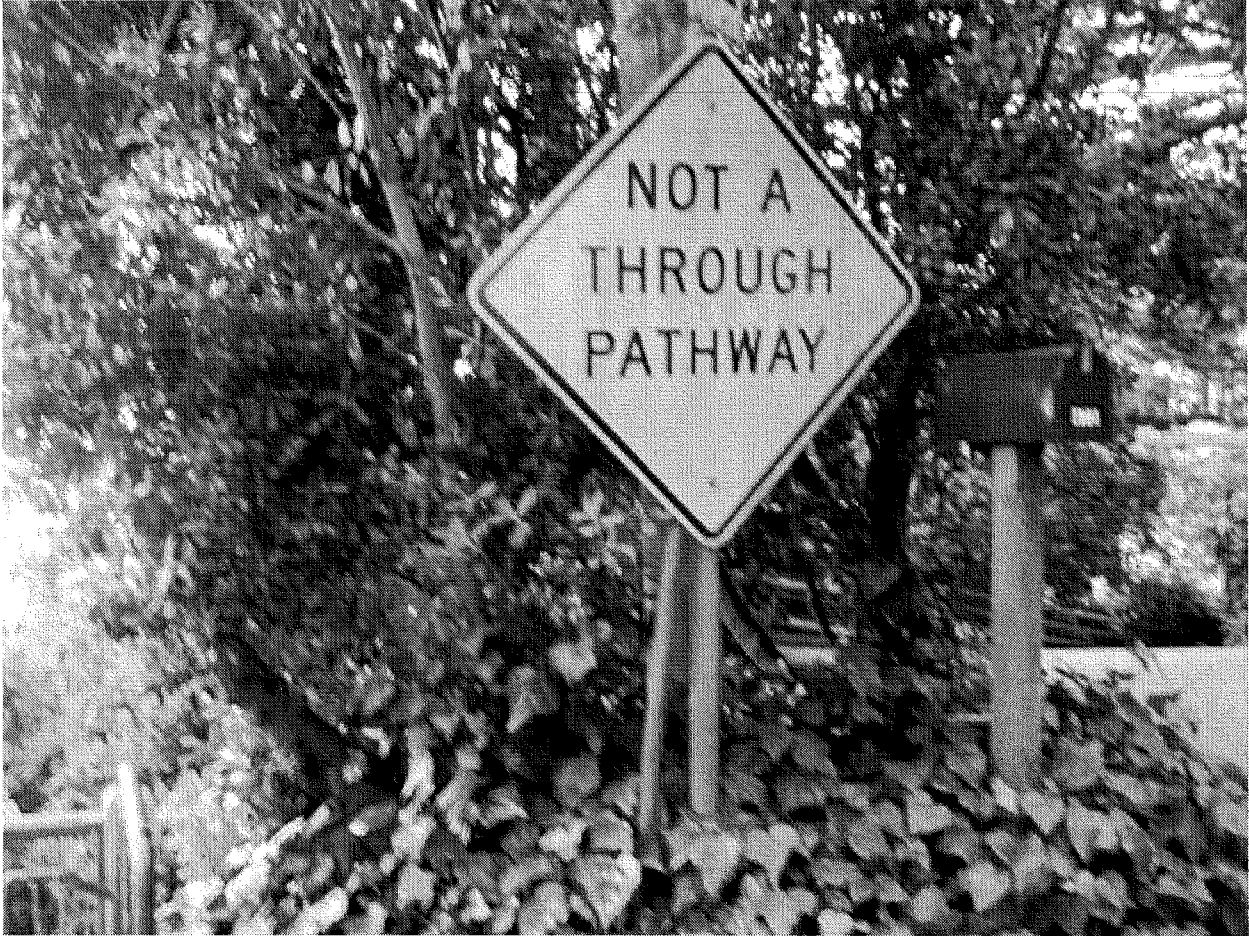
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

MARION AVENUE ATTACHMENT 1

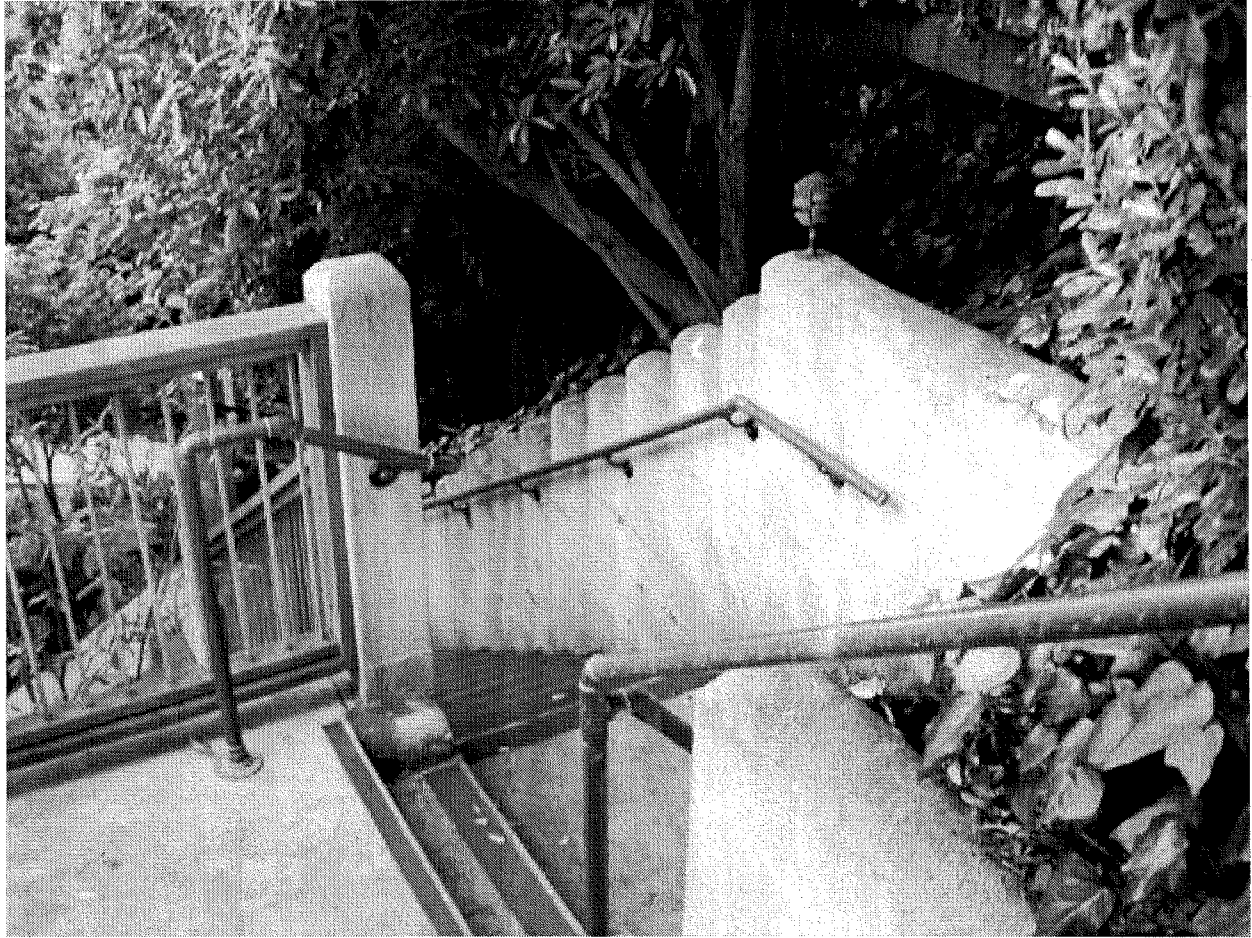


ATTACHMENT 2

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7



Photographs submitted by Paula Bruce on June 23, 2009 of the South Street Pedestrian Stairs



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**SAUSALITO PLANNING COMMISSION  
RESOLUTION NO. 2010-04**

**APPROVAL OF A TENTATIVE PARCEL MAP FOR THE SUBDIVISION OF A PARCEL INTO TWO PARCELS, A DESIGN REVIEW PERMIT FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE, AND A TREE REMOVAL PERMIT TO REMOVE PROTECTED TREES AT 109/111 MARION AVENUE; AS WELL AS A RECOMMENDATION OF CITY COUNCIL APPROVAL OF AN ENCROACHMENT AGREEMENT TO ALLOW A DRIVEWAY TO ENCROACH INTO THE SAUSALITO BOULEVARD RIGHT-OF-WAY AND TO ALLOW AN EXISTING ENTRY STAIRCASE TO ENCROACH INTO THE MARION AVENUE RIGHT-OF-WAY  
(TM/DR/EA/TR 08-011)**

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**WHEREAS**, an application was filed by applicant and property owner Paula Marie Bruce requesting Planning Commission approval of a Tentative Parcel Map, Design Review Permit and a Tree Removal Permit for the subdivision of a parcel into two parcels, the construction of a new single-family residence and the removal of protected trees at 109/111 Marion Avenue (APN 065-263-04), approval for construction and repair of a public stairway in the South Street right-of-way; and recommendation of City Council approval of an Encroachment Agreement for a driveway to encroach into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way; and

**WHEREAS**, the Planning Commission conducted duly-noticed public hearings on June 3, 2009, July 1, 2009, September 23, 2009, December 2, 2009, December 16, 2009 and January 20, 2010, at which time all interested persons were given an opportunity to be heard; and

**WHEREAS**, the Planning Commission has considered all oral and written testimony on the subject application; and

**WHEREAS**, the Planning Commission has reviewed and considered the information contained in the staff reports dated July 1, 2009, September 23, 2009, December 2, 2009, December 16, 2009 and January 20, 2010 for the proposed project; and

**WHEREAS**, the Planning Commission finds that, as conditioned herein, the proposed project is consistent with the General Plan and complies with the requirements of Zoning Ordinance; and

**WHEREAS**, the Planning Commission by separate resolution approved the *Bruce Residence Initial Study/Mitigated Negative Declaration* pursuant to the California Environmental Quality Act (CEQA).

**NOW, THEREFORE, THE PLANNING COMMISSION HEREBY RESOLVES:**

1. A Tentative Minor Subdivision (Parcel) Map to subdivide one parcel at 109/111 Marion (APN 065-263-04), into two separate parcels including the installation of pedestrian stairs which would complete the partially-installed stairs in the South Street right-of-way between Edwards

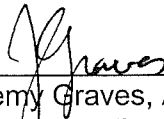
ATTACHMENT 3  
4B2  
13

Avenue and Marion Avenue is approved based upon the findings provided in Attachment 1, and subject to the conditions of approval provided in Attachment 2. The project plans are provided in Attachment 4.

2. A Design Review Permit for construction of a new single-family residence on Parcel "B" of the Tentative Minor Subdivision (Parcel) Map is approved based upon the findings provided in Attachment 1, and subject to the conditions of approval provided in Attachment 2. The project plans are provided in Attachment 4.
3. A Tree Removal Permit to remove three (3) protected trees is approved based upon the findings provided in Attachment 1 and subject to the conditions of approval provided in Attachment 2. The project plans are provided in Attachment 4.
4. An Encroachment Agreement to allow for a driveway to encroach into the Sausalito Boulevard right-of-way, a portion of an existing entry staircase in the Marion Avenue right-of-way, and landscaping in the Marion Avenue right-of-way is recommended for City Council approval based upon the findings provided in Attachment 1, and subject to the conditions of approval provided in Attachment 2. The recommended area for the Encroachment Agreement is illustrated in Attachment 3. The project plans are provided in Attachment 4.

**RESOLUTION PASSED AND ADOPTED**, at the regular meeting of the Sausalito Planning Commission on the 20<sup>th</sup> day of January, 2010, by the following vote:

AYES:	Commissioner:	Keegin, Cox, Keller
NOES:	Commissioner:	None
ABSENT:	Commissioner:	Bair
ABSTAIN:	Commissioner:	None



\_\_\_\_\_  
Jeremy Graves, AICP  
Secretary to the Planning Commission

**ATTACHMENTS**

- 1- Findings
- 2- Conditions of Approval
- 3- Encroachment Site Plan
- 4- Project Plans

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3. The design of the subdivision shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

*The subdivision is located on a steep north-facing slope with extensive vegetation and therefore no design options that would feasibly allow the extensive use of future solar passive heating. The subdivision design allows for passive cooling opportunities due to the existing vegetation and north-facing slope.*

Government Code Section 66474 requires the local agency disapprove a tentative map if it makes any one of the following findings. In accordance with Government Code Section 66474, the Planning Commission finds:

4. That the proposed map is not consistent with applicable general and specific plans.

*The subdivision map is consistent with the General Plan. No specific plan exists for this area.*

5. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

*The proposed residence is consistent with the General Plan. No specific plan exists for this area.*

6. That the site is not physically suitable for the type of development.

*The project's geotechnical report finds that the site has high geological stability and is suitable for the development of a single-family residence. A Condition of Approval requires the Developer to submit the geotechnical report for peer review to insure that the proposed measures are adequate for the site.*

7. That the site is not physically suitable for the proposed density of development.

*The proposed residential unit is within the density limits of the R-2-2.5 Residential Zoning District, which allows for 1 dwelling unit per every 2,500 square feet of parcel area.*

8. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

*A Botanical Inventory and Special-Status Plant Survey prepared for the project site indicate that no special-status plants are located on the site. The Initial Environmental Study/Mitigated Negative Declaration and Mitigation Monitoring Program prepared for the project identified mitigation measures to effectively mitigate the project's potential environmental impacts to a less-than-significant level.*

9. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

*The project's geotechnical report found that the site has high geological stability and therefore its development would not pose a threat to life or safety. As a condition of approval the geotechnical report is required to undergo third party peer review before construction documents may be approved. In addition, a traffic Sight Distance Memo was prepared for the project, which concluded that the available sight distance to the west from a vehicle located on the project driveway, at the edge of the traveled way, would allow adequate stopping sight distance for a vehicle traveling 20 miles per hour.*

10. That the design of the subdivision or type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction.

*The proposed map does not include any existing public easements. Unpermitted existing encroachments into the unimproved public right-of-way for Marion Avenue, which is located adjacent to the project site, are required as a condition of approval to be partially removed to provide a clear delineation of public right-of-way.*

#### **DESIGN REVIEW PERMIT FINDINGS**

Pursuant to Zoning Ordinance Section 10.54 (Design Review Procedures), the requested Design Review Permit may be issued based on the following findings:

- A) The proposed project is consistent with the General Plan, any applicable specific plans and this chapter.

*The proposed project is consistent with all applicable policies, standards, and regulations of the General Plan and Zoning Ordinance.*

- B) The proposed architecture and site design complements the surrounding neighborhood and/or district by either: a) Maintaining the prevailing design character of the neighborhood and/or district or b) Introducing a distinctive and creative solution which takes advantage of the unique characteristics of the site and contributes to the design diversity of Sausalito.

*The proposed residence is designed to blend in with the hillside setting by sloping upward along the contour of the hillside. The design of the residence is traditional in style, with a pitched roof and use of wood braces, outriggers, and corbels. The exterior is proposed to be a light textured stucco. The retaining walls would be a muted brown, textured with stucco and accented with concrete blocks. Glass would be incorporated into the residence's design on the north and east facades with glass railings along the decks and walkways. The design which takes advantage of the unique characteristics of the site and contributes to the design diversity of Sausalito.*

- C) The proposed project is consistent with the general scale of structures and buildings in the surrounding neighborhood and/or district.

*The proposed three-story structure features a total Floor Area Ratio of 0.45 (2,504 square feet). The General Plan designation and Zoning District for the property identify the site for Medium Low Density residential development. The proposed is within the upper end of the range of existing home sizes in the neighborhood and the middle range of Floor Area Ratios. Five nearby properties have higher Floor Area Ratios.*

*Design of the proposed residence reduces the massing from the street by placing the parking level into the hill and stepping back the upper level. This reduces the massing compared to the soft-story design with open parking and no step back used by several nearby uphill properties.*

- D) The proposed project has been located and designed to minimize obstruction of public views and primary views from private property.

*By recessing the structure into the hillside the proposed project has been sited and designed to minimize obstruction of public views and primary views from surrounding private property.*

- E) The proposed project will not result in a prominent building profile (silhouette) above a ridgeline.

*The subject parcel is not located along a ridgeline.*

- F) The proposed landscaping provides appropriate visual relief, complements the buildings and structures on the site, and provides an attractive environment for the enjoyment of the public.

*The project's landscaping features native plants that are appropriate for the site and will soften views of the home from offsite locations. The removal of three protected tree will be mitigated by planting of eleven on-site replacement trees of five species.*

- G) The design and location of buildings provide adequate light and air for the project site, adjacent properties, and the general public.

*The adjacent structures at 514 South Street and 119 Sausalito are set back from the proposed residence by approximately by over 40 lineal feet. The adjacent duplex at 109/111 Marion and the residence at 514 South Street are situated at a significantly higher elevations than the proposed downslope residence on Parcel "B". The project therefore will result in no negative impacts on light and air for the project site, adjacent properties, or the general public.*

- H) Exterior lighting, mechanical equipment, and chimneys are appropriately designed and located to minimize visual, noise and air quality impacts to adjacent properties and the general public.

*Due to the proximity of adjacent structures, the chimney is appropriately located and designed. The project does not propose any mechanical equipment. The project is subject to the standard condition that all exterior lighting be shaded and downward facing.*

- I) The project provides a reasonable level of privacy to the site and adjacent properties, taking into consideration the density of the neighborhood, by appropriate landscaping, fencing, and window deck and patio configurations.

*The residence provides appropriate landscaping along the western and eastern portions of the lot. The eastern property line is also buffered by landscaping in the undeveloped portion of the Marion Avenue right-of-way.*

- J) Proposed entrances, exits, internal circulation, and parking spaces are configured to provide an appropriate level of traffic safety and ease of movement.

*Vehicular access exists from Marion Avenue for the existing duplex on Parcel "A". A new driveway will be constructed to access the proposed residence on Parcel "B" from Sausalito Boulevard. A two car garage is proposed on Parcel "B", and it has been demonstrated that vehicles can enter and exit the garage safely.*

- K) The proposed design preserves protected trees and significant natural features on the site to a reasonable extent and minimizes site degradation from construction activities and other potential impacts.

*The project is subject to the condition that each on-site protected tree removed or damaged by the project shall be replaced with 24-inch box replacement trees at a 3:1 ratio (3 replacement trees: 1 removed or damaged tree). The project geotechnical report finds that the site has high geological stability and is suitable for the development of a single-family residence. A Condition of Approval requires the Developer to submit the geotechnical report to peer review to insure that the proposed measures are adequate for the site. In addition, the project is subject to the condition which requires that prior to issuance of construction permits, the applicant shall submit a Parking and Construction Management and Traffic Control Plan, which includes measures to minimize general impacts of construction on the neighborhood and the City as a whole.*

- L) The project site is consistent with the guidelines for heightened review for projects which exceed 80% of the maximum allowed Floor Area Ratio and/or site coverage, as specified in subsection E (Heightened Review Findings).

*Heightened Review is not required for this project.*

#### **ENCROACHMENT AGREEMENT FINDINGS**

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement for a driveway to encroach into the Sausalito Boulevard right-of-way, a portion of an existing entry staircase to encroach into the Marion Avenue right-of-way (as indicated in Attachment 3), and landscaping in the Marion Avenue right-of-way (as indicated in Attachment 3) based on 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.

*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue fits with existing encroachments along the right-of-way in the neighborhood and will have a minimal impact on the streetscape. A Sight Distance Memo was prepared for the project, which concluded that the available sight distance to the west from a vehicle located on the project driveway, at the edge of the traveled way, would allow adequate stopping sight distance for a vehicle traveling 20 miles per hour.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way is compatible with the surrounding area, which contains other private entry encroachments. The encroachment will not diminish visual or physical enjoyment of the streetscape.*

*Landscaping: The requested authorization to maintain landscaping in the Marion Avenue right-of-way will improve the visual public enjoyment of the streetscape. Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not diminish public enjoyment of the area.*

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

*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue does not impact access to the adjoining parcel at 514 South Street. The driveway encroachment does not set a new land use precedent as it is solely for the driveway access to Parcel "B."*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way does not impact adjoining parcels. Other parcels in the immediate vicinity have received Encroachment Agreements for entry access and therefore the encroachment would not extend an undesirable land use precedent.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of adjoining parcels.*

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

*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue is necessary to provide access to the property. The extent of the encroachment is justifiable due to the steep slope of the lot and the extent of the right-of-way which is currently paved.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way is necessary to provide direct access to the duplex unit at 109/111 Marion Avenue. The encroachment is necessary to the reasonable use of the property.*

*Landscaping: Maintenance of landscaping in the right-of-way improves the aesthetics in the neighborhood and view from the subject property and therefore the encroachment is justifiable.*

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



*Driveway: The encroachment of the driveway, as conditioned, will not affect access and circulation along Sausalito Boulevard Avenue.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue provides direct access to the duplex unit at 109/111 Marion Avenue. The encroachment will not affect public circulation nor create a public safety hazard.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of the right-of-way.*

- 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.

*Driveway: The encroachment of the driveway, as conditioned, will not affect access and circulation along Sausalito Boulevard Avenue.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue provides direct access to the duplex unit at 109/111 Marion Avenue. The encroachment will not affect public circulation nor create a public safety hazard.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of the right-of-way.*

- F) The value of the proposed improvements in the right of way would not preclude or make difficult the establishment or improvement of streets or pedestrian ways in the future.

*Driveway: The value of the driveway encroachment of the in the right-of-way would not preclude or make difficult the improvement of the street in the future.*

*Existing Stairs: The value of the existing front entry stairs encroachment into the Marion Avenue would not preclude or make difficult the establishment of pedestrian ways in the future.*

*Landscaping: The value of the landscaping maintenance of the in the right-of-way would not preclude or make difficult the establishment of pedestrian ways in the future.*

#### **TREE REMOVAL PERMIT FINDINGS**

In accordance with Municipal Code Section 11.12.030.B. 2.a, a tree removal permit is approved based on the following finding:

- a. The tree to be removed will be replaced by a desirable tree.

*The three protected trees to be removed will be replaced by desirable trees at a 3:1 ratio (3 replacement trees: 1 removed or damaged tree).*

**PLANNING COMMISSION RESOLUTION**  
**January 20, 2010**  
**TM/DR/EA/TR 08-011**  
**109/111 Marion Avenue**

**ATTACHMENT 2: CONDITIONS OF APPROVAL**

These conditions of approval apply to the following plans:

- Sheets 0-A.7 of the project plans entitled "Sausalito Residence" prepared by William K. Spencer date-stamped received January 15, 2010;
- Sheets 1-2 of the Tentative Parcel Map prepared by David Keane, entitled "Tentative Map", date stamped received December 10, 2009; and
- The conceptual stair improvement plan prepared by Bill Matteson entitled "South St. Stair Concrete Plan" date stamped received January 12, 2010.

**General**

1. Upon building permit submittal the Conditions of Approval shall be shown on all construction drawings.
2. Upon building permit submittal the applicant shall provide a written response demonstrating compliance with each Condition of Approval.

**CEQA Compliance**

3. All mitigation measures set forth in the *Bruce Residence Initial Environmental Study/Negative Declaration (IES/MND)* – are hereby incorporated into these Conditions of Approval, as if fully contained herein, except those found infeasible pursuant to Section 15091 of the California Environmental Quality Act (CEQA) Guidelines.
4. Pursuant to Section 21089 of the California Public Resources Code and Section 711.4 et seq. of the California Fish and Game Code, the appropriate fees in affect at the time the *IES/MND* is approved shall be submitted to the Planning Division within five (5) working days of this permit approval of the project. A check shall be made payable to the County of Marin and submitted to the City's Planning Division. No grading or building permits shall be issued until the fees are paid. The fees are collected on behalf of the Department of Fish and Game and are not for City purposes.
5. The monitoring and reporting of CEQA mitigation measures in connection with the project will be conducted in accordance with the approved Mitigation Monitoring Plan.

**Planning**

6. If the required improvements for the parcel map have not installed and accepted by the City prior to recordation of the parcel map, the Developer shall enter into a Subdivision Improvement Agreement with the City prior to recordation of the parcel map to ensure the required improvements are installed. The Subdivision Improvement Agreement shall be subject to the review and approval of the Community Development Director, City Engineer, and City Attorney.

7. If construction is proposed to begin during the breeding season (February - August), a pre-construction survey shall be conducted in order to identify migratory and resident bird nest(s) in the project site. The surveys shall be conducted by a qualified biologist (approved by the Community Development Director) no more than 30 days prior to initiation of grading. If active nest(s) are not found during the pre-construction survey, further mitigation is not required. If any migratory bird nest(s) are found within the construction area during the survey, grading and construction in the area shall either stop or continue only after the nest(s) are protected by an adequate setback approved by a qualified biologist. If permanent avoidance of the nest(s) is not feasible, impacts on nest(s) shall be minimized by avoiding disturbances to the nest location during the nesting season unless a qualified biologist verifies that the birds have either a) not begun egg-laying and incubation, or b) that the juveniles from those nests are foraging independently and capable of independent survival at an earlier date. [MM-3<sup>1</sup>]
8. During construction, if any bone material is uncovered that may be human, the Marin County Coroner and the Native American Heritage Commission shall be notified. Should human remains be found, the Coroner's office shall be immediately contacted and all work halted until final disposition by the Coroner. Should the remains be determined to be of Native American descent, the Native American Heritage Commission shall be consulted to determine the appropriate disposition of such remains. [MM-5]
9. The project shall adhere to all recommendations in the Construction Management Plan from Newtown Construction, dated June 18, 2009 as updated on September 14, 2009 and September 23, 2009.
10. The project shall adhere to all recommendations in the Botanical Inventory/Special-Status Plant Survey by Monk and Associates, dated September 3, 2009.
11. Prior to issuance of a grading permit, the applicant shall submit a construction noise mitigation plan for the review and approval Community Development Director to ensure on-site construction equipment is sound-baffled to the maximum extent practicable.
12. Trash/recycling shall be located in covered, screened enclosures.
13. The residence shall be protected with an automatic fire sprinkler system subject to the review and approval of the Southern Marin Fire Protection District.
14. The project shall provide addressing to be plainly visible from Sausalito Boulevard.
15. All exterior lighting shall be shielded and downward facing.
16. Prior to install of the roof sheathing, the applicant shall provide certification from a licensed surveyor stating that the roof height, design, and location is in conformance with the Planning Commission approved plans.

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<sup>1</sup> Mitigation measures (MM) listed in the *Bruce Residence Initial Environmental Study/Mitigated Negative Declaration* are referenced by number (e.g., MM 3 for Mitigation Measure 3).

17. All outstanding planning application fees must be paid within ten (10) of billing by the City.

### **Landscaping**

18. All new trees shown on the approved landscaping plans shall be installed as 24-inch box trees; prior to issuance of a building permit the landscaping plans shall be revised to amend the note on Sheet A-3 to read that "all new trees shall be a minimum of 24-inch box in size". The revised plans shall be subject to the review and approval of the Community Development Director.
19. Each on-site protected tree removed or damaged by the project shall be replaced with 24-inch box replacement trees at a 3:1 ratio (3 replacement trees: 1 removed or damaged tree). Replacement tree credit shall be provided for new trees planted pursuant to the project's landscape plan. Additional replacement trees may be planted on-site or off-site at the discretion of the applicant. The location and species of off-site replacement trees shall be subject to the review and approval by the Community Development Director. [MM-1]
20. The project shall adhere to all recommendations in the memo to Nick Pappani from Moritz Arboricultural Consulting, dated November 9, 2009.

### **Fencing**

21. Prior to recordation of the Parcel Map a six-foot (6') tall fence (subject to the review and approval of the Community Development Director) shall be installed at the Developer's expense along the eastern property line of Parcel "A" and Parcel "B" to mark border between the subject property and the Marion Avenue right-of-way. The fence may include gates to access the patio areas.
22. Prior to recordation of the Parcel Map, the Applicant shall remove the existing deer fence located near the centerline of Marion Avenue right-of-way.
23. The Developer shall submit, for the review and approval by the Community Development Director and City Engineer, a plan for the removal of the existing fence north of the curb of Marion Avenue (where the pavement ends). The plan should include replacement of the fence with signage and either a guardrail or a railing/gate system to indicate that the area is accessible to the public. These improvements shall be installed prior to recordation of the Parcel Map.

### **Encroachments**

24. Prior to recordation of the Parcel Map, five (5) feet of the existing improvements (e.g., brick patio paving, stone/wood stairs, and pathways) in the Marion Avenue right-of-way (as measured east from the eastern property lines of Parcel "A" and Parcel "B") shall be removed. In addition, the Community Development Director, in consultation with the City Engineer and City Attorney, may determine removal of additional portions or all of the existing improvements in the Marion Avenue right-of-way is necessary to ensure that the remaining improvements are safe, do not create a public liability, do not un-necessarily impede pedestrian access along the right-of-way, prevent privatization of the public

right-of-way, and respect the privacy of the entryway of the residence at 112 Marion Avenue. Removal of the improvements shall be performed at the Developer's expense Any portions of the existing improvements which are allowed to remain require City Council approval of an Encroachment Agreement.

25. The applicant shall make every effort to reconfigure the driveway such that it is located only within the Sausalito Boulevard right of way directly in front of Parcel "B". Prior to City Council review of the Encroachment Agreement the Developer shall submit (1) revised plans depicting the reconfiguration of the driveway or (2) evidence from a Structural Engineer stating the reasons why such reconfiguration not possible.
26. Landscaping in the Marion Avenue right-of-way shall be limited to the maintenance and irrigation of landscaping in the area depicted on the Encroachment Site Plan in Attachment 3 of this Planning Commission resolution (or any subsequent modifications by the City Council). Prior to City Council consideration of the Landscaping Maintenance Agreement as a part of the Encroachment Agreement, the applicant shall submit a Landscape and Irrigation Plan. The Landscape and Irrigation Plan shall depict the location and species of existing and proposed plants to be maintained in the Agreement Area in addition to the location of drip irrigation. At no time shall the landscaping in the right-of-way hinder or preclude public access to or along the Marion Avenue right-of-way.

#### **South Street Stairs**

27. Prior to recordation of the Parcel Map, the Developer shall obtain City Council approval for installation of stairs in the South Street right-of-way between Edwards Avenue and Marion Avenue. If the City Council does not grant approval of the installation of stairs in the South Street right-of-way between Edwards Avenue and Marion Avenue, the Developer shall either:
  - Submit construction drawings, obtain a building permit, and install poured-in-place stairs in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and the north of the curb of Marion Avenue (where the pavement ends) prior to recordation of the Parcel Map; or
  - Submit an in-lieu fee comparable to the cost of the design, all associated permitting fees, and installation of stairs in the unimproved portion of the Marion Avenue right-of-way between Sausalito Boulevard and the north of the curb of Marion Avenue.
28. Prior to recordation of the Parcel Map, the Developer shall install poured-in-place stairs and pathway in the South Street right-of-way between Edwards Avenue and Marion Avenue consistent with the conceptual stair improvement plan prepared by Bill Matteson titled "South St. Stair Concrete Plan" date stamped received January 12, 2010. The Developer shall submit construction drawings and obtain a building permit for construction of the stairs. The Developer shall install signage at both Marion Avenue and Edwards Avenue which indicates that the stairway is a public pedestrian access pathway. The stair construction plan and related signage shall be subject to the review and approval of the City Engineer and Community Development Director.

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## Engineering

29. Third party peer reviews may be required as determined by the City Engineer. Such review shall be performed at the Developer's expense and may include the review of the final soils report, grading, hydrology, lot closure calculations, improvement plans, erosion control plans and post construction pollution prevention plans, field inspections of permitted work. Developer shall submit a deposit to the City prior to third party review.
30. Prior to issuance of grading and building permits, the developer shall submit the approved plans to a Professional Land Surveyor to develop a Staking Plan that is in conformance with approved plans. The staking plan documents are to enable determination of vertical and horizontal position of the foundation, driveways and site retaining walls and to assure verification of setbacks and ingress-egress sight distance.
31. The Developer's Civil Engineer shall certify the actual pad elevation or as-built foundation corner elevations.
32. A professional land surveyor shall be retained to set construction stakes to guide placement of foundation piers, foundation walls, retaining walls, garage slab and driveway slabs in conformance with approved plans. The surveyor shall submit a letter to the City Engineer enumerating the actual grades and positions of the foundation and significant retaining walls, prior to beginning any framing work. The surveyor shall submit a second letter enumerating the actual grades, profile and position of the driveway, garage floor, as-built roadway flow line elevations, prior to final inspection by the City.
33. Street and site design shall conform with the Cities and County of Marin Public Works Standards.
34. Frontage Improvement Plans shall be prepared by a registered Civil Engineer, subject to approval of Public Works staff prior to issuance of Building, Grading and Encroachment Permits.
35. Maintenance (Guarantee and Warranty) Bond: Developer shall provide a bond or other acceptable financial assurance to the City at the completion of construction of the permitted improvements. The bond amount shall in the amount of fifteen (15) percent of the approved improvement construction estimate. The Bond shall be held for one year following completion and acceptance of the improvements. The purpose of the assurance is to correct defective work and to resolve outstanding labor and material payment claims.
36. Mylar copies of record and as-built drawings shall be provided to the City prior to release of subdivision improvement bonds. The record map shall also be provided on a computer file format compatible with the City system.
37. For any damage to existing public improvements due to construction activities, Developer shall repair, at their expense, damage prior to issuance of a Certificate of Occupancy. Contractor must protect all existing and new improvements.

## Grading

38. The Geotechnical Investigation, prepared by Earth Science Consultants, dated April 20, 2008, and date stamped received May 21, 2009 shall be subject to peer review prior to issuance of a grading and/or building permit. Developer shall submit a deposit to the City prior to third party review. The peer reviewer shall be selected by the City Engineer and the peer review document shall be subject to review and approval by the City Engineer.
39. The Developer's Soils Engineer shall inspect and certify the grading and as-built plans are in conformance with the grading plan and geotechnical investigation report.
40. During construction activities, the following measures shall be implemented on-site [MM-2]:
  - Water all active construction areas at least twice daily.
  - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
  - Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
  - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
41. During construction, if any earth-moving activities uncover artifacts, exotic rock, or unusual amounts of bone or shell, work shall be halted in the immediate area of the find and shall not be resumed until after a qualified archaeologist has inspected and evaluated the deposit and determined the appropriate means of curation. The appropriate actions may extend from recording the resource with the California Archaeological Inventory database to excavation, recordation, and preservation of the site if it has outstanding cultural or historic significance. [MM-4]
42. The project shall adhere to all recommendations in the Geotechnical Investigation, prepared by Earth Science Consultants, dated April 20, 2008, and date stamped received May 21, 2009 and the addendums to the Geotechnical Report, dated January 26, 2009, date stamped February 3, 2009 and dated June 15, 2009, date stamped June 17, 2009.
43. Excavation of the project site shall not use explosives.
44. Grading operations shall not occur between October 1 and April 1 without written authorization by the Public Works Engineering staff. Grading on hillside land with geologic formation known to slide shall be limited to between April 15 and October 15.
45. Prior to issuance of Grading permit, the Developer shall submit Grading assurances in value of no more than two hundred (200) percent of the estimate for each of the following items (upon review of the final construction documents the City Engineer may reduce the Grading assurance value to a minimum of one hundred fifty (150) percent):

excavation, foundation and retaining wall construction, drainage facilities, pollution prevention facilities, and traffic control. The Grading assurance shall be subject to the approval of the Engineering staff and in a form acceptable to the City. Upon completion of the applicable work, and subject to the review and approval of the Engineering staff the associated assurance amount shall be released to the permit holder.

46. Grading/drainage permit(s) shall be obtained from the Public Works Department for the proposed earthwork in excess of 50 cubic yards.
47. Recommendations cited in the final City approved geologic and geotechnical report and peer review shall be implemented in the project design and construction. The Developer shall mitigate all issues revealed in the report and by any City or third party peer review as approved by the authorized Public Works staff.
48. The Soils Report shall include an evaluation of geological hazard (landslides, liquefaction, ground faulting), stability of the proposed development site including surrounding properties. The report shall include recommendation to correct identified hazards and to mitigate impacts of the development.
49. The Developer's Civil Engineer shall submit site improvement plans, grading plans, and public improvement plans, utility plans and landscape plans for review and approval by the Public Works Department prior to issuance of a grading permit. The plans shall include, but not be limited to: drainage, frontage improvements, utilities, and earthwork.
50. A Performance Bond shall be submitted to the City prior to issuance of grading permits as required by the City Engineer. The bond amount will account for costs to construct the approve grading and drainage plan, the costs to install and maintain erosion and sediment controls, and the costs of implementing pollution prevention best management practices during the course of construction. Grading Assurance amounts shall be based upon a Construction Estimate developed by the Developer's Civil Engineer or Contractor as reviewed and approved by the City. If a Bond is used as assurance, the Bond underwriter shall be licensed to do business in the State of California and have a Best's rating of not less than A: VII. A Cash Deposit or Letter of Credit from a Financial Institution approved by the City may be submitted in-lieu of a Bond.
51. A cash bond of five thousand dollars (\$5,000) shall be submitted to the City prior to issuance of grading permits.

#### **Drainage**

52. Concurrent with the Building Permit plan check, a site design analysis shall be submitted to the Public Works Department that determines increases in peak runoff for the 10 year storm event (Flood Prevention) and in flow information accordance with MCSTOPP site design guidelines (Water Pollution Prevention). Runoff shall be controlled to limit of non-stormwater discharges and stormwater discharges in excess of the carrying capacity of nearby inlets and culverts, subject to the approval of Public Works Staff prior to issuance of Building and Grading Permits.



53. The Developer's Civil Engineer shall submit an Erosion Control Plan, including cost estimate, for review and approval by the Public Works Department.
54. The Developer's contractor shall implement erosion control measures as per the erosion control plan and incorporating guidelines and measures from the most current ABAG manual for erosion and sediment control if grading work is not completed by October 15.
55. Prior to issuance of a grading permit, the project developer shall submit, for the review and approval by the City Engineer, an erosion control plan that utilizes standard construction practices to limit the erosion effects during construction of the proposed project. In addition, all project contractors shall conform to the requirements of the "Best Management Practices for Construction Sites" required by the City, including detention and/or filter materials to preclude an increase in water quantity and quality impacts from debris and sediments entering the stormwater system over "pre-development" conditions." The Best Management Practices (BMPs) shall be included in the construction contracts for the review and approval by the City Engineer. BMPs could include but are not limited to [MM-6]:
  - Hydro-seeding;
  - Placement of erosion control measures within drainage-ways and ahead of drop inlets;
  - The temporary lining (during construction activities) of drop inlets with "filter fabric";
  - The placement of straw wattles along slope contours;
  - Use of a designated equipment and vehicle "wash-out" location;
  - Use of siltation fences;
  - Use of on-site rock/gravel road at construction access points; and
  - Use of sediment basins and dust palliatives.
56. The drainage plan shall incorporate the following:
  - Subdrains shall be shown on grading plan.
  - Runoff shall be determined by the Rational Method, 10 year 6 hour and 100 year 6 hour storm events.
  - Culverts shall convey to 10 year 6 hour event.
57. Prior to approval of final project design, the Developer shall prepare a detailed Drainage Mitigation Study, in coordination with the Public Works Department. The study shall determine runoff quantities of existing and proposed development. The Study shall develop a plan to discharge runoff at historic rates.
58. Storm water shall be discharged by gravity flow to an approved (city owned and maintained) storm drain system.
59. Storm drains carrying public runoff shall be routed only in roadway right-of-way unless otherwise approved by the Director of Public Works.

### **Stormwater Pollution Prevention**

60. The developer shall implement efficient irrigation, appropriate landscape design, and proper maintenance to reduce excess irrigation runoff, promote surface filtration, and minimize use of fertilizers, herbicides, and pesticides.
61. To the maximum extent feasible, drainage from paved surfaces shall be routed through grassy swales, buffer strips or sand filter prior to discharge into the storm drainage system.
62. All permitted project storm drain inlets shall be imprinted with the "No Dumping, Drains Into the Bay" using thermoplastic or permanently embossed into the facility.
63. Developer shall develop and implement a Water Pollution Prevention Plan that addresses construction related and post-construction related site management practices including litter control, motor vehicle washing and maintenance, storage of hazardous materials.
64. Site Plans shall include facilities in conformance with Marin County (MCSTOPPP) Site Design Guidelines for managing and treating stormwater runoff.

### **Traffic and Parking**

65. The project shall adhere to all recommendations in the sight distance memo from Robert Harrison, dated March 30, 2009, and date stamped received March 31, 2009.
66. Dump trucks are only be allowed to access the project site during the hours of 10:00 a.m. through 4:00 p.m. Dump truck are not allowed to access the project site on weekends or City holidays.
67. Prior to issuance of a Building Permit, the project applicant shall submit a Traffic Control Plan that meets all accessibility requirements. The Traffic Control Plan shall be subject to review and approval of the Improvement Plans by the Engineering Department. [MM-7]
68. Prior to issuance of construction permits, the applicant shall submit a Parking and Construction Management and Traffic Control Plan (subject to the review and approval of the City Engineer) which includes (a) the traffic route of construction (b) identification of a suitable off-site parking area from which construction workers will be shuttled to the construction site (c) a limit on the number of construction vehicles permitted in the neighborhood at any one time (d) a statement that the construction site will maintained in a clean and safe condition and in a manner that does not become a nuisance to the neighborhood. The applicant shall mail a copy of the approved Plan to all property owners within 300 feet of the project site no later than 10 days prior to the start of grading and construction. This mailing shall include a cover memo with a telephone number (which is monitored 24 hours/day) for the construction manager. The construction manager's telephone number shall also be prominently displayed onsite during the construction period. [MM-8]

### Utilities

69. Minimum culvert size in the public right-of-way shall be 12 inches.
70. The Parcel Map shall show easements necessary to accommodate separate utility services serving the existing and proposed units.
71. Prior to issuance of Certificate of Occupancy of the new dwelling unit, each Dwelling unit shall be served by separate and independent utility services. Utility lateral facilities that cross private property shall be in formal easements and covered by maintenance agreements or Conditions, Covenants and Restrictions that specify funding and physical maintenance issues prior to approval of Parcel Map and issuance of Certificate of Occupancy.
72. Prior to issuance of Certificate of Occupancy all overhead electric and communication utility services for new units shall be undergrounded.
73. Prior to recordation of the Parcel Map all overhead electric and communication utility services for the existing units at 109/111 Marion Avenue shall be placed underground
74. Prior to issuance of building permits the sewer laterals serving the existing units shall be video inspected subject to the review of the Sewer Systems Coordinator and repaired or replaced as needed to eliminate discovered defects.
75. Underground Utility Connections shall be made by bore/jack methods unless the street overlay work can be coordinated so that it is concurrent with the project construction. Plans shall include details of receiving pits.
76. Developer shall provide proof of service agreements to the Public Works Department prior to approval of improvement plans. The Developer shall submit evidence of approval of new utility facility plans by the respective utility agencies.

### Advisory Notes

Advisory notes are provided to inform the applicant of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

77. This approval will expire in two (2) years from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted.
78. An approval granted by the Planning Commission does not constitute a building permit or authorization for construction. Appropriate construction permit(s) issued by the Building Division must be obtained prior to construction.
79. The Parcel Map shall be submitted and approved in accordance with the Subdivision Map Act (California Government Code Section 66474) and the Subdivision Regulations of Ordinance No. 430.

80. All applicable City fees as established by City Council resolutions and ordinances shall be paid.
81. Construction Impact Fees shall be paid in accordance with the Construction Impact Fee Ordinance. The fee is due prior to issuance of Building Permit.
82. Encroachment permit, grading permit, third party review fees (cost plus 10%) fees shall be paid.
83. An encroachment permit shall be obtained from the Public Works Department prior to using the public right-of-way for non-public purposes (e.g., material storage, sidewalk construction or demolition) including any and all construction and demolition activities.
84. Grading/drainage permit(s) shall be obtained from the Public Works Department for any earthwork in excess of 50 cubic yards.
85. Pursuant to Municipal Code Chapter 8.54, applicants shall submit a Recycling Management Plan to the Community Development Department prior to the issuance of any construction permits, unless the requirement is waived pursuant to Section 8.54.050.
86. Pursuant to Municipal Code Chapter 11.17, 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. 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 Section 11.17.060.B.
87. Pursuant to Municipal Code Section 12.16.140, the operation of construction, demolition, excavation, alteration, or repair devices and equipment within all residential zones and areas within a 500 foot radius of residential zones shall only take place during the following hours:  
 Weekdays – Between 8:00 a.m. and 6:00 p.m.  
 Saturdays – Between 9:00 a.m. and 5:00 p.m.  
 Sundays – Prohibited  
 City holidays (not including Sundays) – Between 9:00 a.m. and 7:00 p.m.  
  
 Homeowners currently residing on the property and other legal residents may operate the equipment themselves on Sundays and City holidays between 9:00 a.m. and 6:00 p.m.
88. Pursuant to Municipal Code Section 18.08.020, overhead electrical and communication service drops shall be placed underground when the main electrical service equipment (including the panel) is relocated, replaced, and/or modified.
89. Pursuant to Municipal Code Section 18.12.100, existing sewer service laterals shall be inspected for surface water connections and leakage at the time of remodeling of any building. Deteriorated service laterals shall be repaired prior to approval of the building permit.

90. Permits required by other agencies having jurisdiction within the construction area must be obtained in accordance with the respective agency's regulations.
- Marin Municipal Water District – (415-945-1400), including landscaping and irrigation regulations;
  - Southern Marin Fire Protection District -- (415-388-8182); and
  - Pursuant to Municipal Code Section 10.54.100, construction activities under taken in accordance with a design review permit shall comply with the construction time limit regulations based upon the project's valuation. Construction projects which are not completed within the time limits are subject to daily penalties.
91. Pursuant to Municipal Code Section 10.54.100, construction activities under taken in accordance with a design review permit shall comply with the construction time limit regulations based upon the project's valuation. Construction projects which are not completed within the time limits are subject to daily penalties.

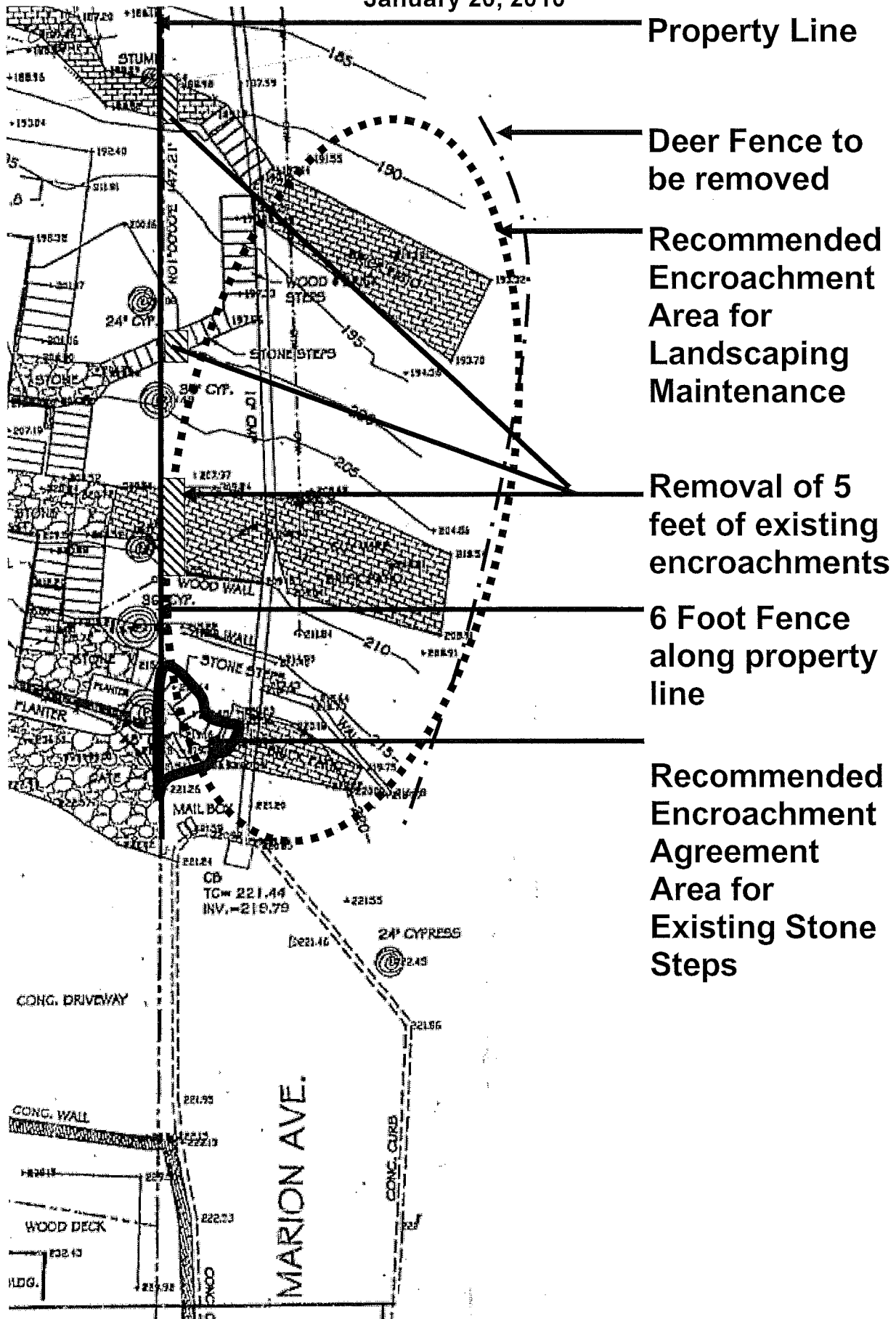
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**PLANNING COMMISSION RESOLUTION**  
**January 20, 2010**  
**TM/DR/EA/TR 08-011**  
**109/111 Marion Avenue**

**ATTACHMENT 3: ENCROACHMENT SITE PLAN**

# Encroachment Site Plan

January 20, 2010



Property Line

Deer Fence to be removed

Recommended Encroachment Area for Landscaping Maintenance

Removal of 5 feet of existing encroachments

6 Foot Fence along property line

Recommended Encroachment Agreement Area for Existing Stone Steps

4B2  
34

**PLANNING COMMISSION RESOLUTION**  
**January 20, 2010**  
**TM/DR/EA/TR 08-011**  
**109/111 Marion Avenue**

**ATTACHMENT 4: PROJECT PLANS**

4B2  
35







**WKS**  
**ARCHITECTS, INC.**  
 WILLIAM K. SPENCER  
 PRINCIPAL ARCHITECT  
 C-1943

2330 E. DEL MAR BLVD.  
 SUITE 215  
 PASADENA, CA 91107  
 TEL: 818-803-8089 FAX: 818-796-7397  
 CONSULTANTS:

STORY POLES

**CLIENT:**  
 PAULA BRUCE  
 109/111 MARION AVE.  
 CITY OF SAUSALITO

**PROJECT:**  
 SAUSALITO RESIDENCE  
 -- SAUSALITO BLVD.  
 SAUSALITO, CA

**SHEET TITLE:**  
 SITE SURVEY  
 AND  
 STORY POLES

**DATE:** JUNE, 2008  
**SCALE:** 1" = 8'  
**BY:** DK  
**CHECKED:**  
**APPROVED:**  
**DATE:** JUNE, 2008  
**SHEET OF:** 11  
**DATE:** 6/16/09

109/111 MARION AVE  
 SAUSALITO, CA 94965  
 TOPOGRAPHIC MAP  
 A-1

ASSESSORS PARCEL NO. 065-563

CITY OF SAUSALITO  
 COMMUNITY DEVELOPMENT



4/8/09





**WKS**  
**ARCHITECTS, INC.**  
 WILLIAM K. SPENCER  
 PRINCIPAL ARCHITECT  
 C-4943

2330 E. DEL MAR BLVD.  
 SUITE 215  
 PASADENA, CA 91107  
 TEL. 818-903-3089 FAX 818-796-2387

CONSULTANTS:

2601 2707

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. IT IS THE POLICY OF THE ARCHITECT TO MAKE THIS INFORMATION AVAILABLE TO THE PUBLIC. ANY AND ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. IT IS THE POLICY OF THE ARCHITECT TO MAKE THIS INFORMATION AVAILABLE TO THE PUBLIC. ANY AND ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. IT IS THE POLICY OF THE ARCHITECT TO MAKE THIS INFORMATION AVAILABLE TO THE PUBLIC.

NO.	REVISION / SUBMISSION	DATE
1		
2		
3	REVISED	1-1-10

CLIENT:

PAULA BRUCE  
 109/111 MARION AVE.  
 CITY OF SAUSALITO

PROJECT:

SAUSALITO RESIDENCE  
 --- SAUSALITO BLVD.  
 SAUSALITO, CA

SHEET TITLE:

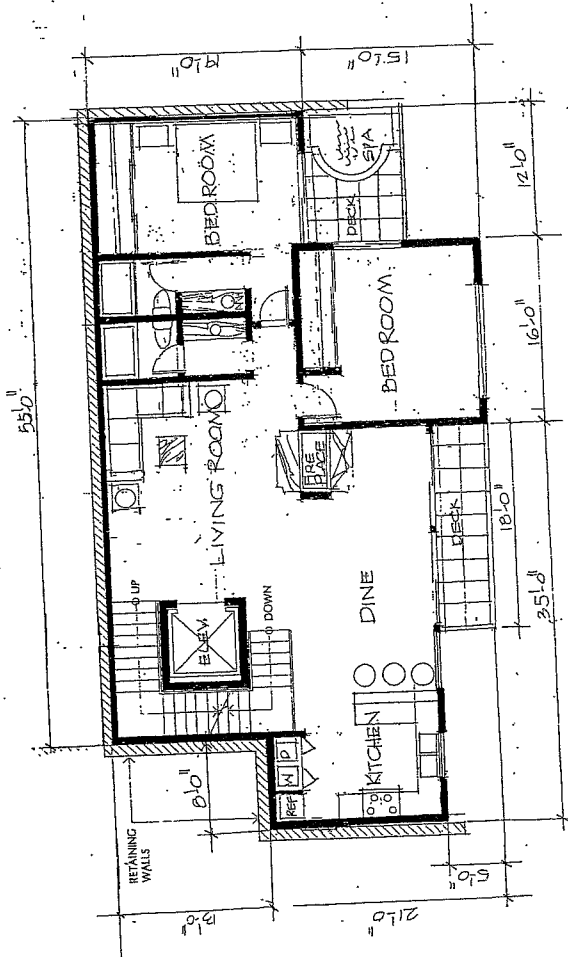
1<sup>ST</sup> AND 2<sup>ND</sup> FLOOR  
 PLANS

SCALE AS NOTED  
 DRAWN BY: DN  
 SHEET

**A-4**

DATE: 6/16/09

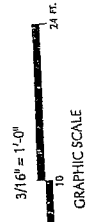
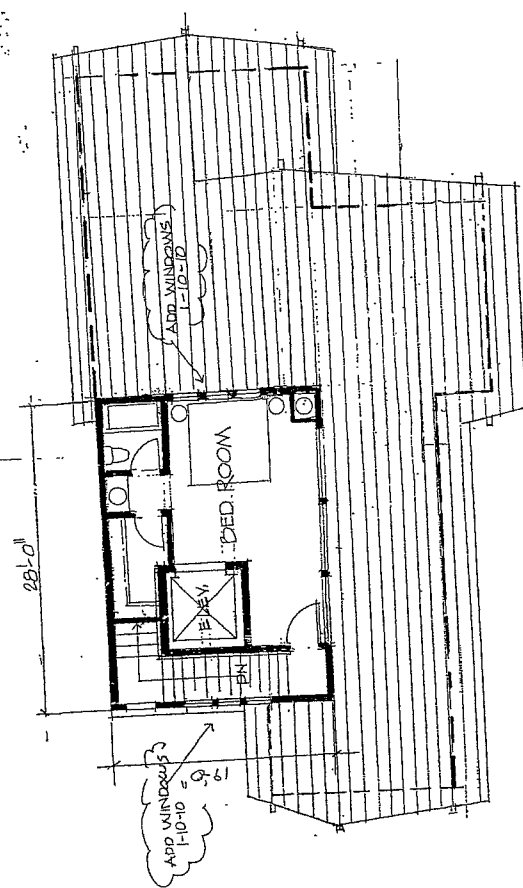
1<sup>ST</sup> FLOOR PLAN (1004 SF)



PROPOSED

JAN 15 2010

2<sup>ND</sup> FLOOR PLAN (592 SF)



482  
41



**WKS**  
**ARCHITECTS, INC.**  
 WILLIAM K. SPENCER  
 PRINCIPAL ARCHITECT  
 C-4943

2330 E. DEL MAR BLVD.  
 SUITE 215  
 PASADENA, CA 91107  
 TEL. 818-903-3099 FAX 828-796-7997  
 CONSULTANTS

THESE PLANS HAVE BEEN PREPARED BY AN ARCHITECT AND ARE SUBJECT TO THE PROFESSIONAL SEAL AND LICENSE OF THE ARCHITECT. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION OR DATA OBTAINED FROM ANY SOURCE, NOR DOES THE ARCHITECT WARRANT THAT THE INFORMATION OR DATA OBTAINED FROM ANY SOURCE IS COMPLETE AND CORRECT. THE ARCHITECT IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THESE PLANS, NOR FOR ANY CONSEQUENCES ARISING FROM THE USE OF THESE PLANS.

NO.	REVISION/ADDITION	DATE
1	REVISED 1-10-10	

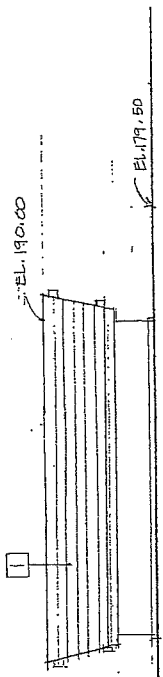
CLIENT:  
 PAULA BRUCE  
 109/111 MARION AVE  
 CITY OF SAUSALITO

PROJECT:  
 SAUSALITO RESIDENCE  
 SAUSALITO BLVD.  
 SAUSALITO, CA

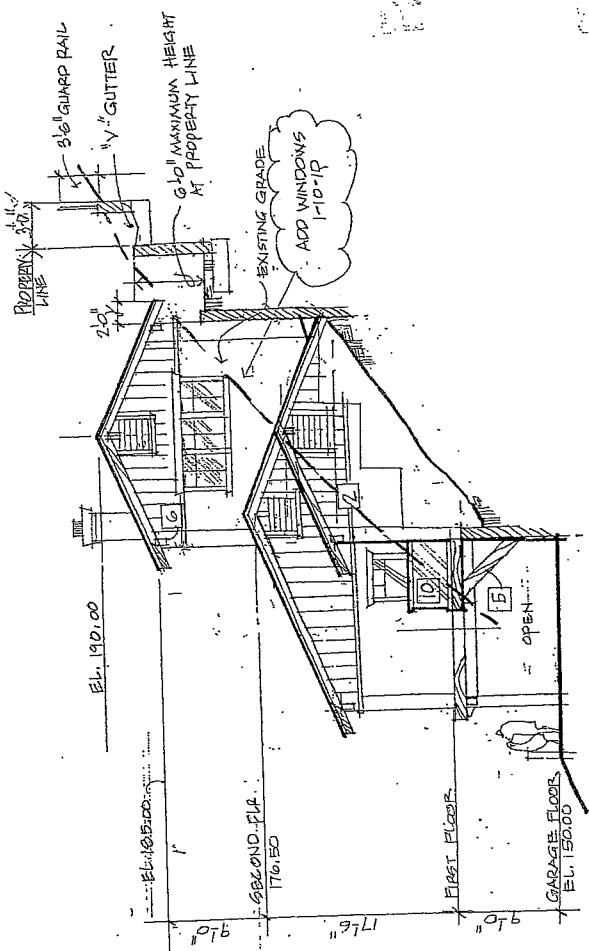
SHEET TITLE:  
 ELEVATIONS

SCALE:  
 AS NOTED  
 DRAWN BY:  
 TN  
 SHEET

**A-6**  
 DATE: 6/16/09

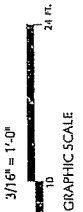


REAR ELEVATION



RIGHT ELEVATION

JAN 15 2010



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**LEGAL DESCRIPTION FOR TITLE REPORT.**

THE PROPERTY DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF MARIN, CITY OF SAUSALITO, FURTHER DESCRIBED AS FOLLOWS: BEGINNING AT A STAKE SET IN NORTHWEST CORNER OF SOUTH STREET AND FOURTH STREET, MARIN COUNTY, CALIFORNIA, BEING THE POINT OF BEGINNING OF THE TRACT OF LAND, THENCE WEST AND ALONG THE NORTH LINE OF SOUTH STREET, 110 FEET TO A STAKE, THENCE AT RIGHT ANGLES NORTH 175 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAUSALITO BOULEVARD, THENCE EAST ALONG SAUSALITO BOULEVARD TO THE POINT OF BEGINNING OF THE TRACT OF LAND, THENCE SOUTH ALONG SAUSALITO BOULEVARD TO THE POINT OF BEGINNING.

BEING VILLA LOTS 222 AND 223 IN BLOCK 18, AS SHOWN HEREON, GREENMAN COMPANY, TRUST, AS OWNER OF THE SAUSALITO DRY LAND COMPANY, FILED IN MARIN COUNTY RECORDS.

DESCRIPTORS THEREFROM THE FOLLOWING PARCEL:

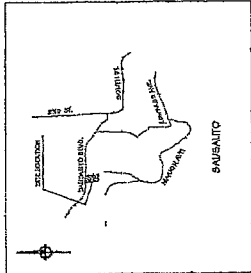
BEING PARCEL A, COMPRISING THE SOUTHERLY PORTION OF LOTS 222 AND 223 IN BLOCK 18, MAP ABOVE REFERRED TO, AND AS SHOWN THEREON, BEING THE SOUTHERLY PORTION OF THE TRACT OF LAND, BEING VILLA LOTS 222 AND 223 IN BLOCK 18, AS SHOWN HEREON, GREENMAN COMPANY, TRUST, AS OWNER OF THE SAUSALITO DRY LAND COMPANY, FILED IN MARIN COUNTY RECORDS.

**GENERAL NOTES.**

1. FOR SITE TOPOGRAPHY SEE SHEET 2 OF 2.
2. FOR EXISTING AND PROPOSED UTILITIES SEE ARCHITECT'S PLAN.
3. FOR LANDSCAPING AND ARBORIST INFORMATION SEE ARCHITECT'S PLAN AND ARBORIST LETTER.

**GEOTECHNICAL ENGINEERING REPORT.**

PREPARED BY EARTH SCIENCE CONSULTANTS (MAY NERSON) JOB NO. 08550.



**LOCATION MAP**

NTS

**APPLICATION INFORMATION:**

**OWNER / SUBDIVIDER:** PAULA BULICE  
109 / 111 MARION AVE  
SAUSALITO, CA 94965

**SUBDIVIDER:** DAVID KEANE SUBDIVISION, PLS 5461  
109 / 111 MARION AVE  
COSTA MESA, CA 94823

**APPLICATOR'S PARCEL NO. 1:** 043-293-04

R-2.5

**EXISTING USE:** RESIDENTIAL, EXISTING RESIDENCE AND AREAS TO REMAIN, SEE TOPOGRAPHY MAP FOR LOCATIONS

**PROPOSED USE:** RESIDENTIAL PARCEL A - 0.407 ± SF  
PARCEL B - 5.622 ± SF. SEE THIS PLAN FOR SETBACKS, UTILITIES, AND OTHER PROPOSED IMPROVEMENTS

**PROPOSED LOTS:** MAIN MUNICIPAL WATER SERVICE  
AGRICULTURAL RESIDENTIAL QUANTITY USE

**WATER SUPPLY:** PER CITY REQUIREMENTS

**SEWERAGE / FLOOD:** SAUSALITO / MARIN CITY SANITATION DISTRICT

**POWER / TELEPHONE:** PACIFIC GAS & ELECTRIC (UNDERGROUND)  
AT FT (UNDERGROUND)

**TELEVISION CABLE:** SOUTHERN MARIN FIRE PROTECTION DIST. /  
SAUSALITO FIRE DEPARTMENT

**OTHER PROVISIONS:** SEE THIS PLAN FOR EXISTING SERVICES

**PROPOSED IMPROVEMENTS:** SEE ARCHITECT'S PLAN FOR PROPOSED SITE IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO: LANDSCAPING AND TIRING WOULD BE PROVIDED IN A NORMAL PROPORTION FOR THE PROPOSED IMPROVEMENTS

**MAP TITLES:** CHANCE / SUBDIVIDER INTENDS TO FILE A PARCEL MAP CREATING TWO LOTS

**TOTAL PARCEL AREA:** 14,029 SQUARE FEET

**PARCEL A:** 0.407 SQUARE FEET

**PARCEL B:** 5.622 SQUARE FEET

**RECEIVED**

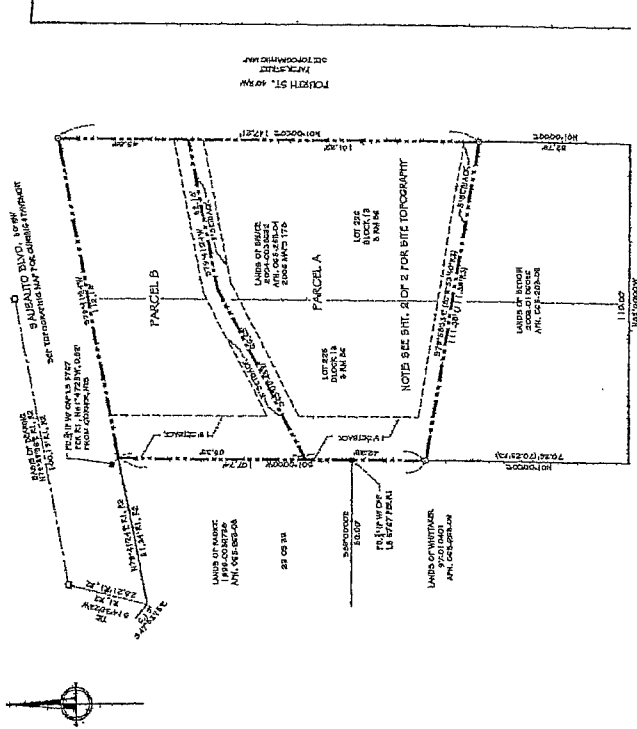
DEC 1 0 2009

CITY OF SAUSALITO, 109 / 111 MARION AVE.  
COMMUNITY DEVELOPMENT TENTATIVE MAP

APPROVED: DATE: NOV. 2009 SHEET 1 OF 2 CONTRACT NO. 05-06-04

DAVID KEANE  
109 / 111 MARION AVE  
SAUSALITO, CALIFORNIA  
TENTATIVE MAP

REVISED	DATE	BY	CHECKED	DATE	BY	CHECKED
1/2/09	REVISED LOT LINE BETWEEN PARCEL A & B	DR	BT BK	APPROVED:	SCALE: AS SHOWN	CONTRACT NO. 05-06-04



GRAPHIC SCALE  
1 inch = 50 feet

- REFERENCES:**
- 28 05 59
  - R1
  - RE
  - APN: 05-253-009
  - R3 2003-0106056

Handwritten initials: BT BK

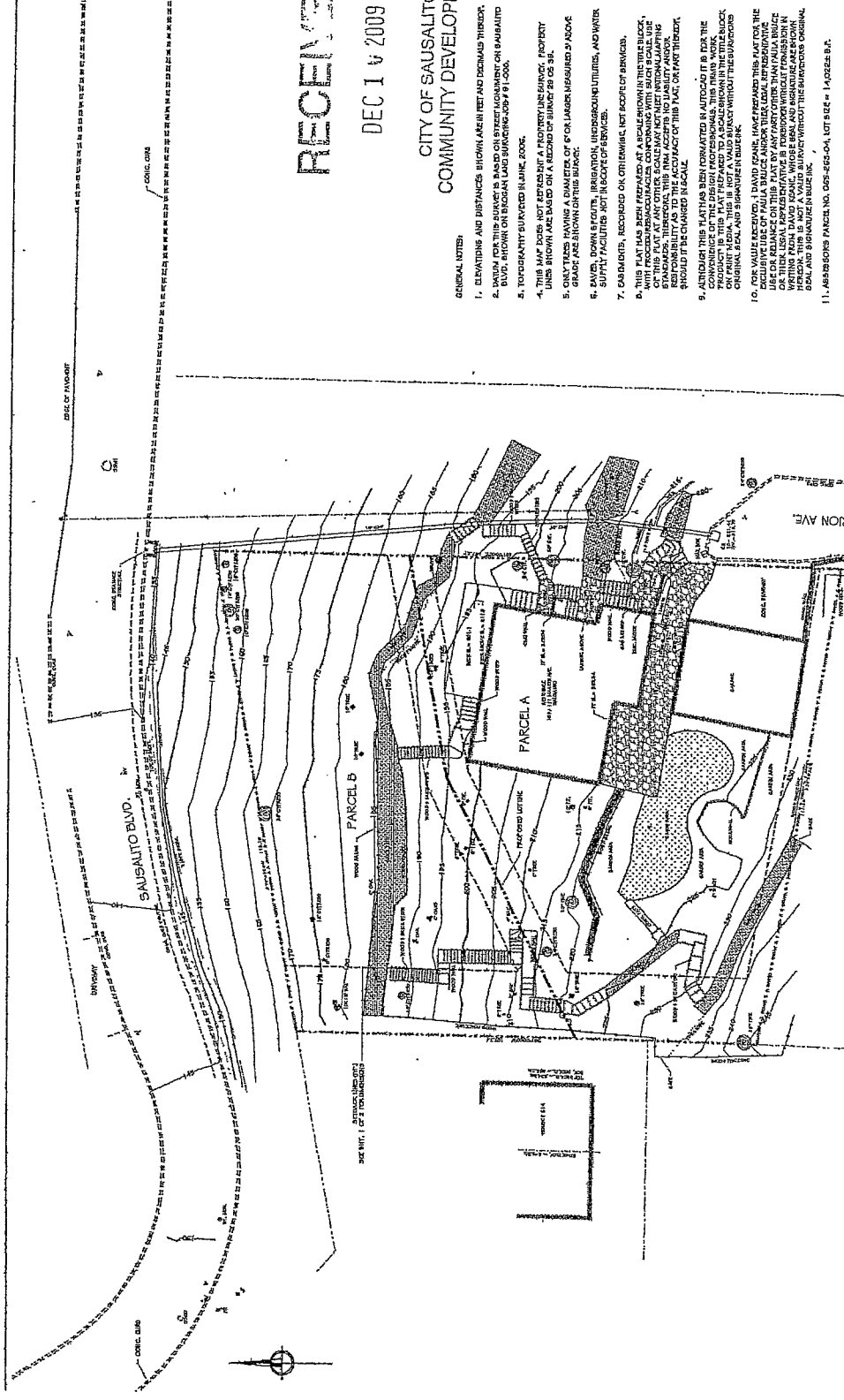
RECEIVED

DEC 1 4 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

GENERAL NOTES:

1. ELEVATIONS AND DISTANCES SHOWN ARE IN FEET AND DECIMAL THEREOF.
2. EXISTING FOR THIS SUBJECT IS BASED ON STREET LIGHTING OR UTILITIES BUD. SHOWN ON ENGINEER LAND SURVEY JOB # 01-2009.
3. TOPOGRAHY SURVEYED IN JUNE, 2008.
4. THIS MAP DOES NOT SHOW ANY EASEMENTS OR RIGHTS OF WAY UNLESS SHOWN AND BASED ON A RECORD OF SURVEY OR U.S. G.S. PLAT.
5. ONLY THOSE HAVING A DIAMETER OF 6" OR LARGER REQUIRING 2" HOSE GRADE ARE SHOWN ON THIS SUBJECT.
6. SAND, DOWN SPROUTS, IRRIGATION, UNDERGROUND UTILITIES, AND WATER SUPPLY FACILITIES NOT IN SCOPE OF SERVICES.
7. EASEMENTS, RECORD OR OTHERWISE, NOT SUBJECT OF SERVICES.
8. THIS PLAN HAS BEEN PREPARED FOR THE CITY OF SAUSALITO AND IS TO BE USED ONLY WITH PROCEEDING APPROVED BY THE CITY OF SAUSALITO. THE CITY OF SAUSALITO MAKES NO WARRANTY AS TO THE ACCURACY OF THIS PLAN, OR ANY THEREOF, SHOULD IT BE CHANGED IN SCALE.
9. ANY OTHER THIS THAT HAS BEEN FORMULATED IN AUTOCAD IT IS FOR THE CONVENIENCE OF THE DESIGN PROFESSIONALS. THIS PLAN WORK OR PART THEREOF IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER. THIS IS NOT A VALID SURVEY WITHOUT THE SURVEYOR'S ORIGINAL SEAL AND SIGNATURE IN BLUE INK.
10. FOR VALID REASON, I, DAVID KEANE, HAVE PREPARED THIS PLAN FOR THE USE OR RELIANCE ON THIS PLAN BY ANY PARTY OTHER THAN THE CLIENT OR THE DESIGNER. I AM NOT PROVIDING ANY OTHER SERVICE TO THE CLIENT OR THE DESIGNER. THIS IS NOT A VALID SURVEY WITHOUT THE SURVEYOR'S ORIGINAL SEAL AND SIGNATURE IN BLUE INK.
11. ASSASSIN'S PARCEL NO. 005-565-04, LOT SIZE = 14,022 SQ. FT.



109 / 111 MARION AVE.  
TENTATIVE MAP

MAY 21, 2009; REVISED DEC. 7, 2009

APPROVED:	DAVID KEANE Professional Seal No. 10975	SCALE:	1" = 40'	CONTRACT NO.:	08-015
CHECKED BY:	DK	DATE:	JUNE, 2005	SHEET:	2 OF 2
BY:	BT			DWG. NO.:	08-015-02

NOTES FOR ADDITIONAL LOT INFORMATION SEE SHEET 1 OF 2



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ATTACHMENT 4

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RESOLUTION NO. XXXX

**A RESOLUTION OF THE SAUSALITO CITY COUNCIL  
APPROVING AN ENCROACHMENT AGREEMENT TO ALLOW A DRIVEWAY TO ENCROACH  
INTO THE SAUSALITO BOULEVARD RIGHT-OF-WAY, AN EXISTING ENTRY STAIRCASE TO  
ENCROACH IN THE MARION AVENUE RIGHT-OF-WAY, AND MAINTENANCE OF  
LANDSCAPING IN THE MARION AVENUE RIGHT-OF-WAY AT 109/111 MARION AVENUE  
(EA 08-011)**

---

**WHEREAS**, an application has been filed by Paula Bruce, requesting City Council approval of an Encroachment Agreement to allow a driveway to encroach into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way at 109/111 Marion Avenue (APN 065-263-04); and

**WHEREAS**, the Planning Commission found that, as conditioned, the proposed project complies with requirements of the General Plan and the Zoning Ordinance; and

**WHEREAS**, on January 20, 2010, the Planning Commission approved Resolution No. No. 2010-04 which approved a Tentative Parcel Map to subdivide an existing parcel at 109/111 Marion Avenue into two parcels, a Design Review Permit to construct a new single-family residence, a Tree Removal Permit to remove three protected trees and recommended City Council approval of a Encroachment Agreement for a driveway encroachment into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way; and

**WHEREAS**, on March 16, 2010 the City Council reviewed and considered the Encroachment Site Plan for the proposed encroachment agreement titled "Encroachment Site Plan" dated January 20, 2010; and

**WHEREAS**, on March 16, 2010 the City Council reviewed and considered the Landscaping Site Plan for the proposed encroachment agreement titled "Sprinkler Locations" dated February 18, 2010; and

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

**WHEREAS**, on January 20, 2010 the Planning Commission approved the *Bruce Residence Initial Study/Mitigated Negative Declaration* pursuant to the California Environmental Quality Act (CEQA).

**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 the improvements in the public right-of-way along the Marion Avenue and

ATTACHMENT 5  
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Sausalito Boulevard property frontage at 109/111 Marion Avenue and to allow the maintenance of landscaping in the Marion Avenue right-of-way.

**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 \_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

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

\_\_\_\_\_  
MAYOR OF THE CITY OF SAUSALITO

ATTEST:

\_\_\_\_\_  
Deputy City Clerk

Exhibit A: Encroachment Agreement Findings  
Exhibit B: Encroachment Agreement

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EXHIBIT A

ENCROACHMENT AGREEMENT FINDINGS  
109/111 MARION AVENUE (EA 08-011)

Pursuant to Zoning Ordinance 10.56.060 (Encroachment Review and Agreements), the Planning Commission recommends City Council approval of an Encroachment Agreement at 109/111 Marion Avenue 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.

*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue fits with existing encroachments along the right-of-way in the neighborhood and will have a minimal impact on the streetscape. A Sight Distance Memo was prepared for the project, which concluded that the available sight distance to the west from a vehicle located on the project driveway, at the edge of the traveled way, would allow adequate stopping sight distance for a vehicle traveling 20 miles per hour.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way is compatible with the surrounding area, which contains other private entry encroachments. The encroachment will not diminish visual or physical enjoyment of the streetscape.*

*Landscaping: The requested authorization to maintain landscaping in the Marion Avenue right-of-way will improve the visual public enjoyment of the streetscape. Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not diminish public enjoyment of the area.*

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

*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue does not impact access to the adjoining parcel at 514 South Street. The driveway encroachment does not set a new land use precedent as it is solely for the driveway access to Parcel "B."*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way does not impact adjoining parcels. Other parcels in the immediate vicinity have received Encroachment Agreements for entry access and therefore the encroachment would not extend an undesirable land use precedent.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of adjoining parcels.*

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



*Driveway: The encroachment of the driveway along Sausalito Boulevard Avenue is necessary to provide access to the property. The extent of the encroachment is justifiable due to the steep slope of the lot and the extent of the right-of-way which is currently paved.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue right-of-way is necessary to provide direct access to the duplex unit at 109/111 Marion Avenue. The encroachment is necessary to the reasonable use of the property.*

*Landscaping: Maintenance of landscaping in the right-of-way improves the aesthetics in the neighborhood and view from the subject property and therefore the encroachment is justifiable.*

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

*Driveway: The encroachment of the driveway, as conditioned, will not affect access and circulation along Sausalito Boulevard Avenue.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue provides direct access to the duplex unit at 109/111 Marion Avenue. The encroachment will not affect public circulation nor create a public safety hazard.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of the right-of-way.*

- 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.

*Driveway: The encroachment of the driveway, as conditioned, will not affect access and circulation along Sausalito Boulevard Avenue.*

*Existing Stairs: The encroachment of the existing front entry stairs into the Marion Avenue provides direct access to the duplex unit at 109/111 Marion Avenue. The encroachment will not affect public circulation nor create a public safety hazard.*

*Landscaping: Subject to the condition that the landscaping would not prohibit public access in the right-of-way, landscaping would not affect the usability or enjoyment of the right-of-way.*

- F) The value of the proposed improvements in the right of way would not preclude or make difficult the establishment or improvement of streets or pedestrian ways in the future.

*Driveway: The value of the driveway encroachment of the in the right-of-way would not preclude or make difficult the improvement of the street in the future.*

*Existing Stairs: The value of the existing front entry stairs encroachment into the Marion Avenue would not preclude or make difficult the establishment of pedestrian ways in the future.*

*Landscaping: The value of the landscaping maintenance of the in the right-of-way would not preclude or make difficult the establishment of pedestrian ways in the future.*

**EXHIBIT B**

**CITY OF SAUSALITO  
ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the "Effective Date") by and between **PAULA MARIE BRUCE** ("Owner") of the property at 109/111 Marion Avenue (APN 065-263-04), and the **CITY OF SAUSALITO**, a municipal corporation ("City").

**RECITALS**

The following Recitals are a substantive part of this Agreement:

A. The construction of a driveway in the Sausalito Boulevard public right-of-way at 109/111 Marion Avenue along the Sausalito Boulevard property frontage and the continued use of an existing entry staircase in the Marion Avenue right-of-way and maintenance of landscaping in the Marion Avenue right-of-way at 109/111 Marion Avenue in the public right-of-way along Marion Avenue property frontage require City Council approval of an Encroachment Agreement (TM/EA 09-161). 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 plans 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 allows for a driveway encroachment into the Sausalito Boulevard right-of-way, an existing entry staircase to encroach in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way at 109/111 Marion Avenue, as shown in the attached site plans (see **Exhibits 1 and 2**) which are 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.
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.

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 3**) 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(s):**  
Paula Marie Bruce  
109/111 Marion Avenue  
Sausalito, CA 94965

**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.

OWNERS:

CITY:

\_\_\_\_\_  
Paula Marie Bruce

\_\_\_\_\_  
Jonathan Leone, Mayor

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

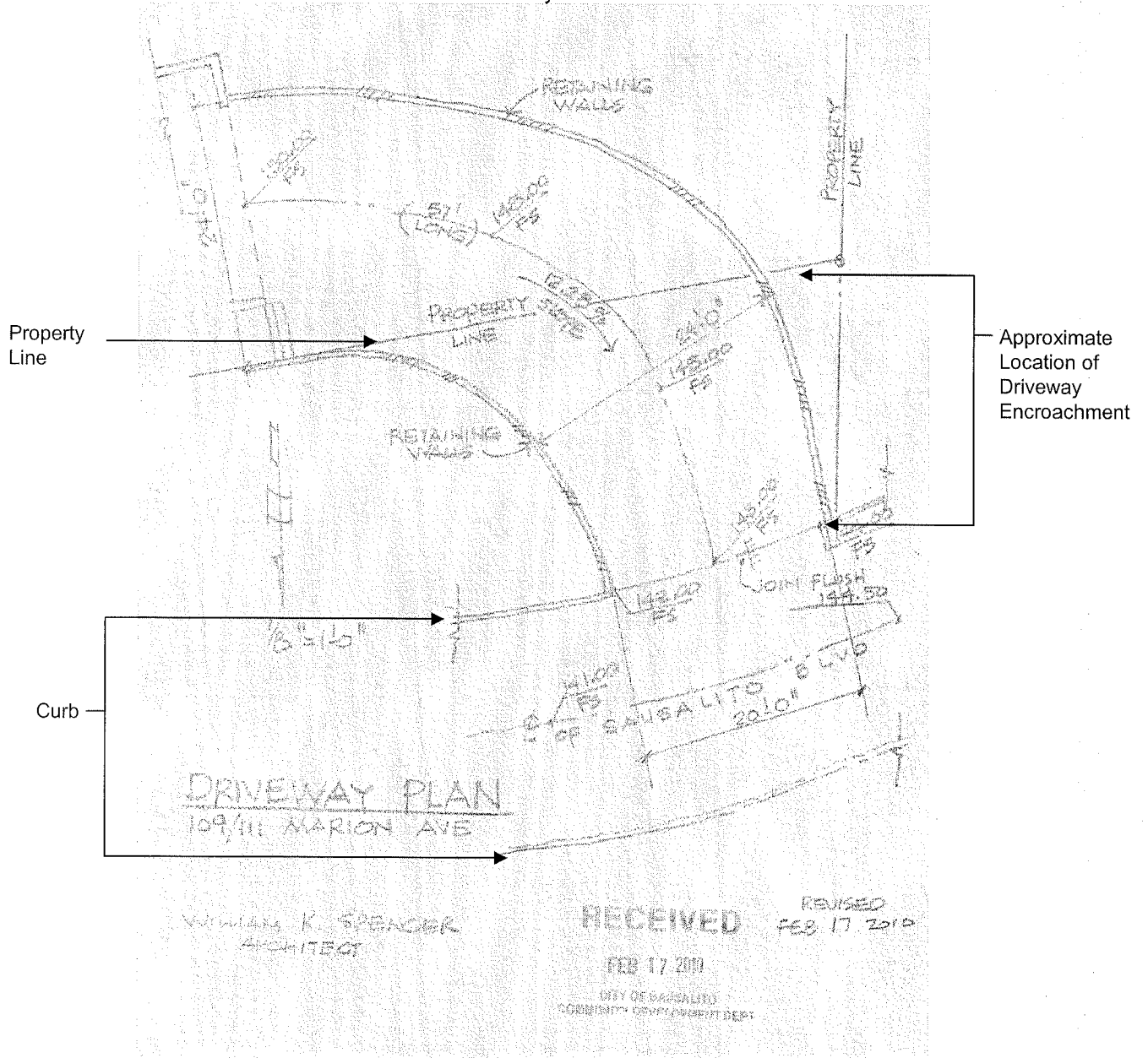
\_\_\_\_\_  
Todd Teachout, City Engineer

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

EXHIBITS:

1. "Driveway Plan" prepared by William K. Spencer date stamped received February 17, 2010
2. "Encroachment Site Plan" dated March 16, 2010
3. Encroachment Agreement Conditions of Approval

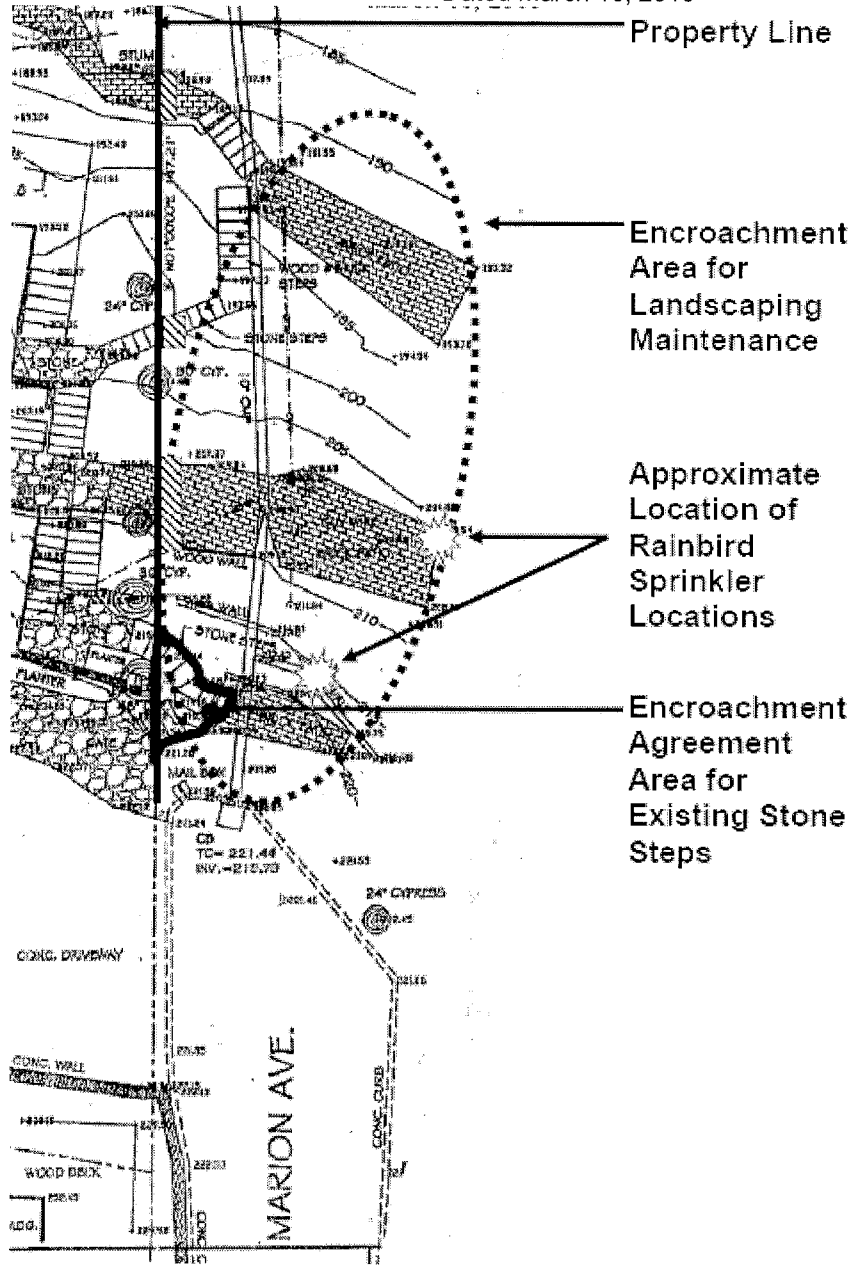
**EXHIBIT 1**  
**Driveway Plan**



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EXHIBIT 2

Encroachment Site Plan  
Dated March 16, 2010



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### EXHIBIT 3

#### ENCROACHMENT AGREEMENT CONDITIONS OF APPROVAL

These conditions apply only to the project plans "Driveway Plan" prepared by William K. Spencer date stamped received February 17, 2010 and "Encroachment Site Plan" dated March 16, 2010.

1. The encroachment agreement is predicated on a driveway encroachment in the Sausalito Boulevard right-of-way, an existing entry staircase encroachment in the Marion Avenue right-of-way, and maintenance of landscaping in the Marion Avenue right-of-way at 109/111 Marion Avenue as shown on the project plans titled "Driveway Plan" prepared by William K. Spencer date stamped received February 17, 2010 and "Encroachment Site Plan" dated March 16, 2010.
2. 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 Community Development Director, 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.
3. 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.
4. 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.

#### Advisory Notes

Advisory notes are provided to inform the applicant of Sausalito Municipal Code requirements, and requirements imposed by other agencies. These requirements include, but are not limited to, the items listed below.

1. An approval granted by the Planning Commission does not constitute a building permit or authorization for construction. Appropriate construction permit(s) issued by the Building Division must be obtained prior to construction.
2. All applicable City fees as established by City Council resolutions and ordinances shall be paid.
3. Pursuant to Municipal Code Chapter 8.54, applicants shall submit a Recycling

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Management Plan to the Community Development Department prior to the issuance of any construction permits, unless the requirement is waived pursuant to Section 8.54.050.

4. The Community Development Director may authorize minor alterations to the approved plans and conditions of approval in accordance with Section 10.50.180 of the Zoning Ordinance. Major changes and alterations to the approved plans and conditions of approval shall be reviewed and approved by the Planning Commission in accordance with Section 10.84.070(B)(2) of the Zoning Ordinance.

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## Description of Nexus for Staircase

There is a clear nexus between the requirement for the stairs and the approved tentative parcel map and design review permit. General Plan Policy CP-4.6 (Circulation and Parking Element, p. 5-10) encourages the improvement and extension of existing public paths for use by residents and the establishment of new pathway connections. Specifically, Program CP-4.6.3 requires the investigation of the use of existing unimproved portions of public rights-of-way (paper streets) as new pathway connections.

The California Subdivision Map Act limits local agencies to having the authority to require "the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvement for the parcels being created" wherever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots (Section 66411.1 of the Subdivision Map Act). Since the requested Parcel Map is a division of land which results in only one additional lot, Government Code Section 66411.1 applies to the requested entitlement. Section 3 of the City's Subdivision Ordinance (Ordinance No. 430) requires improvements for both parcel maps (divisions of four or less) and final maps (divisions of five or more). Pursuant to Ordinance No. 430, typical City improvement requirements are sewage, streets, drainage, sidewalks, curbs and gutters. Staff concluded during the review of the application that the requirement for a pedestrian staircase along the front property line of Parcel "B" is comparable to typical frontage improvements and would fulfill both General Plan Policy CP-4.6 and Program CP-4.6.3 and the City's Subdivision Ordinance for frontage improvements.

The requirement to construct public stairs was also directly related to the request by the applicant for a minor subdivision of land to split one parcel into two parcels and construct a new residence on the new parcel. The Parcel Map and Design Review Permit create an additional developable parcel in the neighborhood with a new housing unit, which will increase the pedestrian traffic in the neighborhood. In a neighborhood with limited sidewalks a public staircase along a public "paper-street" would enhance neighborhood safety by separating pedestrian traffic from vehicular traffic and providing more direct routes for pedestrians. Therefore, as the overall pedestrian traffic in the neighborhood will increase with the approved tentative parcel map and design review permit, the public stairs will provide improved pedestrian access in the immediate vicinity of the site and therefore would provide a safe means of egress and facilitate better pedestrian travel in the neighborhood. The Planning Commission therefore concluded that there was a clear relationship to the requested entitlements and the Condition of Approval requiring installation of the stairs.

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MAR 10 2010

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

March 10, 2010

Ms. Lilly Shensing  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965

Re: 109 Marion Avenue

Dear Ms. Shensing:

In connection with the upcoming hearing on the alternative improvements off Marion Avenue for 109 Marion Avenue, I would like the City Council's attention brought to the following points:

1. **TO INSTALL A POURED-IN-PLACE CONCRETE PATHWAY IN THE SOUTH STREET RIGHT OF WAY.**

The suggested construction details mandated by the Planning Commission are excessive and over-designed for this pathway use. The area is a relatively remote one for Sausalito, being accessible for the most part only by going down a cul-de-sac serving four or five houses. There will be very low useage. Instead of the mandated poured in place concrete throughout the entire length of the stairway, a combination of precast concrete treads and a poured in place grade beam will be more than adequate to meet the demand for a safe and durable pathway. The cost of an entire poured in place detail will cost approximately \$50,000.00, according to the applicant's architect, in place of a combination of precast and poured in place pathway. To be forced to install the more expensive detail is onerous, unfair, and unnecessary.

2. **REMOVAL OF STAIRWAY AT LOWEST ACCESS TO THE MARION AVENUE RIGHT OF WAY SERVES NO REAL PURPOSE**

Removal of this stairway negates having safe access

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to this portion of the existing landscaping. Ms. Bruce has agreed to the installation of a 6 ft. high fence along the property line, and that fence plus a gate would be more than sufficient to separate Ms. Bruce's private property from the public right-of-way. The most likely scenario is that Ms. Bruce or a successor will trip and fall on the removal of the stairs whilst attempting to maintain the area. The Planning Commission's condition, designed to prevent a bystander's misunderstanding that the stairs are not part of the right of way will only do more harm than good. It is not necessary to remove the stairs, because the wall does the job of separating public from private property. The condition is more punitive than beneficial to anyone.

**3. REMOVING FIVE FEET OF EXISTING PAVED SURFACES TO CREATE A 5' PATE OF SEPARATION BETWEEN THE BRUCE PROPERTY LINE AND THE EXISTING PAVED BRICK SURFACES WILL ONLY CREATE AN UNSAFE CONDITION.**

Again, with a view to ensuring that a pedestrian user the Marion Avenue right-of-way will not mistake the Bruce property for public property, the Planning Commission mandated that Ms. Bruce remove a five feet stretch of paved brick surface and leave it in dirt only. This would be all right, except that the Commission has required also that Ms. Bruce construct 6 ft. high wall separating her property from the right-of-way. How would anyone be confused by that? The removal of the brick paving will leave a dirt pathway which, over a short period of time will be unsafe for those very pedestrians whose confusion the City seeks to eliminate by the fence. This is asking for trouble where it did not previously exist. The paving works. Removing it serves absolutely no purpose given the fence. The condition is overkill and absurd.

Please take there points into mind when considering and discussing the subject Tuesday night.

Sincerely,



Stephen A. Fraser