



Application and Permit Center

ENCROACHMENT PERMIT FOR USE OF DISTRICT RIGHT OF WAY

PERMITTEE: **MADISON PARK PROPERTIES, LLC**
 ADDRESS: **155 GRAND AVENUE, SUITE 950**
 CITY/STATE/ZIP: **OAKLAND, CA 94612**
 TELEPHONE NUMBER: **(510) 452-2944** FAX:

CONTACT PERSON: **BOB HUFF** TELEPHONE NUMBER: **(510) 715-5492**
 EMAIL ADDRESS: **BOB@MADISONPARK.COM**

PLEASE READ ALL SECTIONS OF THIS PERMIT CAREFULLY AND KEEP IT AT THE WORK SITE.

The permittee agrees to defend, save, indemnify and hold harmless the County of Contra Costa, Contra Costa County Flood Control and Water Conservation District (District), their officers, employees and agents from all liabilities imposed by law by reason of injury to or death of any person(s) or damage to property, including without limitation liability for trespass, nuisance or inverse condemnation, which may arise out of the work covered by this permit, and does agree to defend the County and District, their officers, employees and agents against any such claim or action asserting such liability. Accepting this permit or starting any work hereunder shall constitute acceptance and agreement to all of the conditions and requirements of this permit and the Ordinance and Specifications authorizing issuance of such permit.

In compliance with your request, and subject to all of the terms, conditions and restrictions written below or given as general or special provisions on any part of this form, PERMISSION IS HEREBY GRANTED AS FOLLOWS:

LOCATION: Lafayette Creek @ 3483 Golden Gate Way, Lafayette APN's 243-232-027 & 243-232-028

LATITUDE: 37° 53' 27.98" N LONGITUDE: 122° 06' 55.82" W

PERMITTED USE: Construction of a multifamily development adjacent to and within the Contra Costa County Flood Control and Water Conservation District's easement for the Lafayette Creek flood control channel.

<input type="checkbox"/> Work Completed	Inspector: _____	Approved Start Date: <u>April 18, 2023</u>
<input type="checkbox"/> Expired	Date: _____	Expiration Date: <u>July 15, 2025</u>
<input type="checkbox"/> Looks OK – No Inspection Requested	Engineer: _____	Date: _____
<input type="checkbox"/> Flood Control – OK to Final		

Items Attached or Referred to Herein and Made Part Hereof:

1. General Provisions, Sheets GP-6 through GP-8, attached.

Special Provisions:

1. PERMITTEE must schedule an inspection from the Public Works Construction Division at least 48 hours before starting any work under this permit. The PERMITTEE shall arrange for an inspection by phoning **Jon Suemnick @ (925) 595-6010** or email **jon.suemnick@pw.cccounty.us**.
2. This permit is issued to 3483 Golden Gate Way, LLC (PERMITTEE) for construction of a multifamily development that encroaches onto the Contra Costa County Flood Control and Water Conservation District (DISTRICT) Lafayette Creek easement located southeast of the intersection of Golden Gate Way and First Street (APNs 243-232-027 and 243-232-028) in the City of Lafayette. The PERMITTEE's improvements include grading, an outfall, and landscaping.
3. PERMITTEE and its contractor shall not enter the flow area of the Lafayette Creek flood control channel at any time.
4. Permittee shall comply with all requirements of the Contra Costa County Health Departments regarding COVID-19.
5. By accepting this permit, PERMITTEE agrees to pay all expenses of the DISTRICT related to this permit. A \$20,000 cash deposit is required prior to the issuance of this permit. The DISTRICT/COUNTY reserves the right to use the cash bond to perform remedial work or to repair damage to the DISTRICT's right of way or facilities caused by the PERMITTEE's activities.

By accepting this permit, PERMITTEE agrees that the DISTRICT can use the cash bond to pay for the balance of its permit expenses.

6. This permit will expire on **July 15, 2025**. Request for time extension shall be submitted in writing to the DISTRICT at least 1 week before the expiration date.
7. The DISTRICT staff assigned to this permit is **Alexander Zandian**, telephone – **(925) 313-2052**, email address – **Alexander.Zandian@pw.cccounty.us**.
8. The DISTRICT Inspector is **Jon Suemnick**, telephone – **(925) 595-6010**, email address – **Jon.Suemnick@pw.cccounty.us**.
9. PERMITTEE shall be responsible for scheduling a pre-construction meeting with the DISTRICT Inspector at least two weeks before the start of work. PERMITTEE shall submit a schedule of work to the DISTRICT Inspector before or during the pre-construction meeting.
10. PERMITTEE shall schedule an inspection with the DISTRICT Inspector within seven days of completion of all work/activities.

11. PERMITTEE shall notify and include the DISTRICT Maintenance Supervisor of the Public Works Maintenance Division in the final inspection of the completed work. Contact **Matt Tolson**, telephone **(925) 313-7004**, email address – Matt.Tolson@pw.cccounty.us.
12. The proposed work shall be in accordance with the civil plans entitled "3483 Golden Gate Way, Lafayette, CA" prepared by Kister, Savio & Rei, Inc. dated February 11, 2022 and the landscaping plans entitled "3483 Golden Gate Way, Lafayette, CA" prepared by Jett Landscape Architecture and Design dated February 11, 2022. The DISTRICT shall be allowed to review and accept proposed changes to the work located within the DISTRICT's right of way before the changes are implemented.
14. By accepting this permit, PERMITTEE agrees to perform, at its sole expenses, all work necessary to correct any errors in the permitted design and construction, as directed by the DISTRICT.
15. PERMITTEE is solely responsible for obtaining any regulatory permits required for the proposed work. PERMITTEE shall submit to the DISTRICT copies of permits required by the Department of Fish and Wildlife, the Regional Water Quality Control Board, and other government agencies that have jurisdiction over the proposed work, or provide correspondence showing that the regulatory permits are not needed.
16. Before the start of work, PERMITTEE shall take photos or other visual records of the condition of all facilities such as gates, fences, flood control channels, structures, and other improvements that may be adversely impacted by PERMITTEE's activities. The cost of this work shall be the PERMITTEE's responsibility. The documents will be used to settle questions related to repair of damage to the facilities or improvements. PERMITTEE shall submit these pre-construction photos and/or video recording to the DISTRICT Inspector at or before the pre-construction meeting.
17. The required minimum relative compaction for native soil backfill within the DISTRICT's right of way is 90% using the Caltrans Method.
18. Suitable soil backfill shall be placed in 4-inch to 6-inch maximum lift and the backfill lifts shall be compacted adequately as required by the DISTRICT Inspector.
19. All soil taken by the PERMITTEE from the DISTRICT's property becomes the property of the PERMITTEE to be disposed of legally or used as the PERMITTEE sees fit. DISTRICT has not analyzed the quality or condition of the soil at the site and makes no representation whatsoever as to the quality or condition of the soil material.
20. PERMITTEE shall not store construction materials or park equipment and vehicles with the DISTRICT's right of way. No refueling or maintenance of vehicles and equipment is permitted on the DISTRICT's property.
21. PERMITTEE shall be responsible for keeping the DISTRICT's right of way secure at all times. PERMITTEE shall install temporary fences or barriers, as necessary, to prohibit trespassing into the DISTRICT's right of way.

22. PERMITTEE shall be solely responsible for determining the presence of underground utilities at the DISTRICT's right of way.
23. PERMITTEE shall have a licensed engineer present during construction to oversee and monitor geotechnical work. Prior to sign off of the permit, the licensed engineer shall certify the work was constructed in accordance with the geotechnical report.
24. PERMITTEE shall install and maintain within their work area, silt fences or other forms of acceptable barriers to prevent soil or contaminants from entering drainage facilities. PERMITTEE's erosion control measures shall not include products that contain mono-filament.
25. PERMITTEE shall submit to the DISTRICT Inspector an electronic copy of the as-built drawings, bearing the signature and seal of a licensed engineer, prior to the sign-off on this permit. As-built plans shall include a certification from the licensed engineer that the project was constructed in accordance with the plans, specifications, and geotechnical report, if applicable.
26. PERMITTEE shall dispose all trash/debris collected from the DISTRICT's rights of way in a legal manner.
27. Prior to the sign off on the permit, PERMITTEE must enter into a Maintenance Agreement with DISTRICT for the continued maintenance of PERMITTEE's constructed improvements and landscaping within the DISTRICT's right of way.

Work performed under this permit shall not commence before April 18, 2023, and shall be completed by **July 15, 2025**.

Failure to complete work by said date shall void this permit unless a written extension is granted by the District.

FOR PERMITTEE:

I hereby acknowledge that I have read this permit and agree to comply with all of the conditions stated herein and with all applicable Ordinances and Laws. For those areas involved herein to which the District does not hold fee title, I have also obtained permission from the underlying property owners.

(Sign) _____ Date _____

(Print) _____ Title _____

FOR THE DISTRICT: Permission is Granted

Brian M. Balbas, Ex-Officio Chief Engineer

By _____ Date _____

Permit Fee / Deposit: Fee \$1,900.00 (0649-9665) Receipt Number: G-1417867

Bond Required? Yes No Bond Type Cash Surety

Bond Amount: Bond \$20,000 (819800-0800) Receipt Number: G-

Insurance Required? Yes No (The Minimum Limit for bodily injury and property damage is \$1 million G.C.L.)

CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Permit For Use Of District Right Of Way

GENERAL PROVISIONS

1. Definitions.
 - a. "District" shall mean the Contra Costa County Flood Control and Water Conservation District, the grantor of this permit.
 - b. "District's right of way" shall mean those areas involved herein on which District has land rights, whether those rights be held in fee, easement, license, permit from others, or any other form.
 - c. "Permitted use", "planned installation", "permittee's facilities", "work covered herein" or other such phrases shall mean the specific work or purpose for which this permit is granted.
2. Scope of Permit. This permit is to be strictly construed and no work other than that specifically mentioned is authorized hereby. Incorporation herein of Permittee's plans does not constitute approval of items shown on said plans which lie outside the limits of District's right of way, nor of temporary alterations of District's flood control facilities (e.g. diversion dams, haul roads, cutting of banks or levees, sump holes) not shown on said plans which the Permittee or its contractor's may find necessary in order to construct or maintain the planned facilities. For any such alteration, Permittee or its contractor shall obtain District approval either by amendment to this permit or by separate permit.
3. No Precedent Established. It is understood and agreed by Permittee that approval of a particular action under a permit shall not establish a precedent for future similar requests by Permittee.
4. Granting of Rights to Others. Nothing herein contained shall be construed to prevent District from granting rights to others within District's right of way concerned herein or using said right of way for any and all purposes, provided, however, that District shall not unreasonably prevent or obstruct Permittee's rights hereunder.
5. Permission of Underlying Owners and Holders of Prior Rights. Where District's title to the right of way concerned herein is anything less than fee, or where others are holders of prior rights within right of way held in fee by District which might be affected by Permittee's proposed use, the permission granted herein is valid only to the extent that District is legally able to grant such permission. Permittee shall also obtain permission for the proposed use of said right of way from said underlying owners or holders of prior rights. This permit shall not be effective until such permission is obtained. When specifically stated elsewhere herein, Permittee shall submit evidence of such permission to District. Failure of District to notify Permittee of the existence of such underlying owners and holders of prior rights shall not relieve Permittee of the responsibility of obtaining said separate permission.

General Provisions (Continued)

6. Non-Assignment. Permittee shall not assign, transfer or sublet this permit or any privileges herein granted except with the written consent of District.
7. Pending Easement. If so indicated elsewhere herein, negotiations are underway for the granting of an easement by District to Permittee for that portion of the work or facilities permitted herein which lie within lands owned in fee by District. District reserves the right to incorporate any or all of the conditions of this permit in said easement. Any conditions of this permit not so incorporated shall remain in full force and effect unless specifically revised or negated in the easement document or by written amendment to this permit. This permit shall not be construed as a release or waiver in any way of the right to compensation for such easement.
8. Future Relocation. If Permittee's facilities should at some time in the future interfere with District's maintenance, repair, reconstruction, alteration or expansion of its flood control facilities, or with installation of new facilities by the District, Permittee's facilities shall be removed, relocated, or modified to the satisfaction of District at the sole cost and expense of Permittee.
9. Revocability and Modification. This permit is revocable on five days notice, and is subject to modification by the District at any time. The listing of a specific expiration date elsewhere in this permit does not waive the right of the District to revoke this permit prior to that date as hereinabove provided. This permit may be revoked or suspended without prior notice if justifiable complaints of "nuisance" (e.g. dust, noise or invasion of privacy) are received from occupants or owners of nearby property.
10. Hold Harmless. Permittee shall indemnify, defend and hold harmless the District of and from any and all claims including inverse condemnation, demands, damages, losses, actions, causes of action or judgments which District may pay or be required to pay by reason of any damages, injury or death to any person or property suffered by any person, firm or corporation as a result of the exercise by Permittee of the rights herein granted.
11. Insurance. If so stated elsewhere herein, this permit shall not be effective for any purpose unless and until Permittee files with District a certificate from his insurer stating that the Contra Costa County Flood Control and Water Conservation District and Contra Costa County has been named, for the purpose and duration of this permit, as an additional insured in his commercial general and automobile liability insurance policies to the minimum limits indicated.
12. Bond. If so stated elsewhere herein, this permit shall not be effective for any purpose unless and until Permittee files with District a bond in the form and amount indicated.
13. Expense of Inspection. Current fee schedule.
14. Notice Prior to Starting Work. Permittee shall notify District's Maintenance Division at least three working days in advance of starting the work covered herein or any new phase thereof.

General Provisions (Continued)

15. Non-Interference. Any work performed hereunder by Permittee or its authorized agents shall be done in such a manner as will at all times enable the District, its authorized agents or contractors, to use District's right of way.
16. Restoration of District's Facilities. Any District facilities removed or damaged during installation or maintenance of Permittee's facilities shall be replaced or repaired equivalent to, or better than their pre-existing condition at the sole cost and expense of the Permittee. If, upon being given reasonable notice by the District, the Permittee does not promptly make such restoration, the District reserves the right to perform the needed work and to bill the Permittee for the actual cost thereof.
17. As-Built Plans. Upon completion of underground or surface work of consequence, Permittee shall furnish to the District plans showing location and details unless pre-installation plans attached hereto sufficiently and accurately show such information.
18. Marking of Underground Facilities. Above-ground markers shall be placed by Permittee at locations satisfactory to District to indicate the line and depth of underground facilities installed under this permit.
19. District Non-Responsibility. Unless otherwise provided herein, District assumes no responsibility for the design, construction, maintenance or repair of Permittee's facilities and will not be responsible in any way for any damage to Permittee's facilities resulting from District's construction, reconstruction, alteration, operation and maintenance of District's facilities.
20. Maintenance. Unless otherwise provided herein, the Permittee agrees to exercise reasonable care to maintain properly any item installed under this permit and to exercise reasonable care in inspecting and immediately repairing and making good any injury to any portion of District's facilities which occurs as a result of the maintenance of such items in District's right of way or as a result of the work done under this permit, including any and all injury to District's facilities which would not have occurred had such work not been done or such item not been placed therein. Except in the case of emergency, Permittee shall consult District at least seven days in advance of commencement of any non-routine maintenance operations.
21. No Recourse Against District. The Permittee shall have no recourse whatsoever against the District for any loss, cost, expense, or damage arising out of any provisions or requirement of this permit because of its enforcement or for the termination or revocation of this permit as provided herein. Nor shall this permit be given any value before any court or public authority in any proceeding of any character.