

When Recorded Return to:

City Clerk
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Agreement
(Construction of Improvements Within Creek Setback Area)

This Agreement is entered into this _____, between _____, ("Property Owner") and the City of Lafayette, a Municipal Corporation ("City").

RECITALS

This Agreement is predicated on the following facts:

1. Property Owner wishes to construct and maintain certain improvements on property located at _____, Lafayette, California, Assessor's Parcel No. (_____), ("subject property"), more particularly described in Exhibit "A", attached to and made a part of this Agreement.

2. The improvements the property owner wishes to construct are described as follows:

3. Property owner wishes to construct the improvements within a creek setback area as defined in section 6-1841, Lafayette Municipal Code ("Code"). That section provides that no permanent structure other than fences and drainage and erosion protection improvements may be constructed within a setback area.

4. The City Engineer may approve exceptions to the creek setback requirements under section 6-1842 of the Code if:

(a) The submitted materials under subsection (2) below are complete and adequate; and

(b) the property owner agrees to enter into and record an agreement holding the City and other public agencies harmless in the event of flood or erosion damage. The agreement shall bind successors-in-interest and be in a form acceptable to the City Attorney.

(1) In approving an exception, the City Engineer may impose conditions deemed necessary for creekside erosion protection and on-site drainage.

(2) A person requesting an exception under this section shall submit to the City Engineer:

(aa) A topographical survey of the lot precisely showing the creek bottom, sides, top of bank and proposed and existing structures;

(bb) a soils report prepared by a licensed civil engineer specializing in soils analysis which describes the soils condition for the proposed structure and analyzes and makes recommendations as to the creek bank stability and erosion hazard; and

(cc) certification signed by the engineer who prepares the soils report than in the professional opinion of the engineer there is no likelihood of a hazard to persons or property resulting from the proposed construction.

5. Property Owner has submitted the required survey and report to the City Engineer.

6. The property owner's engineer has found that there is no likelihood of a hazard to persons or property or liability to the City or other public agency resulting from the proposed construction. The City Engineer has approved Property Owner's request for an exception to the creek setback requirement contingent upon execution of this Agreement by Property Owner and City.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Ownership of Subject Property.

Property Owner warrants that as the day of this Agreement he is the lawful owner in fee simple of the subject property.

2. Indemnification and Hold Harmless.

Property Owner, for himself, his successors and assigns, agrees to indemnify and hold harmless the City, its agents and employees, and other public agencies, their agents and employees, from responsibility which may arise from or be incurred as a result of Property Owner's construction of improvements on the subject property within the creek setback area as approved by the City Engineer, including but not limited to injury or damage to persons or property from flooding or erosion.

3. Compliance with Applicable Conditions and Regulations.

Property Owner agrees to comply with any conditions imposed by the City Engineer when approving the variance for the subject property, as he in his sole discretion deems reasonably necessary for creekside erosion protection and on-site drainage. Property Owner agrees to construct the improvements in accordance with the plans, drawings and specifications required and approved by the City and to comply with all applicable Federal, State and Local rules and regulations.

4. Agreement Attaches To Land.

This Agreement shall be recorded in the Office of the County Recorder. It pertains to and runs with the property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties.

5. Attorneys Fees.

If it becomes necessary to bring an action in connection with this Agreement, the prevailing party is entitled to reasonable court costs and attorneys fees.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

CITY OF LAFAYETTE

PROPERTY OWNER*

City Manager of the City of Lafayette

ATTEST:

(Property Owner Name)

City Clerk of the City of Lafayette

*Signature must be acknowledged by a Notary Public.

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

On _____ before me, _____,
DATE NAME OF NOTARY PUBLIC

personally appeared _____,
NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the persons(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY