



Municipal Water District

OLIVENHAIN MUNICIPAL WATER DISTRICT RIGHT OF WAY GUIDELINES

BOARD APPROVED IN 2004

The Olivenhain Municipal Water District (OMWD) Board approved these guidelines for all future encroachments. (The Board has referred how to handle existing known encroachments to the Facilities Committee and will take this issue up at a Board meeting later in 2004.)

OMWD is committed to serving present and future customers with a safe, reliable, high quality water supply which exceeds all regulatory requirements in a cost-effective and environmentally responsive manner. To that end, OMWD has acquired and will acquire property and rights of way within which it must operate and maintain water and wastewater treatment, distribution, and transmission facilities in addition to any other ancillary facilities required by OMWD for its operations.

OMWD's property and right of way interests must be protected and preserved against unauthorized use, damage to OMWD property and/or facilities, or hindrance of access to said facilities.

The District has dramatically increased its property ownership over the last 10 years and currently owns approximately 381 acres of fee site land (excluding the EFRR) **and** as much as 214 miles of pipeline easements varying in width from 10 to 50 feet. Currently, over 243 encroachment permits are issued to property owners by the District. Many of the District's properties have also been owned for more than 10 years, however they were previously in undeveloped areas of the District. As development continues to grow into these previously uninhabited areas, encroachments are becoming more common on our properties and rights of way.

Guidelines for Encroachments:

1. OMWD must maintain access to its properties and rights of way so that it retains the immediate ability to construct, reconstruct, maintain, repair, test, inspect, relocate, and or operate any of its facilities.
2. The District currently allows certain encroachments in its right of way so long as the encroacher completes an encroachment permit (attached.) A minimum 4 foot vertical and 15 foot horizontal clearance is generally required. The following are encroachments that are currently considered impermissible and are currently NOT allowed in encroachments:
 - a. Structures/Buildings that prohibit access to the District facilities are not allowed; **Even though fences and irrigation lines are construed as structures, staff generally allows these encroachments so long as gates are placed in the fences that allow the District access and the owner is responsible for any cost to remove the encroachments in the event of an emergency wherein the District must access its easement/facilities.*
 - b. Deep Rooted Trees are prohibited; However, shallow rooted trees that grow no higher than 25 feet and have a mature root spread of no more than 20 feet may be permitted provided the trees are planted no closer than 25 feet from the closest edge of the District's pipeline. Bushes and shrubs are generally allowed where they do not block access and they are no

more than 3 feet tall. Additionally, trees can not make the District's easement impassable, even if they comply with all of the aforementioned criteria.

- c. Grade Elevation Changes that result in less than 3 feet or more than 6 feet of cover over the pipeline are not allowed; Additionally, adequate precautions must be employed as determined by the District's Engineer to protect the District's facilities, including, but not limited to provisions for adequate clearance, non-interference with patrol roads during construction, and finish grading and potholing.
 - d. Large Boulders over 500 lbs are not allowed;
 - e. Blasting and Heavy Equipment are not allowed;
- 3. All requests for an encroachment permit are determined on a case-by-case basis depending on the recorded document that originally fixed the legal rights of the District and are subject to review and approval by the Olivenhain Municipal Water District Board of Directors.
 - 4. Proposed underground facilities of the applicant which parallel the District's facilities are generally not allowed. Sewer and water facilities that are allowed (that do not parallel) must meet the requirements of California Department of Health Services. Electrical and telephone utilities (that do not parallel) that are allowed must be encased in red concrete slurry .
 - 5. The applicant must indemnify and hold the District harmless for any damage to the District's facilities and also any damages to the encroachments when removal by the District is required.
 - 6. The applicant must always supply the District with as-builts.
 - 7. Generally permissible items in an encroachment permit are as follows:
 - a. Turf and other minor landscaping (trees and deep rooted shrubs not permitted per above.)
 - b. Asphalt per District approved design
 - c. Concrete per District approved design with cold joints every 10 feet
 - d. Perpendicular underground utility crossings complying with approved design specifications
 - e. Fences (so long as appropriate width gates are installed)
 - 8. When an unauthorized use of a District property or easement is discovered, the District Engineer gives adequate notice of the infraction to the person responsible. District staff engages the property owner in dialogue for a reasonable period of time to resolve the encroachment. If voluntary corrective action is not undertaken in a reasonable amount of time or a resolution is not possible within a reasonable amount of time, District staff refers the matter for review by the District Counsel.
 - 9. Decisions of management and the General Counsel are always subject to review and approval of the Board. Emergency actions of management for health and safety reasons that are not inline with this encroachment and easement policy will be reviewed with the Board at the next Board meeting following the emergency action.

Easement Encroachment Permitting Process

1. The following items are required for a complete application:
 - Signed and dated Easement Encroachment application;
 - Application Deposit: \$500.00 payable to Olivenhain Municipal Water District;
 - Legal Description of property (can be obtained from the Homeowner's Title report);
 - Detailed list of all proposed encroachments including material type if the encroachment is structural, and/or plant species if the proposed encroachment includes landscaping;
 - An 8.5"x 11" site plan drawn to scale depicting all structures, setbacks and District easements on the property. The proposed encroaching facility must be identified and fully dimensioned. The site plan may be spread over several pages for clarity.

Submittal of other documentation, photos and drawings which may be useful in processing the application is encouraged. The permit will be processed on a time and materials basis, including District inspection services. Additional funds will be requested as required and any funds remaining following the completion of the encroachment will be refunded to the Applicant.
2. Submit completed application to the District's Engineering Department. The Engineering Department may require additional documentation and/or information during the review process. **Please note, incomplete applications will not be processed until all information is received.**
3. The Engineering Department will review the proposed encroachment and provide comments, additional conditions and/or specific limitations as required by the District.
4. The District's approved draft of the encroachment permit will be returned to the Applicant for their review and approval.
5. Once the Applicant has approved the draft encroachment permit the request will be placed on the District's Board meeting agenda for consideration by the Board of Directors for approval.
6. The Board will consider the encroachment permit during one of their regularly scheduled meetings. The Applicant is invited to attend the meeting and provide comment. Should the Board deny the request, the Applicant may revise the proposed encroachment(s) and resubmit under a new application.
7. The approved encroachment permit must be signed and notarized by the Applicant. The completed encroachment permit must be returned to the District with a certificate of insurance naming the Olivenhain Municipal Water District as additional insured (if required as a condition of the encroachment permit). The encroachment permit will be completed by the District and recorded at the Office of The Recorder of San Diego County. A copy of the recorded document will be sent to the Applicant for the Applicant's records.
8. The Applicant must notify the District 48 hours in advance of the time when work within the encroachment area will commence and will advise the District of approximate completion date and time.
9. The District will send an inspector to the site to oversee work within the encroachment area as required. The inspector will document the completed project and the documentation will be kept on file with the encroachment permit.
10. Applicant to maintain encroachment area as determined by the conditions of the encroachment permit.



ENCROACHMENT PERMIT APPLICATION

1966 Olivenhain Road · Encinitas, CA 92024
760-753-6466 Phone · 760-753-1578 FAX

APPLICANT

Name: _____ ☐ Property Owner
Address: _____ ☐ Tenant
_____ Contractor
Day Phone: _____ FAX: _____ E-mail: _____
Emergency Contact: _____

PROPERTY

Assessor's Parcel No.: _____ Is Encroachment ☐ Proposed
☐ Existing
Street Address: _____ Construction Cost Estimate \$ _____

PROPERTY OWNER

Name: _____ Day Phone: _____
Mailing Address: _____
Owner's Name as it appears on the Title report: _____
Approval of the property owner is required: _____
Signature _____ Date _____

FOR DISTRICT USE

Received: _____ ROW ref no. _____ Initial review: _____
EP- _____ Draft Approved: _____ Insurance Req.: Y/N
BoD Meeting: _____ Agenda Item: _____
Notarized Sig.: _____ Recorded: _____

RECORDING REQUESTED BY &

WHEN RECORDED RETURN TO:

Olivenhain Municipal Water District
1966 Olivenhain Road
Encinitas, California, 92024-5699

(This space for recorder's use)
A.P.N. No.

OLIVENHAIN MUNICIPAL WATER DISTRICT
PRIVATE ENCROACHMENT PERMIT NO.

THIS ENCROACHMENT PERMIT No. Permit No. (hereinafter "Agreement") entered into by and between the OLIVENHAIN MUNICIPAL WATER DISTRICT organized and existing pursuant to the Municipal Water District Act of 1911, California Water Code §71000, et seq. (hereinafter "DISTRICT"), and (hereinafter "PERMITTEE").

R-E-C-I-T-A-L-S

1. The DISTRICT presently holds title to an easement as more particularly described in the DISTRICT's document no. , recorded as File/Page , Official Records, San Diego County, not attached hereto, but incorporated herein by reference.

2. PERMITTEE desires to encroach upon this easement.

3. PERMITTEE is the owner of property described in Exhibit "A" attached hereto.

4. The parties agree that PERMITTEE shall be entitled to encroach upon this easement only to the extent and in the manner specified in this Agreement. No other encroachments shall be allowed without the express prior written consent of the DISTRICT.

C-O-V-E-N-A-N-T-S

1. **Permission to Encroach on Easement:** PERMITTEE is hereby granted permission to encroach upon the easement referred to above in the manner specified in Exhibit “B” subject to all conditions specified in Exhibit “B” and subject to all terms of this Agreement.

2. **Limitations of Rights Granted to PERMITTEE:** Rights being granted to PERMITTEE in accordance with this Agreement shall extend only to such rights as the DISTRICT may grant to PERMITTEE in accordance with the terms of the easement presently held by DISTRICT. PERMITTEE shall be solely responsible for verifying that the rights being granted by DISTRICT may be granted to PERMITTEE in accordance with the terms of the DISTRICT’s easement.

3. **Construction of Encroachment:** PERMITTEE shall be solely responsible for all fees, costs, and expenses of whatever type or nature associated with construction of the encroachment. The DISTRICT shall be notified at least forty-eight (48) hours prior to commencement of construction of the encroachment and shall be permitted to inspect and approve all encroachment construction. All encroachment construction shall be carried out as specified by the DISTRICT, in its sole discretion.

3.1. PERMITTEE shall pay all costs of the DISTRICT’s, including, but not limited to, the costs of inspection, administration, legal fees, and engineering relating to the construction and exercise of permission granted to PERMITTEE by this Agreement.

4. **Maintenance of Encroachment Facilities and Area:** PERMITTEE shall maintain the encroachment facilities and encroachment area at all times in a safe, sanitary, and good condition at PERMITTEE’s sole cost and expense. PERMITTEE shall promptly perform all maintenance and repair of the facilities and encroachment area requested by the DISTRICT from time to time, in its sole discretion.

5. **Protection of DISTRICT Facilities in Encroachment Area:** All facilities of the DISTRICT in the encroachment area shall be protected by PERMITTEE as directed by the DISTRICT from time to time, in its sole discretion.

6. **Payment for all Damages and Expenses Caused by Encroachment:** PERMITTEE shall pay for all damages, of whatever type or nature, which may occur to the DISTRICT’S easement or

facilities within the easement as a result of construction, maintenance, use, repair, removal, or relocation of PERMITTEE's facilities.

6.1. PERMITTEE shall also pay for all fees and costs incurred by the DISTRICT to remove, demolish, or relocate PERMITTEE's facilities in order to repair, maintain, replace, relocate, or remove DISTRICT's facilities in the easement or to install new facilities in the easement as the DISTRICT may determine in its sole discretion.

6.2. Should the District determine that PERMITTEE's facilities must be relocated, as the District may determine in its sole discretion, PERMITTEE shall pay all fees and costs to remove and relocate these facilities.

6.3. All such payments shall be made within thirty (30) consecutive days following receipt of a written demand from the District. The written demand shall specify the amount due and the type of losses or expenses incurred. Any amounts not received by the District within this thirty (30) consecutive day period shall earn interest at the maximum rate authorized by California law.

7. **Indemnity**: PERMITTEE hereby agrees to hold harmless, defend and indemnify the District and its agents, servants, employees, consultants, and officers from any and all claims, actions, liability, losses, costs, damage, or expense of whatever type or nature to any persons, entities, or property caused by, or claimed to be caused, in whole or in part, by the construction, maintenance, repair, replacement or use of the encroachment facilities or encroachment areas except claims caused by the sole active negligence or intentional misconduct of the District or its agents or employees. This indemnity shall include all District's attorney's fees, expert fees and costs, and court costs if the District is named as a party in any litigation related to the encroachment.

8. **DISTRICT not Liable for Damage to Encroachment or Encroachment Area**: The District shall not be liable for any damages whatsoever to the encroachment facilities or encroachment area related in any way to the District's continued use of the easement or as a result of the District's construction, use, repair, replacement, or relocation of any District facilities within the easement.

9. **Other Uses Forbidden:** PERMITTEE is limited to the specific encroachment area and facilities granted by this Agreement. No other encroachment is permitted without the express prior written consent of the DISTRICT.

10. **Prior Rights:** This Agreement shall not alter, modify, or terminate, in any way, any of the prior rights of DISTRICT to use of the easement in accordance with its terms. PERMITTEE shall not be considered as acquiring any permanent interest of any kind or nature in the easement which is inconsistent with the rights of the DISTRICT.

11. **General Conditions:** The encroachment shall be subject to each of the following general conditions (where applicable):

11.1. A minimum vertical clearance of four (4) feet shall be maintained between the DISTRICT's facilities and the approved encroachment facilities.

11.2. A minimum horizontal clearance cover of fifteen (15) feet shall be maintained between the DISTRICT's facilities and the approved encroachment facilities.

11.3. The existing ground level over the DISTRICT's facilities shall not be changed without the prior written consent of the DISTRICT.

11.4. No blasting shall be permitted without the prior inspection and approval of the DISTRICT.

11.5. Heavy equipment is not permitted on the easement without District notification and approval.

12. **Termination:** Violation of any of the terms of this Agreement by PERMITTEE shall constitute a material breach of this Agreement entitling the District to unilaterally terminate this Agreement by written notice to PERMITTEE, in addition to all other relief afforded by applicable law. Upon receipt of notice of termination from the DISTRICT, PERMITTEE shall promptly remove all encroachment facilities and restore the encroachment area in the manner directed by the District, in its sole discretion. All fees, costs, and expenses of removal and restoration shall be paid solely by PERMITTEE.

13. **Agreement as Covenant Running with Land and Binding on Successors:** The parties expressly agree that this Agreement shall be construed as a valid and binding equitable servitude and covenant running with the land which shall be binding upon the heirs, personal representatives, successors, assigns, or transferees of the parties hereto. The parties expressly waive the right to challenge the enforceability of this Agreement as a legal and binding equitable servitude and covenant running with the land in any subsequent arbitration or litigation between the parties or their successors.

14. **Attorney's Fees:** In the event of any legal or equitable proceeding to enforce or interpret the terms or conditions of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees and court costs in addition to such other relief as may be afforded by applicable law.

15. **Law Applied:** The validity, interpretation, construction, and performance of this Agreement shall be construed under the laws of the State of California and the applicable rules and regulations of the DISTRICT.

16. **Venue:** In the event of any arbitration or litigation to interpret or enforce the terms of this Agreement, venue shall lie only in the state or federal courts in or nearest to the North County Judicial District, County of San Diego, State of California.

17. **No Warranties:** There are no warranties or representations of any kind being made.

18. **Modification:** This Agreement shall not be altered in whole or in part except by a modification in writing executed by both parties to this Agreement.

19. **Meaning of "PERMITTEE":** The word PERMITTEE as used in this Agreement shall mean the PERMITTEE or any person or entity deriving any interest in this encroachment permit from PERMITTEE or its successors-in-interest.

20. **Attorney Representation:** The PERMITTEE acknowledges that this Agreement has been prepared by the Law Offices of Wesley Peltzer, who represents only the DISTRICT. The PERMITTEE is hereby notified to seek the advice of independent counsel concerning this Agreement and its terms. PERMITTEE acknowledges that PERMITTEE has had the opportunity to do so prior to executing this Agreement.

21. **Effective Date**: The effective date of this permit is _____, 20 ____.

22. **Board of Director's Approval**: This Agreement is executed by the DISTRICT pursuant to Board action of _____, 20____.

“DISTRICT”

OLIVENHAIN MUNICIPAL WATER DISTRICT

Dated: _____, 20____

By: _____
Kimberly A. Thorner
General Manager

“PERMITTEE”*

Dated: _____, 20____

By: _____

***PERMITTEE’S SIGNATURE MUST BE NOTARIZED WITH NOTARY SEAL.**

EXHIBIT “A”

Sheet 1 of 1

Legal Description

EXHIBIT “B”
Sheet 1 of

1. **Encroachment Facilities:**

A.

2. **Encroachment Area:**

3. **Special Conditions of Encroachment:**

Encroachment Permit No.