

Introduced by

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

Approved for Form and Legality

2006 OCT 12 PM 1:20

F. Faiz

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 80237 C.M.S.

**A RESOLUTION GRANTING HILLSIDE HOMES GROUP, INC, A REVOCABLE AND
CONDITIONAL PERMIT TO ALLOW A RETAINING WALL AND EMERGENCY
EGRESS STAIRS TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY AT
4301 KELLER AVENUE FOR THE SIENA HILL SUBDIVISION**

WHEREAS, Hillside Homes Group, Inc, a California Corporation ("Permittee"), owner of the property described in the Grant Deed, recorded May 1, 2001, Series No. 2001143911, at the Office of the County Recorder, Alameda County, California, commonly known as 4301 Keller Avenue (APN: 040A – 3457 – 033 - 01) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a revocable and conditional permit to allow a retaining wall and emergency egress stairs for the Siena Hill subdivision to encroach into the public right-of-way along Keller Avenue; and

WHEREAS, the locations of the encroachments are described in Exhibits B and C attached hereto; and

WHEREAS, the encroachments will not interfere with the use by the public of the roadway or sidewalk; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) have been complied with and on March 2, 2005, the Planning Commission certified the EIR, and adopted CEQA Findings in connection with the approval of the Siena Hill project; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

RESOLVED: That the encroachment permit (ENMJ050254), as conditioned herein and described and delineated in Exhibits A, B, and C, is hereby granted for a revocable permit to allow a retaining wall and

emergency egress stairs for the Siena Hill subdivision at 4301 Keller Avenue to encroach into the public right-of-way; and be it

FURTHER RESOLVED: That the encroachment permit is hereby conditioned by the following special requirements:

1. the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public sidewalk area, good and sufficient commercial general insurance in the amount of \$2,000,000 for each occurrence, and property damage insurance in the amount of \$1,000,000 for each occurrence both including contractual liability insuring the City of Oakland, its directors, officers, employees, representatives, agents, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required every one (1) year and may require the Permittee to increase the amount of and/or change the type of insurance coverage required, if such is reasonably necessary as determined by the City of Oakland; In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and
5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend and hold harmless and indemnify the City of Oakland, its directors, representatives, agents, officers, employees, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. The liability insurance referred to in the preceding paragraph shall cover this contractual liability, provided that nothing herein shall be interpreted as limiting the Permittee's defense, hold harmless and indemnification obligations to the amount set forth in the preceding paragraph; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is

not obligated to grant any changes requested by the Permittee; and

7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, and shall repair any damage resulting there from to the satisfaction of the City Engineer; and

9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and

10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.). Notwithstanding the above provisions of this Paragraph 12,

Permittee shall not be liable to the City of Oakland for any hazardous substances on, in or beneath the encroachment area that were not caused by the Permittee, his or her agents, employees, tenants or service providers; and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

FURTHER RESOLVED: That the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 31 2006, 2006.

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BRUNNER, QUAN, REID, AND~~ BRUNNER, ~~QUAN, REID, AND~~ KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 6

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks, Chang - 2

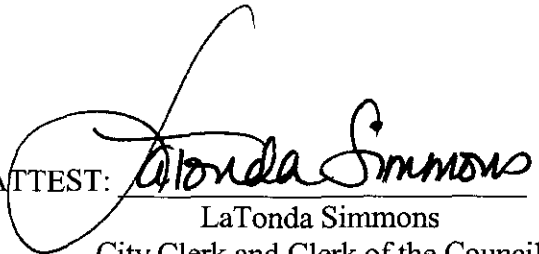
ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council

Exhibit A

APN: 040A – 3457 – 033 - 01

All that land in the City of Oakland, County of Alameda, State of California being described as follows:

Lot 13 in Block 2, as said lot and block are shown on the Map of "Tract 2127, Oakland, Alameda County, California", filed July 28, 1960, in Book 42 of Maps, Page 27, Alameda County Records.

Excepting therefrom; those portions thereof described in Parcels 2, 3, 4, 5, 6, 7 and 8, as described in the deed by Sterling Development Company to Oddstead Homes, dated February 12, 1962, recorded February 19, 1962, Reel 518, Image 315, instrument No. AT/22269, Alameda County Records. Being more particularly described as follows:

Beginning at the most Southwesterly corner of Lot 13 as shown on the said map, said corner also being on the Northerly right-of-way line of Keller Avenue; thence, along the Westerly line of said Lot 13, North 27°22'00" East, 100.16 feet, to the Northeast corner of Lot 13 as shown on said Map of "Tract 2127"; thence, along the Northerly line of said Lot 13, South 62°38'00" East, 395.00 feet; thence, South 27°22'00" West, 49.30 feet; thence South 17°20'00" East, 109.78 feet; thence, North 73°40'00" East, 65.00 feet; thence, South 17°20'00" East 310.00 feet; thence South 48°59'39" East, 140.98 feet; thence, South 12°28'42" West, 54.24 feet, to the Southeast corner of said Lot 13, said corner also being on the Northerly right-of-way line of Keller Avenue; thence, along the Northerly right-of-way line of Keller Avenue, along the arc of a curve to the right, having a radius of 599.95 feet, an arc length of 466.15 feet, and a central angle of 44°31'04"; thence North 33°00'13" West, 373.66 feet; thence along the arc of a curve to the left, having a radius of 449.96 feet, an arc length of 121.77 feet, and a central angle of 15°30'18" to the point of beginning.

Exhibit B

Siena Hill Subdivision

Retaining Wall and Egress Steps

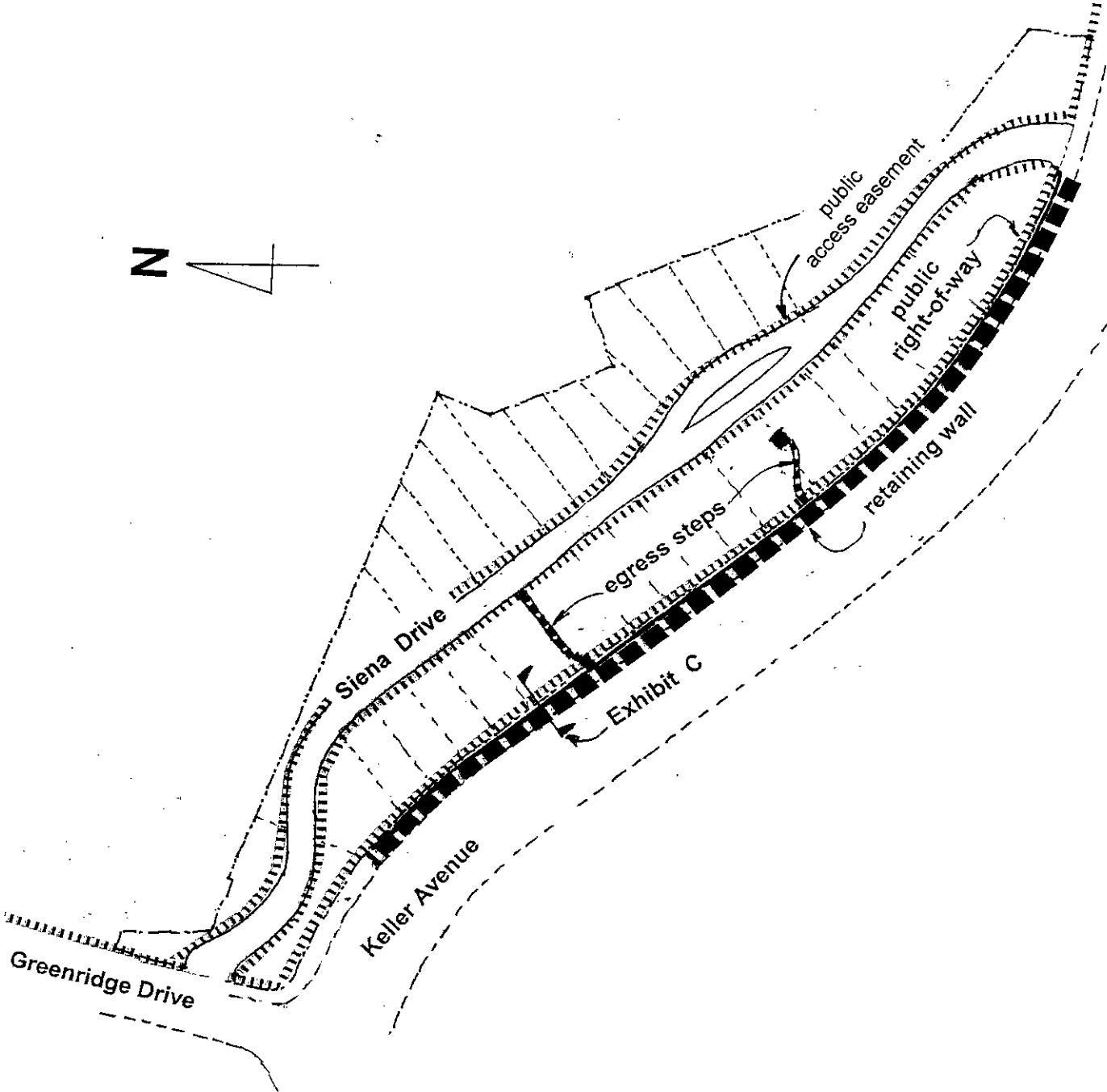


Exhibit C

Siena Hill Subdivision Retaining Wall and Egress Steps

