

Introduced By

2013 FEB 27 PM 4:44

Approved For Form And Legality



City Attorney

Councilmember

## OAKLAND CITY COUNCIL

RESOLUTION No. 84251 - C.M.S.

**RESOLUTION APPROVING A REALIGNMENT OF AN EXISTING SANITARY SEWER EASEMENT LOCATED AT 4845, 4851, AND 4857 HARBORD DRIVE AND ACCEPTING OFFERS OF DEDICATION FROM THE PROPERTY OWNERS TO WIDEN THE EASEMENT TO FACILITATE MAINTENANCE BY THE CITY**

**WHEREAS**, the owners of the following real properties:

OWNER	ADDRESS	PARCEL No.	GRANT DEED
Harry P. Beal	4845 Harbord Drive	048B-7153-030-00	recorded 07-16-2002 series no. 2002-304177
Gay Parker Trust	4851 Harbord Drive	048B-7153-031-00	recorded 10-18-2011 series no. 2011-295240
Blythe Duffield et al.	4857 Harbord Drive	048B-7153-032-00	recorded 10-26-2012 series no. 2012-353688

which are more particularly described in *Exhibits A.1* through *A.4* attached hereto, have made an application (permit no. PPE11053) to the City Engineer of the City of Oakland to

- realign the existing public service easement located in the downhill portions of said parcels adjacent to existing single family residences to contain a newly reconstructed portion of the City maintained sanitary sewer main (permit no. PX1100057), and to
- dedicate an additional five (5) feet of width for said realigned easement to facilitate access by City of Oakland maintenance personnel to the publicly maintained sewer main, and

**WHEREAS**, said owner of 4845 Harbord Drive intends to file an application with the Building Official of the City of Oakland to construct a room addition at the rear of his single family dwelling which will expand the footprint of the residence; and

**WHEREAS**, the proximity of said existing easement and sewer main to said dwelling is such that the proposed room addition would encroach over the City-maintained infrastructure; and

**WHEREAS**, said existing easement across Lots 30, 31, and 32 was dedicated by the Claremont Pines Corporation through a subdivision map for Tract 506, filed June 9, 1932, Book 18, Pages 95 and 96, book 18 of maps, page 95, by the Alameda County Recorder; and

**WHEREAS**, the City Engineer, in consultation with the Public Works Agency of the City of Oakland, previously determined that the alignment of said sewer main could be relocated away and downhill from said residence at 4845 Harbord Drive and said existing easement should therefore be adjusted to realign with and contain said reconstructed sewer main and to increase its existing width from five (5) feet to ten (10) feet to provide adequate access for maintenance by City personnel; and

**WHEREAS**, the limits of said existing easement are delineated diagrammatically in *Exhibit B*, attached hereto; and

**WHEREAS**, the limits of said realigned and wider sewer easement are delineated diagrammatically and described textually in *Exhibits C* and *D*, attached hereto; and

**WHEREAS**, *Exhibits C* and *D* were prepared by a qualified civil engineer licensed by the State of California to prepare metes and bounds land surveys; and

**WHEREAS**, said owner of 4845 Harbord Drive did complete the reconstruction of said realigned sewer main (permit no. PX 1100057) which provides sufficient clearance from said proposed room addition to afford improved access for maintenance by City personnel; and

**WHEREAS**, said owners of 4845 Harbord Drive, 4851 Harbord Drive, and 4857 Harbord Drive, have each consented to irrevocably offer to the City of Oakland, as described in *Exhibits C* and *D*, the dedications across their respective real properties of five (5) feet of additional width for said realigned five (5) feet wide sewer easement, which will increase the total width of the public service easement to ten (10) feet in order to afford improved access by City personnel for maintenance of the publicly maintained sewer main; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32: Infill Projects) and Section 15301 (minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

**RESOLVED:** That the realignment, as described and delineated in *Exhibits C* and *D* of the existing public service easement located at 4845 Harbord Drive, 4851 Harbord Drive, and 4857 Harbord Drive is hereby approved; and be it

**FURTHER RESOLVED:** That pursuant to California Government Code section 7050, the offers of dedication, as described and delineated in *Exhibits C* and *D* of the five (5) feet wide public service easements which abut the realigned existing sewer easement located at 4845 Harbord Drive, 4851 Harbord Drive, and 4857 Harbord Drive are hereby accepted; and

**FURTHER RESOLVED:** That this approval is hereby further conditioned by the following special requirements:

1. the Permittees (Harry P. Beal, Gay Parker Trust, Blythe Duffield et al.), by the acceptance of this realignment of the existing public service easement and the offers of dedication of abutting public service easements, agree and promise both collectively and individually,
  - (a) to indemnify, defend, and hold harmless the City of Oakland, its officers, agents, employees, and volunteers, to the maximum extent permitted by law, 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; collectively referred to as "claims", whether direct or indirect, known or unknown, foreseen or unforeseen, to the extent that such claims were either (1) caused by the Permittees, their agents, employees, contractors or representatives, or, (2) in the case of environmental contamination, the claim is a result of environmental contamination that emanates or emanated from 4845, 4851, and 4857 Harbord Drive, Oakland, California site, or was otherwise caused by the Permittees, their agents, employees, contractors or representatives; and
  - (b) if any contamination is discovered below or in the immediate vicinity of the encroachment, and the contaminants found are of the type used, housed, stored, processed or sold on or from 4845, 4851, and 4857 Harbord Drive, Oakland, California site, such shall amount to a rebuttable presumption that the contamination below, or in the immediate vicinity of, the encroachment was caused by the Permittees, their agents, employees, contractors or representatives; and

This indemnification shall survive the termination of the easements at a future date as yet undetermined; and

2. the Permittees, both collectively and individually, acknowledge that the City of Oakland makes no representations or warranties as to the conditions beneath the existing public service easement; and that by accepting this vacation, the Permittees agree that they will use the easement area in the future at their own risk; and
3. the Permittees, both collectively and individually, acknowledge that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement 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

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.); and

4. the Permittees, both collectively and individually, further acknowledge that they understand and agree that they hereby expressly waive all rights and benefits which they now have 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
5. the Permittees, both collectively and individually, recognize that by waiving the provisions of Civil Code Section 1542, they 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 Permittees' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
6. the hereinabove conditions shall be binding upon the Permittees, both collectively and individually, and the successive owners and assigns thereof; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 19 2013, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF,  
AND PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: LATONDA SIMMONS

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

## EXHIBIT A.1

### Descriptions of the Private Properties Encumbered By Easements

Address 4845 Harbord Drive

Parcel no. 048B-7153-030-00

Deed no. 2002-304177

Recorded July 16, 2002

Hereby GRANT(S) to **HARRY P. BEAL , AN UNMARRIED MAN**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, CITY OF OAKLAND, AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERN LINE OF HARBORD DRIVE (FORMERLY EDITH STREET) DISTANT THEREON SOUTH 33 DEGREES 30 MINUTES WEST 37.00 FEET FROM THE CORNER COMMON TO LOTS 29 AND 30, AS SAID LOTS AND DRIVE ARE SHOWN ON THAT CERTAIN MAP, HEREINAFTER REFERRED TO; AND RUNNING THENCE NORTHEASTERLY ALONG SAID NORTHWESTERN LINE OF HARBORD DRIVE, NORTH 33 DEGREES 30 MINUTES EAST 43.00 FEET TO A POINT THEREON DISTANT SOUTH 33 DEGREES 30 MINUTES WEST 34.00 FEET FROM THE CORNER COMMON TO SAID LOT 29 AND LOT 28 IN SAID TRACT; THENCE NORTHWESTERLY AND LEAVING SAID NORTHWESTERN LINE OF HARBORD DRIVE, NORTH 56 DEGREES 39 MINUTES WEST 146.19 FEET TO A POINT ON THE NORTHWESTERN LINE OF SAID LOT 29, DISTANT THEREON SOUTH 45 DEGREES 45 MINUTES WEST 34.79 FEET FROM THE CORNER COMMON TO SAID LOTS 28 AND 29, AND RUNNING THENCE SOUTHWESTERLY ALONG THE NORTHWESTERN LINE OF SAID LOTS 29 AND 30, SOUTH 45 DEGREES 45 MINUTES WEST 44.23 FEET; AND THENCE SOUTH 56 DEGREES 30 MINUTES EAST 155.53 FEET TO THE POINT OF BEGINNING.

BEING A SOUTHWESTERN PORTION OF LOT 29 AND A NORTHEASTERN PORTION OF LOT 30, "TRACT NO. 506, FILED JUNE 9, 1932, MAP BOOK 18, PAGES 95 AND 96 ALAMEDA COUNTY RECORDS.

A.P.N. 048B-7153-030

Dated: July 10, 2002

## EXHIBIT A.2

### Descriptions of the Private Properties Encumbered By Easements

Address 4851 Harbord Drive

Parcel no. 048B-7153-031-00

Deed no. 2011-295240.

Recorded October 18, 2011

all that real property situated in the City of Oakland County of Alameda,  
State of California, described as follows:

Lot 31 and a portion of Lot 30, as said lots are shown on the map of "Tract No. 506, Oakland, Alameda County, California", filed June 9, 1932 in book 18 of Maps, at pages 95 and 96, in the office of the County Recorder of Alameda County, described as follows:

Beginning at a point on the northwestern line of Harbord Drive, as shown on said map, distant thereon south 33° 30' west 37 feet from the most eastern corner of said Lot 30; running thence along said line of Harbord Drive south 33° 30' west 33.79 feet; thence continuing along said line of Harbord Drive southwesterly on the arc of a curve to the left, with a radius of 200 feet, a distance of 9.21 feet to the southwestern line of said Lot 31; thence along the last named line north 60° 11' 15" west 167.77 feet to the northwestern line of said Lot 31; thence along the last named line and along the northwestern line of said Lot 30 north 45° 43' east 54.83 feet to the southwestern line of land conveyed by A. J. Pollard and Alice L. Pollard to Mary Y. Nehor, by deed dated June 25, 1938 and recorded July 12, 1938 in book 3645 of Official Records of Alameda County at page 267; thence along the last named line southeasterly 157.53 feet, more or less, to the point of beginning.

## EXHIBIT A.3

### Description of the Private Properties Encumbered By Easements

Address 4857 Harbord Drive

Parcel no. 048B-7153-032-00

Deed no. 2012-353688

Recorded October 26, 2012

**ORDER NO. : 1116009494-LF**

## EXHIBIT A

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

Lot 32, Tract No. 506, filed June 9, 1932 in Book 18 of Maps, at Page 95, Alameda County Records.

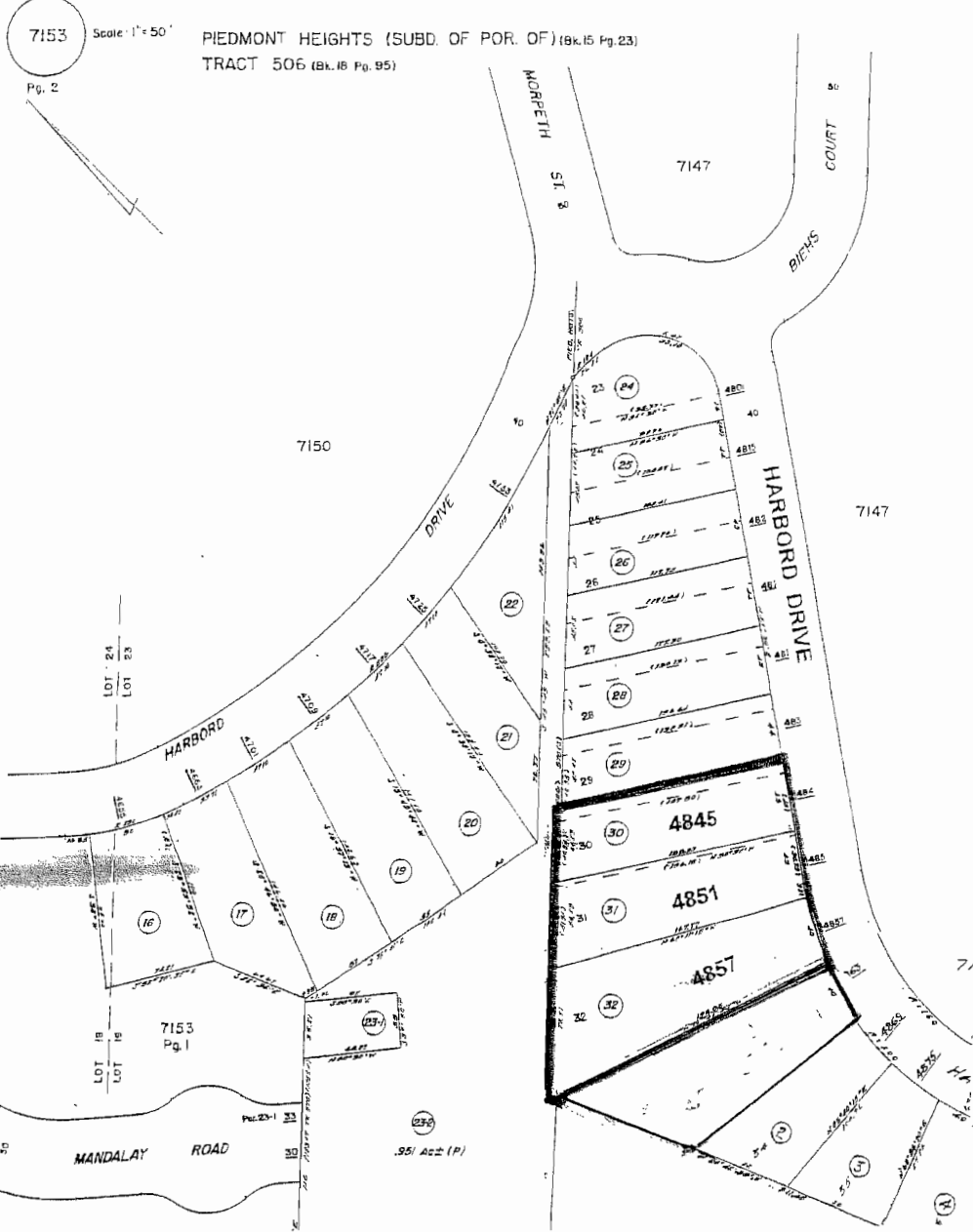
APN: 048B-7153-032

# EXHIBIT A.4

## Delineation of the Private Properties Encumbered By Easements

Address 4845, 4851, and 4857 Harbord Drive

ASSESSOR'S MAP 48B



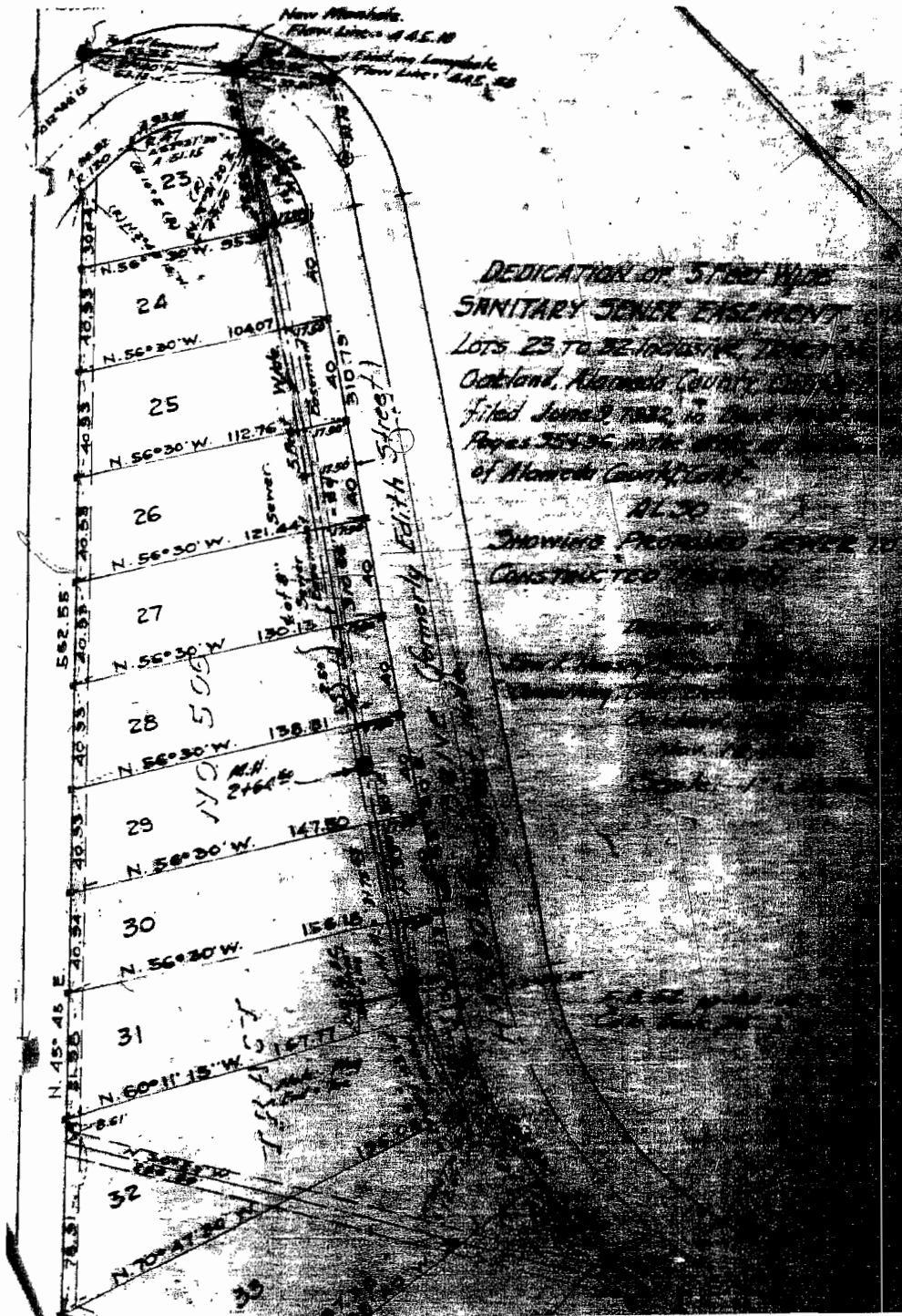
A more legible copy is available at the  
**Office of the City Engineer**  
250 Frank Ogawa Plaza - 2nd floor  
Oakland, CA 94612

Not to scale



# EXHIBIT B

## Limits of the Existing and Non-Realigned Easements



A more legible copy is available at the  
**Office of the City Engineer**  
 250 Frank Ogawa Plaza - 2nd floor  
 Oakland, CA 94612

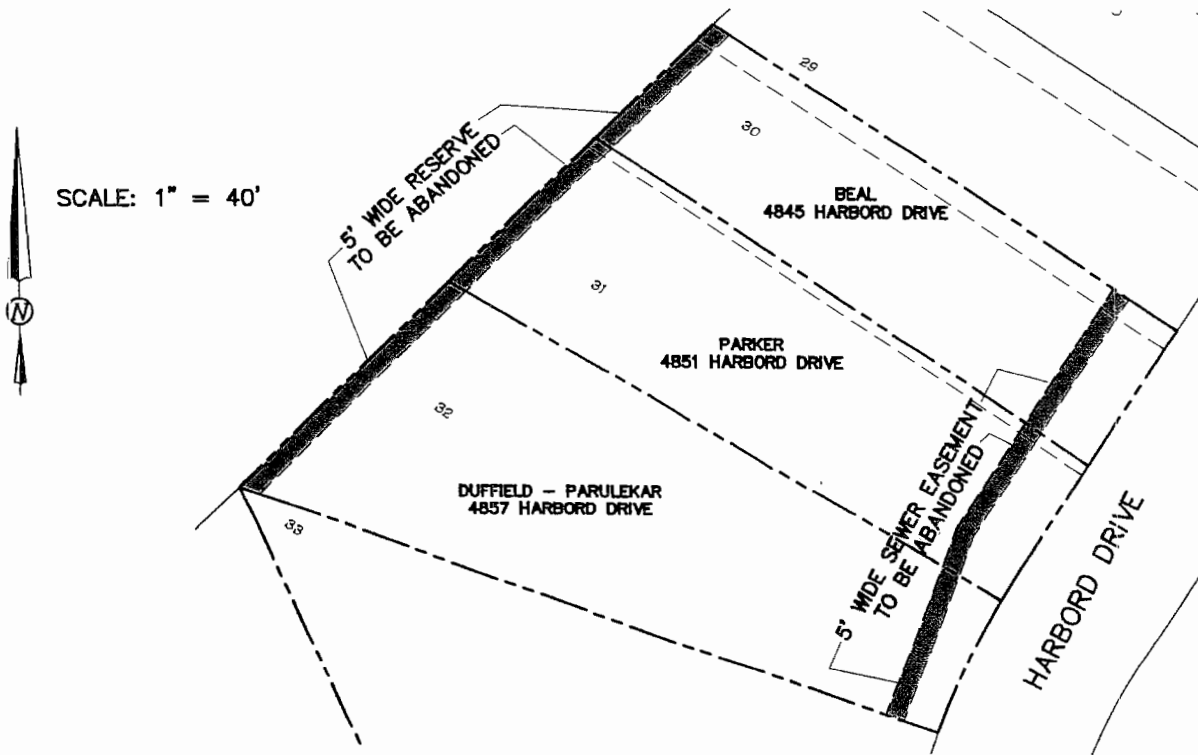
Not to scale

# EXHIBIT C

## Limits of the Realigned Easements

Address 4845, 4851, and 4857 Harbord Drive

PLAT OF 5 FOOT WIDE SEWER EASEMENTS  
AND 5 FOOT WIDE RESERVE TO BE ABANDONED  
PORTIONS OF LOTS 30, 31, 32, & 33  
TRACT NO 506 (18 M 95)  
BEING PORTIONS OF  
4845, 4851, & 4857 HARBORD DRIVE  
OAKLAND, CALIFORNIA



A more legible copy is available at the  
**Office of the City Engineer**  
250 Frank Ogawa Plaza - 2nd floor  
Oakland, CA 94612

Not to scale

# EXHIBIT D

## Limits of the Realigned Easements

Address 4845, 4851, and 4857 Harbord Drive

PLAT OF SANITARY SEWER EASEMENTS  
PORTIONS OF LOTS 30, 31, 32, & 33  
TRACT NO 506 (18 M 95)  
BEING PORTIONS OF  
4845, 4851, & 4857 HARBORD DRIVE  
OAKLAND, CALIFORNIA

