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OAKLAND

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. 89586 C.M.S.

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**RESOLUTION SUMMARILY VACATING A PORTION OF PUBLIC RIGHT OF WAY KNOWN AS YERBA BUENA AVENUE, BETWEEN BEACH STREET AND MANDELA PARKWAY, TO THE FEE OWNER, EAST BAY MUNICIPAL UTILITY DISTRICT, AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, East Bay Municipal Utility District (Owner or EBMUD), as the owner of real property described in a Quitclaim Deed, recorded April 08, 2019, Series No. 2019062688, by the Alameda County Clerk-Recorder, and more particularly described in *Exhibit A* attached hereto, has made an application (PPE 1900053) to the City Engineer of the City of Oakland to summarily vacate a portion of Public Right of Way, known as Yerba Buena Avenue, between Beach Street and Mandela Parkway; and

**WHEREAS**, said portion of Public Right of Way was dedicated through the map "Map of Tract 6624" filed March 11, 1994, in book 212 Pages 6 through 11 of Maps, Official Records of Alameda County; and

**WHEREAS**, the limits of Yerba Buena Avenue proposed for vacation are delineated diagrammatically and described textually in *Exhibits A and B* attached hereto and incorporated herein (Vacated Street); and

**WHEREAS**, the Vacated Street, is an access road to the EBMUD's water treatment plant facility, and for safety and security reasons, entrance to the facility via the access road has been restricted for more than thirty (30) years.

**WHEREAS**, the City Engineer has determined that there are no public utilities within the public service easement proposed for vacation, and that Public Right of Way is no longer needed by the City and the utility companies for future infrastructure improvements; and

**WHEREAS**, pursuant to the California Streets and Highways Code, sections 8333 and 8334.5, the legislative body of a local agency may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utilities

within the existing easement; the vacation will not occur until all the conditions have been satisfied, and that the City Administrator is instructed to not record a vacation until these conditions have been satisfied; and

**WHEREAS**, EBMUD, in accepting this vacation, will agree to the City's conditions for such vacation which will include, without limitation, those set forth in the second Further Resolved recital below; and

**WHEREAS**, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), and 15301 (Class 1, Existing Facilities); now, therefore, be it

**RESOLVED**: That the City Council has reviewed all relevant documents relating to the summary vacation of Public Right of Way that is the subject of this resolution; and be it

**RESOLVED**: That the Vacated Street has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utilities within the existing easement; and be it

**FURTHER RESOLVED**: That the summary vacation of the public service easement to the Owner, as delineated in *Exhibit A and Exhibit B* and as conditioned herein, is hereby granted; and be it

**FURTHER RESOLVED**: That said vacation is hereby conditioned by the following special requirements:

1. the Owner, by the acceptance of this vacation of the existing public service easement, agrees and promises to indemnify, defend, and hold harmless the City of Oakland and its officials, officers, agents, employees, representatives and volunteers, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, including without limitation, injuries, damages, penalties, fines, liens, judgments, costs, or expenses whatsoever arising out of or caused by the vacation of said public service easement and regardless of responsibility for negligence; and
2. Owner shall not to permit any pedestrians on the Vacated Street, except Owner may permit its own authorized employees or contractors to access the Vacated Street for the limited purpose of repair or maintenance of Owner's infrastructure in the Vacated Street area; and
3. Owner agrees to assume full ownership and responsibility for any City infrastructure in the Vacated Street area including, without limitation, the bridge above the designated Vacated Street; and will indemnify and hold the City harmless for any claims, losses, liability, arising from Owner's assumption of ownership and obligations with respect to the Vacated Street as set forth in section 1 above; and

4. the Owner acknowledges 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 Owner agrees that they will use the easement area in the future at their own risk, and are responsible for their activities and the activities of their workmen operating within the vacated area and for their own safety and the safety of any of their personnel; and
5. the Owner acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement areas, and hereby waive and fully release and forever discharge the City of Oakland and its officials, officers, directors, employees, agents, representatives 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 vacated 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.); and
6. the Owner further acknowledges, agrees, and hereby expressly waives 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
7. the Owner recognizes 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 their decision to request said vacation, regardless of whether Owner's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
8. the hereinabove conditions shall be binding upon the Owner and successors, heirs, and assigns, and upon the successive owners of said property; and be it

**FURTHER RESOLVED**, That pursuant to the California Streets and Highways Code, sections 8333 and 8334.5; the vacation will not occur until all the conditions have been satisfied, and that the City Administrator is instructed to not record a vacation until these conditions have been satisfied; and be it

**FURTHER RESOLVED**, That the Council finds, on a separate and independent basis, that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), and 15301 (Class 1, "Existing Facilities");

**FURTHER RESOLVED**, That the City Council directs the City's Environmental Review Officer to file a Notice of Exemption; now, therefore, be it

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

IN COUNCIL, OAKLAND, CALIFORNIA,

FEB 07 2023

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND PRESIDENT FORTUNATO BAS

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NOES - 0

ABSENT - 0

ABSTENTION 0

ATTEST:



ASHA REED

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

*Exhibit A:* Legal Description of the Public Right of Way Proposed for Vacation (1 page)

*Exhibit B:* Graphic Delineation of the Public Right of Way Proposed for Vacation (1 page)

**EXHIBIT A: Description of the Private Property Encumbered by the Easement**

**Address:** Yerba Buena Avenue

**Deed no.** 2019-062688

**Recorded** April 08, 2019

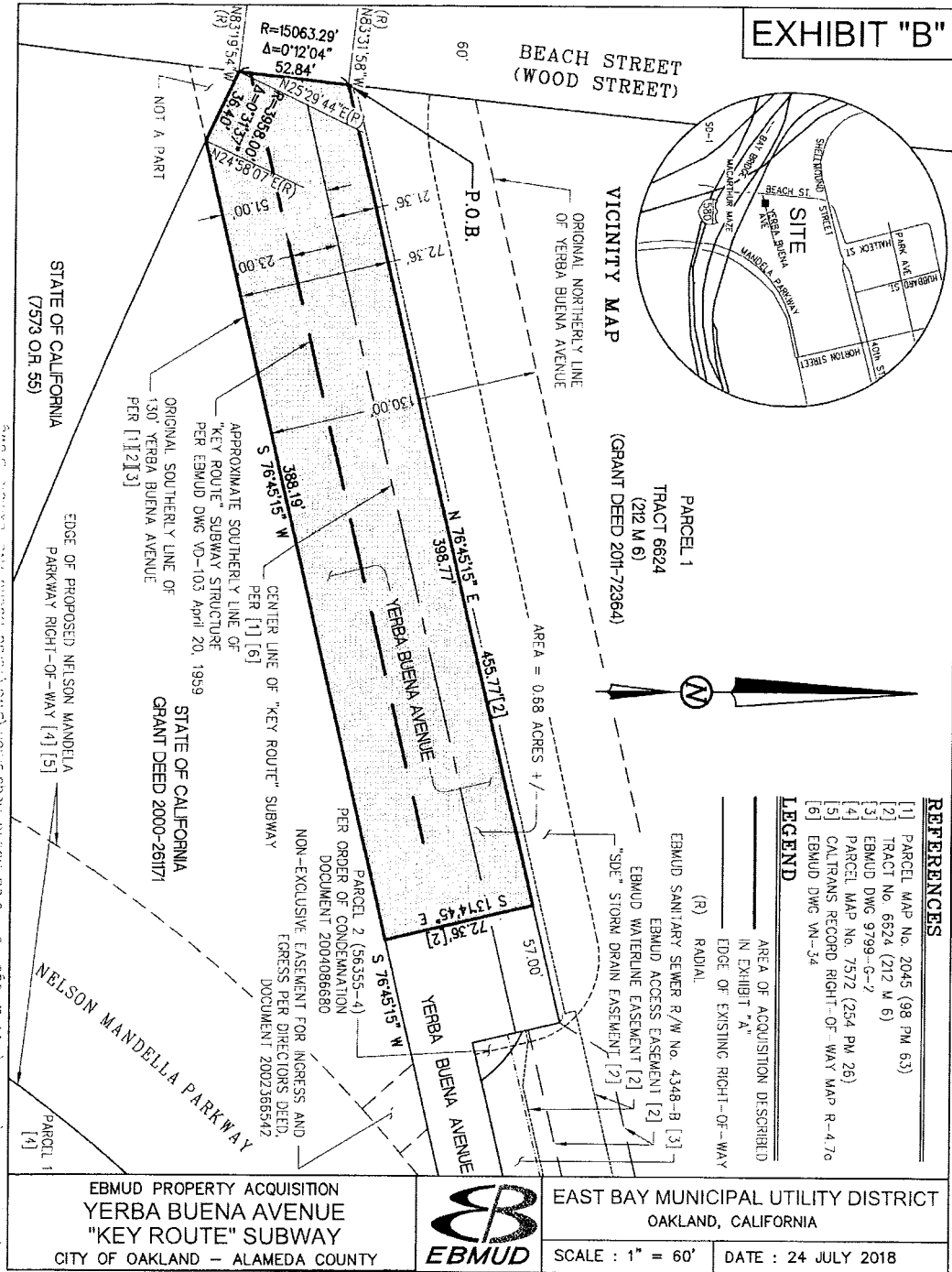
EXHIBIT "A"

Real property situated in the City of Oakland, County of Alameda, State of California, being a portion of Yerba Buena Avenue as shown on the Map of Tract 6624, filed March 11, 1994 in Book 212 of Maps at Pages 6 through 11, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly right-of-way line of Yerba Buena Avenue and the easterly right-of-way line of Beach Street, formerly known as Wood Street, as shown on said map of Tract 6624; thence easterly along said northerly line of Yerba Buena Avenue

North 76° 45'15" East 398.77 feet; thence leaving said northerly line South 13°14'45" East 72.36 feet to the southerly right-of-way line of Yerba Buena Avenue as shown on said map; thence westerly along said southerly line South 76°45' 15" West 388.19 feet to the beginning of a non-tangent curve concave to the northeast, having a radius of 3958.00 feet, a radial line from the beginning of said curve bears North 24°58'07" East with said curve being the northerly line of the Mandela Parkway Extension as shown on Record of Survey R/S 1608, filed October 7, 1999 in Book 24 of Records of Survey at Pages 4 through 7, Alameda County Records; thence northwesterly 36.40 feet along said northerly line through a central angle of 0°31 '37" to the beginning of a non-tangent curve concave to the west, having a radius of 15063 .29 feet, a radial line from the beginning of said curve bears North 83° 19' 54" West, said curve being the easterly right of way line of Beach Street as shown on said map of Tract No. 6624; thence northerly 52.84 feet along said easterly right of way line through a central angle of 0° 12'04" to the POINT OF BEGINNING.

**EXHIBIT B: Graphic Delineation of the Public Service Easement Proposed for Vacation**



A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.