

Introduced By

2013 OCT 10 PM 2:40

Approved as to Form and Legality



Office of the City Attorney

Councilmember

## OAKLAND CITY COUNCIL

RESOLUTION No. 84766 C.M.S.

RESOLUTION AMENDING AND RESTATING A PREVIOUSLY APPROVED CONDITIONAL AND REVOCABLE MAJOR ENCROACHMENT PERMIT TO KAISER FOUNDATION HOSPITALS TO ALLOW (1) TELECOMMUNICATIONS CONDUITS, ELECTRICAL TRANSFORMERS AND VAULTS, A PORTION OF A BUILDING FOUNDATION AND SEWAGE STORAGE VAULT FOR PHASE II BUILDINGS AT 275 WEST MACARTHUR BOULEVARD TO ENCROACH UNDER THE PUBLIC RIGHT-OF-WAY ALONG BROADWAY, WEST MACARTHUR BOULEVARD, AND PIEDMONT AVENUE, AND (2) SOIL NAILING, A PLANTER BOX, RECTANGULAR CURB DRAINS, THE FOUNDATION FOR A GATE POST, SIX BENCHES, FOUR TRASH CANS, FOUR SANITARY SEWER MANHOLES AND A CONCRETE DRIVEWAY APPROACH WITH NON-STANDARD COLOR AT 3600 BROADWAY TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ALONG BROADWAY, MACARTHUR BOULEVARD, AND PIEDMONT AVENUE

WHEREAS, Kaiser Foundation Hospitals, a California corporation (no. C0224971), is the owner of real property known as 3600 Broadway, delineated as Parcel A on Parcel Map 9831 recorded November 18, 2011, Book 318, Page 52, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 012-1024-001-00, and more particularly delineated diagrammatically in *Exhibit A*, attached hereto and incorporated herein, and 275 West MacArthur Boulevard and described in grant deeds recorded October 23, 1961, series no. AS13102, September 10, 1997, series no. 97233768, October 28, 2004, series no. 2004483317, September 1, 1988, series no. 88223179, October 29, 2004, series no. 2004486235, September 1, 1988, series no. 88223179, October 29, 2004, series no. 2004486235, September 10, 1997, series no. 97233768, December 12, 2005, series no. 2005527230 and more particularly delineated diagrammatically in *Exhibit B*, attached hereto and incorporated herein; and

WHEREAS, on January 18, 2011, the City Council passed Resolution No. 83154 C.M.S., which granted Kaiser Foundation Hospitals ("Permittee") a revocable and conditional major encroachment permit to allow telecommunications conduits, electrical transformers and vaults, and a portion of a building foundation and sewage storage vault for Phase II buildings at 275 West MacArthur Boulevard to encroach under the public right-of-way along Broadway, West MacArthur Boulevard, and Piedmont Avenue ("Previous Encroachments"); and

**WHEREAS**, Resolution No. 831354 C.M.S. inadvertently referred to an incorrect encroachment permit number (no. 100062), and the correct encroachment permit number is ENMJ 07176; and

**WHEREAS**, Permittee constructed the Previous Encroachments pursuant to an infrastructure permit (PX0900062), the limits of which are delineated in *Exhibit C* attached hereto and incorporated herein; and

**WHEREAS**, Permittee has obtained a building permit (no. B1004593) to construct a new building at 3600 Broadway and an infrastructure permit (no. PX0900062) for construction of public-right-of-way improvements adjoining 3600 Broadway; and

**WHEREAS**, as part of said building and infrastructure permits, Permittee has constructed the soil nailing, a planter box, rectangular curb drains, the foundation for a gate post, six benches, four trash cans, four sanitary sewer manholes and a concrete driveway approach with non-standard color at 3600 Broadway, which encroach into the public right-of-way along Broadway, MacArthur Boulevard and Piedmont Avenue (“Current Encroachments”, and together with the Previous Encroachments, the “Proposed Encroachments”), the limits of which are delineated in *Exhibit D*, attached hereto and incorporated herein; and

**WHEREAS**, Permittee seeks to amend and restate major encroachment permit number ENMJ 07176 to include the Current Encroachments; and

**WHEREAS**, staff has determined, based on review of the plans and investigation of the site of the Proposed Encroachments, said Proposed Encroachments in the public right-of-way and their locations will not interfere with public use of the roadway, sidewalk or buried utilities, and will not endanger the public welfare and convenience during said public use; and

**WHEREAS**, on June 27, 2006, the City Council approved Resolution No. 80103 C.M.S. certifying the Environmental Impact Report, SCH No. 2005032134 (the “EIR”), for the Kaiser Permanente Oakland Medical Center Master Plan; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, 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 significant 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 defined in CEQA Guidelines Section 15162(a)(3); and

**WHEREAS**, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines sections 15268(b) (ministerial projects), 15301 (existing facilities), 15303 (new construction of small structures), 15311 (accessory structures), 15183 (projects consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the

environment); now, therefore, be it

**RESOLVED:** That the City Council has reviewed all relevant documents relating to the amendment and restatement of major encroachment permit number ENMJ 07176 that is the subject of this resolution; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that the decision made hereby is made in conformance with the requirements of CEQA; and be it

**FURTHER RESOLVED:** That the City Council hereby amends and restates the conditional revocable major encroachment permit (no. ENMJ 07176) previously granted to Permittee to allow (1) telecommunications conduits, electrical transformers and vaults, and a portion of a building foundation and sewage storage vault for Phase II buildings at 275 West MacArthur Boulevard to encroach under the public right-of-way along Broadway, West MacArthur Boulevard, and Piedmont Avenue, as set forth in *Exhibit C*, and (2) soil nailing, a planter box, rectangular curb drains, the foundation for a gate post, six benches, four trash cans, four sanitary sewer manholes and a concrete driveway approach with non-standard color at 3600 Broadway to encroach into the public right-of-way along Broadway, MacArthur Boulevard and Piedmont Avenue as set forth in *Exhibit D*, and according to the permit conditions set forth below; and be it

**FURTHER RESOLVED:** That said major 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.
2. This agreement may be voided and the associated permit for encroachments may be revoked at any time and for any reason, at the sole discretion of the City Council, expressed by resolution as being in the City's best interest, or the associated permit may be suspended at any time, at the sole discretion of the City Engineer, upon failure of the Permittee to comply fully and continuously with each and all of the conditions set forth herein and in the associated permit.
3. The Permittee hereby disclaims any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agrees that the encroachment is granted for an indeterminate period of time and that the use and occupancy by the Permittee of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.
4. The Permittee shall maintain fully in force and effect, at its own expense, at all times during the period for which the permit is in effect, good and sufficient public liability insurance in a face amount not less than \$2,000,000.00 for each occurrence, and property damage insurance in a face amount not less than \$1,000,000.00 for each occurrence, both including contractual liability, insuring the City of Oakland, its officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way,

as respects liabilities assumed under this permit. The policy shall contain an endorsement declaring the policy as primary coverage on said liabilities. The Permittee shall submit a written certificate of such insurance or copy of the policy to the City Engineer showing that insurance is in effect in compliance with this section, and shall file subsequent notices of the renewal thereof with the City Engineer. Such certificate shall state that the insurance coverage shall not be canceled, amended or be permitted to lapse without thirty (30) days' prior written notice to the City Engineer. The Permittee also agrees that the City Engineer, at his or her sole discretion, may review the type and amount of insurance required of the Permittee annually and may require the Permittee to increase the amount of and/or change the type of insurance coverage required as circumstances warrant.

5. The Permittee shall be solely and fully liable and responsible for the repair, replacement, removal, reconstruction, and maintenance of any portion or all of the private improvements constructed or installed in the public right-of-way, whether by cause, neglect, or negligence of the Permittee or others, and for the associated costs and expenses necessary to restore or remove the encroachment to the satisfaction of the City Engineer, and shall not allow the encroachment to become a blight or a menace or a hazard to the health and safety of the general public.
6. The Permittee acknowledges and agrees that the encroachment is out of the ordinary and does not comply with City of Oakland standard installations. The Permittee further acknowledges and agrees that the City of Oakland and public utility agencies will periodically conduct work in the public right-of-way, including excavation, trenching, and relocation of its facilities, all of which may damage the encroachment. The Permittee further acknowledges and agrees that the City and public utility agencies take no responsibility for repair or replacement of the encroachment which may be damaged by the City or its contractors or public utility agencies or their contractors. The Permittee further acknowledges and agrees that upon notification by and to the satisfaction of the City Engineer, Permittee shall immediately repair, replace, or remove, at the sole expense of the Permittee, all damages to the encroachment that are directly or indirectly attributable to work by the City or its contractors or public utility agencies or their contractors.
7. The Permittee shall remain liable for and shall immediately reimburse the City of Oakland for all costs, fee assessments, penalties, and accruing interest associated with the City's notification and subsequent abatement action for required maintenance, repairs, or removal, whether in whole or in part, of the encroachment or of damaged City infrastructure made necessary by the failure, whether direct or indirect, of the Permittee to monitor the encroachment effectively and accomplish preventative, remedial, or restorative work expeditiously. The City reserves the unqualified right to collect all monies unpaid through any combination of available statutory remedies, including recordation of Prospective Liens and Priority Liens/ Special Assessments with the Alameda County Recorder, inclusion of non-reimbursed amounts by the Alameda County Assessor with the annual assessment of the general levy, and awards of judgments by a court of competent jurisdiction.
8. Upon revocation of the encroachment permit, the Permittee shall immediately, completely, and permanently remove the encroachment from the public right-of-way, repair any damage

resulting therefrom, and restore the public right-of-way to its original conditions existing before the construction or installation of the encroachment, to the satisfaction of the City Engineer and all at the sole expense of the Permittee.

9. This agreement and the associated permit for an encroachment shall become effective upon filing of this agreement with the Alameda County Recorder for recordation as an encumbrance of the property and its title.
10. The Permittee acknowledges that the City makes no representations or warranties as to the conditions beneath said encroachment. By accepting this revocable permit, 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 safety of itself and any of its personnel in connection with its entry under this revocable permit.
11. The Permittee acknowledges that the City is unaware of the existence of any hazardous substances beneath the encroachment area, and Permittee hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors 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 of 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 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401, 1450), the 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 Sections 253000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.).
12. 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." The Permittee recognizes that by waiving the provisions of this section, Permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to agree to these encroachment terms and conditions, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
13. The Permittee shall, and by the acceptance of this revocable permit agrees and promises:
  - (a) to indemnify, defend, save and hold harmless the City of Oakland, its officers, agents,

employees, and volunteers, to the maximum extent permitted by law, from any and all suits, 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, brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under the permit or arising out of the Permittee's failure to perform the obligations with respect to the use and occupancy of the public right-of-way by virtue of the permit, to the extent that such claims were either (1) caused by the Permittee, its 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 275 West MacArthur Boulevard and/or 3600 Broadway, Oakland, California site, or was otherwise caused by the Permittee, its 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 275 West MacArthur Boulevard and/or 3600 Broadway, 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 Permittee, its agents, employees, contractors or representatives; and
- (c) the Permittee shall comply with all applicable federal, state, county and local laws, rules, and regulations governing the installation, maintenance, operation and abatement of the encroachment.

- 14. The encroachment permit and accompanying indenture agreement shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Engineer, and shall become null and void upon the failure of the Permittee to comply with all conditions.
- 15. The Indenture Agreement alone does not allow work to be done which requires permitting and/or inspection, and the Permittee shall obtain any and all required permits before beginning work.
- 16. The hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

**FURTHER RESOLVED:** That the City Council of the City of Oakland, at its sole discretion and at a future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way; and be it

**FURTHER RESOLVED:** That this resolution shall take effect when all the conditions hereinabove set forth have been complied with to the satisfaction of the City Engineer 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 Engineer is hereby authorized to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder as an encumbrance of the tide of the property identified above.

**DEC 10 2013**

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

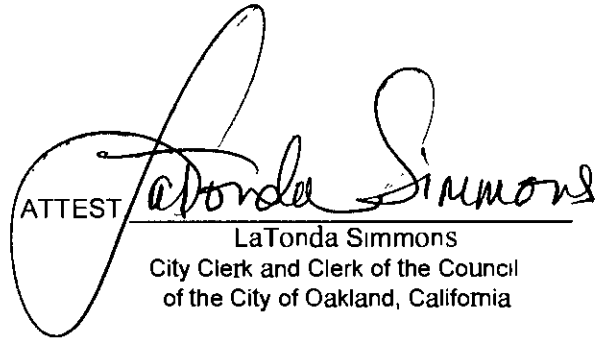
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

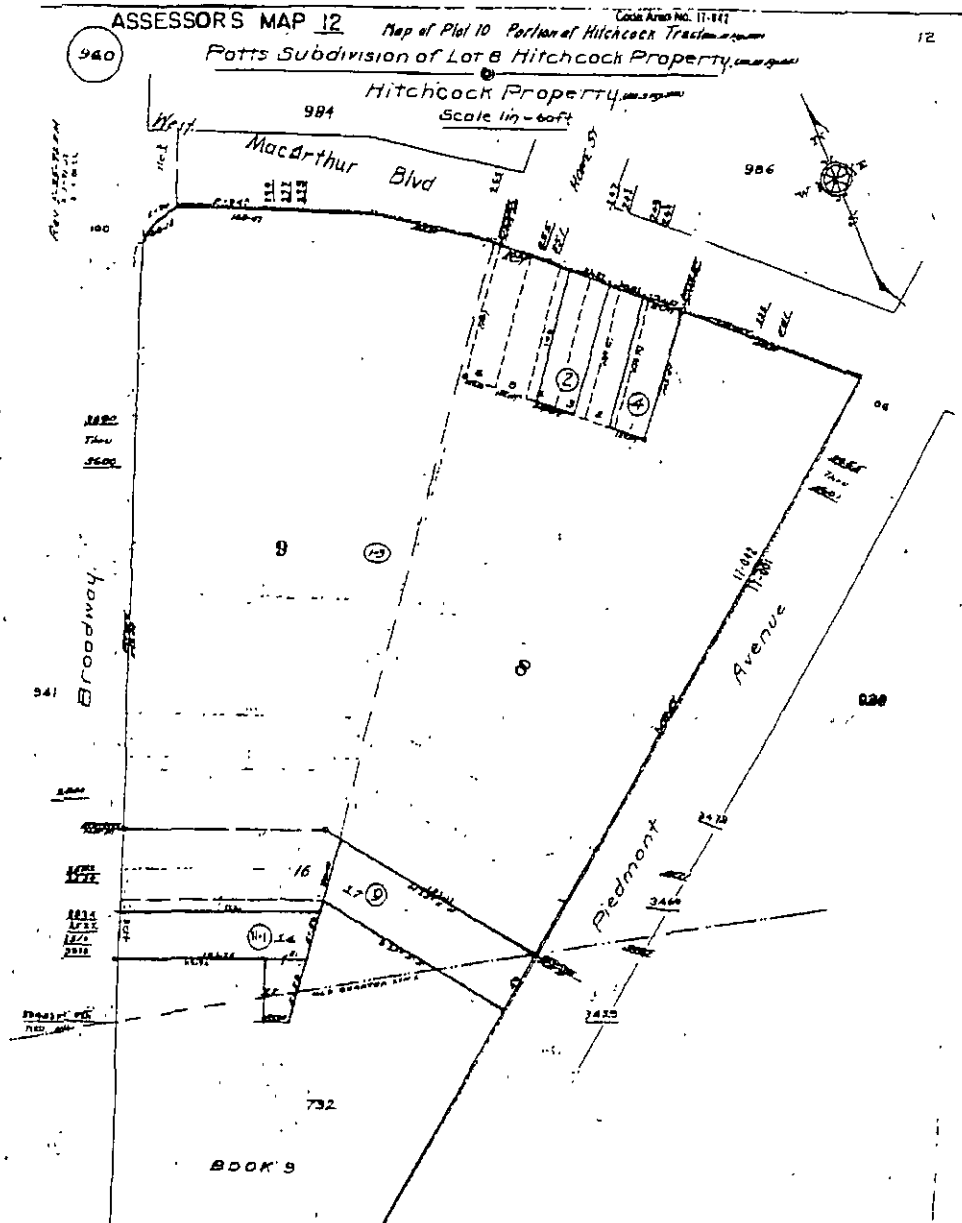
ABSTENTION - 0

ATTEST   
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

# EXHIBIT A

## Graphic Delineation of the Private Property Abutting the Encroachment at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard



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

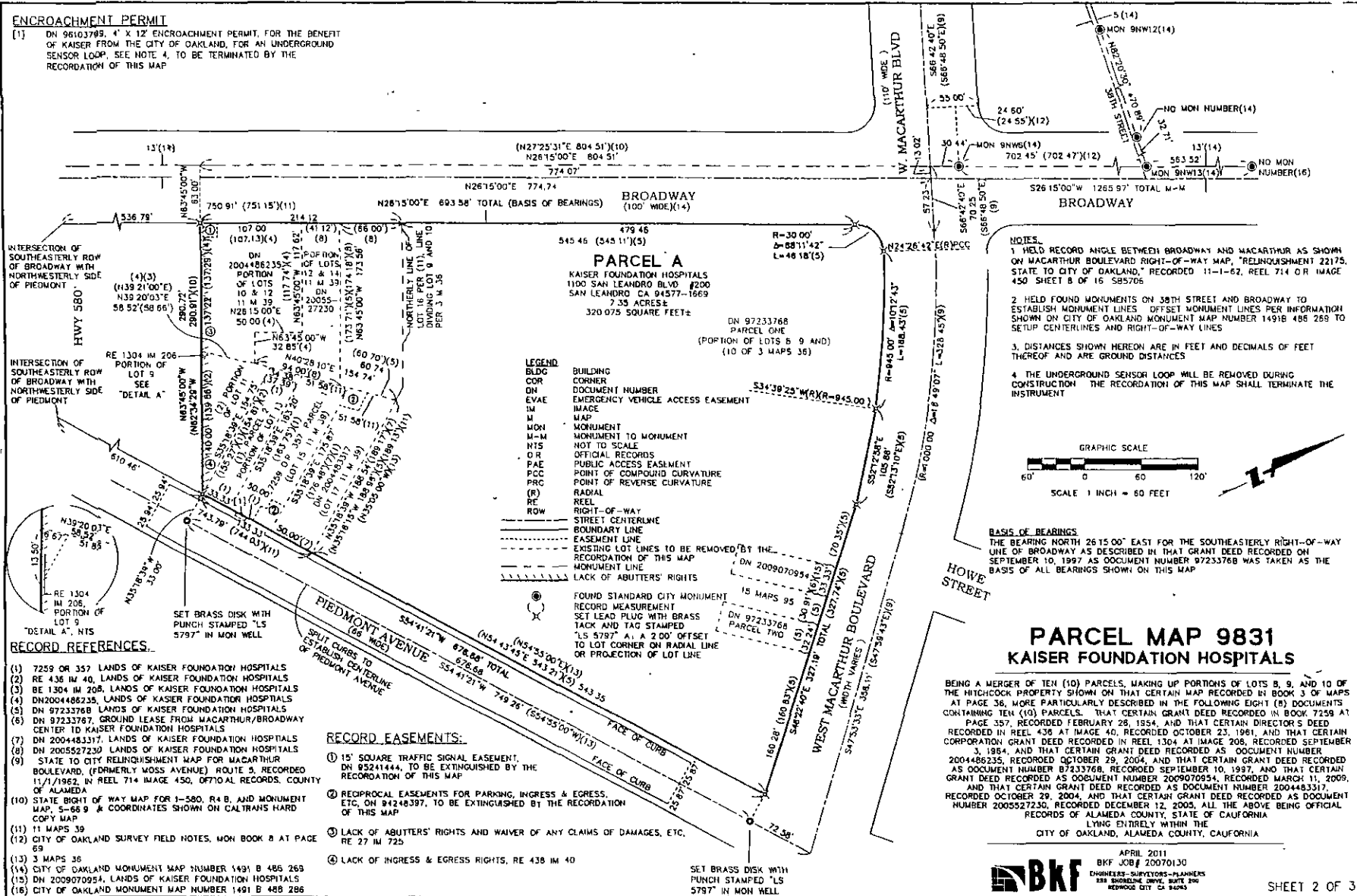
## Graphic Delineation of the Private Property Abutting the Encroachment at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00

### ENCROACHMENT PERMIT

(1) DN 96103789, 4' X 12' ENCROACHMENT PERMIT, FOR THE BENEFIT OF KAISER FROM THE CITY OF OAKLAND, FOR AN UNDERGROUND SENSOR LOOP, SEE NOTE 4, TO BE TERMINATED BY THE RECORDATION OF THIS MAP



Parcel map 9831

Parcel map BK 318 PP 53

### PARCEL MAP 9831 KAISER FOUNDATION HOSPITALS

BEING A MERGER OF TEN (10) PARCELS, MAKING UP PORTIONS OF LOTS 8, 9, AND 10 OF THE HITCHCOCK PROPERTY SHOWN ON THAT CERTAIN MAP RECORDED IN BOOK 3 OF MAPS AT PAGE 36, MORE PARTICULARLY DESCRIBED IN THE FOLLOWING EIGHT (8) DOCUMENTS CONTAINING TEN (10) PARCELS, THAT CERTAIN GRANT DEED RECORDED IN BOOK 7259 AT PAGE 357, RECORDED FEBRUARY 28, 1954, AND THAT CERTAIN DIRECTOR'S DEED RECORDED IN REEL 436 AT IMAGE 40, RECORDED OCTOBER 23, 1961, AND THAT CERTAIN CORPORATION GRANT DEED RECORDED IN REEL 1304 AT IMAGE 208, RECORDED SEPTEMBER 3, 1964, AND THAT CERTAIN GRANT DEED RECORDED AS DOCUMENT NUMBER 2004486235, RECORDED OCTOBER 29, 2004, AND THAT CERTAIN GRANT DEED RECORDED AS DOCUMENT NUMBER 97233768, RECORDED SEPTEMBER 10, 1997, AND THAT CERTAIN GRANT DEED RECORDED AS DOCUMENT NUMBER 2009070954, RECORDED MARCH 11, 2009, AND THAT CERTAIN GRANT DEED RECORDED AS DOCUMENT NUMBER 2004483317, RECORDED OCTOBER 29, 2004, AND THAT CERTAIN GRANT DEED RECORDED AS DOCUMENT NUMBER 2005527230, RECORDED DECEMBER 12, 2005, ALL THE ABOVE BEING OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

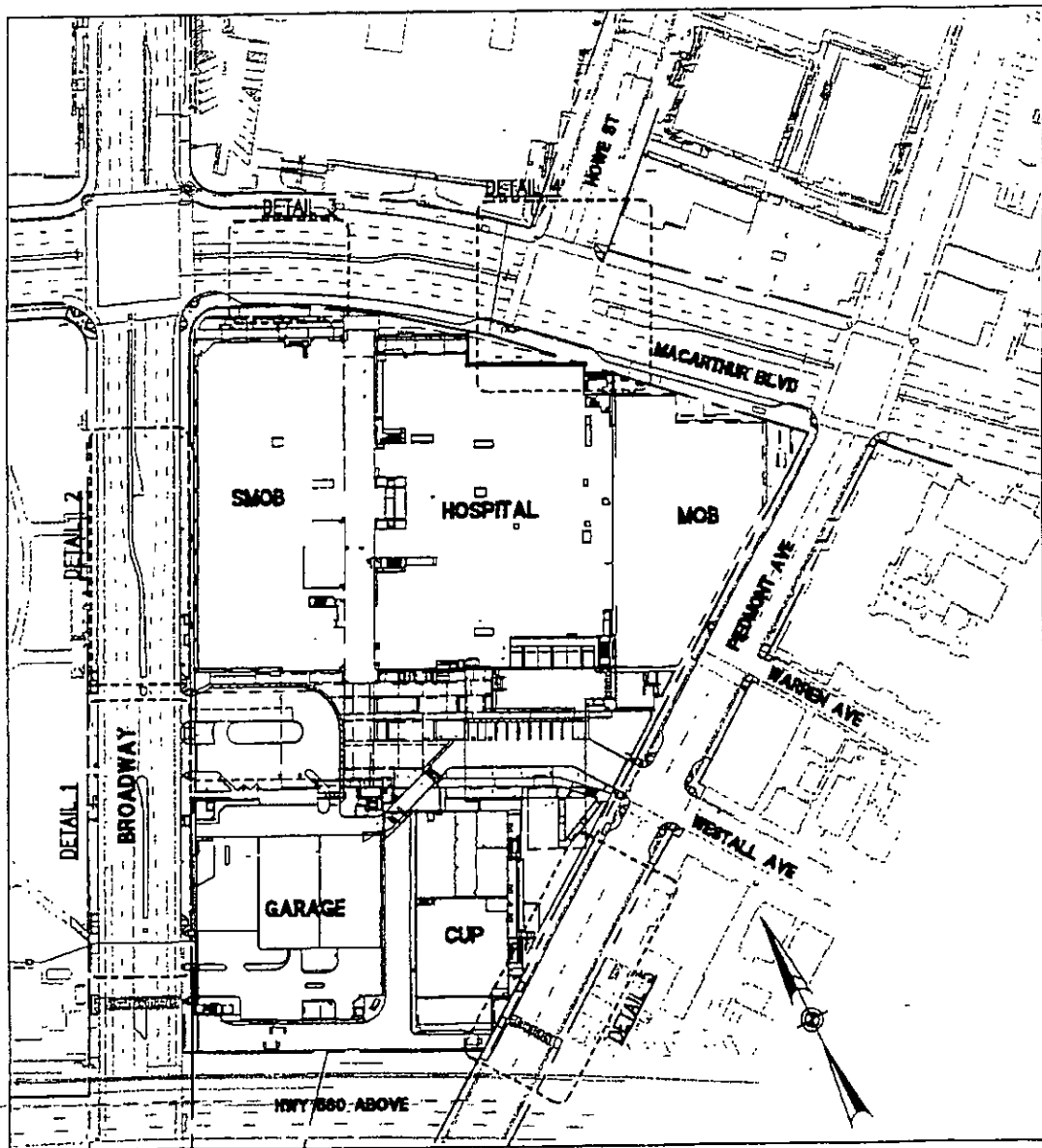
APRIL 2011  
BKF JOB # 20070130  
ENGINEER: SURVEYORS-IN-CHARGE  
238 SHENKLE DRIVE, SUITE 200  
REDWOOD CITY CA 94065

# EXHIBIT C (1 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Encroachment Key Plan

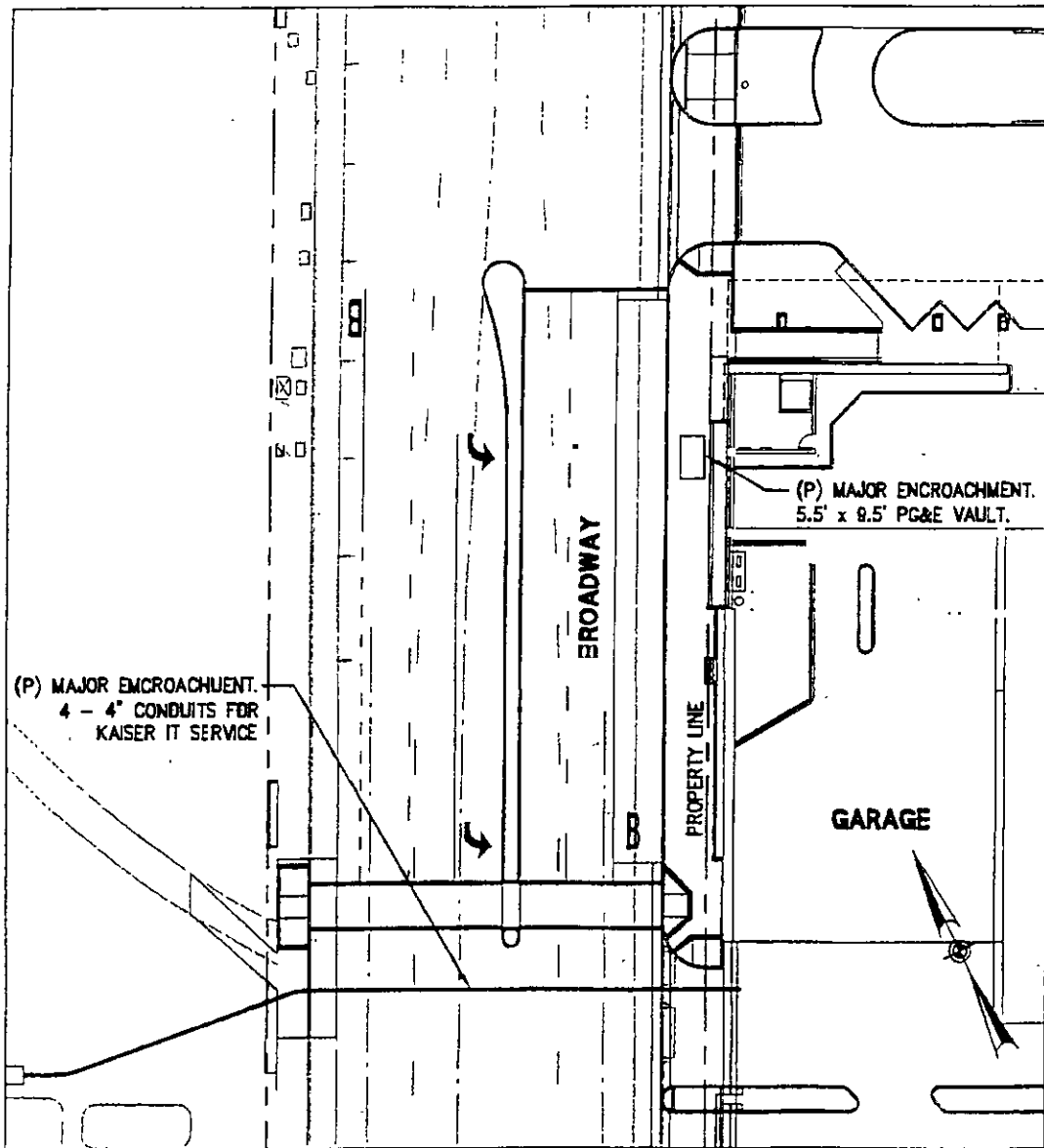


# EXHIBIT C (2 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Detail I - Transformer Vault and Telecommunications Conduit Encroachments

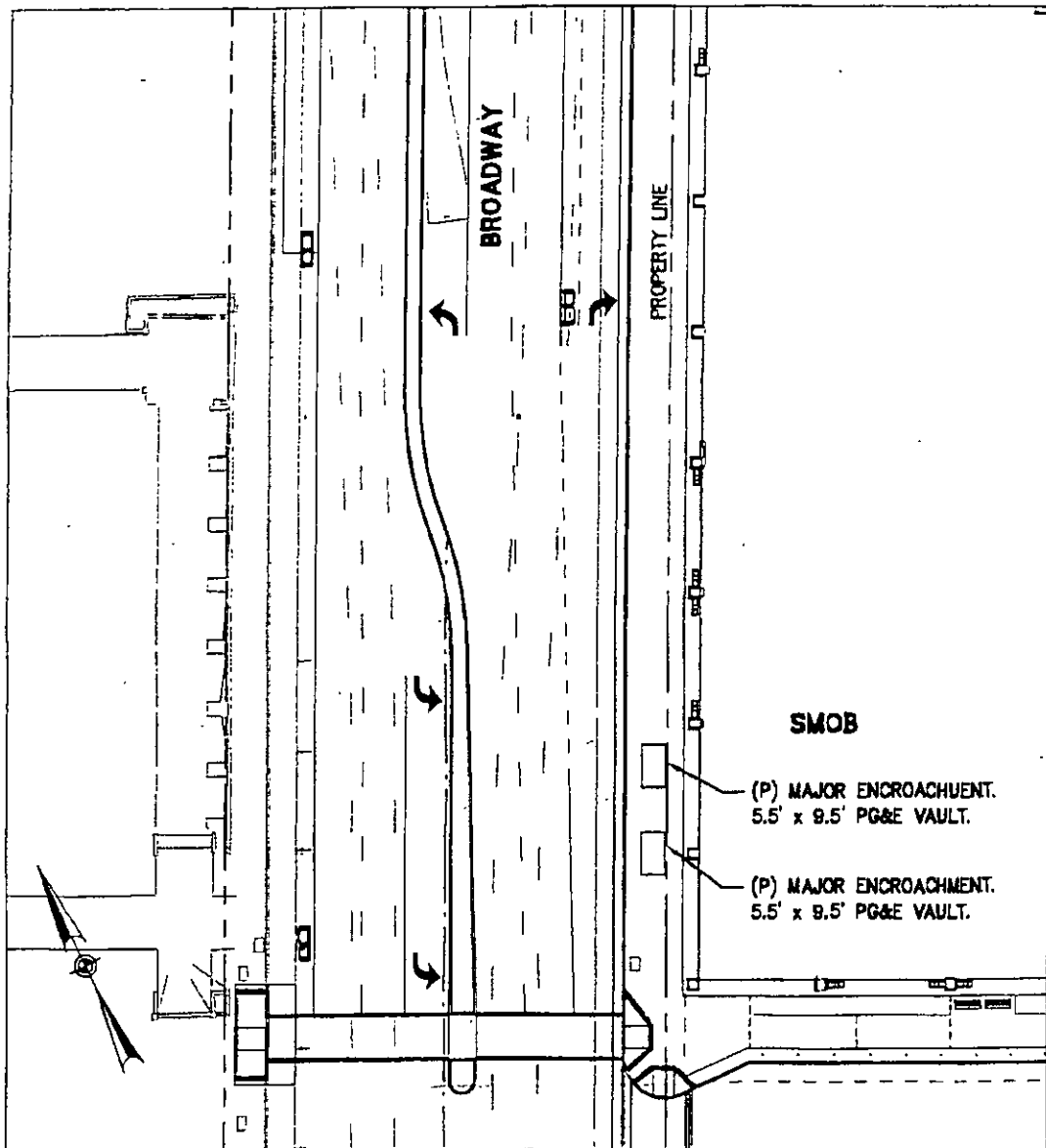


# EXHIBIT C (3 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Detail 2 - Transformer Vaults Encroachment

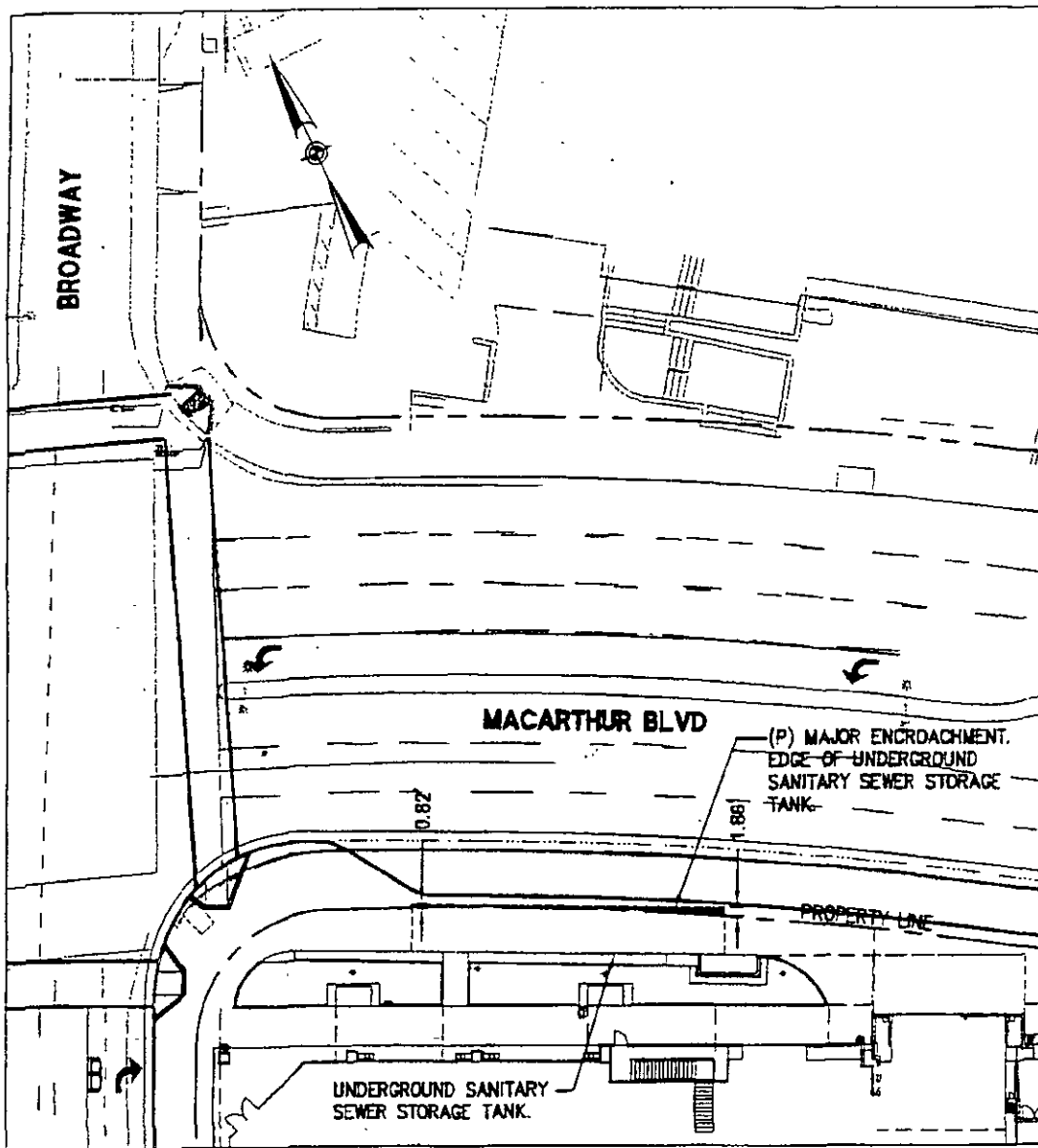


# EXHIBIT C (4 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Detail 3 - Sewage Storage Vault Encroachment

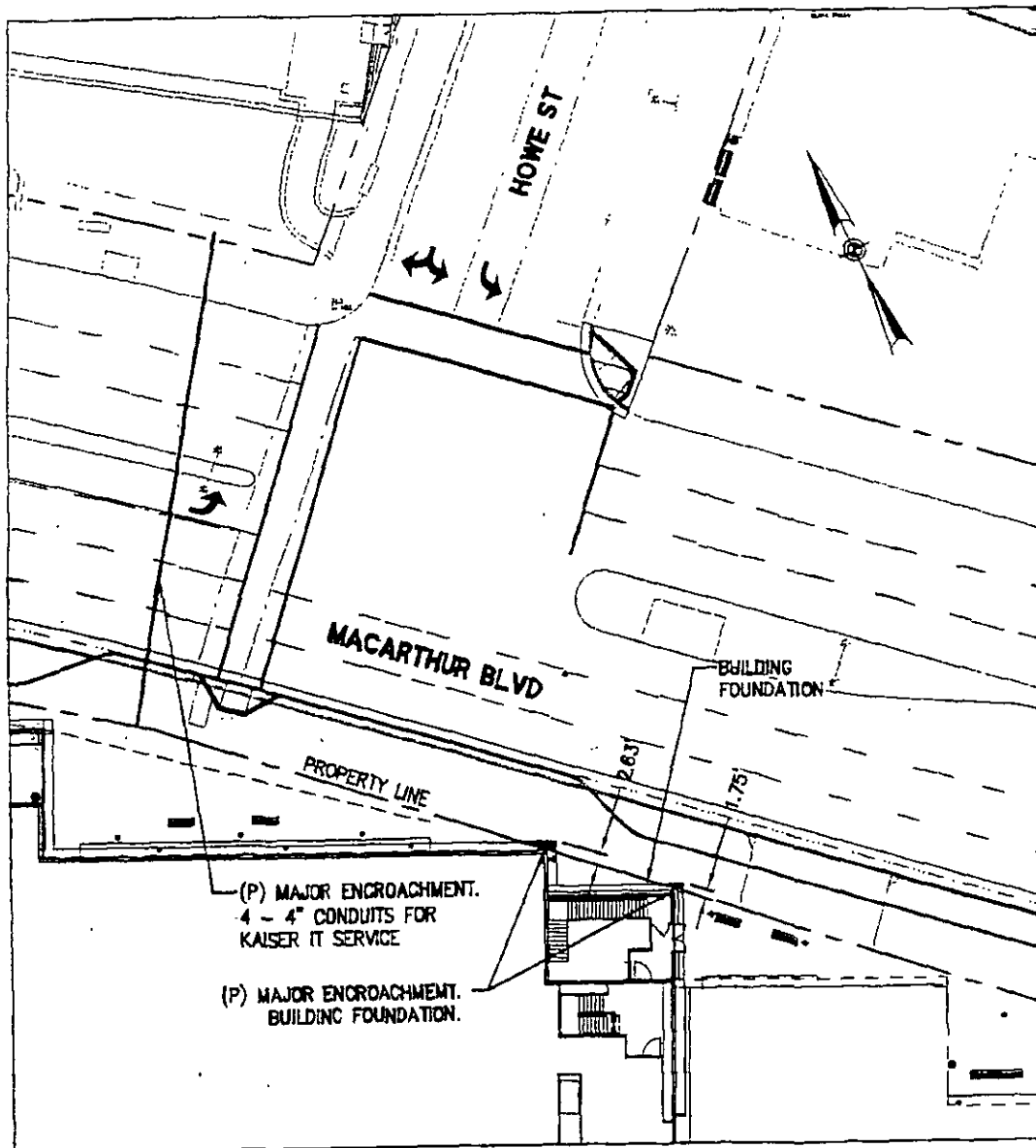


# EXHIBIT C (5 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Detail 4 - Building Foundation and Telecommunications Conduit Encroachments

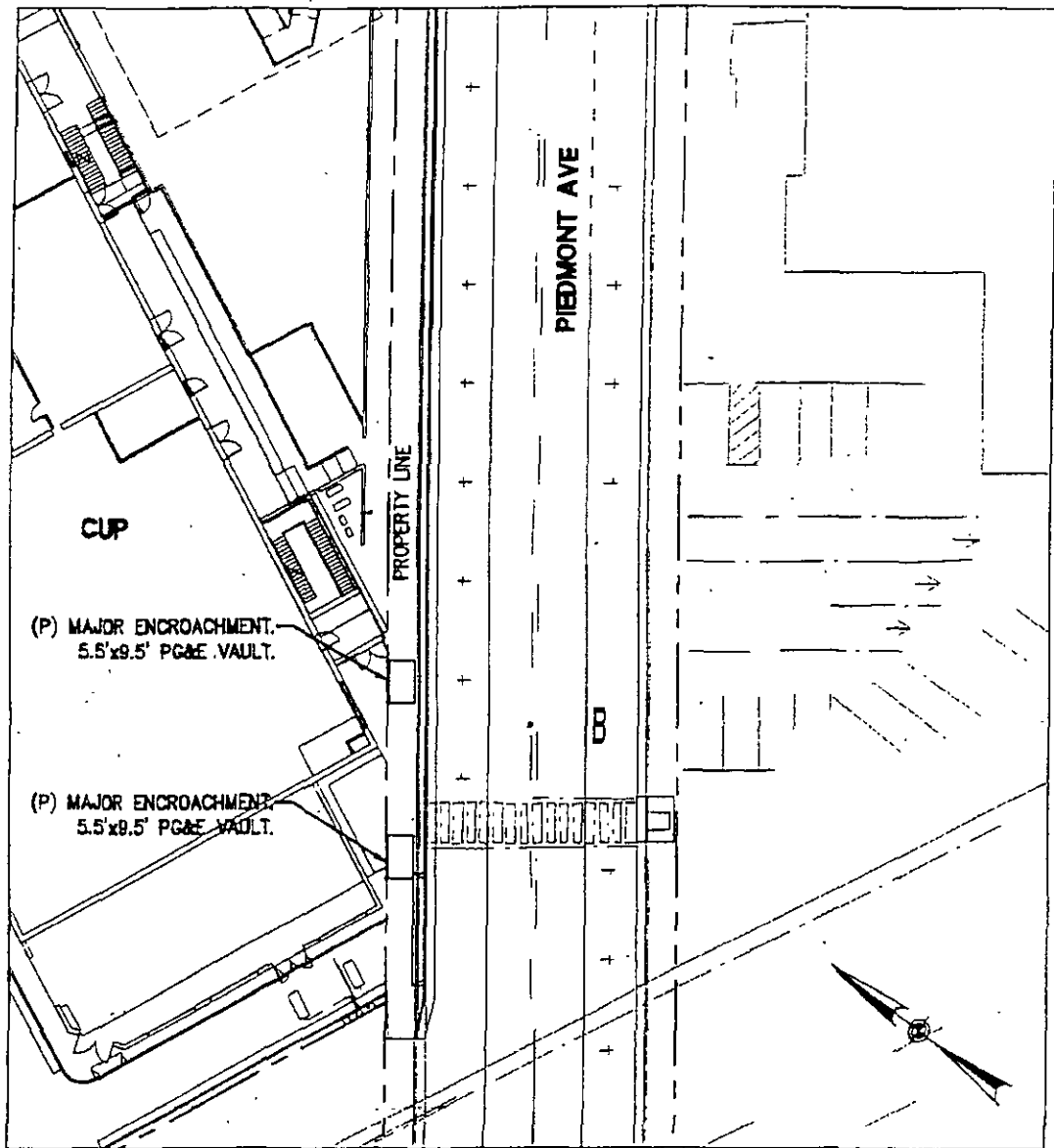


# EXHIBIT C (6 of 6)

## Limits of the Encroachment in the Public Right-Of-Way at 275 West MacArthur Boulevard

Address 275 West MacArthur Boulevard

### Detail 5 - Transformer Vault Encroachments

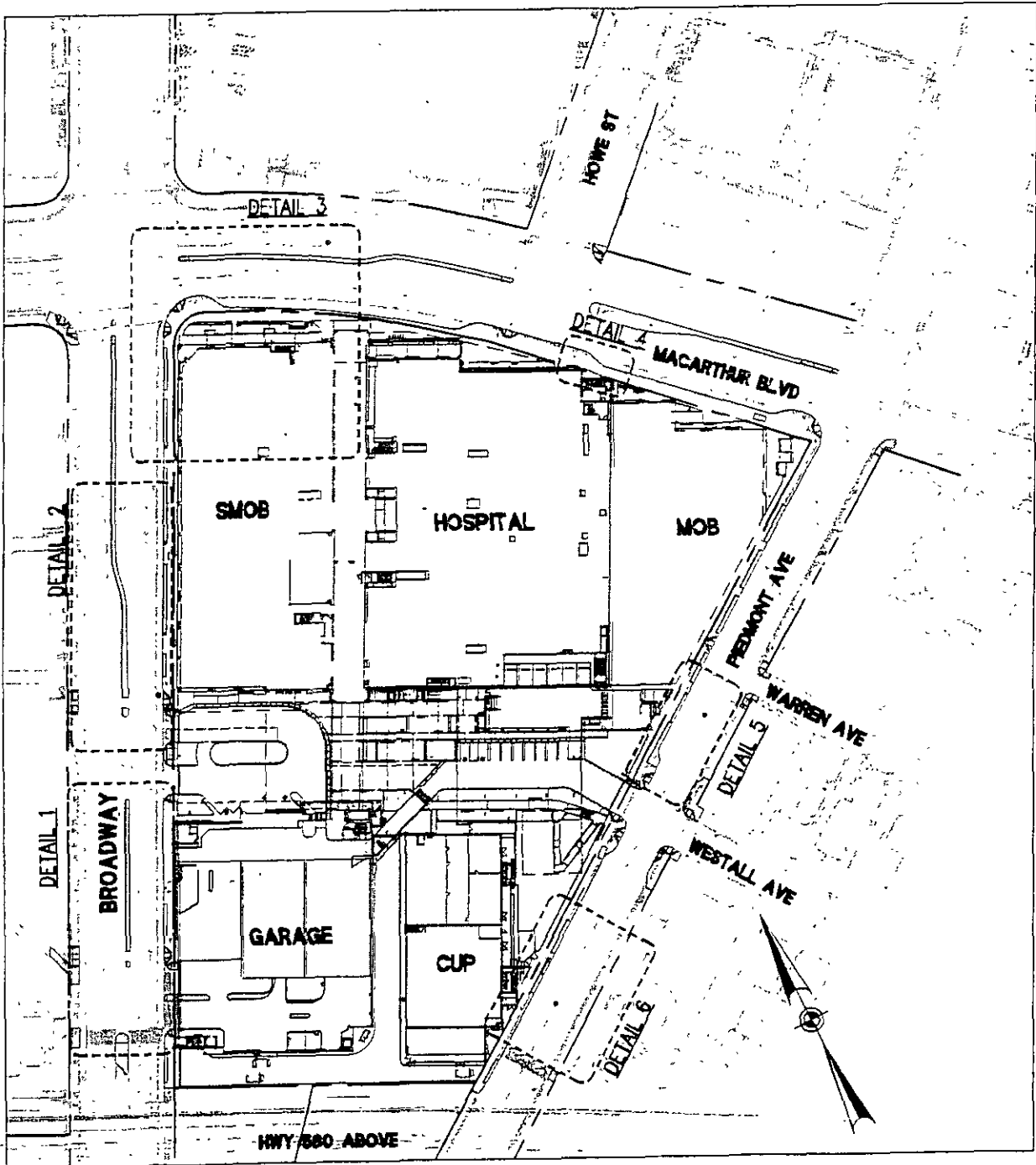


# EXHIBIT D (1 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-i024-001-00



KAISER OAKLAND MEDICAL CENTER  
MINOR ENCROACHMENT KEY MAP

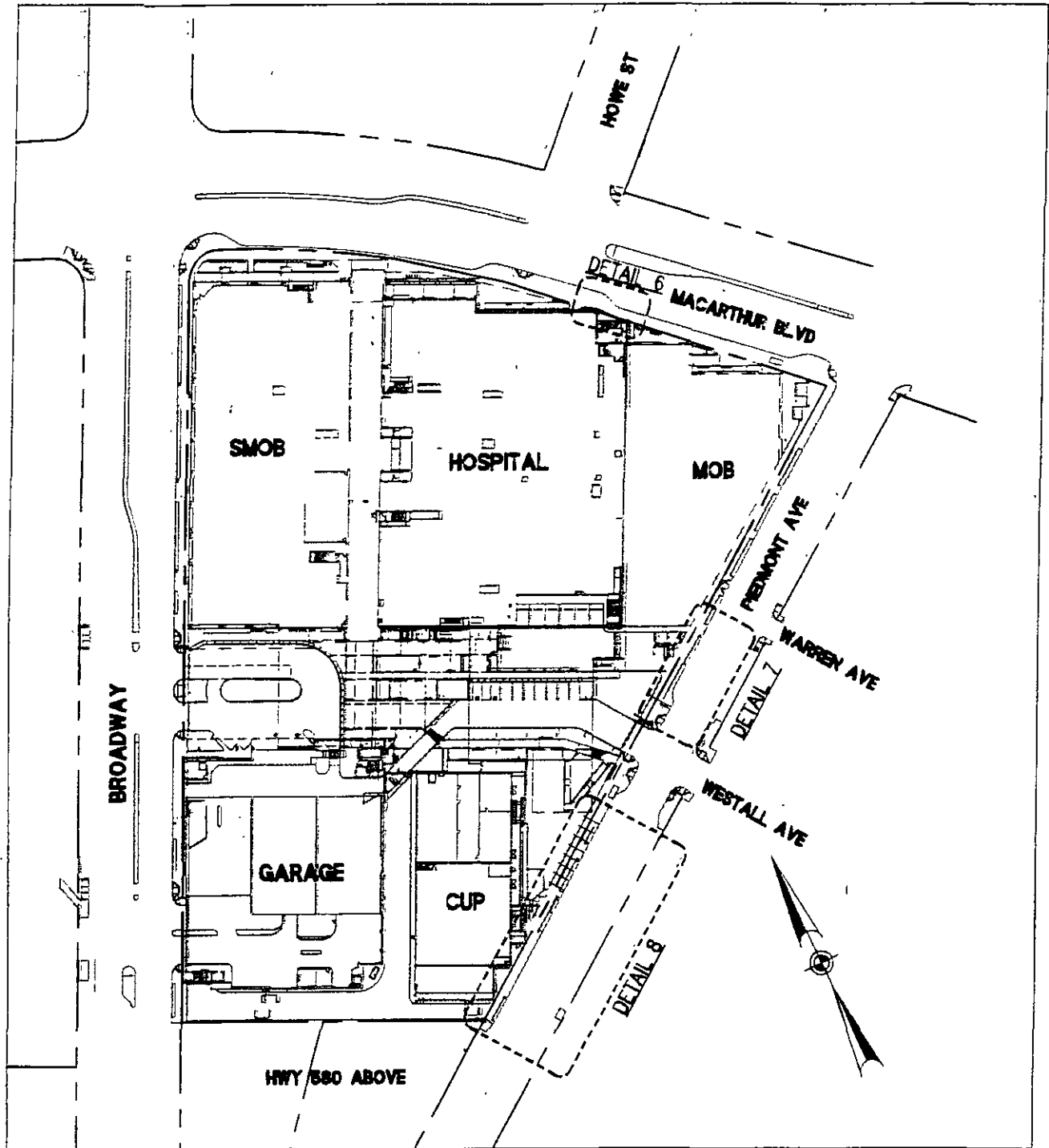


# EXHIBIT D (2 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00



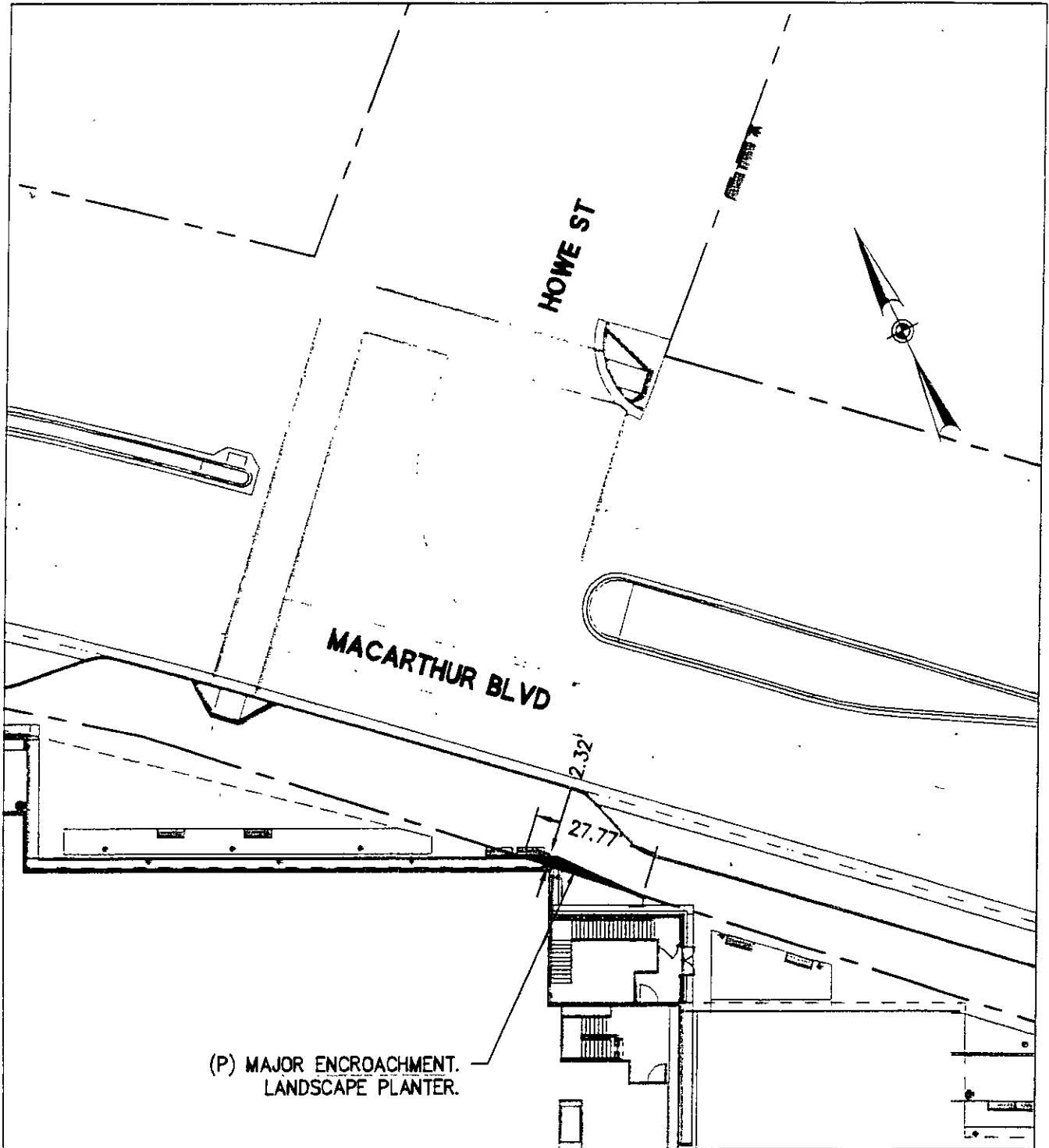
KAISER OAKLAND MEDICAL CENTER  
MAJOR ENCROACHMENT KEY MAP

**EXHIBIT D (3 of 12)**

**Limits of the Encroachment in the Public Right-Of-Way  
at 3600 Broadway**

Address 3600 Broadway

Parcel no 012-1024-001-00

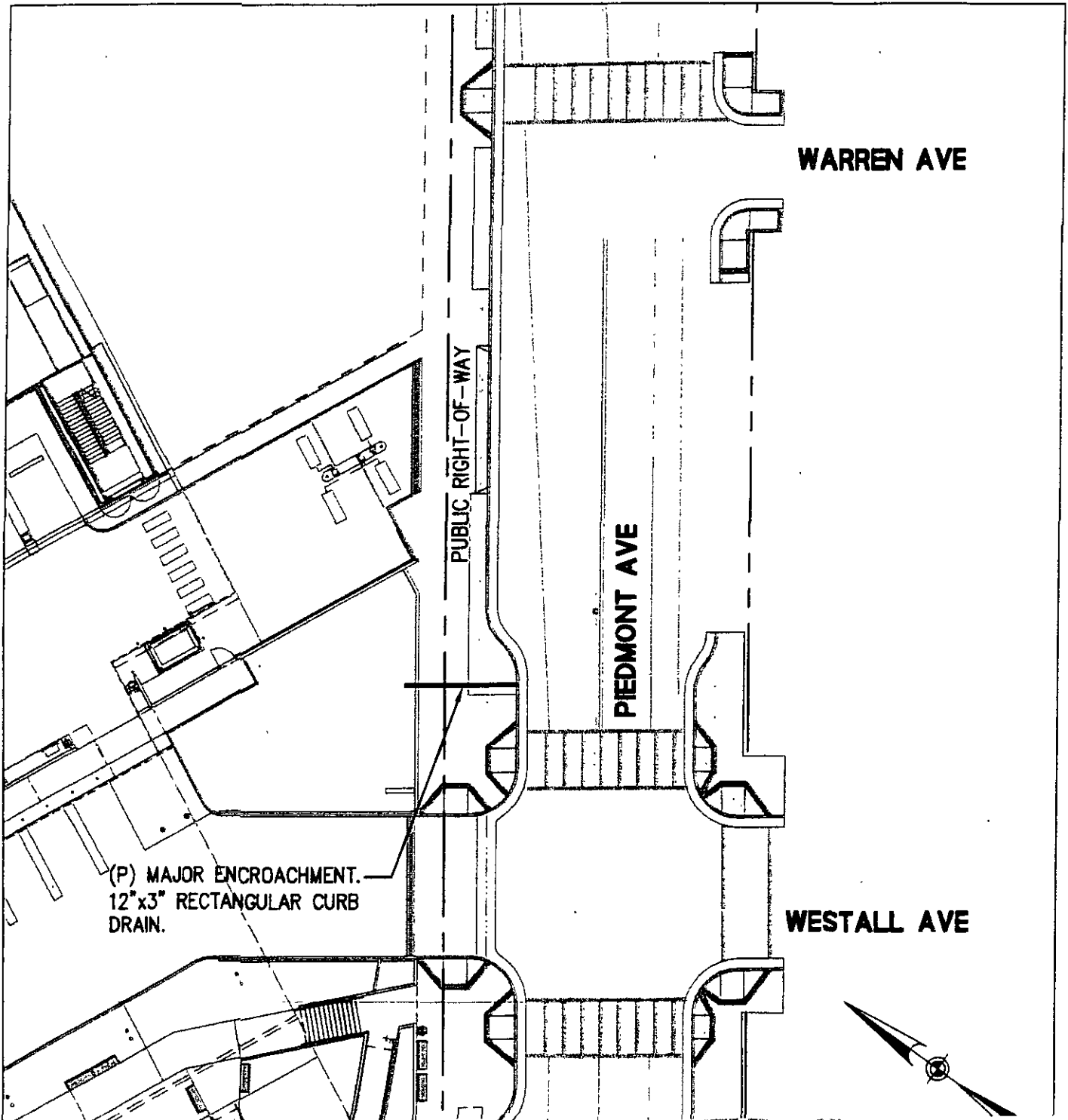


**EXHIBIT D (4 of 12)**

**Limits of the Encroachment in the Public Right-Of-Way  
at 3600 Broadway**

Address 3600 Broadway

Parcel no. 012-1024-001-00

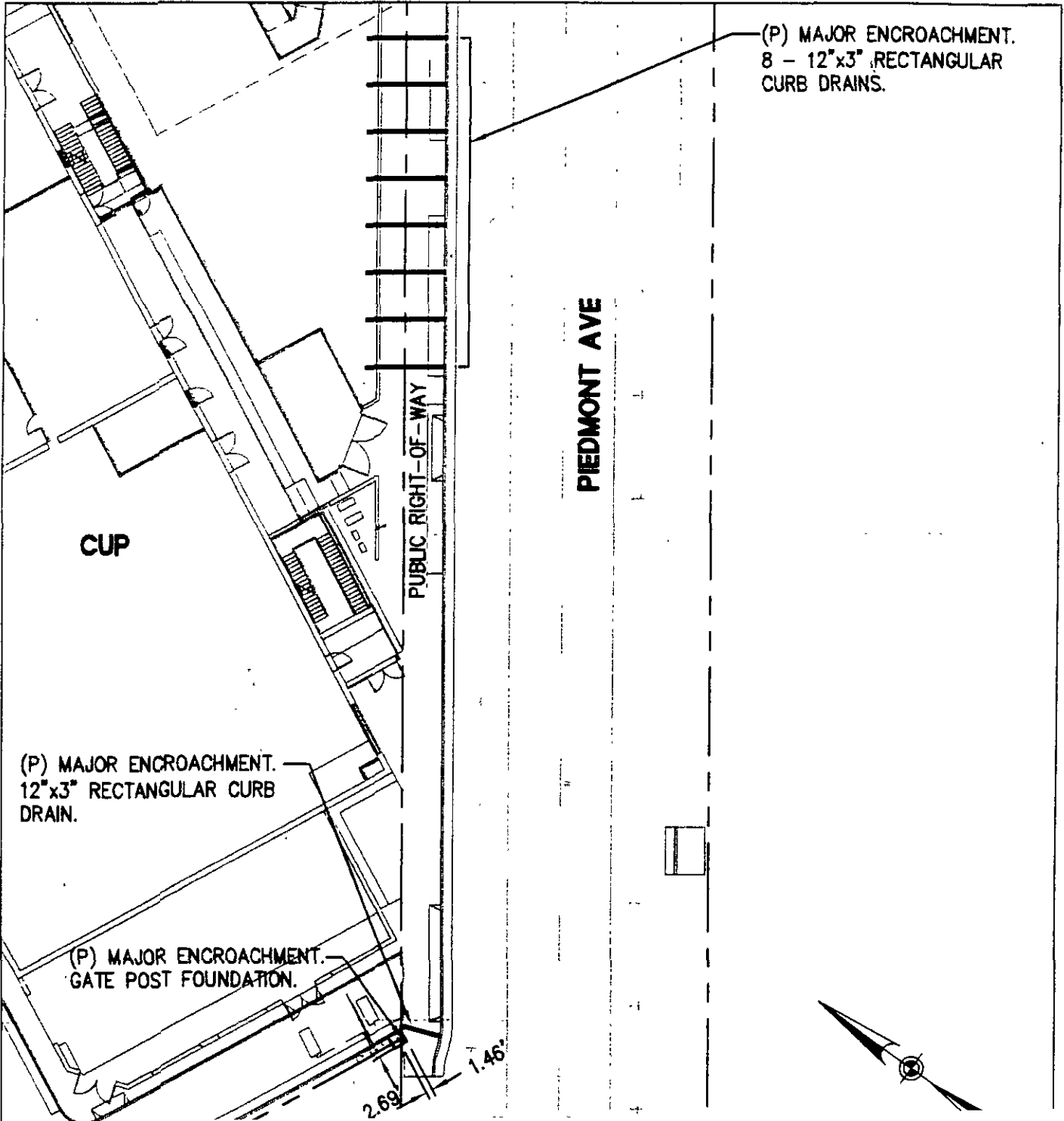


**EXHIBIT D (5 of 12)**

**Limits of the Encroachment in the Public Right-Of-Way  
at 3600 Broadway**

Address 3600 Broadway

Parcel no. 012-1024-001-00

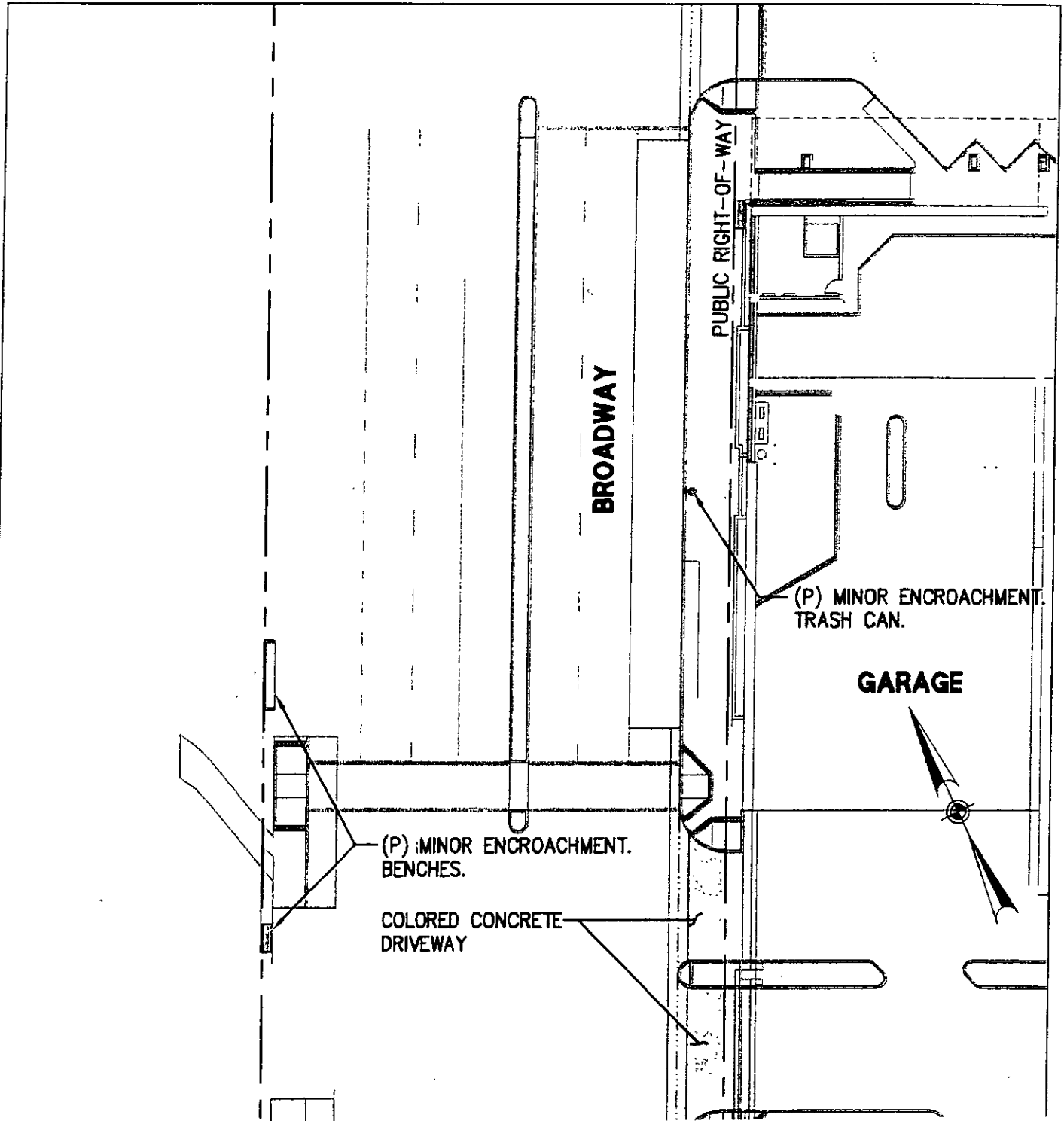


# EXHIBIT D (6 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00

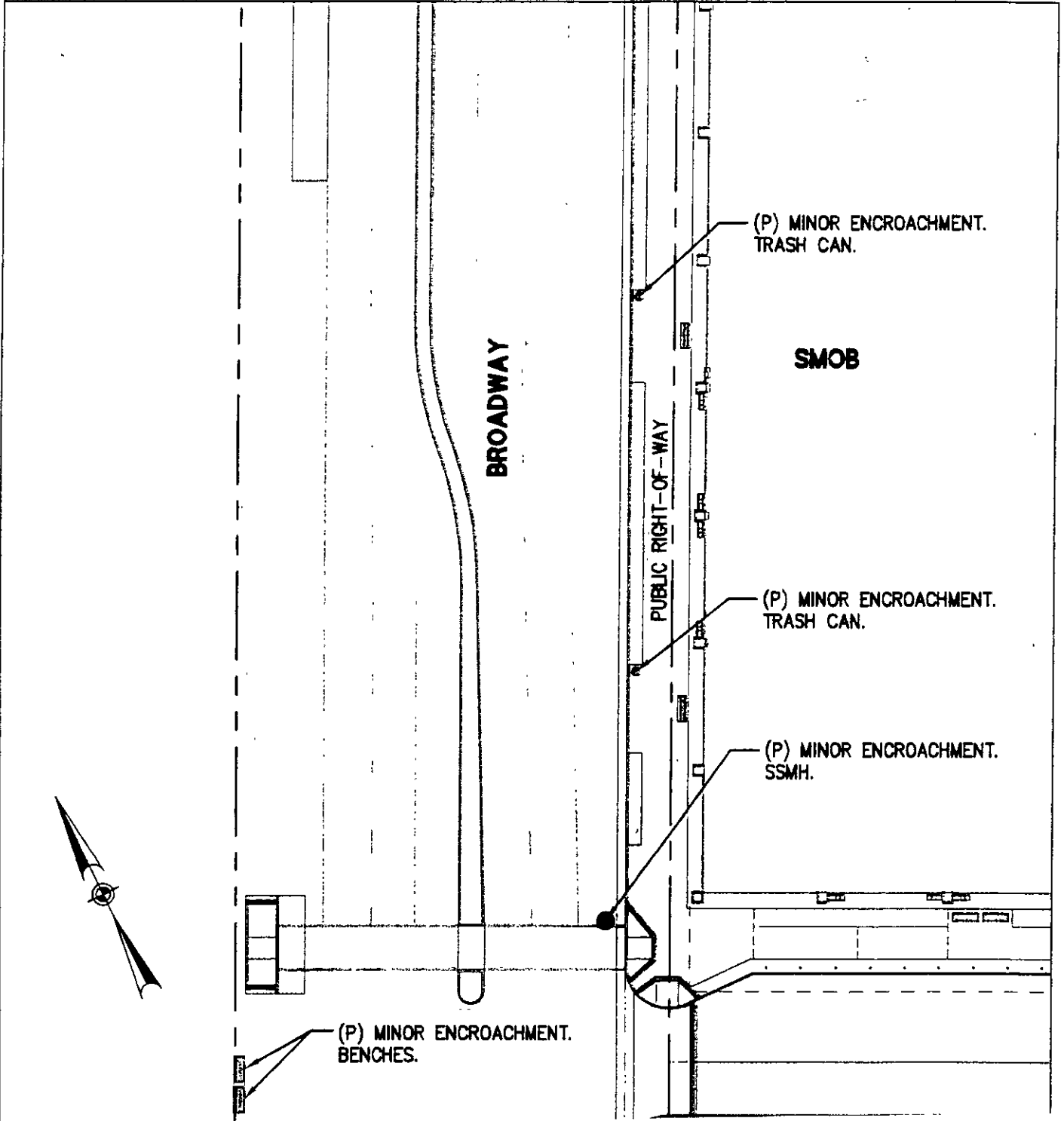


# EXHIBIT D (7 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00

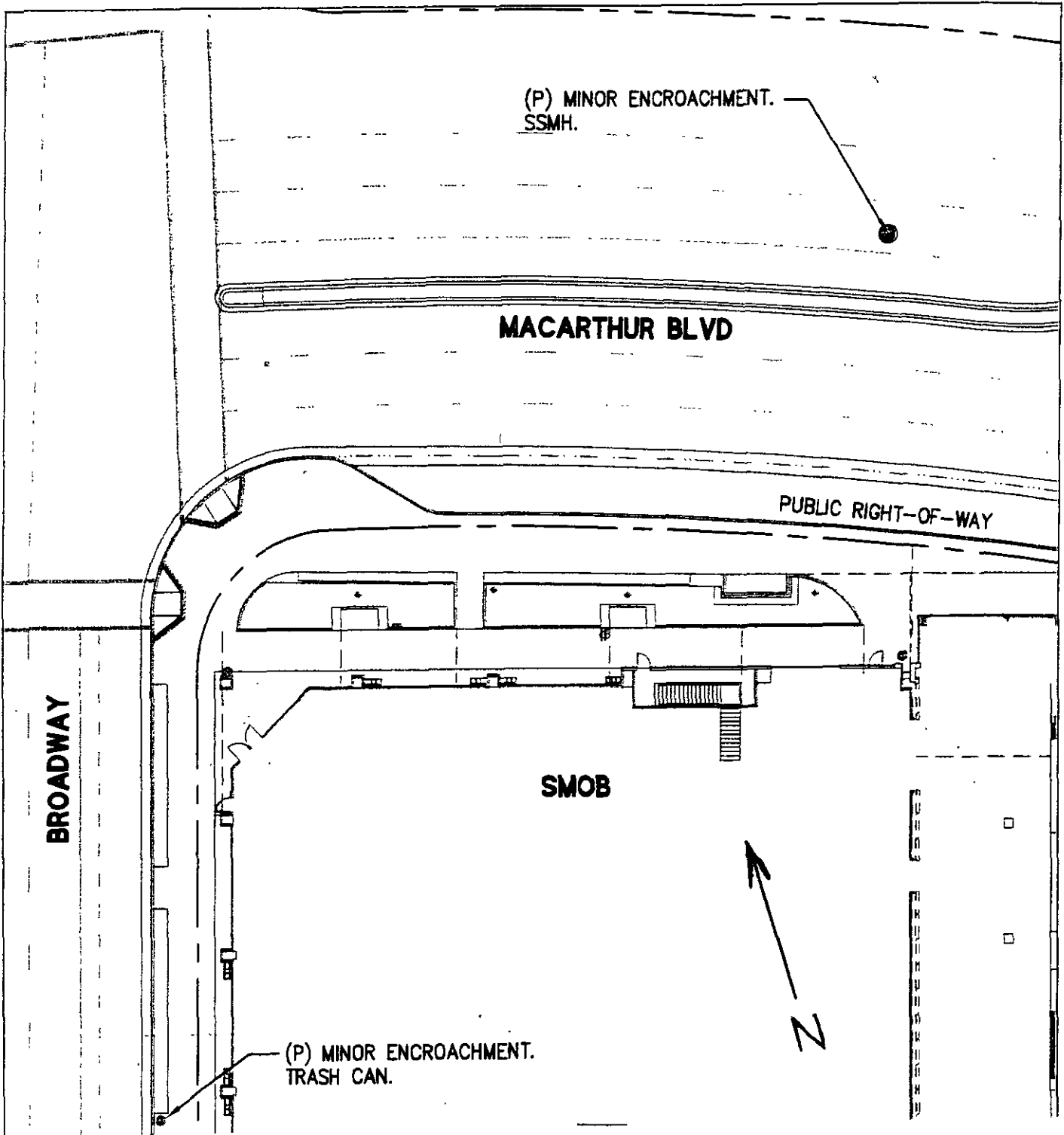


**EXHIBIT D (8 of 12)**

**Limits of the Encroachment in the Public Right-Of-Way  
at 3600 Broadway**

Address 3600 Broadway

Parcel no. 012-1024-001-00

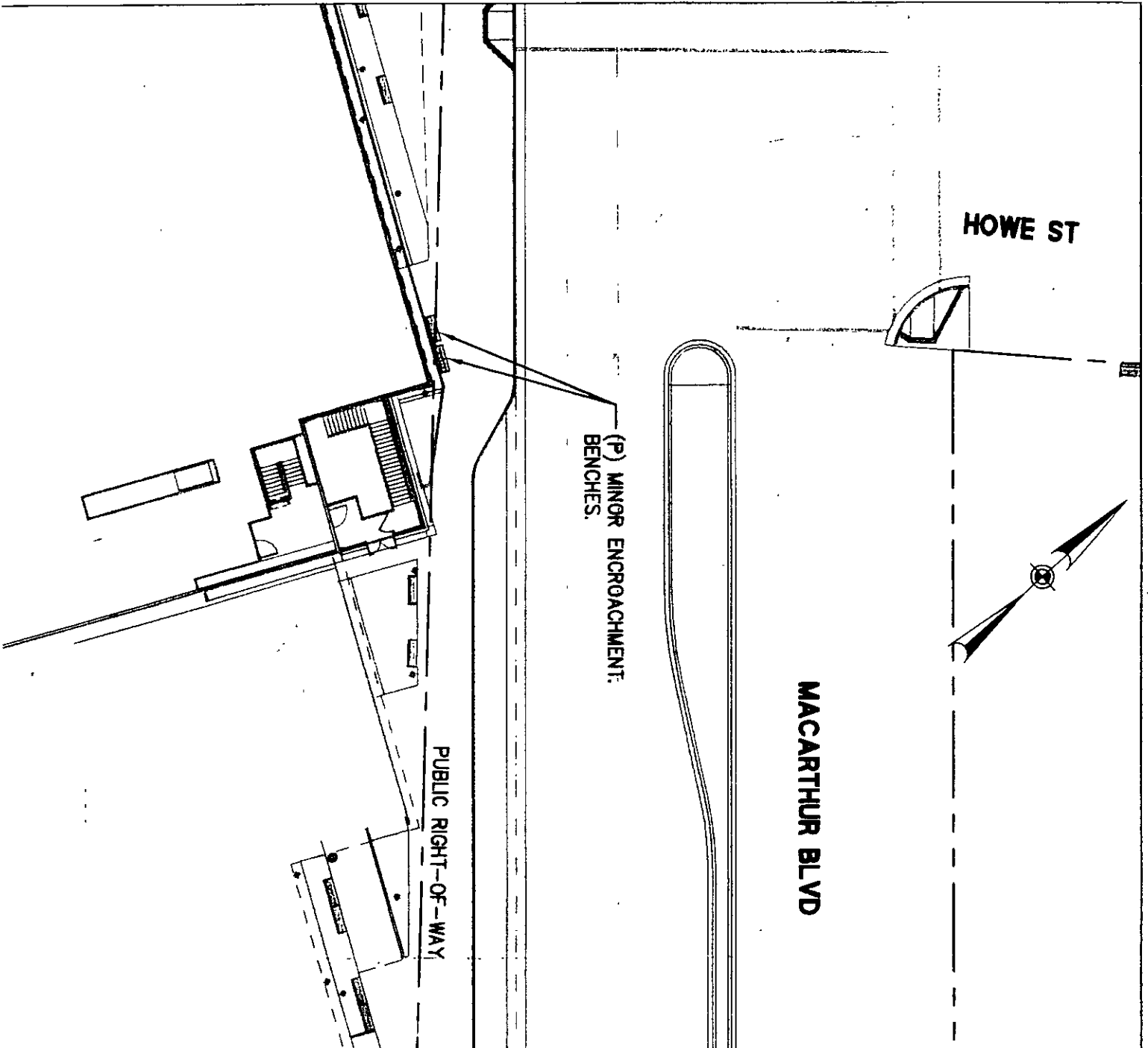


# EXHIBIT D (9 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address: 3600 Broadway

Parcel no. 012-1024-001-00



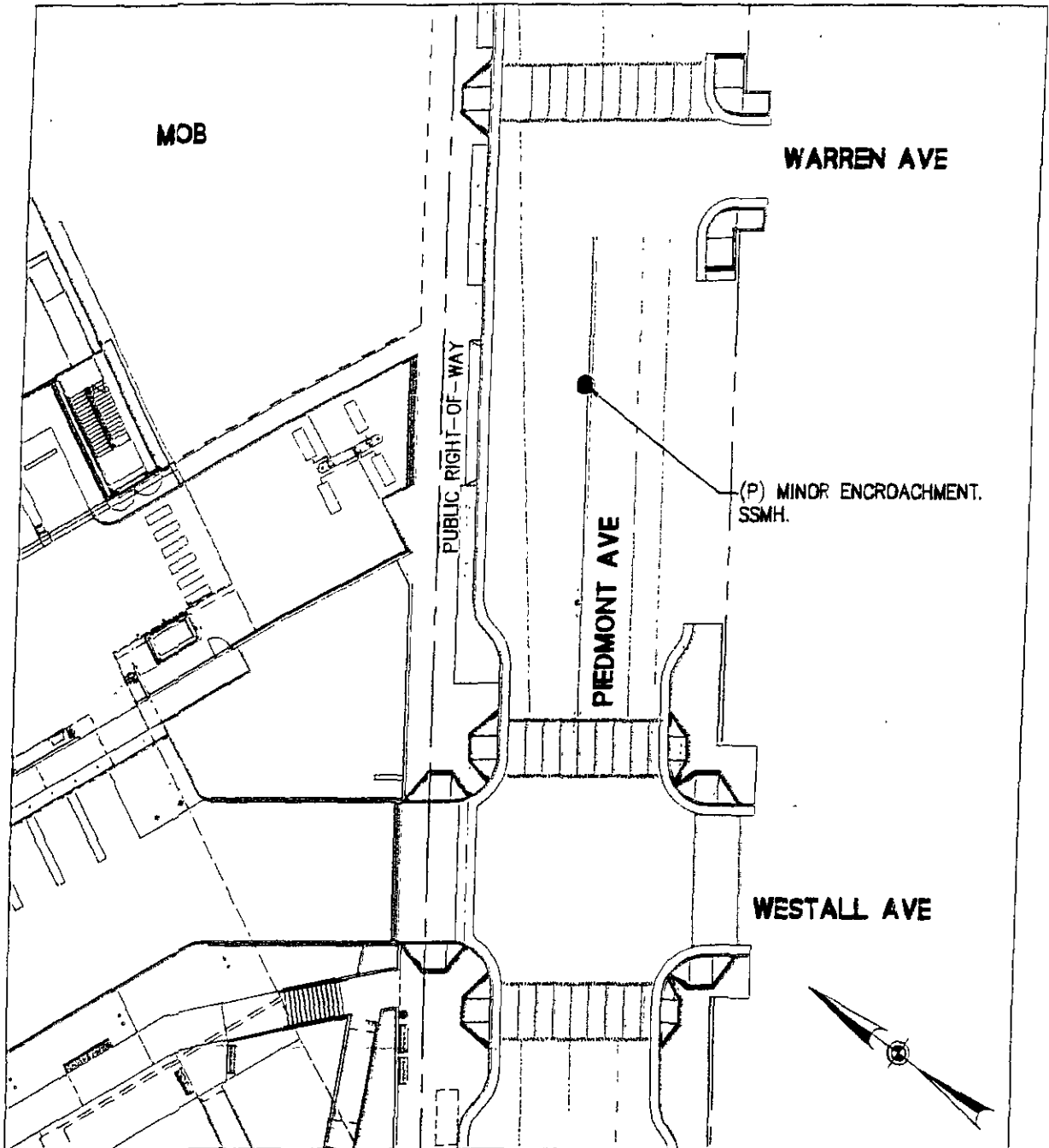


# EXHIBIT D (10 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00

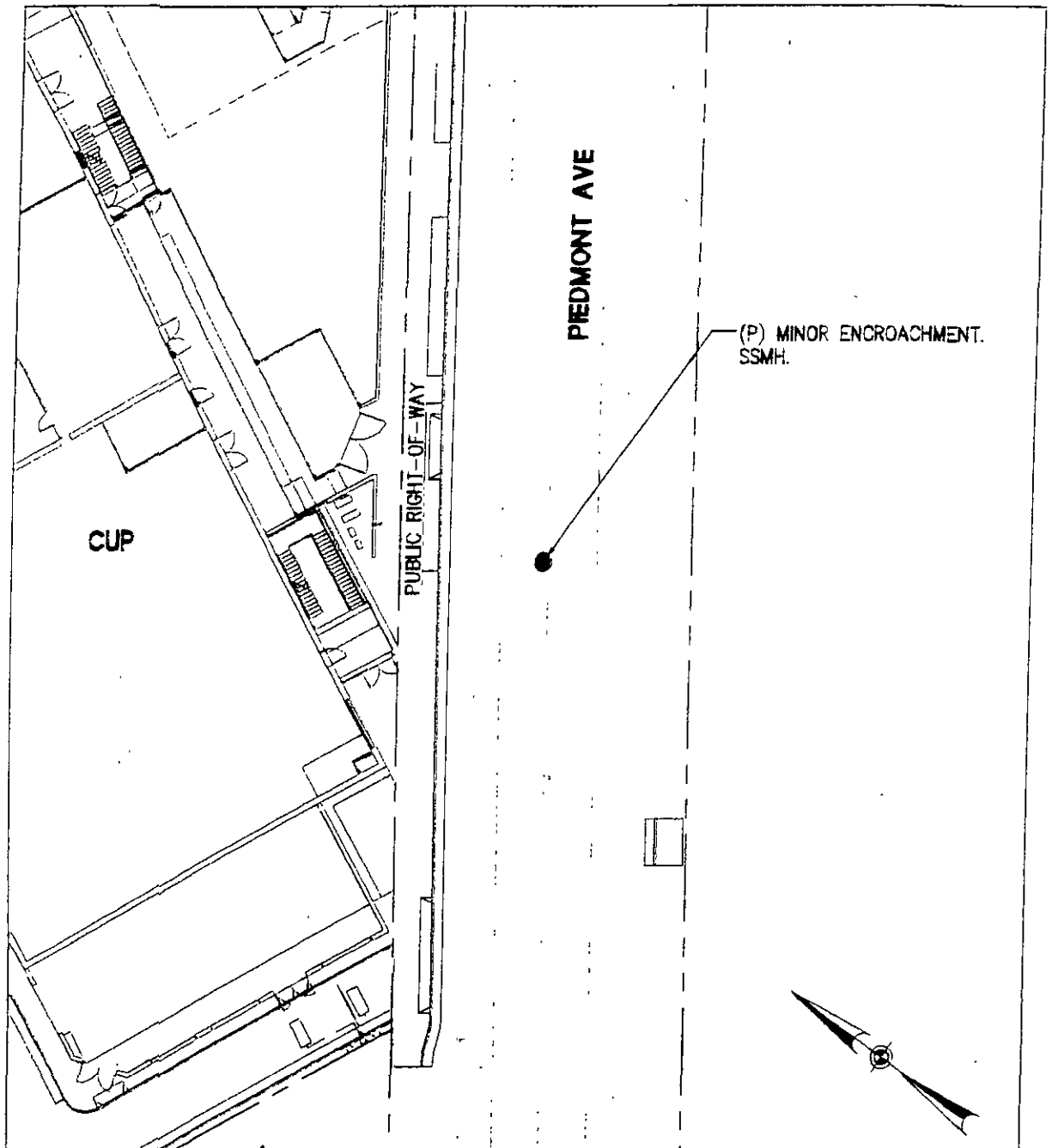


# EXHIBIT D (11 of 12)

## Limits of the Encroachment in the Public Right-Of-Way at 3600 Broadway

Address 3600 Broadway

Parcel no. 012-1024-001-00

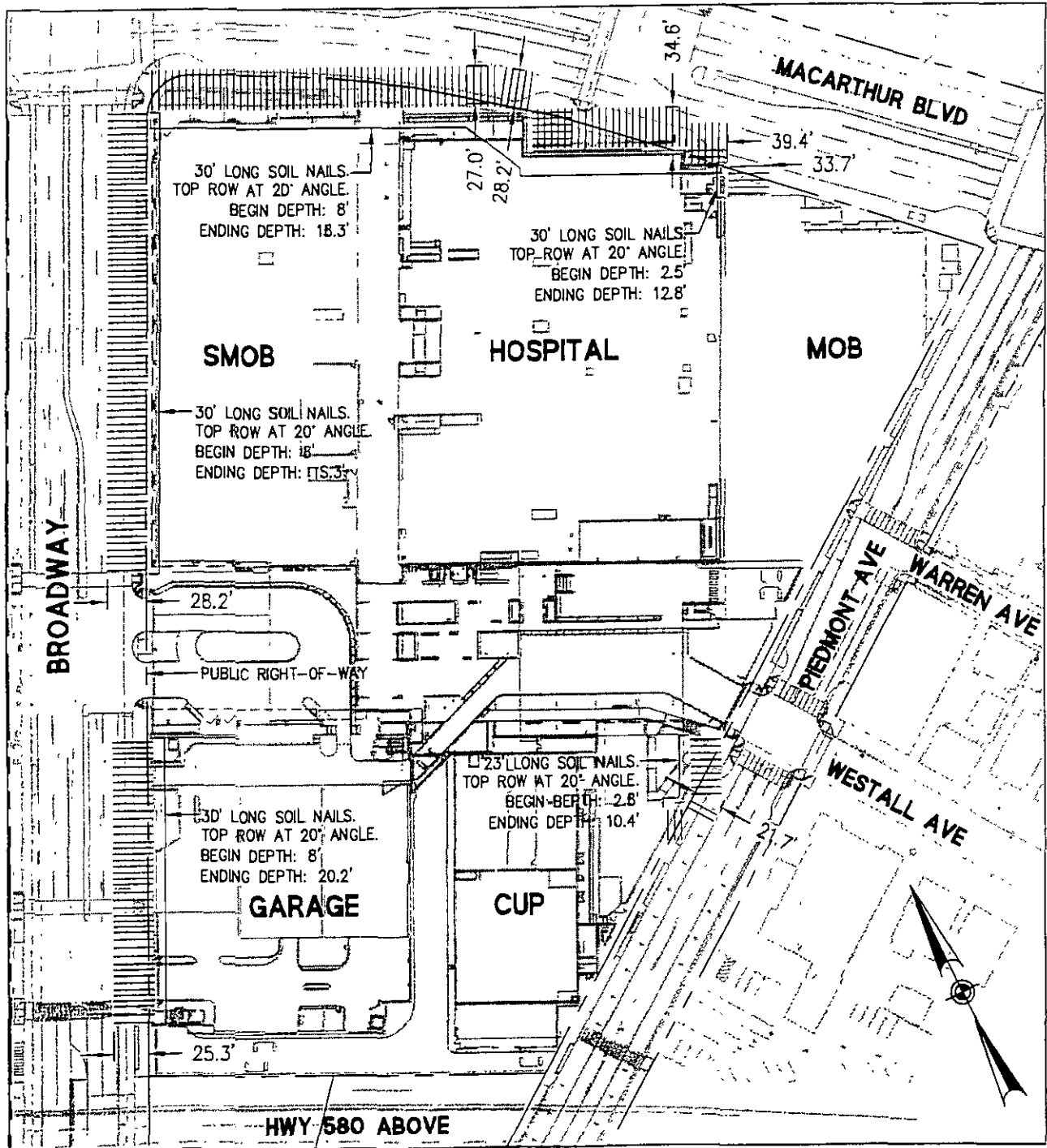


# EXHIBIT D (12 of 12)

## Limits of the Encroachment in the Public Right-Of-Way At 3600 Broadway

Address 3600 Broadway

Parcel no. 012 -1024-001-00



KAISER OAKLAND MEDICAL CENTER  
MAJOR ENCROACHMENT SHORING SOIL NAILS