

## MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number:                    8 2 7 5 0

City Council Meeting Date                            May 18, 2010

Agenda Item No.                                        7-19

Recorded Vote    8 AYES.

**Reason for Missing Legislation:**

- Draft submitted in agenda packet, original never received
- Council amended legislation at the meeting

**Responsible Contact Information**

Department    CEDA

Contact Person/Ext.                                Jim Bondi - 6654

Notes (if any)

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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2010 APR 29 PM 7:40

**DRAFT**

Introduced By

Approved For Form And Legality

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**RESOLUTION GRANTING THE OAKLAND HOUSING AUTHORITY A  
REVOCABLE AND CONDITIONAL PERMIT TO ALLOW ENTRY STAIRS AND  
AN UNDERSIDEWALK ELECTRICAL TRANSFORMER AND VAULT FOR THE  
LION CREEK CROSSINGS PHASE IV AFFORDABLE HOUSING PROJECT  
AT 814 69th AVENUE TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY  
ALONG 69th AVENUE AND 70th AVENUE**

**WHEREAS**, the Oakland Housing Authority and owner of the property described in Grant Deeds recorded by the Alameda County Clerk-Recorder set forth below, and identified by the Alameda County Assessor with parcel numbers set forth below, and identified by the City of Oakland with building addresses set forth below,

APN	ADDRESS	SERIES No.	RECORDED
041-4166-008-00	845 70th Avenue	2007041229	January 26, 2007
041-4166-009-00	841 70th Avenue	2007041229	January 26, 2007
041-4166-010-01	827 70th Avenue	2008202448	June 3, 2008
041-4166-011-01	815 70th Avenue	2003511947	August 28, 2003
041-4166-012-01	809 70th Avenue	2005225965	June 3, 2005
041-4166-012-02	6920 Snell Street	2005225965	June 3, 2005
041-4166-013-00	800 69th Avenue	2002472787	October 18, 2002
041-4166-014-00	814 69th Avenue	2004339545	July 23, 2004
041-4166-015-00	822 69th Avenue	2004185198	April 29, 2004
041-4166-016-01	830 69th Avenue	2004280245	June 22, 2004

and more particularly described in *Exhibit A* attached hereto, has made an application to the City Engineer of the City of Oakland for a permit (ENMJ 10052) to allow the installation of a new concrete vault and electrical transformer under the public sidewalk along 69th Avenue and eighteen (18) first-floor entry stairs along 69th Avenue and 70th Avenue, and

**WHEREAS**, said property is bounded by 69th Avenue, 70th Avenue, Snell Street, and Lion Way; and

**WHEREAS**, the Planning Commission of the City of Oakland has previously approved a rezoning (RZ 08248), General Plan amendment (GP 08249), Major Variance (CMV 08247), and a Planned Unit Development (PUDF 05304) for said property; and

**WHEREAS**, the owner has filed a permit application (B 0902523) with the Building Official of the City of Oakland to construct seventy-two (72) affordable housing units on said property; and

**WHEREAS**, the owner has also filed a subdivision map (PM 09847) with the City Engineer of the City of Oakland to merge said parcels comprising said property; and

**WHEREAS**, the owner has also filed an infrastructure permit application (PX 1000051) with the City Engineer to construct publicly maintained improvements in said abutting streets; and

**WHEREAS**, the transformer is necessary to provide electrical power for the new building and will be maintained by the Pacific Gas and Electric Company (PG&E); and

**WHEREAS**, the location of the vault encroachment has been approved by PG&E; and

**WHEREAS**, the Building Official has determined that location of entry stairs encroachments is necessary to assure safe exiting for residents and entry for public safety responders from first floor units in the event of an emergency; and

**WHEREAS**, the entry stairs along 70th Avenue will encroach into a public access easement which will be dedicated by the owner on said subdivision map (PM 09847); and

**WHEREAS**, the limit of the encroachments are delineated in *Exhibits B1* through *B5* attached hereto; and

**WHEREAS**, the encroachments and their locations will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

**WHEREAS**, on June 4, 2003, the Planning Commission of the City of Oakland certified the mitigated negative declaration (ER 030001) associated with environmental impacts of this project and adopted findings pursuant to the requirements of the California Environmental Quality Act (CEQA) in connection with the approval of this 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 encroachments contemplated 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 in CEQA guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines 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 not new information of substantial importance as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED:** That the encroachment, as conditioned herein, is exempt from the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the encroachments, as conditioned herein and delineated in *Exhibits B1* through *B5*, are hereby granted for a revocable permit to allow the installation of a

concrete vault and electrical transformer under the public sidewalk along 69th Avenue and eighteen (18) first-floor entry stairs along 69th Avenue and 70th Avenue; and be it

**FURTHER RESOLVED:** That the encroachments are 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 and master signal cable, street lighting and traffic 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 right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, 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, materially changed, 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 at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. 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, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, 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. This indemnification shall survive termination of this Permit; 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 solely 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, restore the premises to its original condition, and shall repair any resulting damage 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 ***Exhibit B***; 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 Permittee's 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.); 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 Engineer and shall become null and void upon the failure of the Permittee to comply with the conditions set forth herein 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 by the Alameda County Clerk-Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2010**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT BRUNNER

NOES -

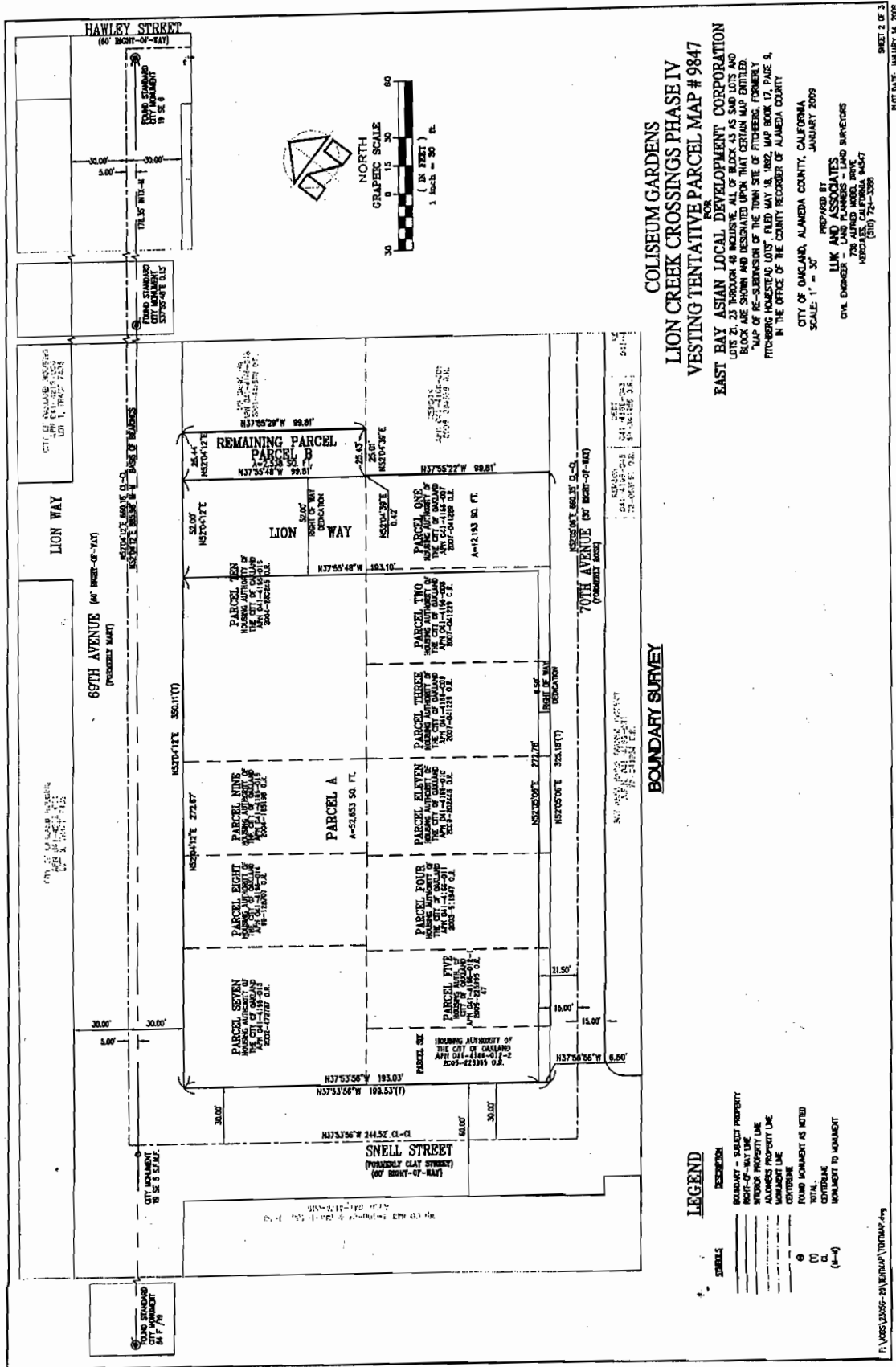
ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

# Exhibit A

## Lands of the Oakland Housing Authority



**COLISEUM GARDENS  
LION CREEK CROSSINGS PHASE IV  
VESTING TENTATIVE PARCEL MAP # 9847**

FOR  
**EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION**  
LOTS 21, 23 THROUGH 48 INCLUSIVE, ALL OF BLOCK 43 AND LOTS AND  
BLOCK ARE SHOWN AND DESIGNATED UPON THAT CERTAIN MAP ENTITLED  
"MAP OF RE-SUBDIVISION OF THE TOWN SITE OF FITCHBURG, FORMERLY  
FITCHBURG HOMESTEAD LOTS", FILED MAY 18, 1982, MAP BOOK 17, PAGE 9,  
IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA  
SCALE: 1" = 30'

PREPARED BY  
**BLK AND ASSOCIATES**  
LAND SURVEYORS AND ENGINEERS  
CIVIL ENGINEER 725 PIEDMONT AVENUE, SUITE 200  
BERKELEY, CALIFORNIA 94707  
(510) 754-3388

SHEET 2 OF 3  
PLOT DATE: JANUARY 14, 2008

P. Voss 12/26/06 - 2011/04/15/10/04/07/08/09/10/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100

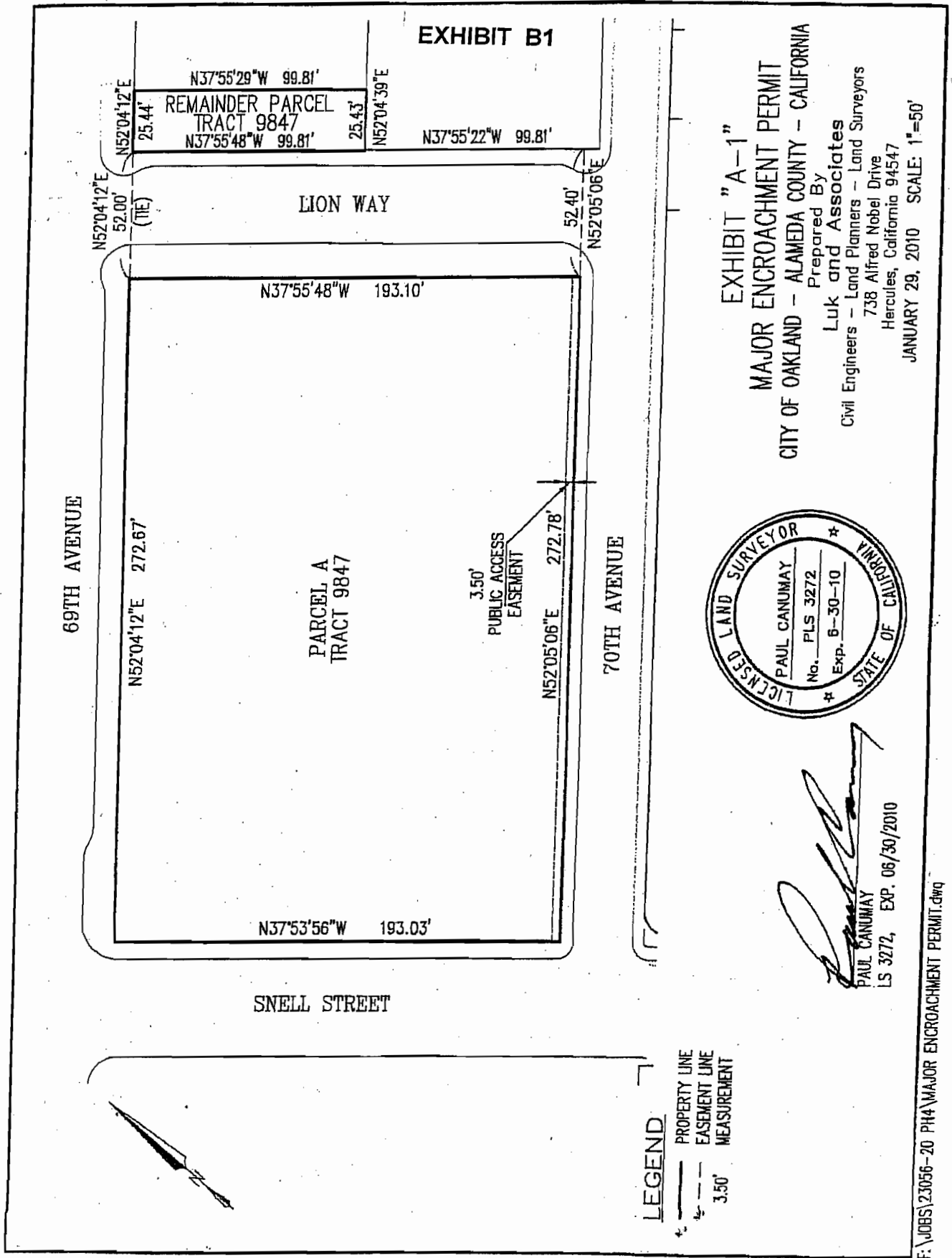


EXHIBIT B1

REMAINDER PARCEL  
TRACT 9847

LION WAY

PARCEL A  
TRACT 9847

3.50'  
PUBLIC ACCESS  
EASEMENT

70TH AVENUE

69TH AVENUE

SNELL STREET

**LEGEND**

- PROPERTY LINE
- - - EASEMENT LINE
- 3.50' MEASUREMENT

**EXHIBIT "A-1"**

MAJOR ENCROACHMENT PERMIT  
CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA

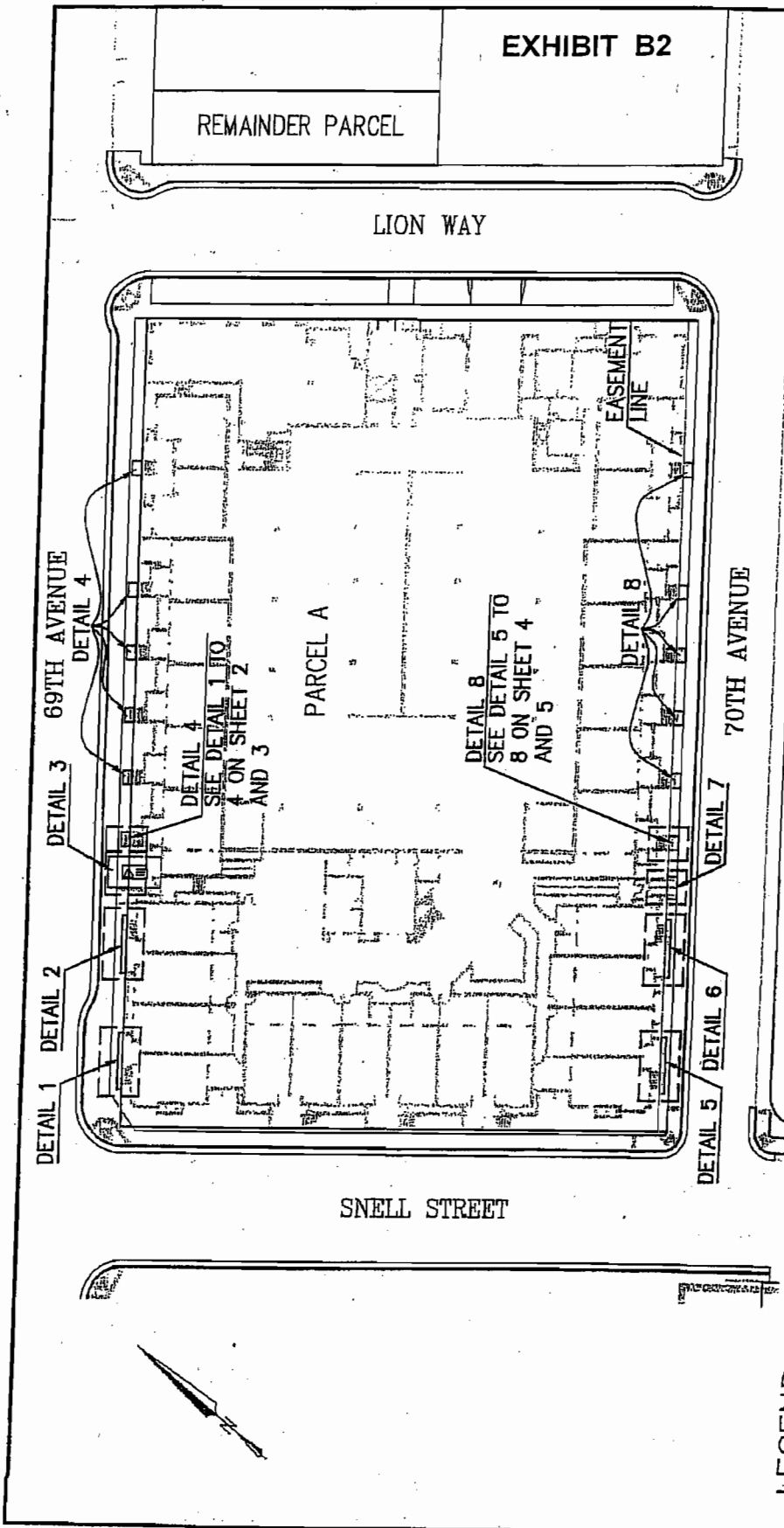
Prepared By  
**Luk and Associates**  
Civil Engineers - Land Planners - Land Surveyors  
738 Alfred Nobel Drive  
Hercules, California 94547

JANUARY 29, 2010 SCALE: 1"=50'



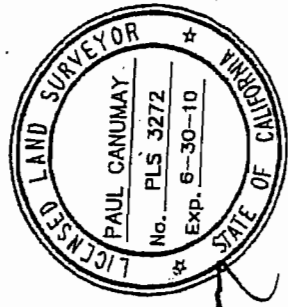
*Paul Canumay*  
PAUL CANUMAY  
LS 3272, EXP. 06/30/2010





**LEGEND**

- LIMIT LINE
- EASEMENT LINE
- \* 3.50' MEASUREMENT



*Paul Canumay*  
 PAUL CANUMAY  
 LS 3272, EXP. 06/30/2010

**EXHIBIT "B"**  
**MAJOR ENCROACHMENT PERMIT**  
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA  
 Prepared By  
**Luk and Associates**  
 Civil Engineers - Land Planners - Land Surveyors  
 738 Alfred Nobel Drive  
 Hercules, California 94547  
 JANUARY 29, 2010 SCALE: 1"=50'

EXHIBIT B3

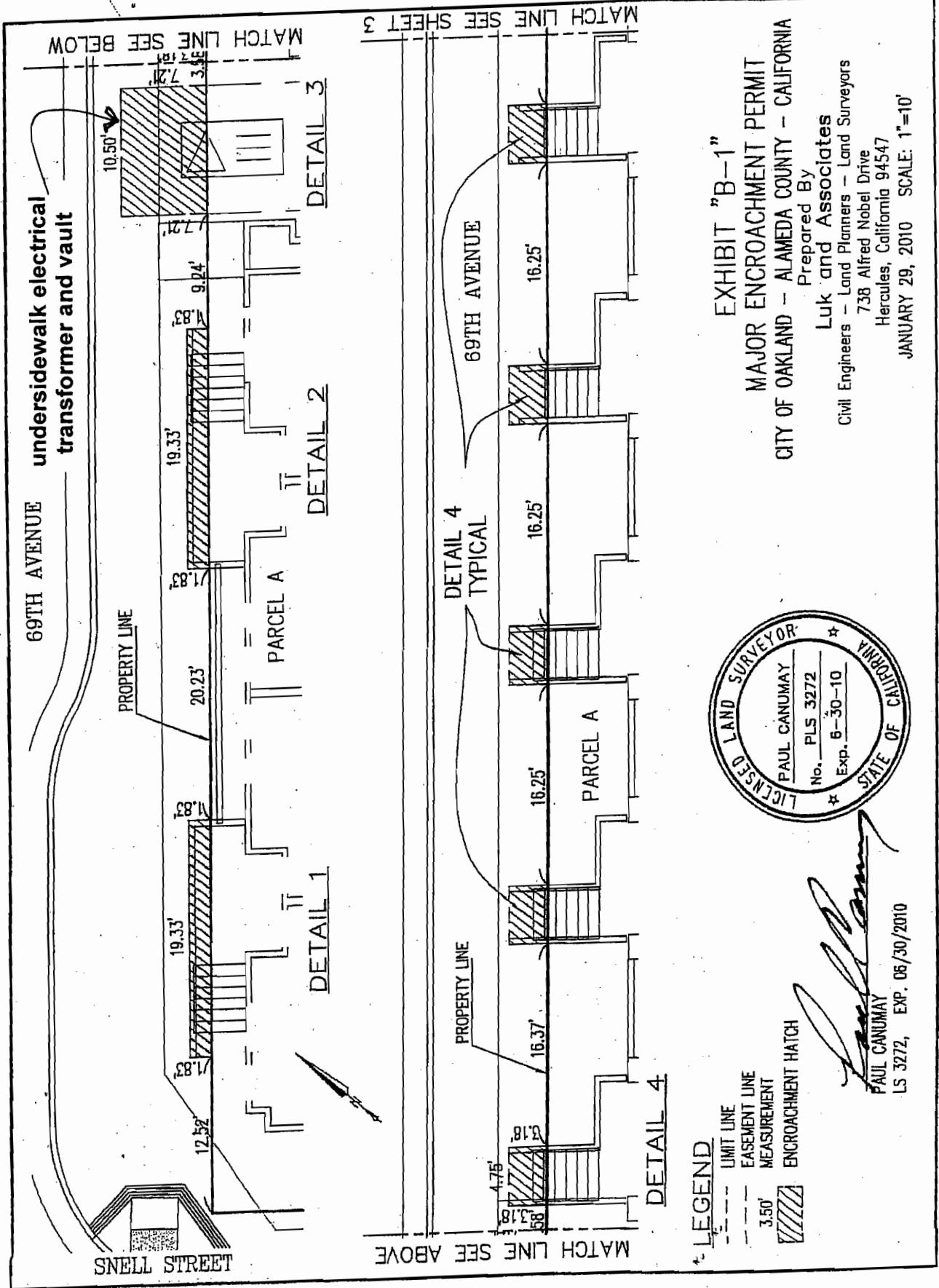
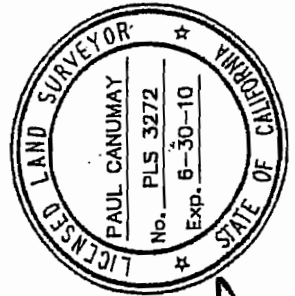
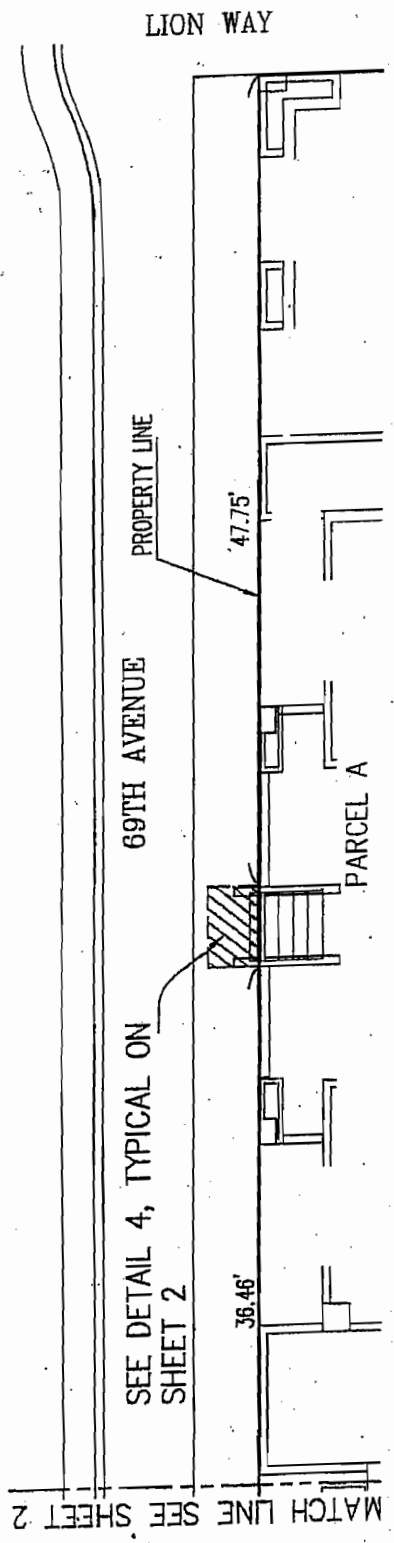


EXHIBIT "B-1"  
 MAJOR ENCROACHMENT PERMIT  
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA  
 Prepared By  
**Luk and Associates**  
 Civil Engineers - Land Planners - Land Surveyors  
 738 Alfred Nobel Drive  
 Hercules, California 94547  
 JANUARY 29, 2010 SCALE: 1"=10'

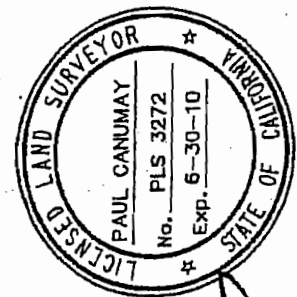


*Paul Canumay*  
 PAUL CANUMAY  
 LS 3272, EXP. 06/30/2010



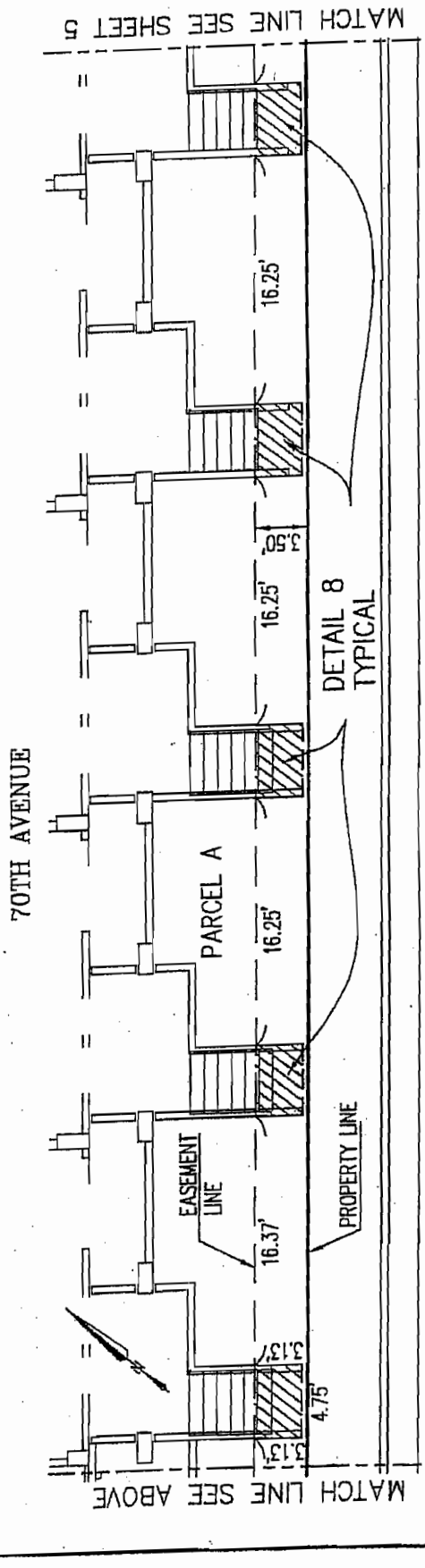
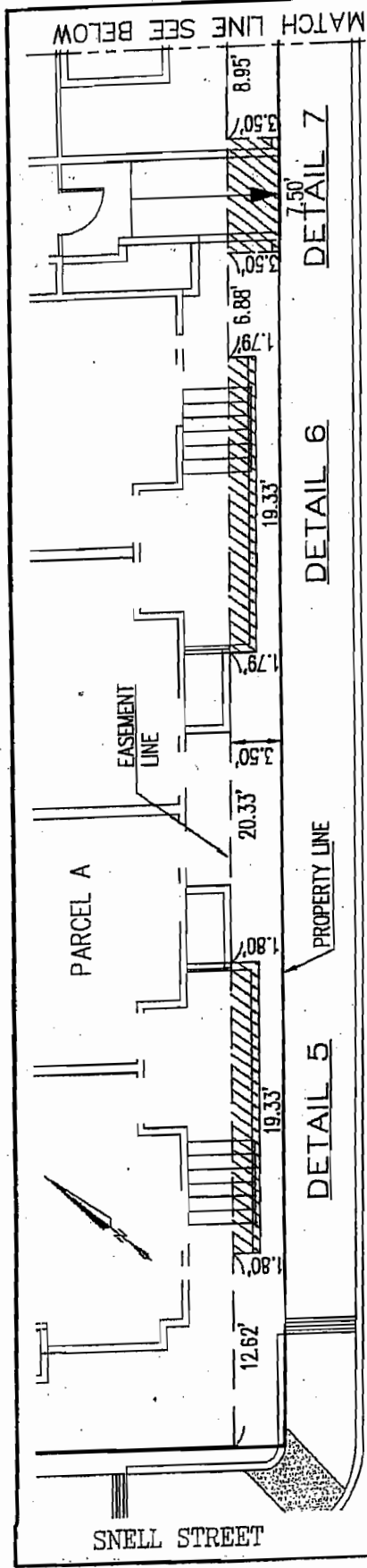
**EXHIBIT B4**

**EXHIBIT "B-2"**  
**MAJOR ENCROACHMENT PERMIT**  
**CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA**  
 Prepared By  
**Luk and Associates**  
 Civil Engineers - Land Planners - Land Surveyors  
 738 Alfred Nobel Drive  
 Hercules, California 94547  
 JANUARY 29, 2010 SCALE: 1"=10'



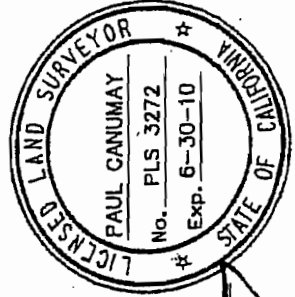
*Paul Canumay*  
 PAUL CANUMAY  
 LS 3272, EXP. 06/30/2010

EXHIBIT B5



**LEGEND**

- LIMIT LINE
- - - EASEMENT LINE
- 3.50' MEASUREMENT
- ENCROACHMENT HATCH



*Paul Canumay*

PAUL CANUMAY  
LS 3272, EXP. 06/30/2010

EXHIBIT "B-3"

MAJOR ENCROACHMENT PERMIT

CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA

Prepared By  
**Luk and Associates**  
Civil Engineers - Land Planners - Land Surveyors  
738 Alfred Nobel Drive  
Hercules, California 94547  
JANUARY 29, 2010 SCALE: 1"=10'