

OAKLAND CITY COUNCIL

RESOLUTION No. 76198 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

MPW

A RESOLUTION GRANTING JOHN O'DONOGHUE ET. AL., AND CARL EDWARD OLSON ET. AL., A CONDITIONAL REVOCABLE PERMIT FOR THE ENCROACHMENT OF ABOVE GRADE BUILDING PROJECTIONS WITHIN THE PUBLIC RIGHT-OF-WAY AREAS OF MADISON, OAK, THIRD AND FOURTH STREETS

WHEREAS, John O'Donoghue and Ann O'Donoghue, husband and wife, as Community Property and Neil S. Cotter and Mary Cotter, husband and wife and Carl Edward Olson, trustee, Carl Edward Olson Revocable Trust dated February 15, 1996 and Daniel A. Sullivan, trustee and Juanita M. Arbeloa-Sullivan, trustee, of the Sullivan Family Revocable Trust dated March 31, 1995 ("Permittee"), owners of that certain property described in the Deed, recorded April 1, 1999, Series No. 99-137350, at the Office of the County Recorder, Alameda County, California, commonly known as 311 Oak Street, have made application for a conditional revocable permit to the Council of the City of Oakland for the encroachment of above-grade building projections within the public right-of-way areas of Madison, Oak, Third and Fourth Streets; and

WHEREAS, the location of said encroachments to be granted by this resolution is delineated in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, said encroachments will not interfere with the public use of Madison, Oak, Third and Fourth Streets; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the guidelines as prescribed by the Secretary of Resources, and the City's Environmental Review Regulations have been satisfied and an Environmental Impact Report was prepared and previously certified by the City Planning Commission on November 17, 1999; now therefore,

BE IT RESOLVED: That this resolution complies with the CEQA, and the City Council relies upon the previously certified Environmental Impact Report in approving this resolution; and be it

FURTHER RESOLVED: That the Permittee is hereby granted a conditional revocable permit for the encroachment of above-grade building projections within the public right-of-way areas of Madison, Oak, Third, and Fourth Streets; and be it

FURTHER RESOLVED: That the Council of the City of W a n d , in granting this permission prescribes as special conditions thereof, the following:

1. That 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. That, after notice to Permittee, **this** permit **shall** be revocable at the reasonable discretion **of** the Council **of** the City of Oakland, **expressed** by resolution of said Council.
3. That **the** Permittee, by the acceptance, either expressed or implied, of **this** revocable permit hereby disclaims any right, title, or interest in or **to** any portion of the public right-of-way **area**, underlying the said encroachment or the *air space* above and agrees that said temporary use of said **area** **does** not constitute an abandonment **on** the **part** **of** the City of Oakland of any of its rights for **street purposes** and **otherwise**.
4. The Permittee **shall** maintain in force and effect at **all** times that said encroachment occupies said public right-of-way, **good** and sufficient fund to cover public liability and property damage, both including contractual liability insuring the City of Oakland against any and all claims arising out of the existence of said encroachment in said public right-of-way **area**.
5. That **the** Permittee, by the acceptance, either expressed or implied of **this** revocable permit agrees and **promises** to defend and hold harmless and indemnify the City of Oakland, its agents, officers, and employees, from any and every 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** said encroachment to said right-of-way **area** and street **area** 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.
6. That Permittee shall make no changes to the encroachment hereby allowed either structurally, with regard to dimension, or with respect to **use**, without the written consent of the Director of Building Services and understands that the City may impose reasonable fees and considerations for **processing** permits required for such proposed changes. Permittee *also* understands that the City is not obligated to grant **any** changes proposed by said Permittee.
7. That the Permittee, by the acceptance, either expressed or implied, of this revocable permit shall be solely and fully responsible for the repair or replacement of any portion or all of said improvements in the event that said 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 herewith.

- 8. That upon the termination of the permission herein granted, Permittee shall immediately remove said encroachment from the right-of-way area, and any damage resulting therefrom shall be repaired to the satisfaction of the Director of Building Services.
- 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. Said disclaimer and agreement shall be subject to the approval of the City Attorney and the Director of Building Services.
- 10. That the Permittee agrees to limit the amount of time that the sidewalk elevator doors are kept open. The sidewalk elevator doors shall be opened only during actual use and shall be kept closed at all other times.
- 11. 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 Director of Building Services 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.
- 12. That 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 Director of Building Services 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.

FURTHER RESOLVED: The City Clerk is hereby directed to have a certified copy of this resolution recorded at the Office of the Alameda County Recorder.

DEC 12 2000

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 19_____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, ~~CHANG~~, MILEY, NADEL, REID, ~~ROSSO~~, SPEES AND ^{WAN}
 PRESIDENT DE LA FUENTE - 17

NOES- None

ABSENT- Chang-1

ABSTENTION- None

ATTEST:

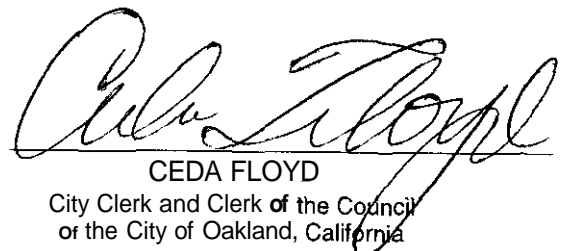
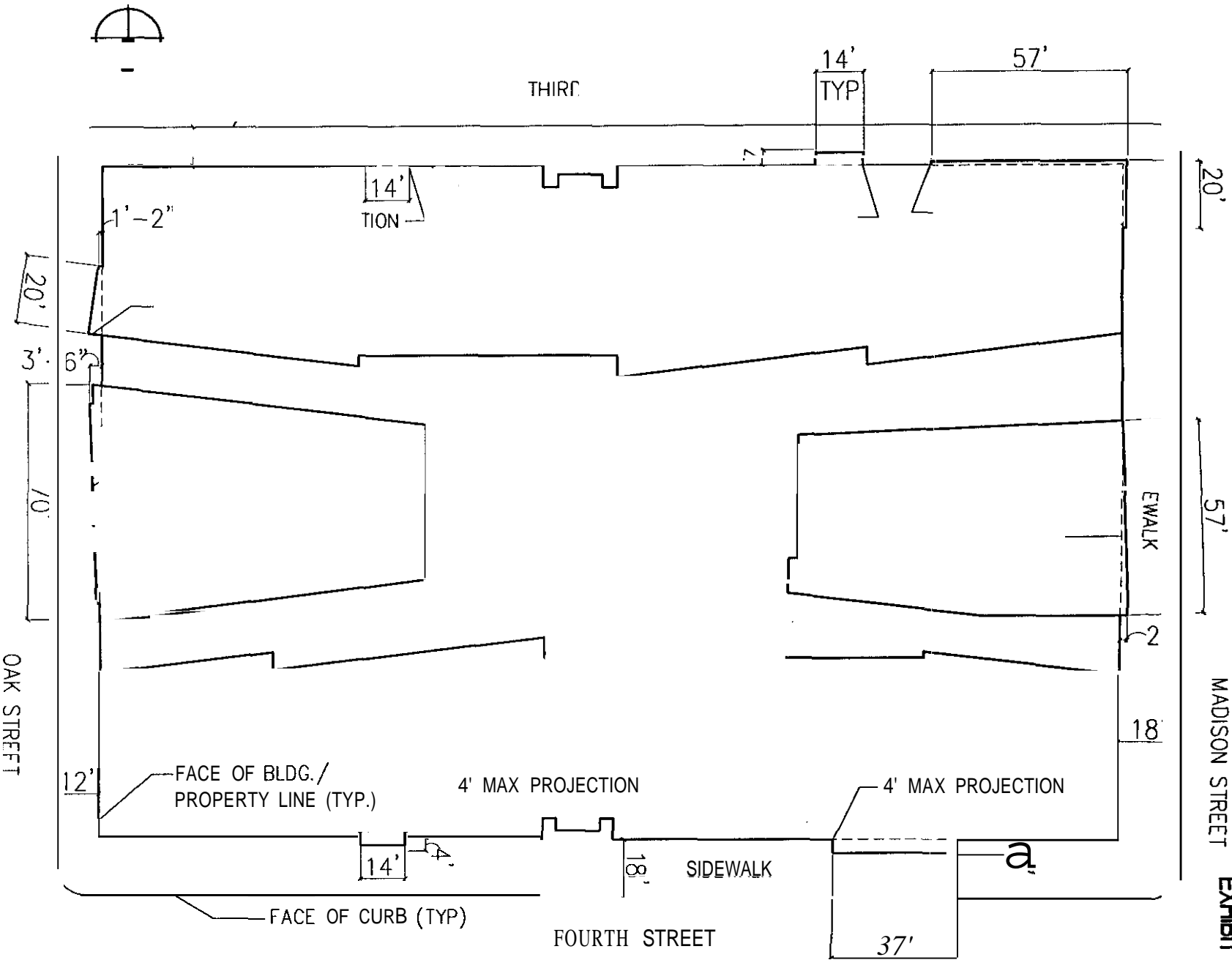

 CEDA FLOYD
 City Clerk and Clerk of the Council
 of the City of Oakland, California

EXHIBIT 'A'



NOTE: ELEVATION TO B.O. LOWEST PROJECTION = 21.20'

masih
ARCHITECTS

348 FIRST STREET
SAN FRANCISCO, CA 94108
FAX 415 357 1730
2830 NINTH STREET
BERKELEY, CA 94710
FAX 510 844 1929

PROJECT:
JACK LONDON HOUSING
311 OAK STREET
OAKLAND, CA 94607

SKETCH TITLE:
**PROPOSED ENCROACHMENT PLAN
AT 311 OAK STREET**

JOB NO.: 9900
DATE: 11.20.00

DRAWN:
CHECKED:
REVISION NO.:
SCALE: NOT TO SCALE

REF. DETAIL NO.:
REF. SHEET NO.:
SKETCH NUMBER: