

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 APR 29 PM 7:41

Approved For Form And Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 82745 C.M.S.

RESOLUTION CONDITIONALLY APPROVING THE REALIGNMENT OF AN EXISTING STORMWATER DRAINAGE EASEMENT LOCATED AT 187 CHADBOURNE WAY

WHEREAS, the Hampton and Johnella Barnett Trust, as "Permittee" and owners of the real property described in a Grant Deed, recorded March 20, 1995, series no. 95060328, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 037A-3150-022-00, and identified by the City of Oakland as 187 Chadbourne Way and Lot 41, and more particularly described in *Exhibit A* attached hereto, have made an application (PPE 09066) to the City Engineer of the City of Oakland to realign an existing public service easement located in the rear of said parcel adjacent to an existing single family residence; and

WHEREAS, said owners have also filed an application (RB 1000345) with the Building Official of the City of Oakland to construct a room addition at the rear of their single family dwelling which will expand the footprint of their residence by approximately five hundred (500) square feet; and

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

WHEREAS, said easement across Lot 41 was dedicated by the Sterling Development Company through a subdivision map for Tract 1614, filed May 16, 1956, series no. AL 52653, book 37 of maps, page 19, by the Alameda County Recorder, and accepted by the City of Oakland through Council Resolution No. 34365 C.M.S., attached hereto as *Exhibit B*; and

WHEREAS, the City Engineer, in consultation with the Public Works Agency of the City of Oakland, has determined that the alignment of said easement may be adjusted away from said residence and the drainage pipe may be reconstructed within said relocated easement so that stormwater will continue to be adequately conveyed to a downstream facility; and

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

WHEREAS, the limits of said realigned easement are delineated diagrammatically and described texturally in *Exhibits D* and *E*, attached hereto; and

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

WHEREAS, said owners have also filed a permit (PX 1000052) with the City Engineer to reconstruct a replacement stormwater pipe within said realigned easement and with sufficient clearance from said room addition to provide improved access for maintenance by City personnel; 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 D and E*, of the existing public service easement located at 187 Chadbourne Way is hereby approved; and be it

FURTHER RESOLVED: That this approval shall become immediately void and the property owner shall be required to file a new application for said realignment and pay new fees in the event that the final acceptance by the City Engineer and the expiration of the one (1) year warrantee period for re-constructing the existing drainage pipe does not occur within three (3) years following the date of approval of this Resolution by the Council of the City of Oakland; and be it

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

1. the Permittee, by the acceptance of this realignment of the existing public service easement, 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 said vacation and regardless of responsibility for negligence; and
2. the Permittee 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 Permittee agrees that it will use the easement area in the future at its own risk; and
3. the Permittee acknowledges 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 (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

4. 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
5. 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
6. the hereinabove conditions shall be binding upon the Permittee 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, MAY 18 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

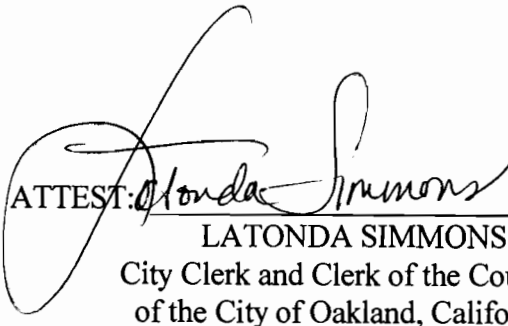
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Lands of Hampton Barnett & Johnella Barnett, as described in a Grant Deed, recorded March 20, 1995, Series No. 95060328, by the Alameda County Clerk-Recorder

Lot 41, Tract 1614, filed May 15, 1956 Map Book 37, pages 19 and 20, Alameda County Records.

ASSESSOR'S MAP 37A

3150

Scale: 1" = 100'

TRACT 1614 (Bk.37 Pg.19)
P.M. 2322 (Bk.102 Pg.04)

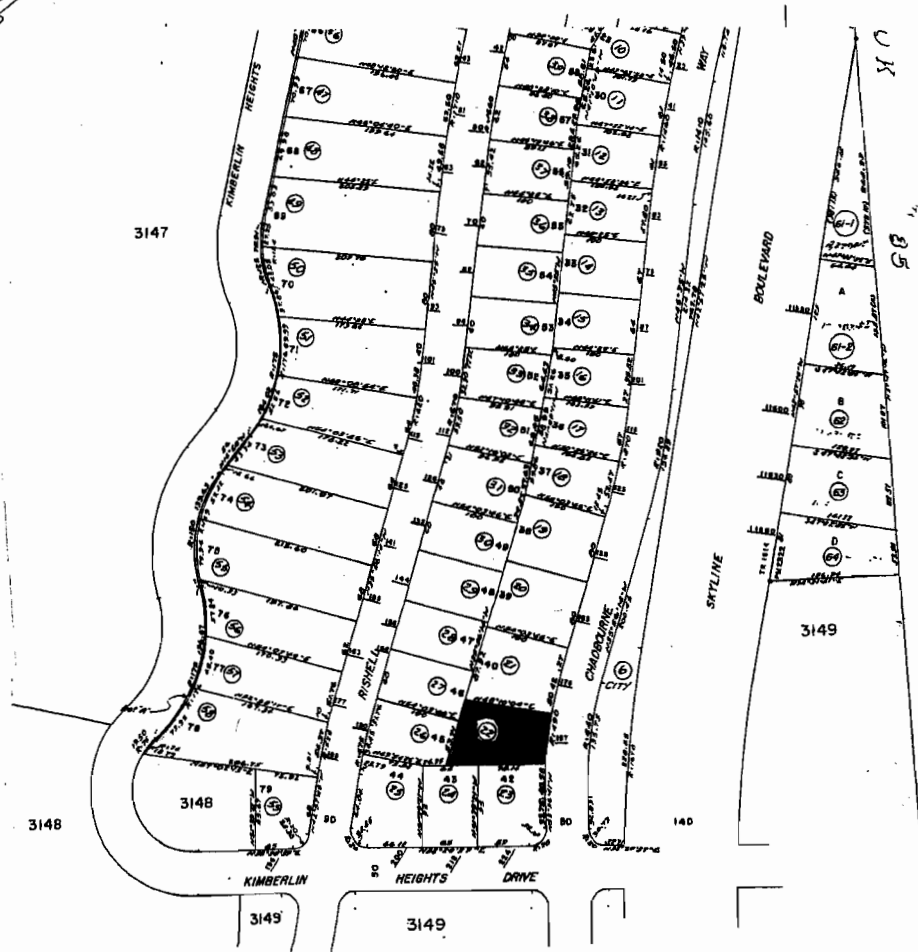
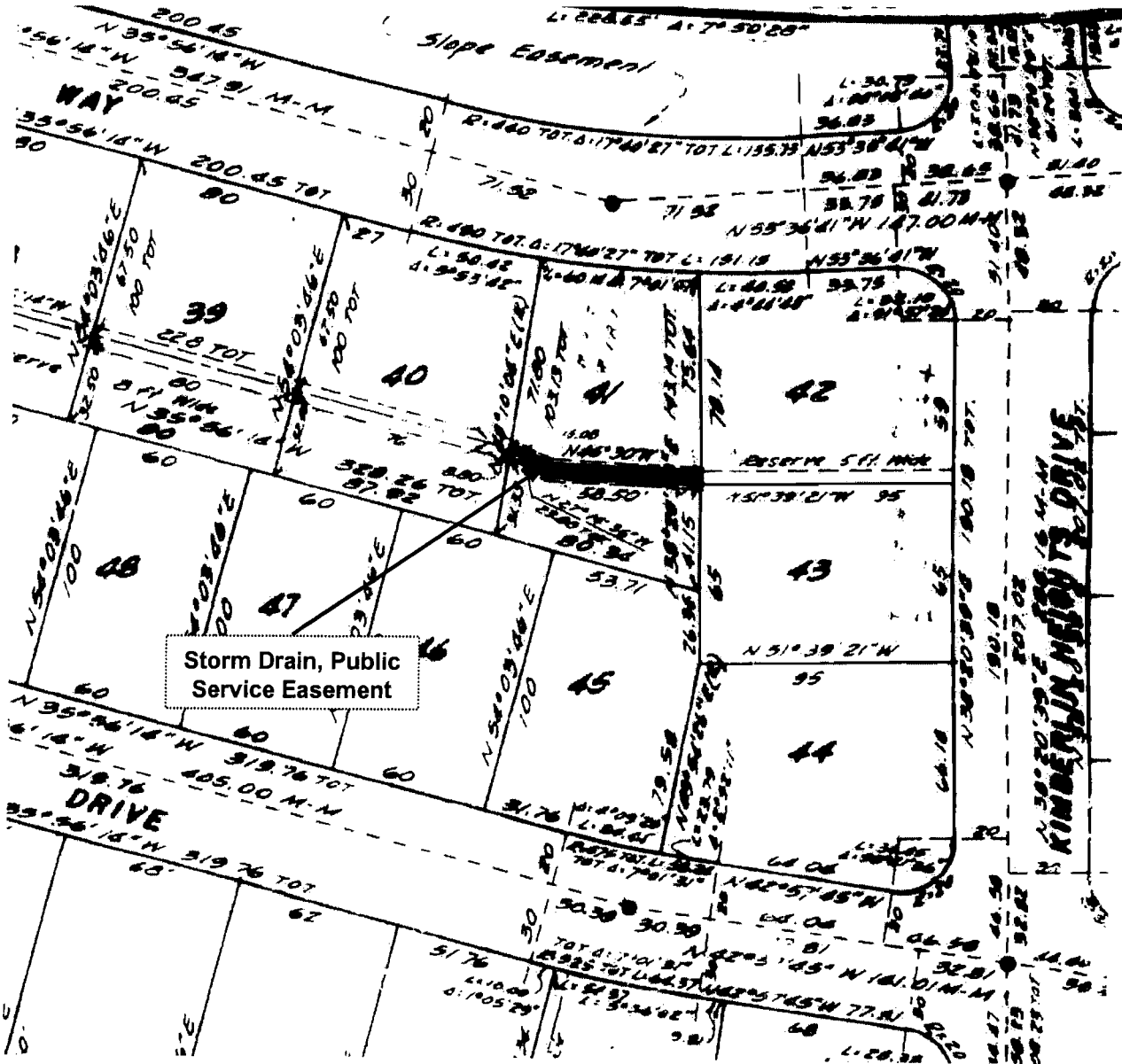


Exhibit B

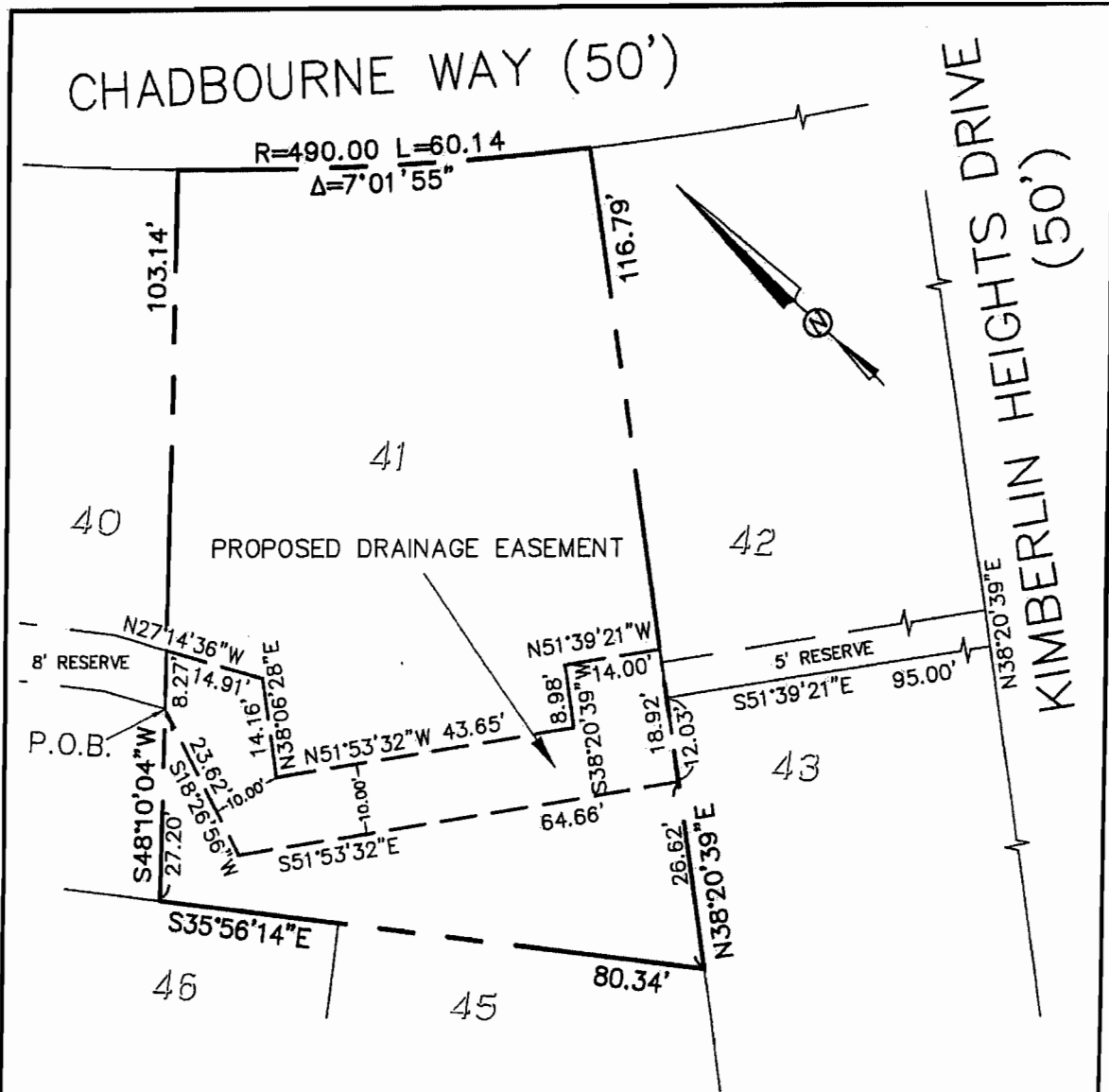
Delineation of storm drain easement accepted by the City of Oakland in 1956 through Tract Map 1614, AL-52653, Book 37, Page 19 and 20



Tract 1614

Exhibit D

Location Of The New Dedicated Public Service Easement



PROPOSED DRAINAGE EASEMENT



LOT 41
 TRACT 1614 (37 M 19)
 LOCATED AT 187 CHADBOURNE WAY
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA
 JANUARY, 2010 SCALE: 1" = 20'

MORAN ENGINEERING, INC.

CIVIL ENGINEERS \ LAND SURVEYORS
 1930 SHATTUCK AVENUE, SUITE A
 BERKELEY, CALIFORNIA 94704
 (510) 848-1930

Exhibit E

Description Of The New Dedicated Public Service Easement

LEGAL DESCRIPTION

DESCRIPTION OF A DRAINAGE EASEMENT OVER THE PROPERTY COMMONLY KNOWN AS 187 CHADBOURNE WAY, OAKLAND

Real Property in the City of Oakland, County of Alameda, State of California, described as follows:

A portion of Lot 41, as said lot is shown on the map of Tract 1614, filed May 15, 1956 in Book 37 of Maps, Page 19, Official Records of Alameda County, more particularly described as follows:

Beginning at the intersection of the northwestern line of said Lot 41 with the southwestern line of the 8 foot wide Reserve as said reserve is shown on said Tract (37 M 19);

Thence South 18° 26' 56" West, 23.62 feet;

Thence South 51° 53' 32" East, 64.66 feet to the southeastern line of said Lot 41;

Thence along said southeastern line, North 38° 20' 39" East, 18.92 feet;

Thence North 51° 39' 21" West, 14.00 feet;

Thence South 38° 20' 39" West, 8.98 feet;

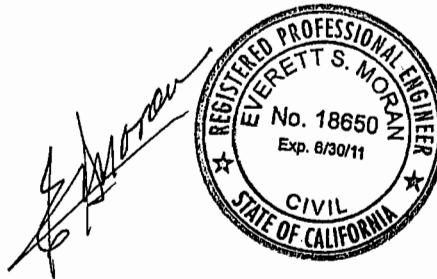
Thence North 51° 53' 32" West, 43.65 feet;

Thence North 38° 06' 28" East, 14.16 feet to the northeastern line of the said 8 foot wide Reserve;

Thence along said northeastern line, North 27° 14' 36" West, 14.91 feet to the northwestern line of said Lot 41;

Thence along said northwestern line, South 48° 10' 04" West, 8.27 feet to the Point of Beginning.

6512 Chadbourne DrainEase forCity.doc
APN 037A-3150-022



Job No. 05-6512
January 13, 2010