

CITY OF OAKLAND
Agenda Report

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

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: May 11, 2010

RE: A Report And Resolution Granting The Oakland Housing Authority A Revocable And Conditional Permit For The Lion Creek Crossings Phase IV Affordable Housing Project At 814 69th Avenue To Allow Entry Stairs And An Undersidewalk Electrical Transformer And Vault To Encroach Into the Public Right-Of-Way Along 69th Avenue and 70th Avenue

SUMMARY

A resolution has been prepared granting the property owner, Oakland Housing Authority, a conditional and revocable permit (EMNJ 10052) to allow a new electrical transformer and vault and new entry stairs for eighteen (18) residential units to encroach into the public right-of-way.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

KEY ISSUES AND IMPACTS

The new residential building, which is currently being designed, is located on a one (1) acre lot bounded by 69th Avenue, 70th Avenue, Snell Street, and Lion Way. The building footprint occupies the entire site, and portions of the front entry stairs for eighteen (18) ground-floor units encroach approximately three (3) feet into the right-of-way along 69th Avenue and 70th Avenue. Pacific Gas & Electric requires an undersidewalk vault for its new electrical transformer serving the four (4) story, seventy-two (72) unit building with a parking garage.

Oakland Municipal Code Section 12.08.030 requires that these types of encroachments receive approval of the City Council. The encroachments will not interfere with pedestrian access or vehicle traffic or buried utilities. The City Council has previously approved similar encroachments for new construction throughout Oakland.

SUSTAINABLE OPPORTUNITIES

Economic

The project will provide construction employment opportunities for the Oakland community.

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Environmental

Land use approvals and construction permits for real property and building improvements require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and pollutant runoff.

Social Equity

The residential project will increase the affordable housing stock for Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

The design of the project will conform to State and City requirements for handicapped accessibility.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution approving the proposed vault and stair encroachments.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution granting the Oakland Housing Authority a conditional and revocable permit to allow a new electrical utility vault and new entry stairs to encroach into the public right-of-way.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
City Engineer
Building Services Division

APPROVED AND FORWARDED TO
THE PUBLIC WORKS COMMITTEE



Office of the City Administrator

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

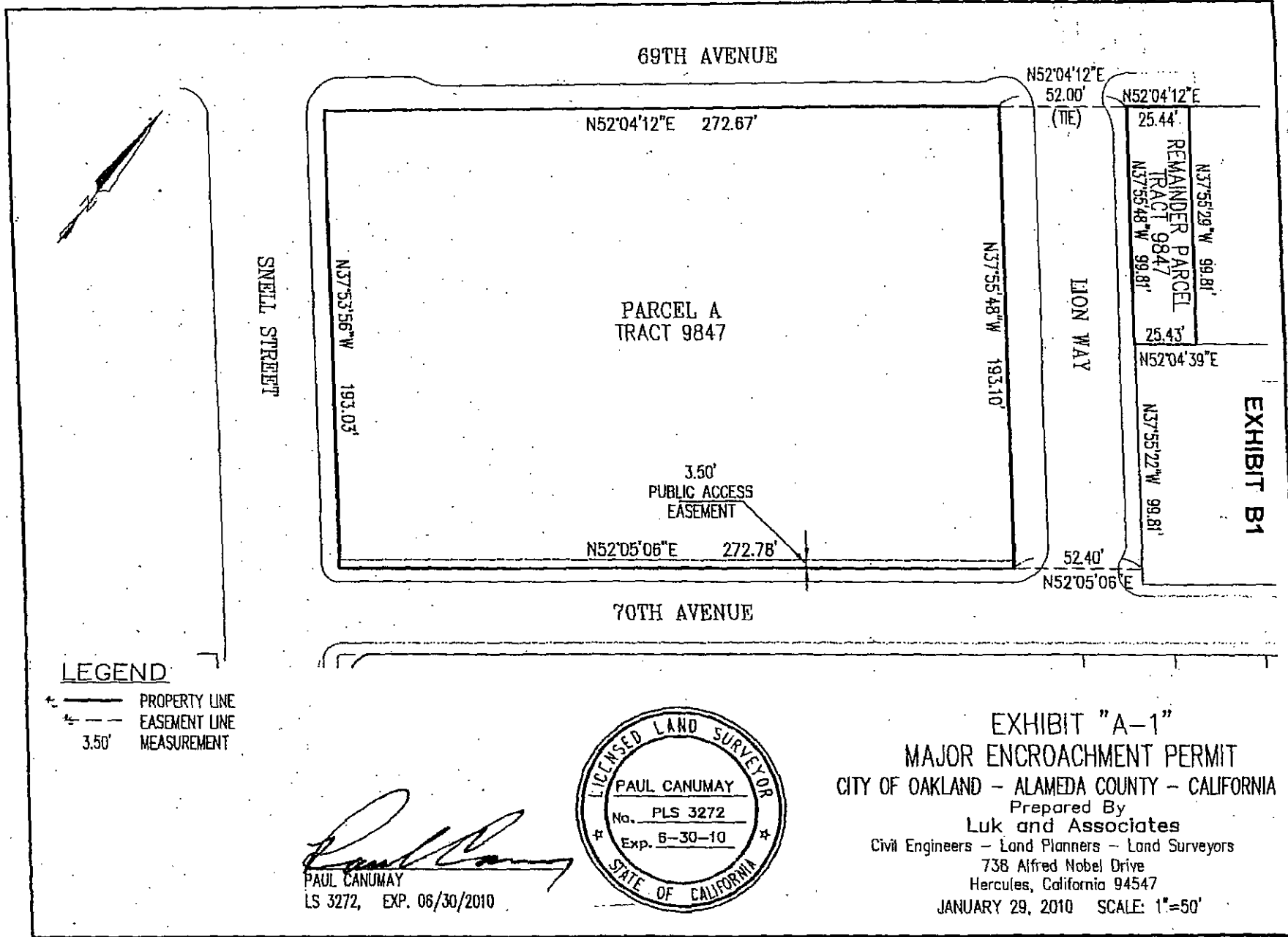
NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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



LEGEND

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

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

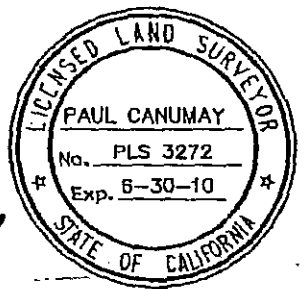
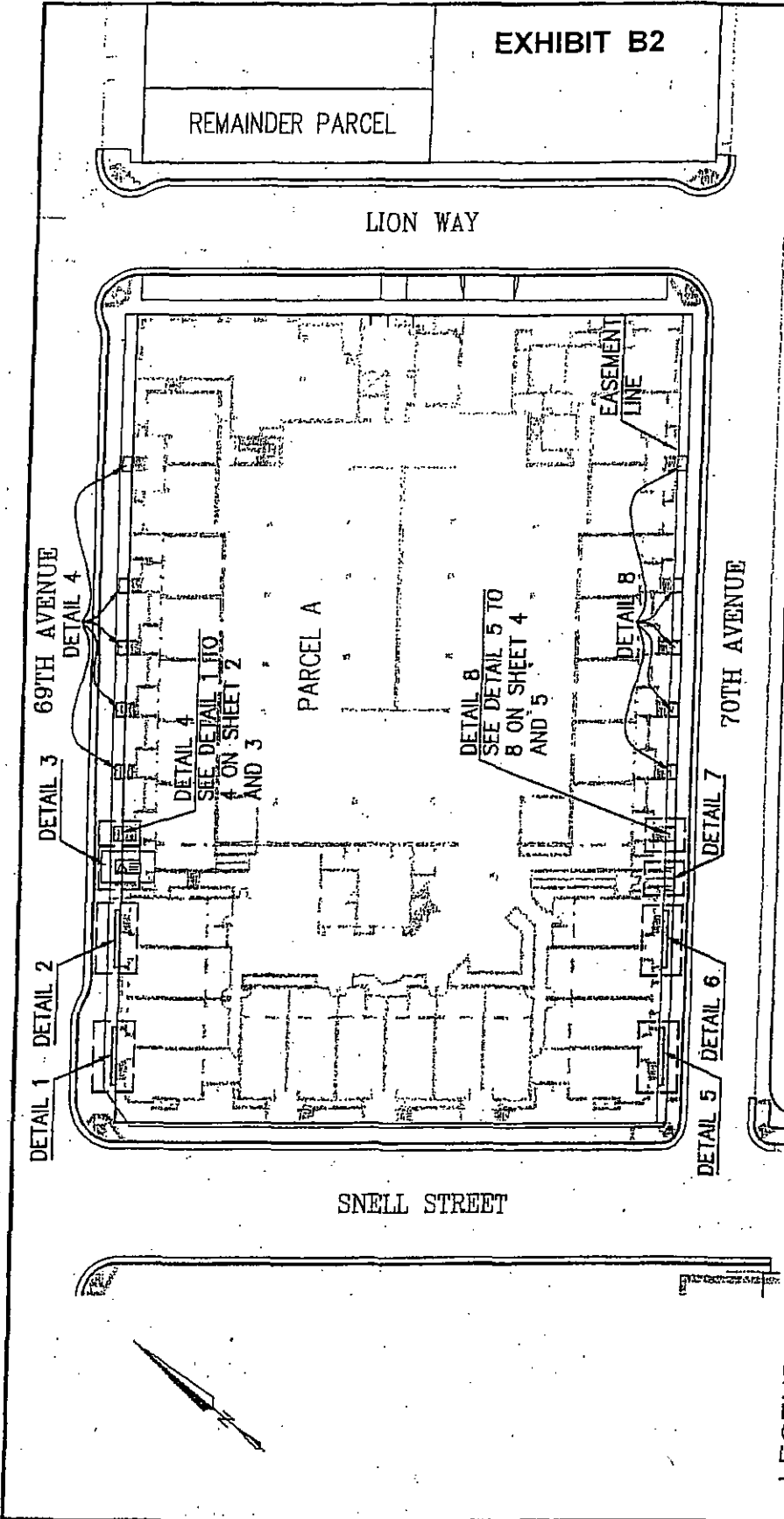


EXHIBIT "A-1"
 MAJOR ENCROACHMENT PERMIT
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA
 Prepared By
Luk and Associates
 Civil Engineers - Land Planners - Land Surveyors
 738 Alfred Nobel Drive
 Hercules, California 94547
 JANUARY 29, 2010 SCALE: 1"=50'



LEGEND

- LIMIT LINE
- - - EASEMENT LINE
- + 3.50' MEASUREMENT

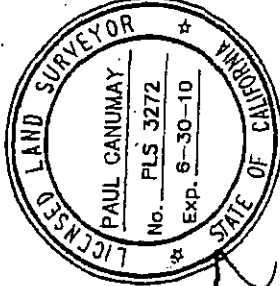


EXHIBIT "B"
MAJOR ENCROACHMENT PERMIT
CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA

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

JANUARY 29, 2010 SCALE: 1"=50'

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

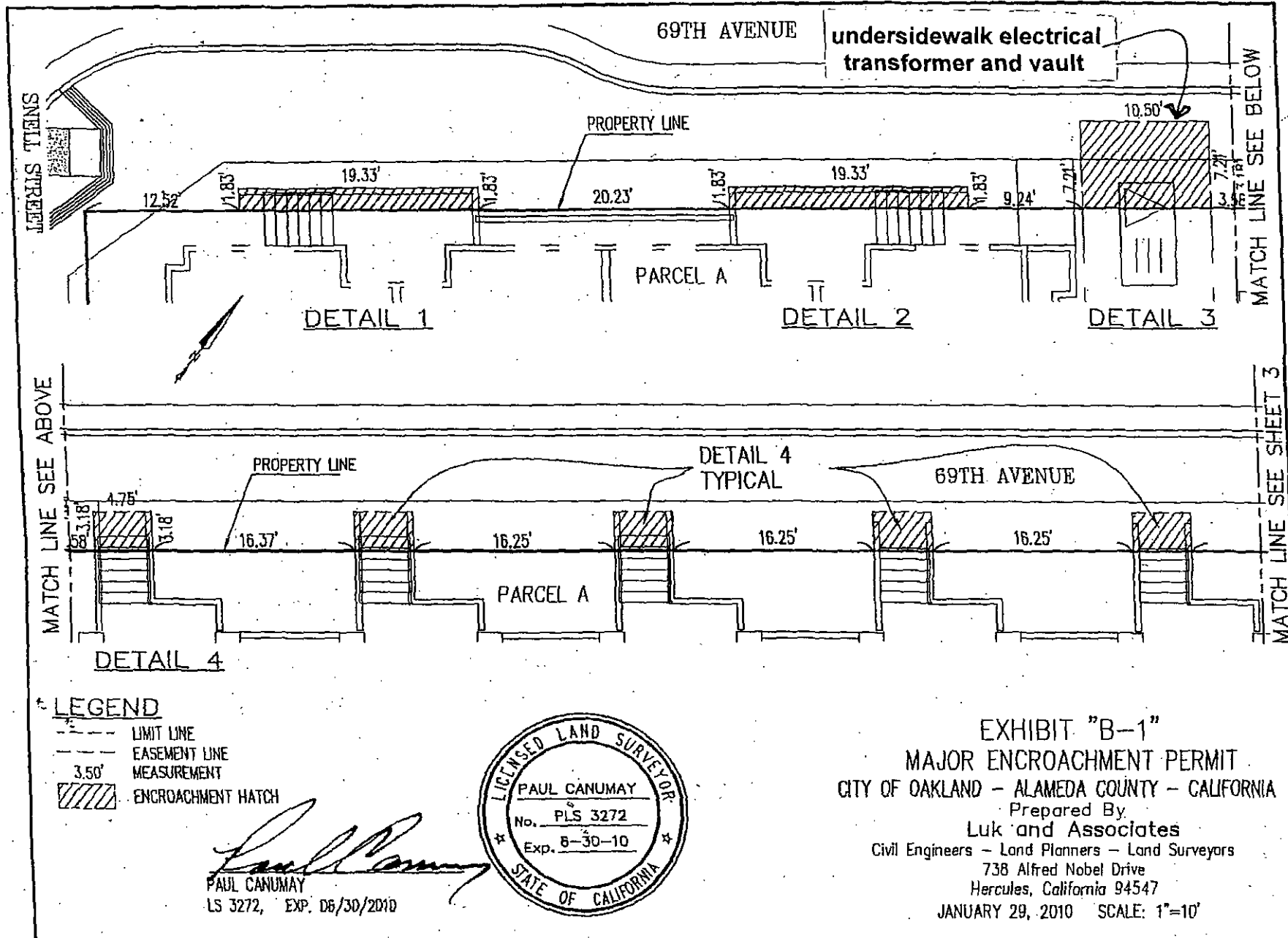


EXHIBIT B3

MATCH LINE SEE SHEET 2

SEE DETAIL 4, TYPICAL ON SHEET 2.

69TH AVENUE

PROPERTY LINE

LION WAY

36.46'

47.75'

PARCEL A

LEGEND


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

EXHIBIT B4



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

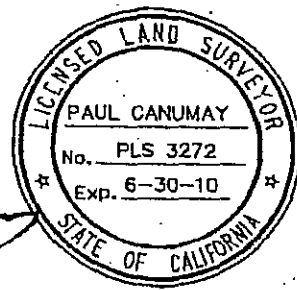


EXHIBIT "B-2"
 MAJOR ENCROACHMENT PERMIT
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA
 Prepared By
Luk and Associates
 Civil Engineers - Land Planners - Land Surveyors
 738 Alfred Nobel Drive
 Hercules, California 94547
 JANUARY 29, 2010 SCALE: 1"=10'

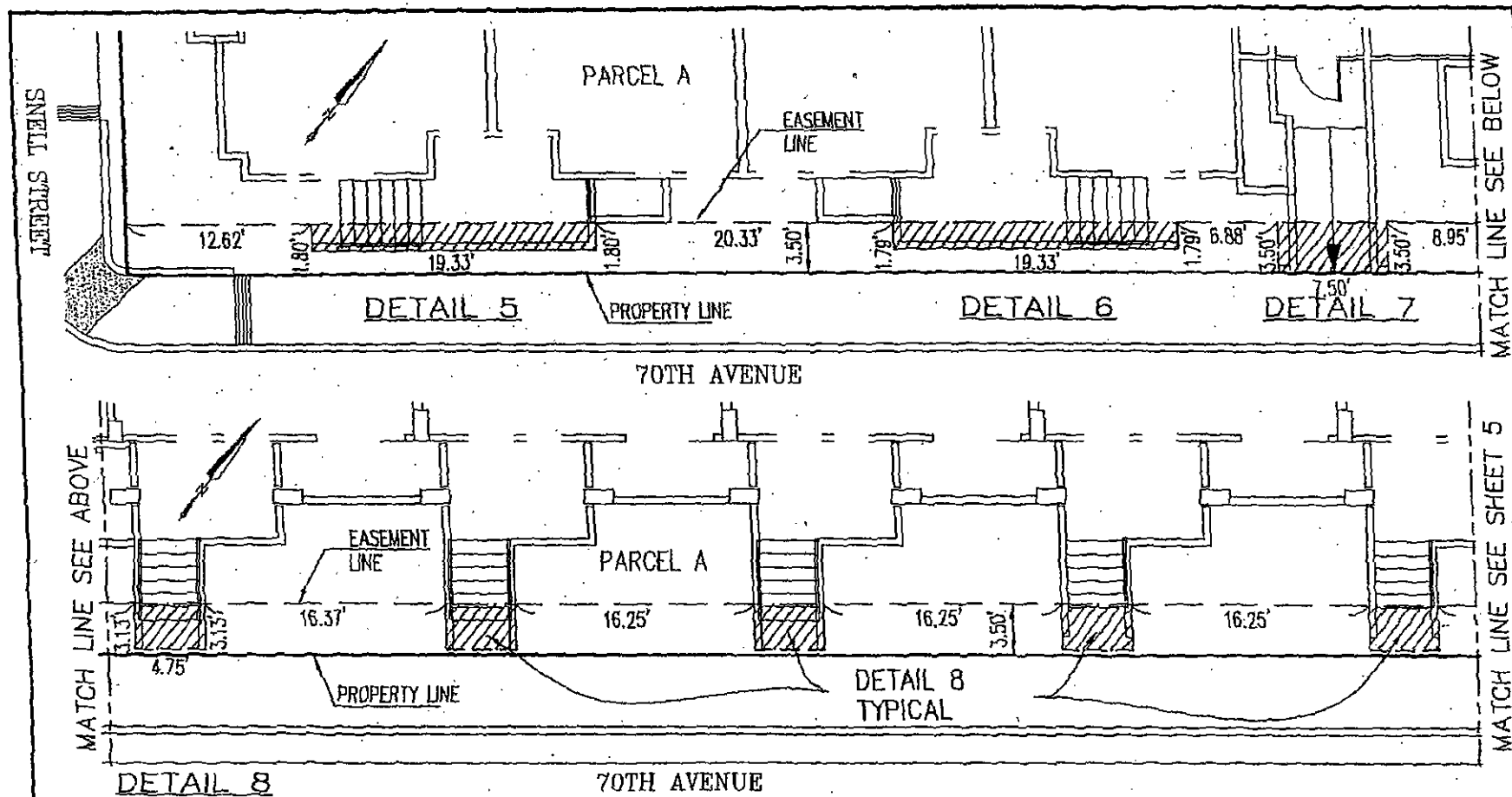


EXHIBIT B5

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

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

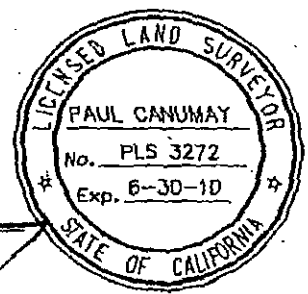


EXHIBIT "B-3"
 MAJOR ENCROACHMENT PERMIT
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA
 Prepared By
 Luk and Associates
 Civil Engineers - Land Planners - Land Surveyors
 738 Alfred Nobel Drive
 Hercules, California 94547
 JANUARY 29, 2010 SCALE: 1"=10'