

Introduced By

Approved For Form And Legality

2007 AUG 23 AM 11:26

F. Faiz

Councilmember

City Attorney

OAKLAND CITY COUNCIL**RESOLUTION No. 80825 C.M.S.****RESOLUTION VACATING A PUBLIC SERVICE EASEMENT AT 4850
CLAREWOOD DRIVE TO THE ROMAN CATHOLIC WELFARE CORPORATION
OF OAKLAND FOR SAINT THERESA PAROCHIAL SCHOOL**

WHEREAS, the Roman Catholic Welfare Corporation of Oakland (C0434342), as "Permittee" and owners of the property described in a Grant Deed, recorded June 29, 1962, Series No. AT 87752, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048B-7152-008-02, and identified by the City of Oakland as 4850 Clarewood Drive, and identified by the Roman Catholic Archdiocese of Oakland as Saint Theresa Parochial School, and more particularly described in *Exhibit A* attached hereto, has made application to the Council of the City of Oakland to summarily vacate an unused and unneeded storm water drainage public easement (PPE 0700678) to facilitate a proposed expansion of classrooms for the elementary school (CDV 07127); and

WHEREAS, said easement was dedicated by the Claremont Pines Corporation and accepted by the City of Oakland in 1938 by Resolution 6138 C.M.S., attached hereto as *Exhibit B*; and

WHEREAS, the Public Works Agency of the City of Oakland has determined that said easement has no public utilities within it and has never been used for the purpose for which it was dedicated and is not needed in the future for such purpose; and

WHEREAS, pursuant to the California Streets and Highways Code, sections 8333 and 8334.5, the legislative body of a local agency may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utility facilities within the existing easement; and

WHEREAS, the limits of said easement are delineated diagrammatically in *Exhibit C* attached hereto and are described texturally in said dedication by the Claremont Pines Corporation, recorded March 1, 1938, series II 9504, book 3587, page 214, by the Alameda County Recorder; 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 proposed summary vacation of the existing public service easement does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the summary vacation of the existing public service easement delineated in *Exhibit B* at 4850 Clarewood Drive to the Roman Catholic Welfare Corporation of Oakland, as conditioned herein under, is hereby granted; and be it

FURTHER RESOLVED: That the vacation is hereby conditioned by the following special requirements:

1. the Permittee, by the acceptance of this vacation, 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 this resolution shall take effect upon its recordation by the Alameda County Clerk-Recorder; 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, SEP 18 2007, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, ~~KERNIGHAN~~, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 7

NOES - 0

ABSENT - Kernighan - 1

ABSTENTION - 0

ATTEST.

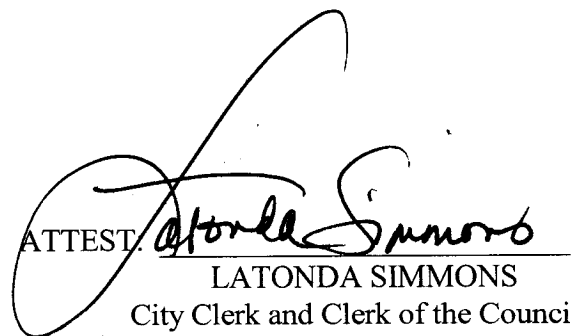

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Lands of the Roman Catholic Welfare Corporation of Oakland, as described in a Grant Deed, recorded June 29, 1962, series no. AT 87752, by the Alameda County Clerk-Recorder

Lot 83, Tract No. 506, filed June 9, 1932, book 18 of maps, pages 95 and 96

Exhibit B

OAKLAND CITY COUNCIL

RESOLUTION No. 6138 C. M. S.

Handwritten initials and signatures in the top right corner, including "O.C.", "M.C.", and "W.W.F."

INTRODUCED BY COUNCILMAN _____

RESOLUTION ACCEPTING DEED FROM CLAREMONT PINES CORPORATION FOR CERTAIN PUBLIC CONDUIT EASEMENTS AND RIGHT OF WAYS ADJACENT TO EDITH PLACE BETWEEN BROADWAY TERRACE AND HARBORD DRIVE; AND DIRECTING THE CITY CLERK TO HAVE SAID DEED RECORDED.

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RESOLVED:

That the deed dated February 18, 1938 from Claremont Pines Corporation, a corporation, to the City of Oakland for certain public conduit easements and right of ways adjacent to Edith Place between Broadway Terrace and Harbord Drive be and the same is hereby accepted; and the City Clerk is hereby directed to have said deed recorded in the office of the Recorder of Alameda County, California.

IN COUNCIL, OAKLAND, CALIF., FEB 24 1938, 19__

PASSED BY THE FOLLOWING VOTE:

AYES—BEACH, DE PAOLI, FITZSIMMONS, JACOBSEN, PETERS, QUINN, SHATTUCK, SLAVICH AND PRESIDENT MCCrackEN. — 9

NOES— *None*

ABSENT— *None*

ATTEST: *H. J. M. Center*
MAYOR OF THE CITY OF OAKLAND, CALIF.

ATTEST: *W. W. Campbell*
CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF OAKLAND, CALIF.

Exhibit C

Location Of The Existing Public Service Easement

A strip of land, 5 feet in width, bounded and particularly described as follows:

Beginning at a point on the northeastern line Edith Place, distant thereon 259.87 feet northwesterly from the southeastern line of Lot 83 of the aforesaid "Track No. 506"; running thence North 22 degrees, 52 minutes, 41 seconds East, 25 feet; thence North 67 degrees, 07 minutes, 19 seconds West, 5 feet; thence South 22 degrees, 52 minutes, 41 seconds West, to the aforesaid northeastern line of Edith Place; and thence South 41 degrees, 07 minutes, 19 seconds East, along said northeastern line of Edith Plane, to the point of beginning.

