

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

**CITY OF OAKLAND**  
*Agenda Report*

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: June 9, 2009

**RE: A Report And Resolution Granting Essex Portfolio L.P. A Revocable And Conditional Permit For A New Building At 100 Grand Avenue To Allow Electrical Transformers and Vaults To Encroach Under The Sidewalk On 23rd Street And An Entrance Canopy To Encroach Over The Sidewalk On Grand Avenue**

---

**SUMMARY**

A resolution has been prepared granting Essex Portfolio L.P., a California limited partnership (no. 199407700013) and developer of a twenty-two (22) story building for residential condominiums (subdivision map PM 8988) and ground floor commercial space at 100 Grand Avenue (APN 008-0655-010-00), a conditional and revocable permit (EMNJ 09057) that will allow three (3) concrete vaults and electrical transformers to be installed under the public sidewalk on 23rd Street and an entrance canopy to be installed over the public sidewalk on Grand Avenue.

**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**

Oakland Municipal Code Section 12.08.030 requires that proposed encroachments into the public right-of-way (basements, vaults, etc.) receive approval of the City Council. The below-sidewalk concrete vaults will be six (6) feet wide and ten (10) feet long and will encroach approximately nine (9) feet into the 23rd Street right-of-way. The transformers will be accessed through removable steel covers set flush with the pedestrian walking surface. The steel-framed entrance canopy is fifty-seven (57) feet wide and will encroach approximately seven (7) feet into the Grand Avenue right-of-way and have sixteen (16) feet of clearance above the sidewalk.

The sidewalk is twelve (12) feet wide on Grand Avenue and fourteen (14) feet wide on 23rd Street. The encroachments will not interfere with the public's use of the right-of-way or

Item No. \_\_\_\_\_  
Public Works Committee  
June 9, 2009

maintenance of buried utilities. The City Council has previously approved similar encroachments above and below the sidewalk for new buildings in the downtown area.

## **PROJECT DESCRIPTION**

A twenty-two (22) story building is being constructed on a three-quarter (0.75) acre parcel which is bounded by Grand Avenue, Webster Street, 23rd Street, and Valdez Street in the Central Business District. Pacific Gas and Electric (PG&E) requires electrical transformers, which it will maintain, to be installed under the public sidewalk. The transformers will provide power to the new building.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

Construction of the new building will provide opportunities for professional services and construction related jobs for the Oakland community.

### **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 project will assist the economic revitalization of the commercial district.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits for building remodeling will conform to State and City requirements for handicapped accessibility.

## **RECOMMENDATIONS**

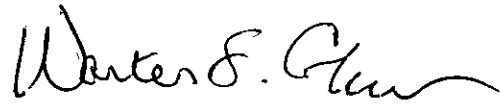
Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution approving the encroachment under and over the public sidewalk.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this report and adopt the proposed resolution granting Essex Portfolio L.P. a conditional and revocable encroachment permit for a new

apartment building to allow three (3) electrical transformers and concrete vaults to encroach under the sidewalk on 23rd Street and an entrance canopy to encroach over the sidewalk on Grand Avenue.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:

Raymond M. Derania  
City Engineer  
Building Services Division

APPROVED FOR FORWARDING TO  
THE PUBLIC WORKS COMMITTEE



Office Of The City Administrator

Introduced By

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

Approved For Form And Legality

\_\_\_\_\_  
Councilmember

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

2009 MAY 28 PM 2  
**DRAFT**

## OAKLAND CITY COUNCIL

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

**RESOLUTION GRANTING ESSEX PORTFOLIO L.P. A REVOCABLE AND  
CONDITIONAL PERMIT FOR A NEW BUILDING AT 100 GRAND AVENUE  
TO ALLOW CONCRETE VAULTS AND ELECTRICAL TRANSFORMERS  
AND VAULTS TO ENCROACH UNDER THE PUBLIC SIDEWALK ALONG  
23rd STREET AND AN ENTRANCE CANOPY TO ENCROACH OVER THE  
PUBLIC SIDEWALK ON GRAND AVENUE**

**WHEREAS**, Essex Portfolio L.P. (Permittee), a California limited partnership (no. 199407700013) and owner of the property described in a grant deed, recorded September 12, 2006, Series No. 2006345425, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 008-0655-010-00, and identified by the City of Oakland as 100 Grand Avenue and more particularly described in *Exhibit A* attached hereto, has made application to the Council of the City of Oakland for a conditional and revocable permit (ENMJ 09057) to allow the installation of three (3) new concrete vaults and electrical transformers under the public sidewalk along 23rd Street and a new steel-framed entrance canopy over the public sidewalk along Grand Avenue; and

**WHEREAS**, the Building Official of the City of Oakland has issued a permit (B 0600468) to said owner for the construction of a twenty-two (22) story building for two hundred and thirty four (234) residential condominium units, ground floor commercial occupancy, tenant parking; and

**WHEREAS**, the subdivision map (PM 8988) for the residential condominiums was recorded by the Alameda County Clerk-Recorder on December 8, 2006, series no. 2006450476, book 294 of maps, pages 36 and 37; and

**WHEREAS**, the transformers are 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 encroachment has been approved by PG&E; and

**WHEREAS**, said transformers will be accessed through hinged steel cover plates set flush with the pedestrian walking surface; and

**WHEREAS**, the location of the cantilevered entrance canopy was approved by the Planning Commission of the City of Oakland and will have five (5) feet clearance horizontally from the face-of-curb and sixteen (16) feet clearance vertically above the sidewalk; and

**WHEREAS**, the exiting sidewalks are twelve (12) feet wide along Grand Avenue and fourteen (14) feet wide along 23rd Street; and

**WHEREAS**, the limit of the encroachments are delineated in *Exhibits B1* and *B2* attached hereto; and

**WHEREAS**, the encroachment and its location will not interfere with the use by the public of the roadway or sidewalk or buried utilities; 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 CEQA Guideline Section 15332 (Class 32: Infill Projects) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

**RESOLVED**: That the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

**FURTHER RESOLVED**: That the encroachment, as conditioned herein and delineated in *Exhibits B1* and *B2*, is hereby granted for a revocable permit to allow the installation of three (3) concrete vaults and electrical transformers under the public sidewalk along 23rd Street and an entrance canopy above the public sidewalk along Grand Avenue for a new building at 100 Grand Avenue; and be it

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

1. the Permittee (Essex Portfolio L.P.) 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; 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 (5) 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 its 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 the Council of the City of Oakland, at it sole discretion and at future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule, for use and occupancy of the public right-of-way; and be it

**FURTHER RESOLVED:** That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with the City Engineer 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; and be it

**FURTHER RESOLVED:** That the City Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009**

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

## Legal Description of Real Property

CITY OF OAKLAND

**PARCEL ONE:**

BEGINNING AT A POINT OF INTERSECTION OF THE NORTHERN LINE OF GRAND AVENUE WITH THE EASTERN LINE OF WEBSTER STREET; AND RUNNING THENCE EASTERLY ALONG SAID LINE OF GRAND AVENUE 100 FEET; THENCE AT RIGHT ANGLES NORTHERLY 75 FEET; THENCE AT RIGHT ANGLES WESTERLY 100 FEET TO THE EASTERN LINE OF WEBSTER STREET; AND THENCE SOUTHERLY ALONG SAID LINE OF WEBSTER STREET 75 FEET TO THE POINT OF BEGINNING.

BEING THE SOUTHERN 75 FEET OF LOT 1 AND THE WESTERN 20 FEET OF THE SOUTHERN 75 FEET OF LOT 2 AS SAID LOTS ARE SHOWN ON THE "MAP OF BOULEVARD TERRACE, OAKLAND, CAL.", FILED FEBRUARY 7, 1889 IN BOOK 10 OF MAPS, PAGE 36, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

ASSESSOR'S PARCEL NO. 008-0655-009-01 (PORTION)

**PARCEL TWO:**

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERN LINE OF 23RD FORMERLY LOCUST, STREET, WITH THE EASTERN LINE OF WEBSTER STREET, AS SAID STREETS ARE SHOWN ON THE MAP HEREIN REFERRED TO; RUNNING THENCE EASTERLY ALONG SAID LINE OF 23RD STREET, 100 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 50 FEET; THENCE AT RIGHT ANGLES WESTERLY 100 FEET TO THE SAID EASTERN LINE OF WEBSTER STREET; AND THENCE NORTHERLY ALONG SAID LAST NAMED LINE 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOTS 1 AND 2, AS SAID LOTS ARE SHOWN ON THE "MAP OF BOULEVARD TERRACE, OAKLAND, CALIF.", FILED FEBRUARY 7, 1889, IN BOOK 10 OF MAPS, PAGE 36, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

ASSESSOR'S PARCEL NO. 008-0655-009-01 (PORTION)

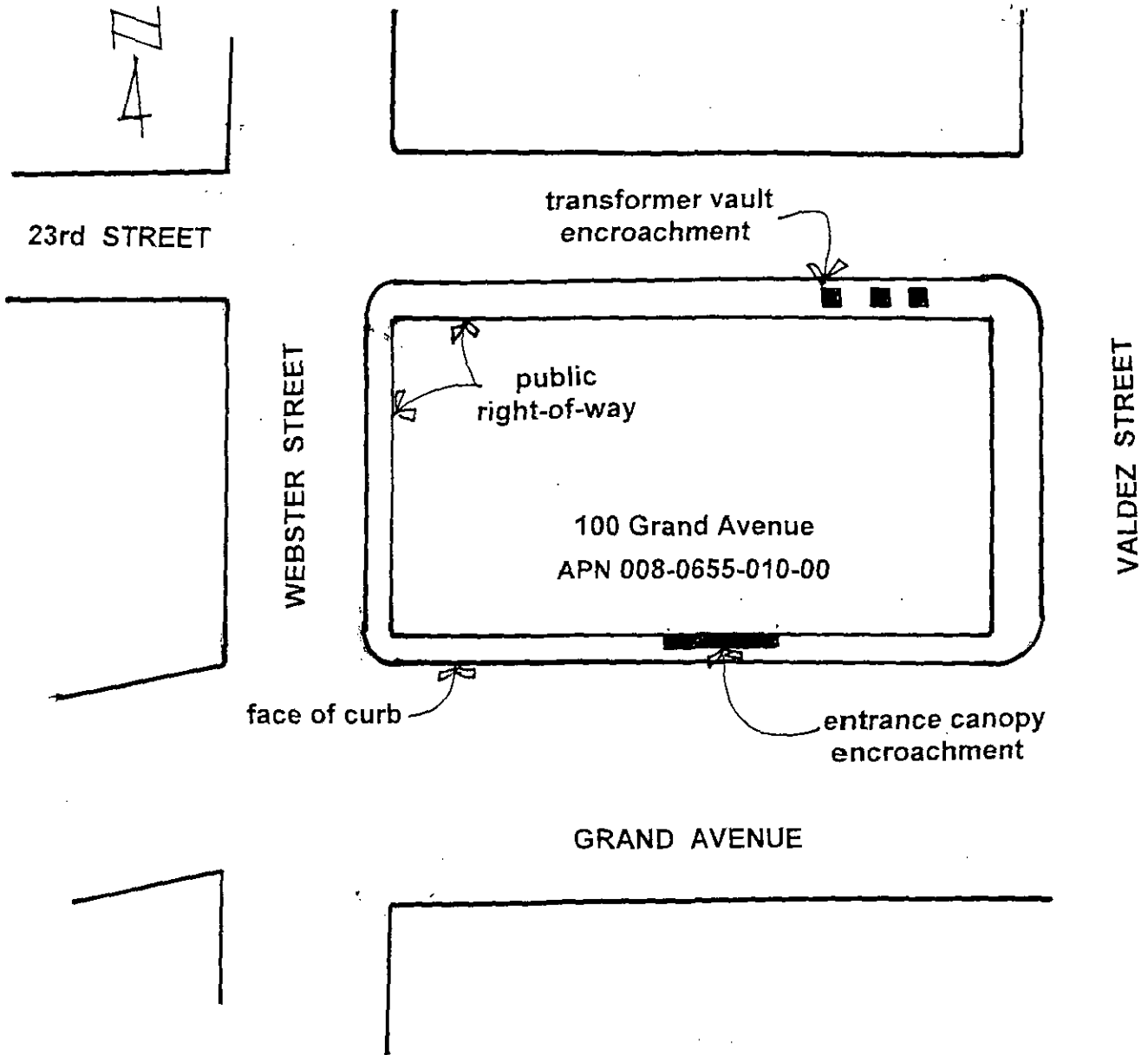
**PARCEL THREE:**

LOT 3 AND THE EASTERN 60 FEET OF LOT 2, ACCORDING TO THE MAP OF BOULEVARD TERRACE, FILED FEBRUARY 7, 1889, IN BOOK 10 OF MAPS, AT PAGE 36, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

ASSESSOR'S PARCEL NO. 008-0655-007

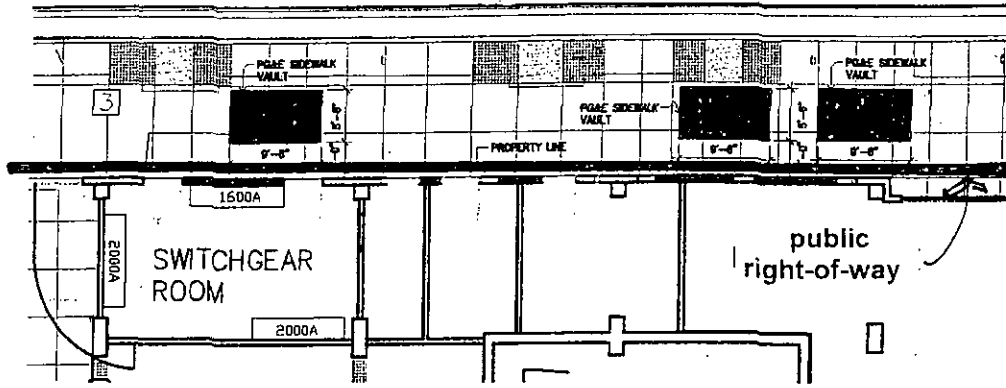
# EXHIBIT B1

## Limits of Encroachment

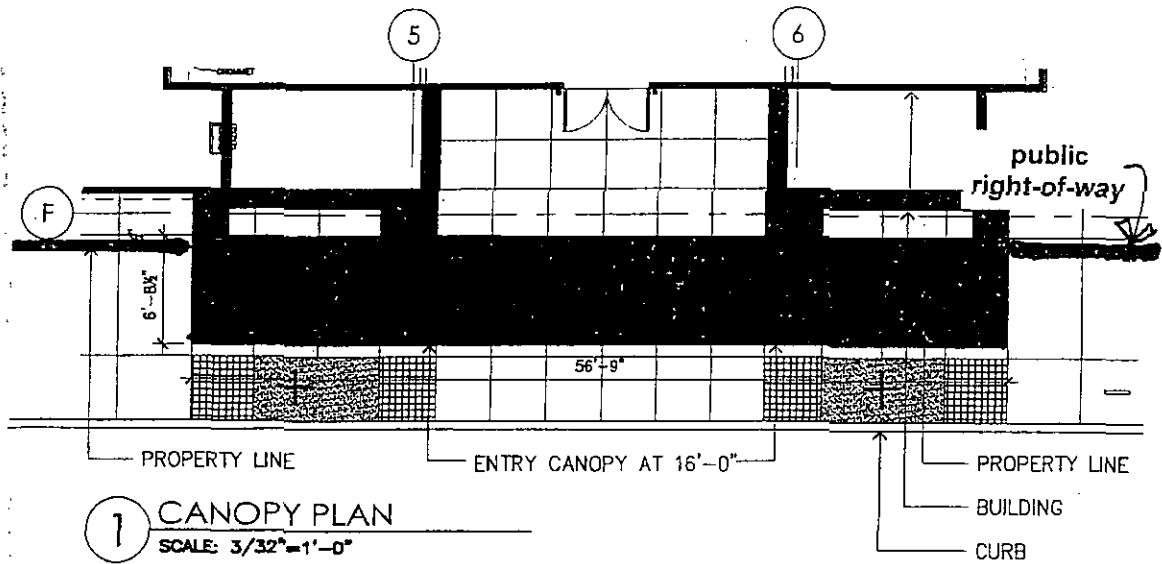


# EXHIBIT B2

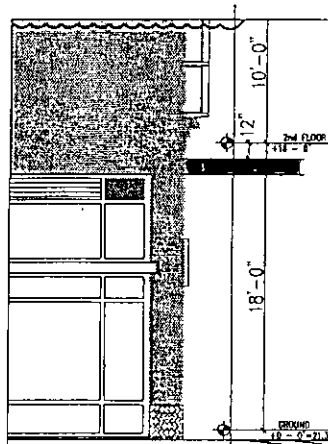
## Limits of Encroachment



② SIDEWALK VAULT LOCATIONS  
SCALE: 1/16"=1'-0"



① CANOPY PLAN  
SCALE: 3/32"=1'-0"



③ ENTRY CANOPY SIDE ELEVATION  
SCALE: 1/4"=1'-0"