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Councilmember

Approved For Form And Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 83071 C.M.S.

**RESOLUTION CONDITIONALLY ACCEPTING A DEDICATION FROM
THE ARCADIA PARK OWNERS ASSOCIATION OF A PUBLIC FACILITIES
EASEMENT TO CONSTRUCT A PRIVATELY MAINTAINED PARK IN THE
ARCADIA PARK SUBDIVISION LOCATED AT 921 98th AVENUE**

WHEREAS, the Arcadia Park Owners Association, a nonprofit mutual benefit corporation (C3009894), as "Permittee" and owners of the real property identified as Lot C on Parcel Map No. 8017, recorded December 17, 2009, book 315 of maps, pages 9 through 15, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as parcel number 044-5079-113-00, and more particularly described and delineated in *Exhibit A* attached hereto, has made an application (PPE 10059) to the City Engineer of the City of Oakland to dedicate a public facilities easement for park purposes over a portion of said parcel; and

WHEREAS, approximately one-half (1,537 square feet) of said parcel was previously dedicated as a public access easement to connect Elmhurst Avenue with Tubman Drive and Clemente Drive, as shown on the map of the original subdivision of platted land, "Arcadia Park - Tract No. 7640", recorded July 25, 2007, book 299 of maps, pages 89 through 97, by the Alameda County Clerk-Recorder; and

WHEREAS, said owner has also filed an application for landscaping plans with the Planning Director of the City of Oakland to construct a park on the remaining area (2,142 square feet) of said parcel to satisfy conditions of approval (PUD 05335, GP 05331) of said original subdivision; and

WHEREAS, said conditions of approval require that the subdivider, Pulte Home Corporation (no. C1271167), reserve separate parcels of real property adjacent to newly constructed public streets throughout said subdivision for the purpose of constructing parks; and

WHEREAS, said conditions of approval also require that the property owner dedicate public facilities easements encompassing the whole surface areas of said parks to assure free access thereto by the public; and

WHEREAS, said conditions of approval also require that said parks be privately maintained in perpetuity by the property owner and the successive owners and assigns thereof; and

WHEREAS, the Permittee acquired title to said Lot C from the Pulte Home Corporation through a grant deed, recorded August 7, 2009, series no, 2009-253959, by the Alameda County Clerk-Recorder; and

WHEREAS, the limits of said existing public access easement are also delineated in *Exhibit A*; and

WHEREAS, *Exhibit A* was prepared by a qualified civil engineer who is licensed by the State of California to prepare metes and bounds surveys; and

WHEREAS, pursuant to California Government Code section 7050, the Council of the City of Oakland may accept the dedication of a public easement by Resolution of the Council; and

WHEREAS, at its meeting on September 30, 2005, the Planning Commission of the City of Oakland approved the Planned Unit Development (PUD05335), General Plan Amendment (GP 05331), and Rezoning (RZ 05332) for the project and certified the Environmental Impact Report (ER 050003) and adopted California Environmental Quality Act (CEQA) Findings and a Statement Of Overriding Considerations in connection with the approval of the project; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzed the potential environmental effects of the project, including the public facilities easement dedication as conditioned herein, and incorporated 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 the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 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 “no new information of substantial importance” as described in CEQA Guidelines Section 15162(a)(3); now, therefore be it

RESOLVED: That the dedication of said public facilities easement for park purposes, as conditioned herein, does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the dedication from the Arcadia Park Owners Association to the City of Oakland of a public facilities easement for park purposes, as described and delineated in *Exhibit A*, is hereby conditionally accepted; and be it

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

1. the Permittee (Arcadia Park Owners Association) 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 claims, demands, lawsuits and judgment for damages of any kind and nature whatsoever brought by any person or persons, corporations, or other entities for or on account of arising out the dedication of said public facilities easement for park purposes and any bodily injury, disease, or illness, including death, damage to property, real or personal, or damages of any nature, arising in any manner out of construction or maintenance of private improvements within said easement or arising in any manner from said private improvements, or sustained as a result of repair to said private improvements, or as a result of the failure to maintain and/or repair said private improvements; and

2. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement area, 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 easement 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
3. 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
4. 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
5. the Permittee acknowledges it is responsible in perpetuity for the maintenance of said park and the repair, replacement, and removal of all private improvements, including, but not limited to,

landscaping, equipment and associated appurtenances, vegetation, shrubbery, trees, irrigation, electrical, lighting, fencing, benches, pathways, and drainage; 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 Engineer is hereby authorized to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 7 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

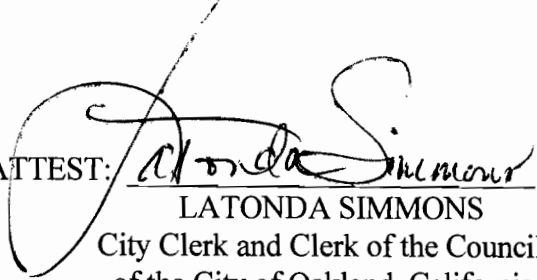
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

ASSESSOR'S MAP 44

5079

SCALE: 1" = 80'

4214289

Code Area Nos. 17-032

(A) TR. 7640 29989-97
(B) P.M. 8017 3156-15

4958 Pg. 2

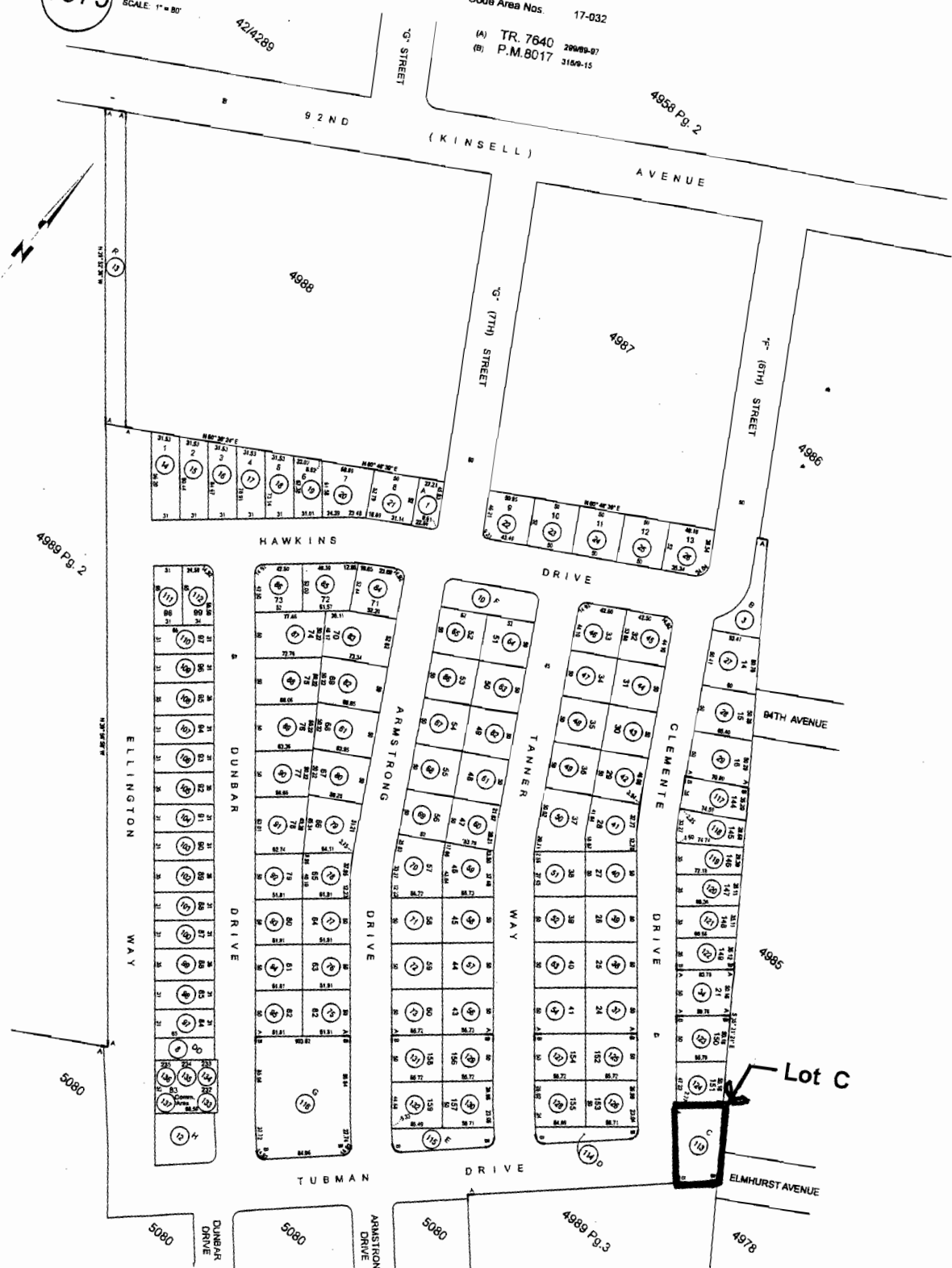


EXHIBIT A

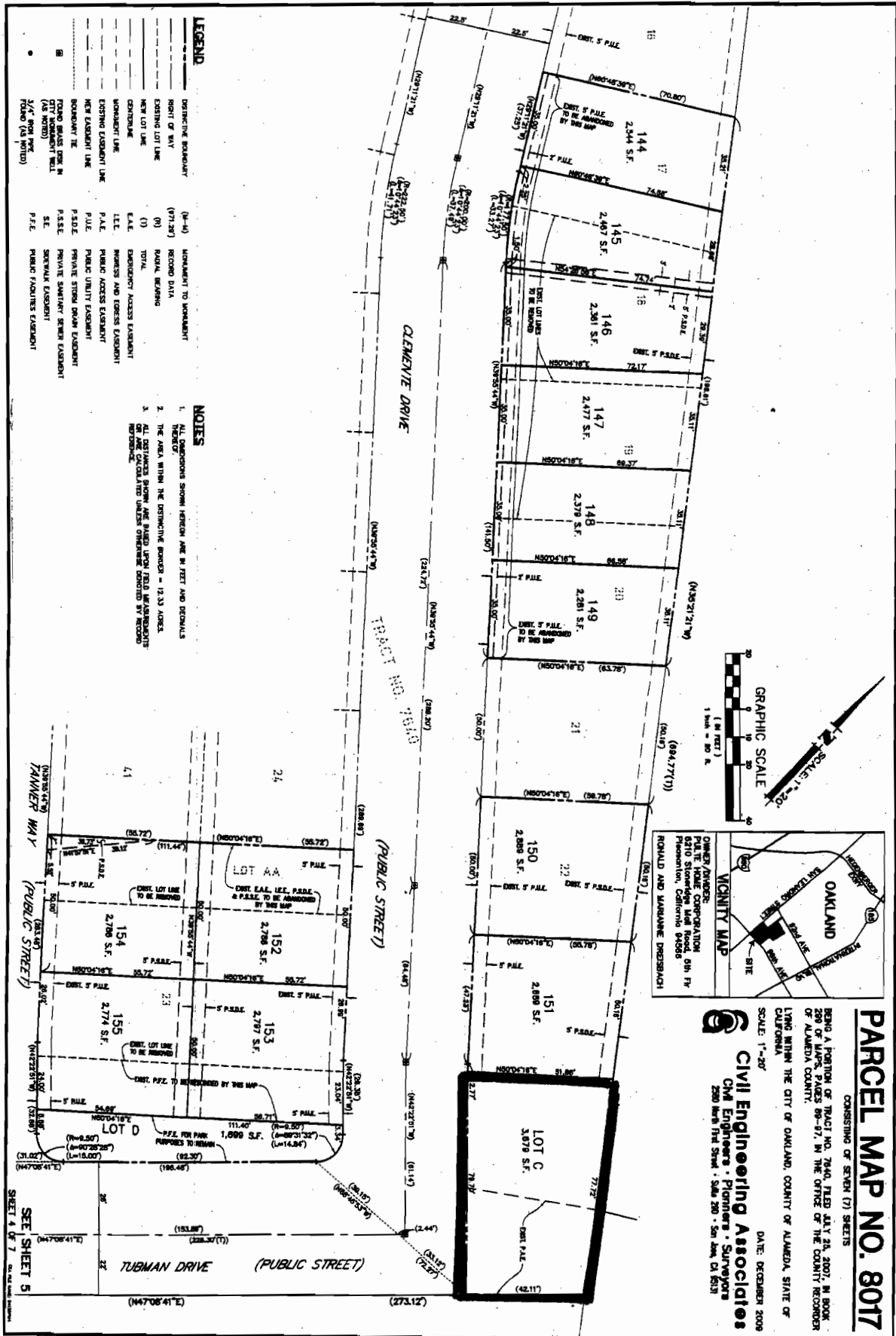
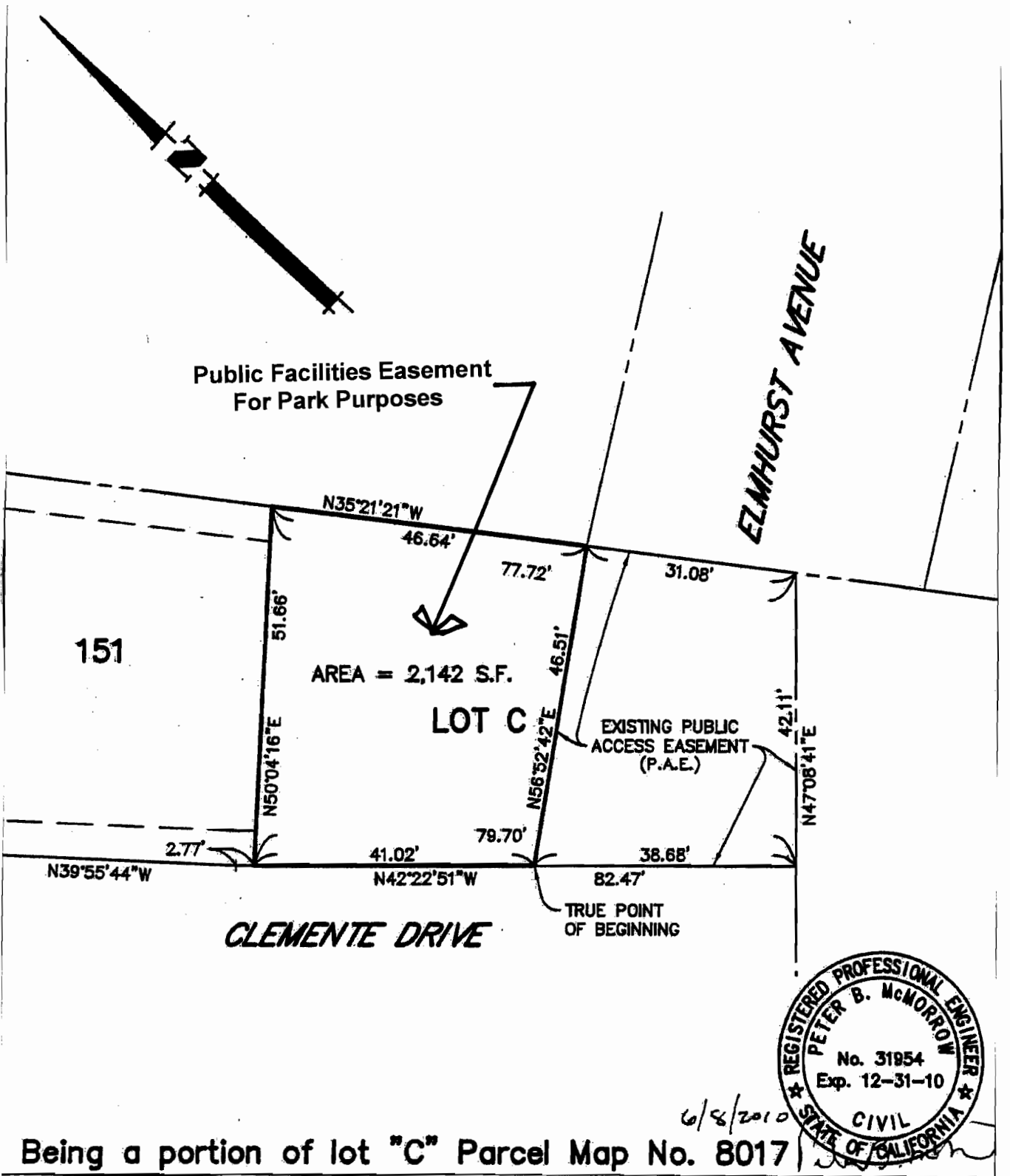


EXHIBIT A



Being a portion of lot "C" Parcel Map No. 8017

EXHIBIT A

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT "C" AS SHOWN UPON THAT CERTAIN MAP TITLED "PARCEL MAP NO. 8017", FILED DECEMBER 17, 2009 IN BOOK 315 AT PAGES 9 THROUGH 15 IN THE OFFICE OF THE COUNTY RECORDER OF SAID ALAMEDA COUNTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE MOST SOUTHEASTERLY CORNER OF SAID LOT "C";

THENCE NORTH 42° 22' 51" WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT "C" A DISTANCE OF 38.68 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 42° 22' 51" WEST ALONG LAST MENTIONED SOUTHWESTERLY LINE A DISTANCE OF 41.02 FEET;

THENCE NORTH 50° 04' 16" EAST A DISTANCE OF 51.66 FEET TO A POINT IN THE NORTHEASTERLY BOUNDARY OF SAID TRACT NO. 8017;

THENCE SOUTH 35° 21' 21" EAST ALONG LAST NORTHEASTERLY LINE A DISTANCE OF 46.64 FEET;

THENCE SOUTH 56° 52' 42" WEST A DISTANCE OF 46.51 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2,142 SQUARE FEET (0.0492 ACRES) MORE OR LESS

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Civil Engineers • Planners • Surveyors



Peter B. McMorrow
6/8/2010