

CITY OF OAKLAND

Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

09 JUL -2 PM 7:09

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 14, 2009

RE: **A Report And Two Resolutions**

- **Conditionally Abandoning Existing Public Utility Easements And**
 - **Conditionally Accepting Dedications Of New Public Utility Easements**
- Without Cost For The Coliseum Gardens Hope 6 Affordable Housing Project Being Constructed By The Oakland Housing Authority At 801 69th Avenue**

SUMMARY

Two resolutions have been prepared that will support the infrastructure design process for the Coliseum Gardens Hope 6 affordable housing project being constructed by the Oakland Housing Authority (OHA). Publicly maintained utilities (sewer, drainage, gas, etc.) will be relocated to accommodate the future construction of new housing units. The abandonment of the existing easements and acceptance of the new easements will be finalized after the construction warrantee period for removing and installing the infrastructure has expired.

FISCAL IMPACT

Staff costs for processing the proposed dedications and vacations 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 construction of public infrastructure improvements will be without cost to the City.

PROJECT DESCRIPTION

OHA is currently designing Phase IV (Lion Creek Crossings) of the Coliseum Gardens project. Lion Creek Crossings is bounded by 69th Avenue, 70th Avenue, Snell Street, and Lion Way (APN 041-4166-013-00). OHA has applied for a grading permit (GR 0900063) for the new 263 unit complex. The project's subdivision map (TR7488) was approved by the City Council in 2004 with a condition that OHA dedicate new utility easements when the design for the project's new infrastructure (sanitary sewer, drainage, water, gas, etc.) was finalized. OHA will relocate the existing infrastructure without cost the City for the utility companies.

Item No. _____
Public Works Committee
July 14, 2009

KEY ISSUES AND IMPACTS

Easement Dedication

California Government Code Section 7050 allows a City to accept dedications of privately owned real property by resolution for any public purpose, including use for public easements. A dedication is not a sale and, therefore, is without cost to a city. The property owner must record a dedication on the property title, but a city is not required to accept it. A city may conditionally accept a dedication or simply take no action. In general, a city has thirty (30) years to accept a dedication, unless it rejects a dedication beforehand by resolution.

Easement Abandonment

California Streets and Highways Code Section 8333 allows a City to summarily abandon an easement when the easement has not been used for the purpose for which it was dedicated for not less than five (5) consecutive years immediately preceding the proposed vacation. The site has not been occupied and the easements have not been used since before the subdivision map was approved by the City Council in 2004.

SUSTAINABLE OPPORTUNITIES

Economic

Construction of the affordable housing project will provide opportunities for professional services and construction related jobs.

Environmental

Construction permits for infrastructure 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

Construction of the project will provide affordable housing opportunities for the Oakland community.

DISABILITY AND SENIOR CITIZEN ACCESS

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

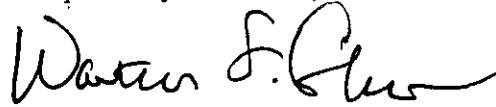
RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution accepting the dedication and abandonment of public utility easements.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolutions which will conditionally abandon existing public utility easements and conditionally accept the dedication of new public utility easements for the Coliseum Gardens Hope 6 affordable housing project being constructed by the Oakland Housing Authority. The abandonment and acceptance will be effective upon expiration of the construction warrantee period for the utilities.

Respectfully submitted,

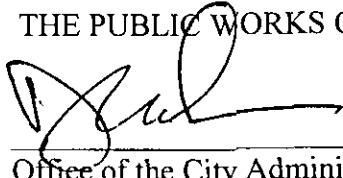


WALTER S. COHEN, Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Building Official and City Engineer
Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



Office of the City Administrator

DRAFT

Introduced By _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved For Form And Legality

Councilmember

2009 JUL -2 PM 7: 13

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION SUMMARILY AND CONDITIONALLY VACATING EXISTING PUBLIC SERVICE EASEMENTS WITHOUT COST TO THE HOUSING AUTHORITY OF THE CITY OF OAKLAND FOR THE COLISEUM GARDENS HOPE 6 AFFORDABLE HOUSING PROJECT LOCATED AT 801 69th AVENUE

WHEREAS, the Housing Authority of the City of Oakland (Permittee), a California eleemosynary corporation and owner of seven (7) vacant lots identified as numbers 1 through 5, inclusive, and Parcels B and C on the final subdivision map no. TR7488, approved by Resolution No. 78666 C.M.S. of the Council of the City of Oakland on October 4, 2004, and identified by the Alameda County Assessor as APN 041-4212-002-00 through 041-4212-008-00, inclusive, and identified by the City of Oakland as Coliseum Gardens Hope 6 project and more particularly described on said map in *Exhibit A* attached hereto, has made an application (PPE 09061) to the City Engineer of the City of Oakland to vacate summarily existing public service easements of various dimensional widths and lengths that traverse said properties at various locations to facilitate the construction new public infrastructure for a new affordable housing project; and

WHEREAS, said easements were originally dedicated by various entities and accepted by the City of Oakland through various grant deeds, which were recorded on various dates by the Alameda County Recorder and which are more particularly delineated and identified in *Exhibit B* attached hereto; and

WHEREAS, said easements were dedicated originally for the purposes of future construction of sanitary sewer and storm water drainage mains across said properties; and

WHEREAS, pursuant to design proposals submitted by the Permittee for new infrastructure improvements to serve said new project, the City Engineer of the City of Oakland has determined that said existing easements have not been used for the purposes for which they were dedicated since before said Resolution approving the subdivision map was approved and will not be needed in the future; and

WHEREAS, pursuant to the California Streets and Highways Code section 8333, the legislative body may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for not less than five (5) consecutive years immediately preceding the proposed vacation; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("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 exempted from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the City Council hereby finds and determines that the proposed summary vacation of said public service easement does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That said vacations, as conditioned herein, of said public service easements, as delineated and identified in *Exhibit B*, to the Housing Authority of the City of Oakland are hereby granted; and be it

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

1. the Permittee shall be responsible for properly abandoning, with required permits, existing sanitary sewer improvements within said easement and for properly constructing, with required permits, all public infrastructure improvements within said public service easement; and
2. the Permittee shall be responsible for removing, replacing, and relocating, with required permits, all existing public utilities as necessary to facilitate the installation of said infrastructure improvements; and
3. the Permittee 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 vacation of said public service easement; regardless of responsibility for negligence; and
4. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions within said public service easement; and that the Permittee agrees that he will use the vacated area at his own risk, and is responsible for his activities and the activities of with all other permittees or workmen operating within the vacated area and for his own safety and the safety of any of his personnel; and
5. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the vacated area, and hereby waives and fully releases and forever discharges the City of Oakland and its officials, officers, employees, representatives, 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 vacated 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

6. the Permittee further acknowledges that he understands and agrees that he hereby expressly waives all rights and benefits which he 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
7. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, he will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his decision to request said vacation, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
8. the hereinabove conditions shall be binding upon the Permittee and his successors, heirs, and assigns, and upon the successive owners of said properties; 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 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; 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

ASSESSOR'S MAP 41

Code Area Nos. 17-032

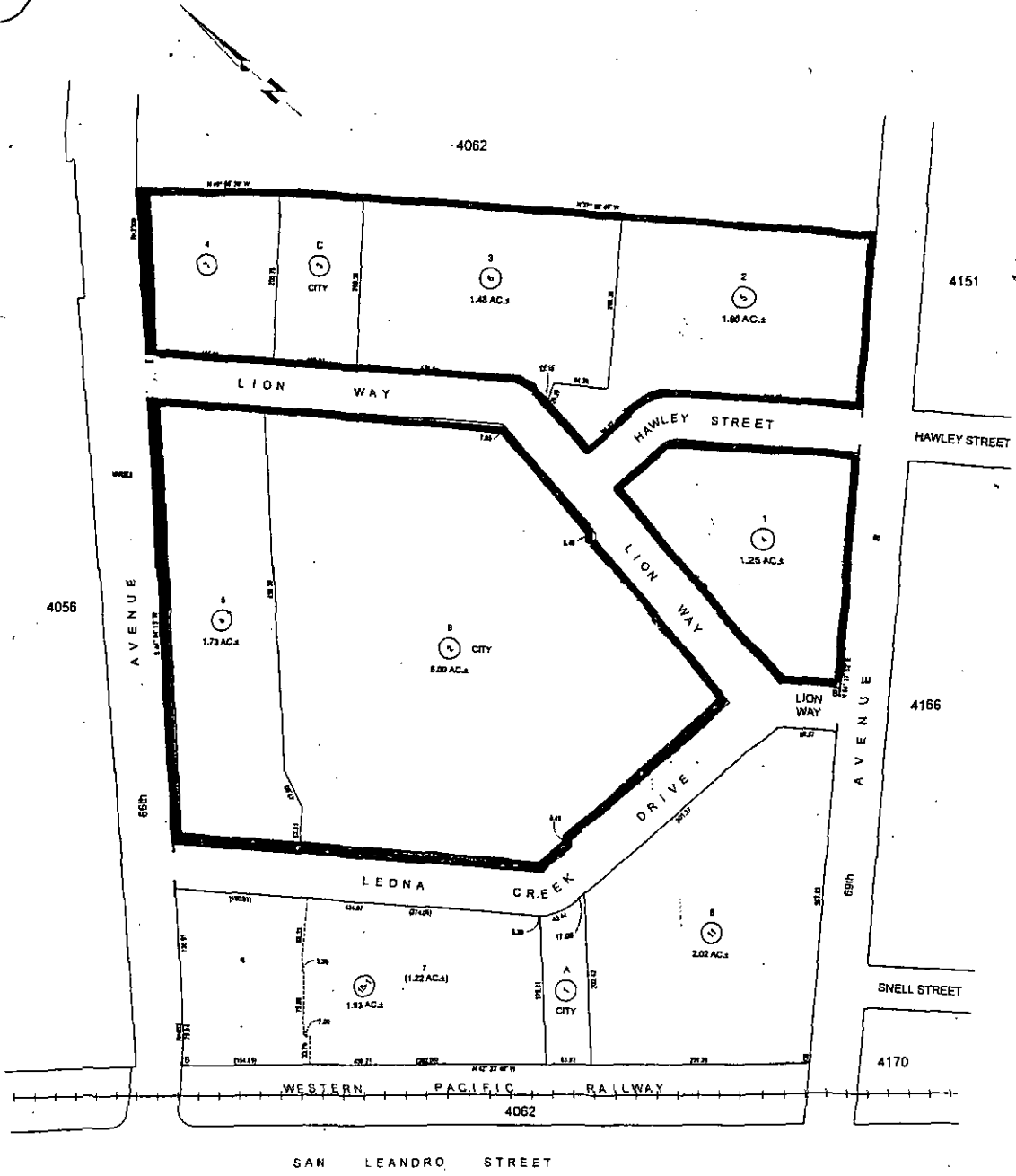
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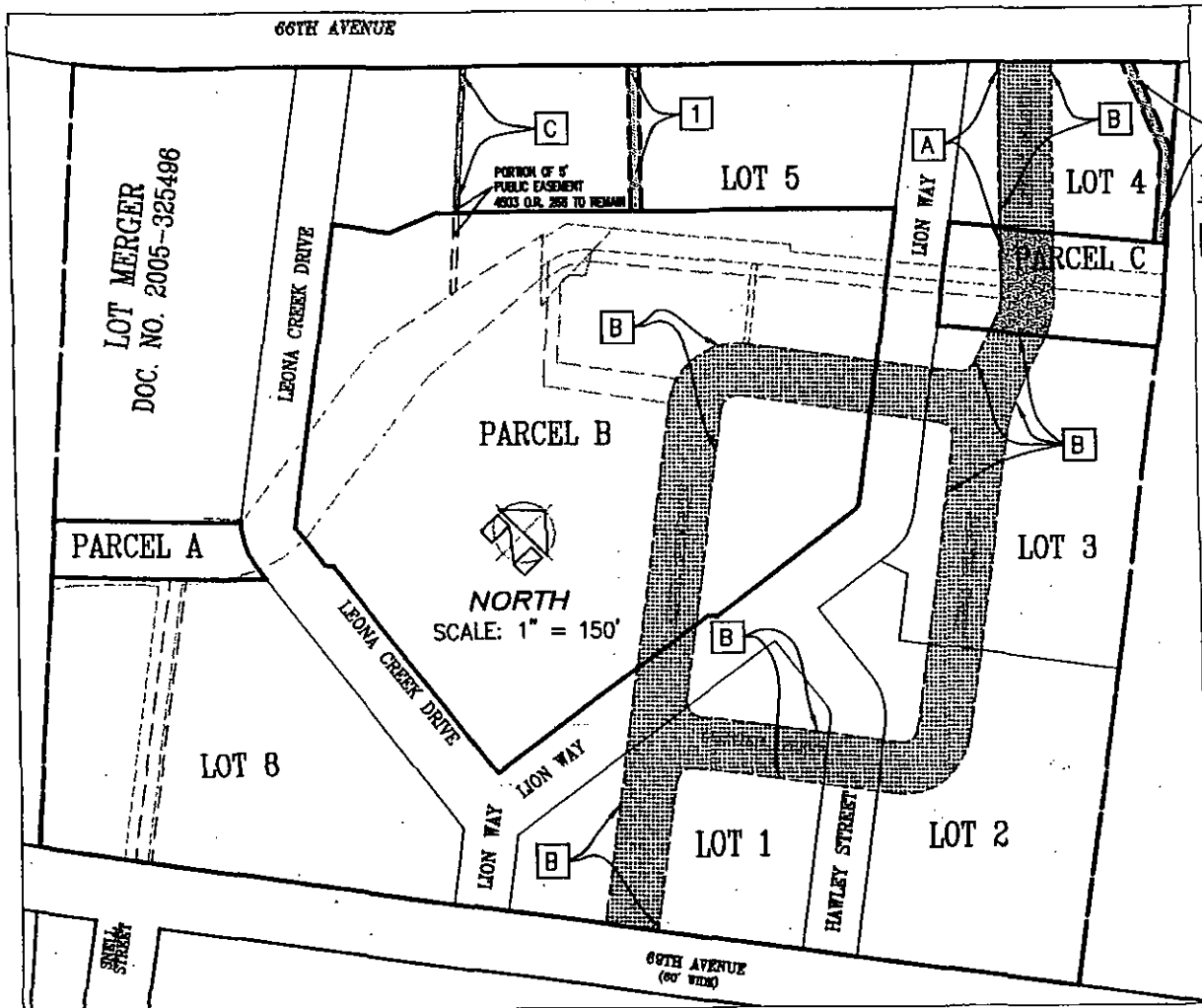
SCALE: 1" = 100'

(B) TR.7488 2781-4

DRAWN: 05-18-03 LL
REVISED: 03-24-06 RP

DRAWN: 05-18-03 LL





EASEMENT DEDICATIONS:

- 1 PUBLIC STORM DRAIN EASEMENT DEDICATION ON LOT NO. 5.
- 2 PUBLIC STORM DRAIN EASEMENT DEDICATION ON LOT NO. 4.

EASEMENTS TO BE VACATED:

- A EASEMENT AND RIGHT OF WAY IN FAVOR OF CITY OF OAKLAND, RECORDED OCTOBER 16, 1981, INSTRUMENT NUMBER 81-175500, OF OFFICIAL RECORDS.
- B UTILITY EASEMENTS RESERVATION PER DOCUMENT ENTITLED "AN ORDINANCE VACATING OLMSTED AND BRENTFORD STREET BETWEEN 66TH AND 69 AVENUES", RECORDED JULY 31, 2003 AS DOCUMENT NUMBER 2003448969 (EASEMENT WITHIN PARCEL C REMAIN).
- C VACATION OF THE PORTION OF THE 5' PUBLIC EASEMENT RECORDED IN BOOK 4503 AND PAGE 268.

Exhibit B

**EASEMENT EXHIBITS
COLISEUM GARDENS**
CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

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

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND
09 JUL -2 PM 7:09

Approved For Form And Legality

DRAFT

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION CONDITIONALLY ACCEPTING DEDICATIONS OF PUBLIC SERVICE EASEMENTS WITHOUT COST FROM THE OAKLAND HOUSING AUTHORITY FOR THE COLISEUM GARDENS HOPE 6 AFFORDABLE HOUSING PROJECT LOCATED AT 801 69th AVENUE

WHEREAS, the Housing Authority of the City of Oakland (Grantor), a California eleemosynary corporation and owner of seven (7) vacant lots identified as numbers 1 through 5, inclusive, and Parcels B and C on the final subdivision map no. TR 7488, approved by Resolution No. 78666 C.M.S. of the Council of the City of Oakland on October 4, 2004, and identified by the Alameda County Assessor as APN 041-4212-002-00 through 041-4212-008-00, inclusive, and identified by the City of Oakland as Coliseum Gardens Hope 6 affordable housing project and more particularly described on said map in *Exhibit A* attached hereto, has made an application (PPE 09061) to the City Engineer of the City of Oakland to dedicate various portions of said real properties for use in perpetuity as public service easements of various dimensional widths and lengths that traverse said properties at various locations to facilitate the construction of a new public infrastructure for a new housing complex; and

WHEREAS, said dedications and the graphical delineations of the metes and bounds describing said portions of real property are attached hereto in *Exhibit B*; and

WHEREAS, pursuant to said Resolution, the Grantor has previously filed said final subdivision map with the Alameda County Clerk-Recorder that

- subdivided the platted land for development of said lots as residential housing; and
- dedicated rights-of-way for Lion Way and Leona Creek Drive as publicly maintained streets; and
- vacated a portion of the existing right-of-way for Hawley Street.

WHEREAS, pursuant to said Resolution, acceptance by the City of Oakland of said dedications was conditioned upon acceptance by the City Engineer of the City of Oakland of necessary public infrastructure improvements which are currently being constructed by the Grantor permit number PX 0800067; and

WHEREAS, the City Engineer has determined that new public service easements are required to accommodate public maintenance of said infrastructure; and

WHEREAS, the Grantor desires to dedicate said public service easements; and

WHEREAS, the Grantor understands and agrees that construction of said public infrastructure improvements required for the full use of said affordable housing project shall be without cost to the City of Oakland and shall be an indistinguishable part of said permit PX 0800067 and shall further be an indistinguishable part of the Subdivision Improvement Agreement executed by the Grantor pursuant to said Resolution No. 78666 C.M.S.; and

WHEREAS, said dedications and infrastructure improvements shall conform with the approved Tentative Map (TM 7488) and land use permits (ER030001, PUDF05304, GP03636, GP08249) for the Coliseum Gardens Hope 6 project subdivision; and

WHEREAS, on June 4, 2003, the Planning Commission certified the EIR, adopted CEQA findings 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 dedication 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 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 City Council's action approving dedications of public service easements, as conditioned herein, complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That the dedications of public service easements, as conditioned herein after and described and delineated in *Exhibit B*, are hereby accepted; and be it

FURTHER RESOLVED: That the dedications of public service easements hereby conditioned by the following special requirements:

1. the Grantor shall be responsible for the construction of public infrastructure improvements without cost to the City of Oakland; and
2. construction by the Grantor of the public infrastructure improvements shall conform with the plans, specifications, and general and special conditions of permit PX 0800067 and all revisions thereto; and
3. pursuant to Resolution No. 78666 C.M.S., all requirements, restrictions, conditions, limitations, and time durations set forth in the Subdivision Improvement Agreement executed by the Grantor for approval of the Final Map for the Coliseum Gardens Hope 6 project subdivision shall apply equally to construction of the public infrastructure improvements and acceptance of the dedications of public service easements and subsequent maintenance; and

4. the hereinabove conditions shall be binding upon the Grantors and their 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 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 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

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Code Area Nos. 17-032

4212

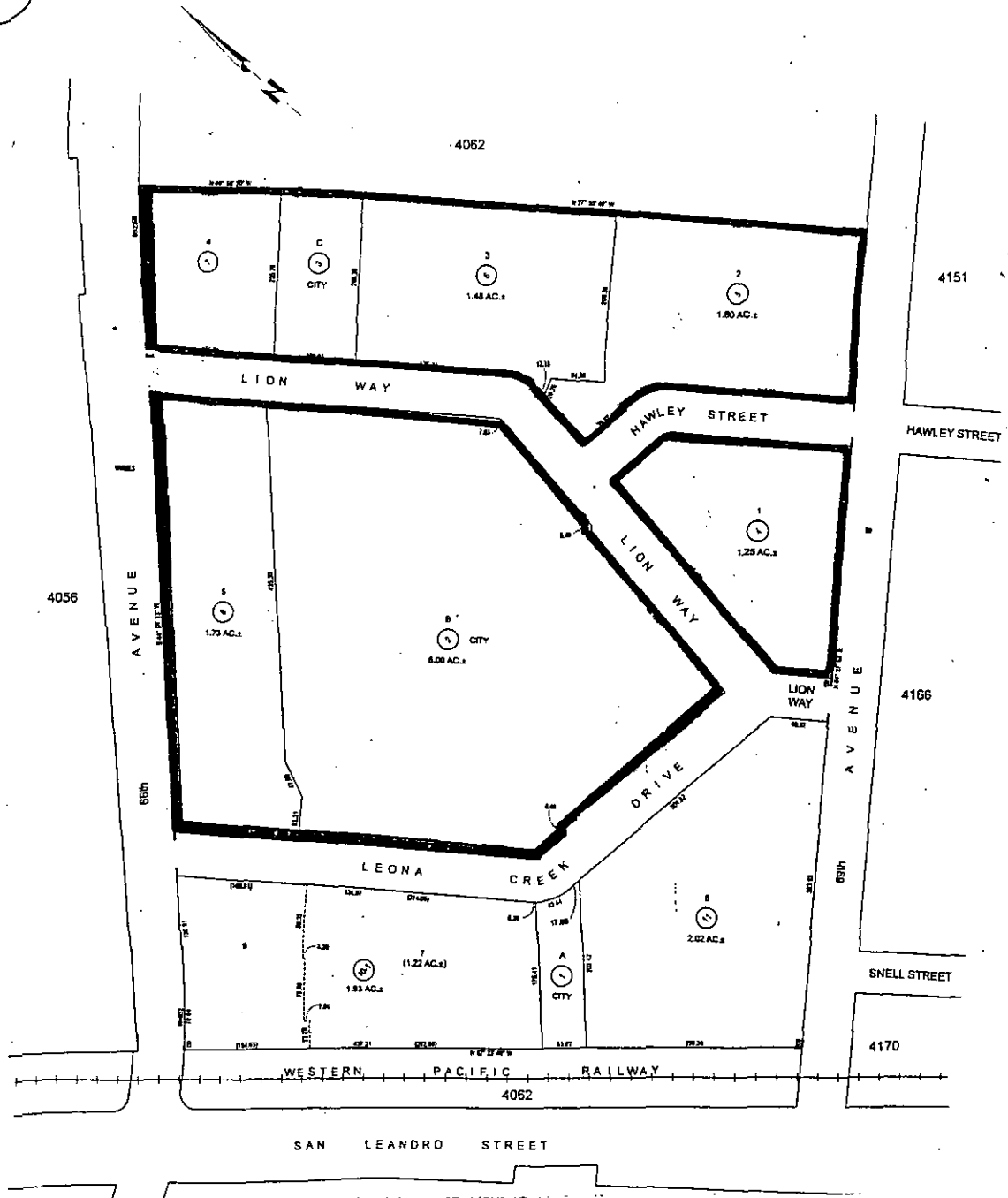
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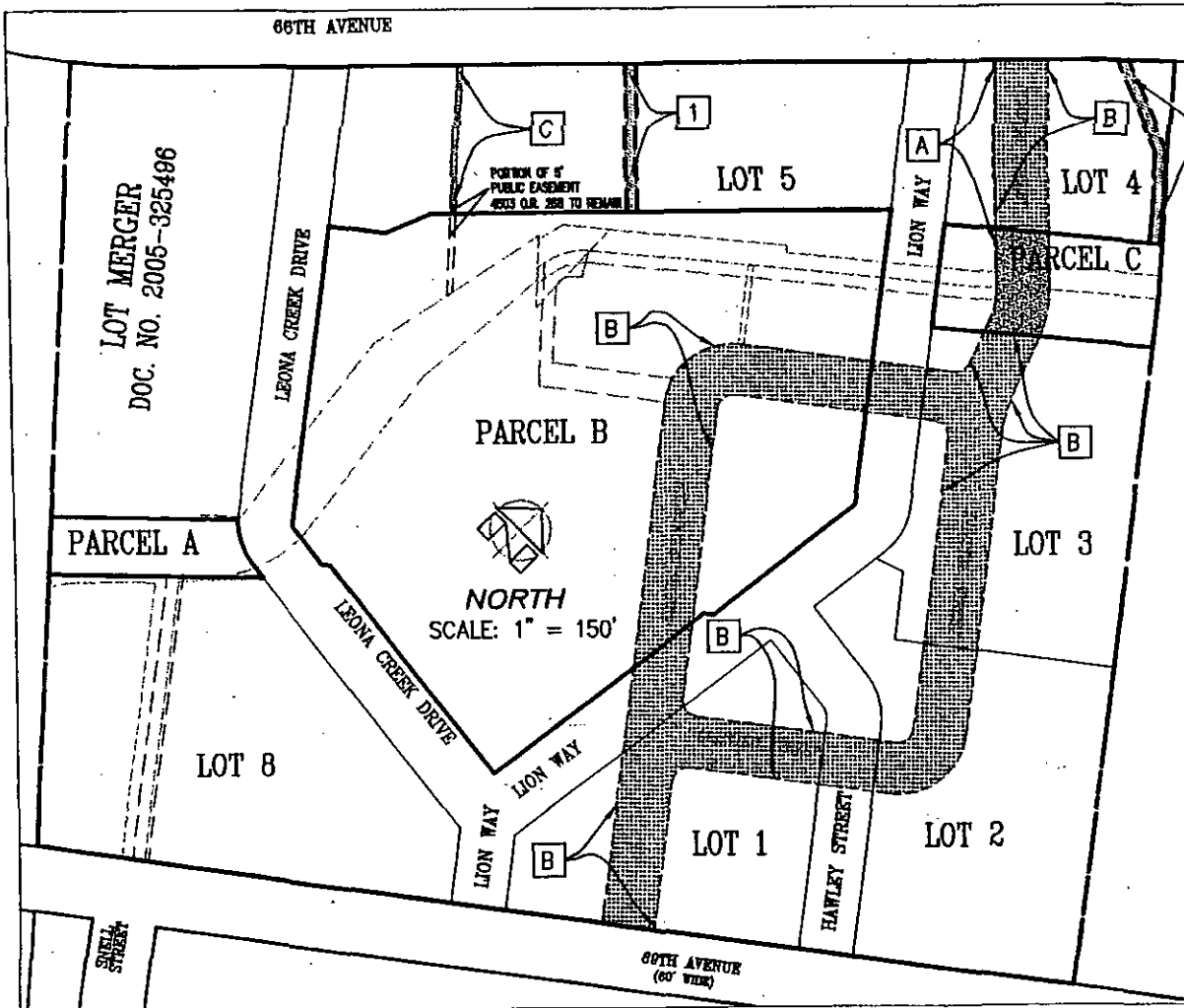
(b) TR.7488 2791-4

REVISED 05-17-05 LL
03-28-04 RP

DRAWN: 05-18-05 LL

062





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**EASEMENT EXHIBITS
COLISEUM GARDENS**

CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA

Luk and Associates

Civil Engineers – Land Planners – Land Surveyors
738 Alfred Nobel Drive
Hercules, California 94547

PLOT DATE: MAY 11, 2009