

MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number: 8 1 4 4 5

City Council Meeting Date July 15, 2008

Agenda Item No. 10.14-CC

Recorded Vote 8 Ayes

Draft submitted in agenda packet, original never received

Council amended legislation at the meeting

Responsible Contact Information

Department CEDA

Contact Person/Ext. Ray Derania x4780

Notes (if any)

Introduced by

Approved for Form and Legality

Councilmember

OAKLAND CITY COUNCIL

DRAFT

Resolution No. _____ C.M.S.

RESOLUTION CONDITIONALLY APPROVING A FINAL MAP FOR TRACT No. 7868 FOR THE TASSAFORANGA AFFORDABLE HOUSING PROJECT AT 968 81st AVENUE FOR THE OAKLAND HOUSING AUTHORITY FOUNDATION

WHEREAS, the developer of a residential dwelling project, Oakland Housing Authority Foundation, a California public benefit corporation (no. C1260637), is the Subdivider of five (5) contiguous parcels identified by the Alameda County Assessor as APN 041-4206-001-00, 041-4206-002-00, 041-4206-004-00, 042-4280-001-01, and 042-04281-007-04, and by the Alameda County Clerk-Recorder as Tract No. 7868, and by the City of Oakland as 968 81st Avenue, and by the developer as Tassaforanga Affordable Housing project; and

WHEREAS, the Subdivider has acquired by purchase for valuable consideration all of the real property comprising Tract No. 7868; and

WHEREAS, the Subdivider has previously applied to the City of Oakland for a tentative map (TTM7868) to voluntarily merge said five (5) parcels and subdivide the platted land into twenty-nine (29) lots comprising Tract No. 7868 for the construction of single family and multiple family dwellings, private roads, and resident parking; and

WHEREAS, the Planning Commission of the City of Oakland approved the environmental determination (mitigated negative declaration) and land use entitlements (CMDV06184, GP06182, RZ06183, ER06013) and the Tentative Map for Tract No. 7868 on September 20, 2006, and the Council of the City of Oakland approved said determination and entitlements on October 17, 2006, which proposed:

- the establishment of twenty-one (21) residential lots for ownership by private purchasers, six (6) residential lots for ownership by the Oakland Housing Authority Foundation, and two (2) lots for resident parking; and
- the dedication to the City of public service easements for access and utilities; and
- the vacation to the Oakland Housing Authority Foundation without valuable consideration of a portion of the 84th Avenue public right-of-way for common-area parking; and
- the dedication to the City without valuable consideration of real property for an expansion of Tassaforanga Park.

WHEREAS, the Secretary of the Planning Commission of the City of Oakland has certified to the Council of the City of Oakland that the Planning Commission and the City Council approved the Tentative Map for Tract No. 7868, upon which said Final Map is based; and

WHEREAS, pursuant to California Government Code section 66412, the Subdivider previously applied to the Zoning Division of the City of Oakland for a Parcel Map Waiver (PMW007038), which was recorded by the Alameda County Clerk-Recorder as series no. 2008090413 on March

13, 2008, to adjust the common boundary separating parcel 041-4206-001-00 (lands of Oakland Housing Authority Foundation) and parcel 041-4206-003-00 (lands of Quintor Enterprises LLC) the product of which is reflected in the Final Map for Tract No. 7868; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Final Map for Tract No. 7868, attached hereto as *Exhibit A*, is substantially the same as the Tentative Map approved by the Planning Commission and the City Council, and
- the Final Map for Tract No. 7868 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, the City Engineer has further determined that the Final Map is technically correct and accurately delineates the proposed metes and bounds of the property boundaries separating the proposed twenty-nine (29) lots and the proposed on-site public service easements, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on the Final Map for Tract No. 7868; and

WHEREAS, the Subdivider has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the proposed on-site public easements; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX0800059 and the Subdividers' plans and specifications for construction of the required public infrastructure improvements, included by reference with *Exhibit B*; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100 as a condition precedent to approval of the Final Map for Tract No. 7868, the Subdivider has executed a Subdivision Improvement Agreement, attached hereto as *Exhibit C*, assuring the timely construction, unconditional warrantee, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, the Subdivider has deposited securities in the form of surety bonds, included by reference with *Exhibit A*, and in sufficient amounts, as estimated by the City Engineer, to secure the Subdivider's performance under *Exhibit B*; 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; now, therefore, be it

RESOLVED: That the Final Map for Tract No. 7868 is hereby conditionally approved; and be it

FURTHER RESOLVED: That the vacation of the portion of 84th Avenue to the Oakland Housing Authority Foundation without valuable consideration, as delineated on the Final Map, is hereby conditionally approved; and be it

FURTHER RESOLVED: That the dedication of public service easements to the City of Oakland, as delineated on the Final Map, is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the dedication of real property to the City of Oakland without valuable consideration, as delineated on the Final Map, for an expansion of Tassaforaga Park is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the approval of the Final Map and the approval of said street vacation and the acceptance of said dedications are conditioned upon completion to the satisfaction of the City Engineer of public infrastructure improvements, as set forth in the Subdivision Improvement Agreement; and be it

FURTHER RESOLVED: That failure by the Oakland Housing Authority Foundation to comply in all aspects with the Subdivision Improvement Agreement shall void approval of the Final Map and void approval of said street vacation and void acceptance of said dedications and shall revert the original parcels comprising Tract No. 7868 to acreage; and be it

FURTHER RESOLVED: That the Oakland Housing Authority Foundation shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements within said public service easements as delineated on the Final Map, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary sewer piping, and storm water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission; and be it

FURTHER RESOLVED: That by the acceptance of said vacated section of the public right-of-way of 84th Avenue, the Oakland Housing Authority Foundation acknowledges each of and agrees to all of the following:

- a. that the Oakland Housing Authority Foundation shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any claim, demand, lawsuit and judgment for damages of any kind and nature arising out of said vacation and regardless of responsibility for negligence; and
- b. that the City of Oakland makes no representations or warranties as to the conditions beneath said vacated section of the public right-of-way; and that by accepting this vacation, the Oakland Housing Authority Foundation agrees that it will use the vacated area at its own risk; and
- c. that the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and Oakland Housing Authority Foundation hereby waives and fully releases and forever discharges the City of Oakland and its officers, officials, representatives, 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

- d. that the Oakland Housing Authority Foundation 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
- e. that the Oakland Housing Authority Foundation recognizes 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 accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and be it

FURTHER RESOLVED: That the hereinabove conditions shall be binding upon the Oakland Housing Authority Foundation and its representatives, heirs, successors, and assigns and the successive owners of said lots as delineated on the Final Map; and be it

FURTHER RESOLVED: That the City Engineer is hereby authorized to endorse the Final Map for Tract No. 7868; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby authorized to endorse the Final Map for Tract No. 7868, upon its execution by the City Engineer, and directed to file the fully endorsed Final Map and the Subdivision Improvement Agreement concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of the Final Map for Tract No. 7868 by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

EXHIBIT A

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE ABOVE DESCRIBED PROPERTY AND WE HAVE SOME RIGHT, TITLE OR INTEREST IN THE REAL PROPERTY DESCRIBED ABOVE...

AS OWNERS

THE CITY OF OAKLAND INFRASTRUCTURE AUTHORITY

BY: AUTHORIZED REPRESENTATIVE

AS OWNERS

HUBERT FOX HUBERTY

BY: AUTHORIZED REPRESENTATIVE

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA COUNTY OF ALAMEDA I, THE UNDERSIGNED, DO HEREBY ACKNOWLEDGE THAT I AM THE OWNER OF THE ABOVE DESCRIBED PROPERTY...

WITNESSE MY HAND

SIGNATURE

PRINTED NAME

PRINCIPLE PLACE OF BUSINESS (CITY/STATE)

DEPARTMENT OF COMMERCE

COMMISSIONER

SUPERVISOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY OR COMPOUND OF THE RECORDS OF THE CITY OF OAKLAND HOLDING AUTHORITY IN NOVEMBER, 2008...

DATE: 11/5/08

NAME: KARA CIRRAL

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THIS MAP IS DESIGNATED AS TRACT 7868, CONSISTING OF TRACT 107 (B) OF THE RECORDS OF THE CITY OF OAKLAND AT A MEETING OF THE BOARD OF SUPERVISORS HELD ON THE DAY OF 11/5/08...

DATE: 11/5/08

NAME: KARA CIRRAL

CITY ENGINEER'S STATEMENT

I, RAFAEL M. BARRERA, CITY ENGINEER, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS TRACT MAP...

DATE: 11/5/08

NAME: RAFAEL M. BARRERA

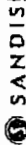
RECORDERS STATEMENT

THE MAP, FILED FOR RECORDING, IS THE PROPERTY OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA...

TRACT 7868

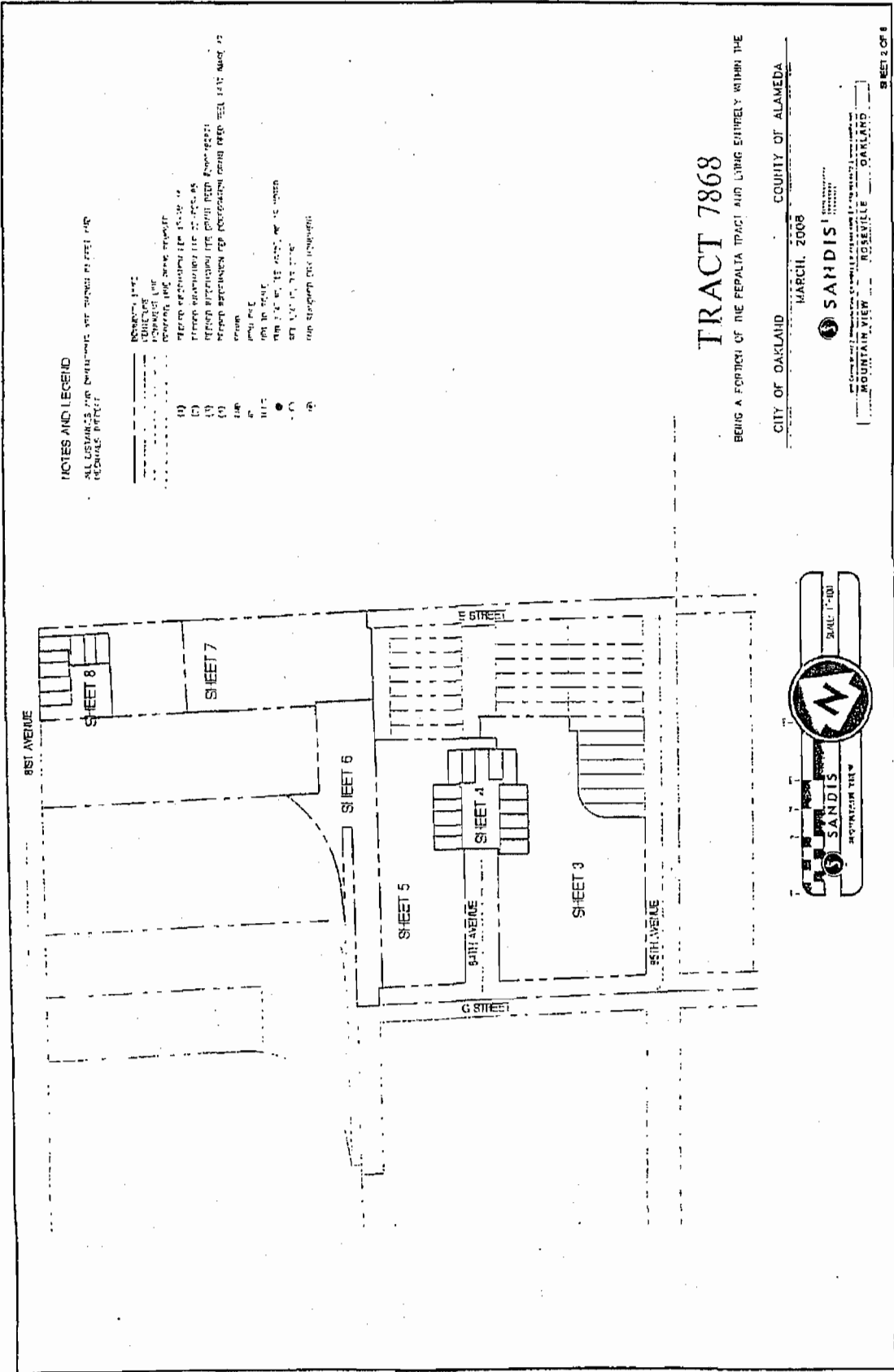
BEING A PORTION OF THE REPALIA TRACT AND LINGO ENTIRELY WITHIN THE

CITY OF OAKLAND COUNTY OF ALAMEDA MARCH, 2008



SANDIS RECORDERS & TITLE COMPANY 1000 MOUNTAIN VIEW ROSEVILLE, CALIFORNIA 95678

EXHIBIT A



NOTES AND LEGEND

ALL DIMENSIONS ARE IN FEET AND DECIMAL FRACTIONS

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TRACT 7868

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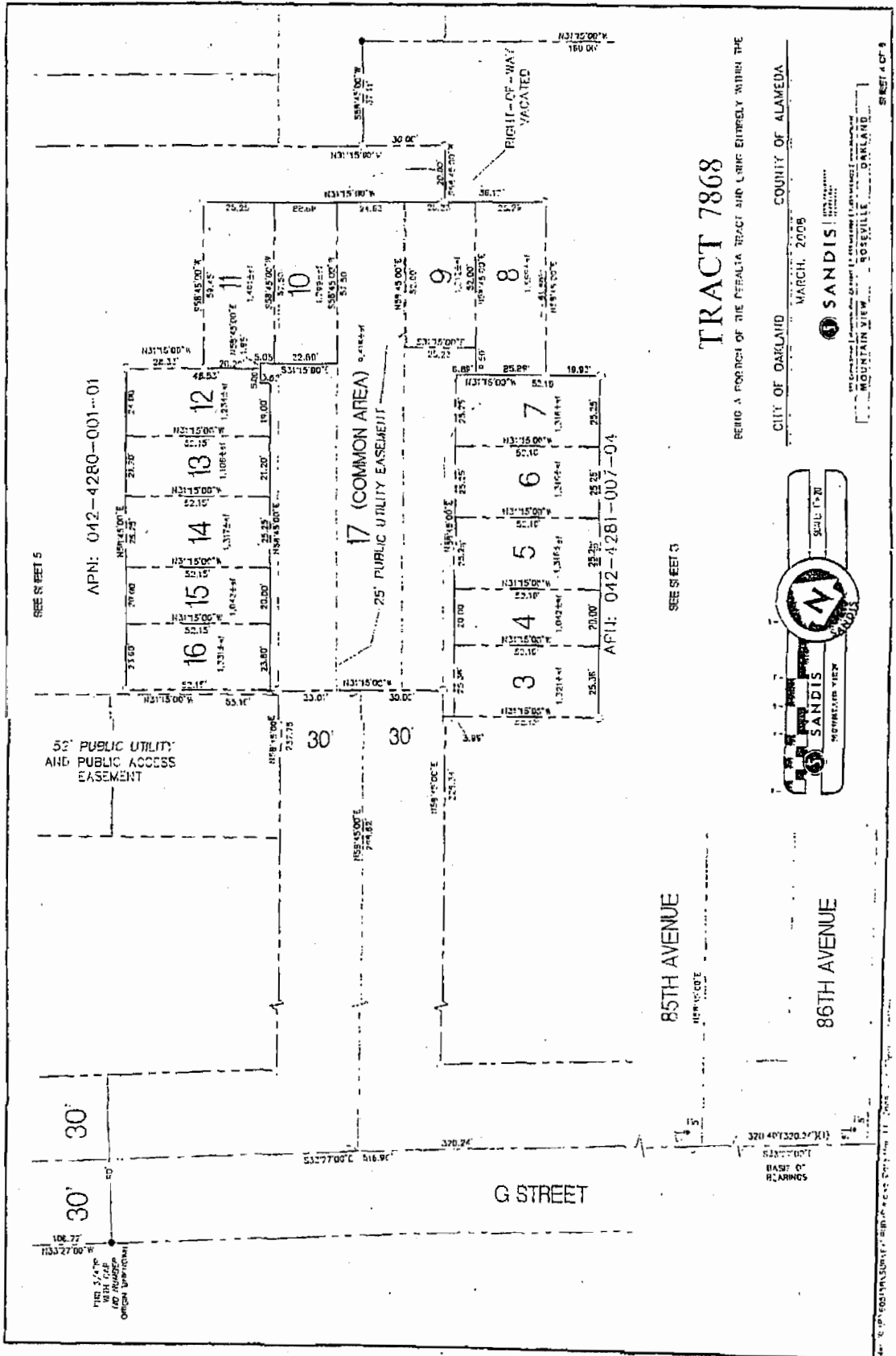
CITY OF OAKLAND COUNTY OF ALAMEDA
 MARCH, 2008



MOUNTAIN VIEW ROSEVILLE OAKLAND



EXHIBIT A



TRACT 7868

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CITY OF OAKLAND COUNTY OF ALAMEDA

MARCH, 2008

SANDIS



85TH AVENUE

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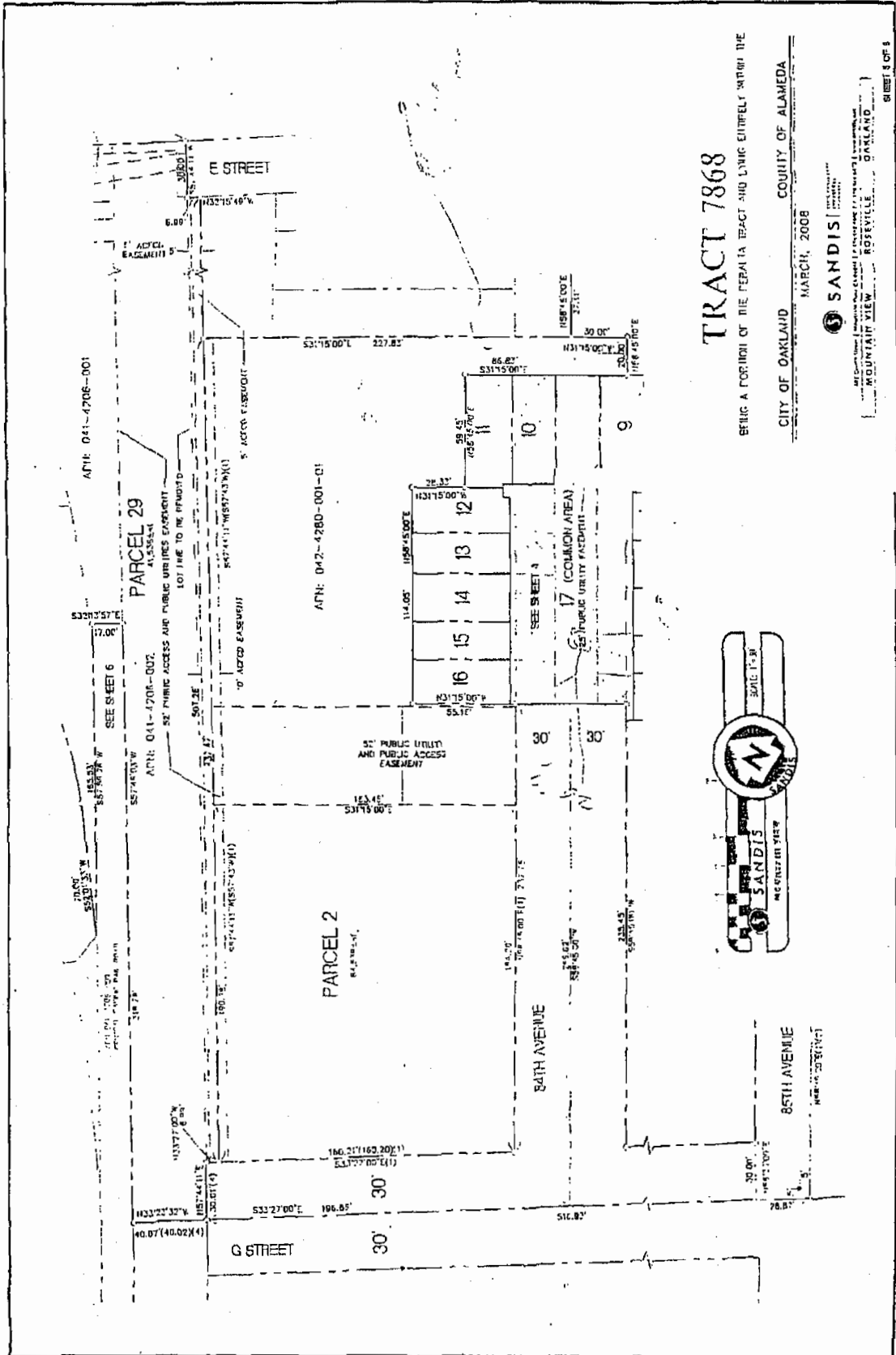
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SEE SHEET 5

SEE SHEET 3

SHEET 4 OF 4

EXHIBIT A



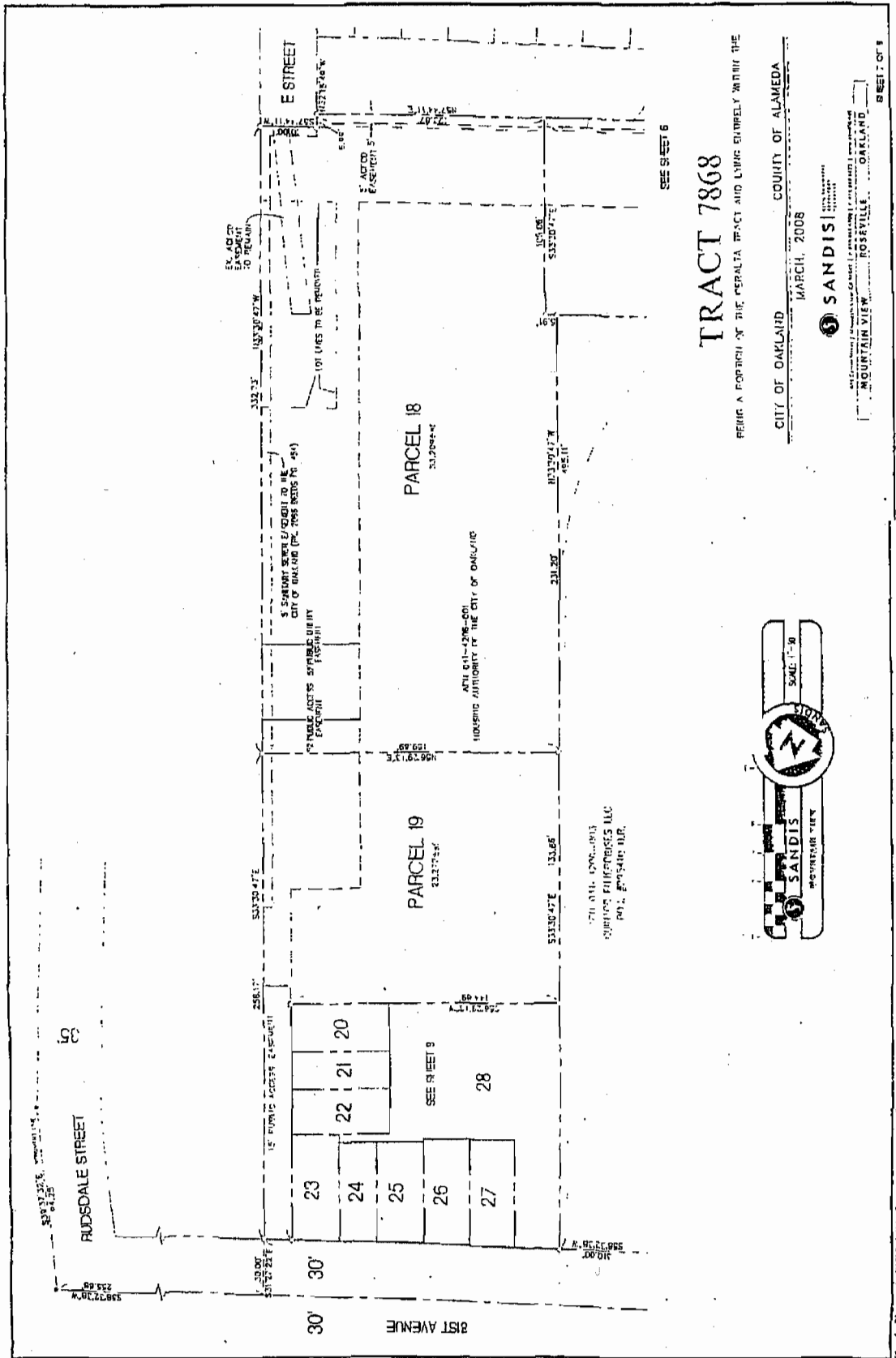
TRACT 7868

BEING A PORTION OF THE TRACT AND LYING ENTIRELY WITHIN THE CITY OF OAKLAND COUNTY OF ALAMEDA MARCH, 2008



SANDIS
 MOUNTAIN VIEW
 OAKLAND
 SHEET 8 OF 8

EXHIBIT A



TRACT 7868

BEING A PORTION OF THE PERALTA TRACT AND LYING ENTIRELY WITHIN THE

CITY OF OAKLAND COUNTY OF ALAMEDA
MARCH, 2008

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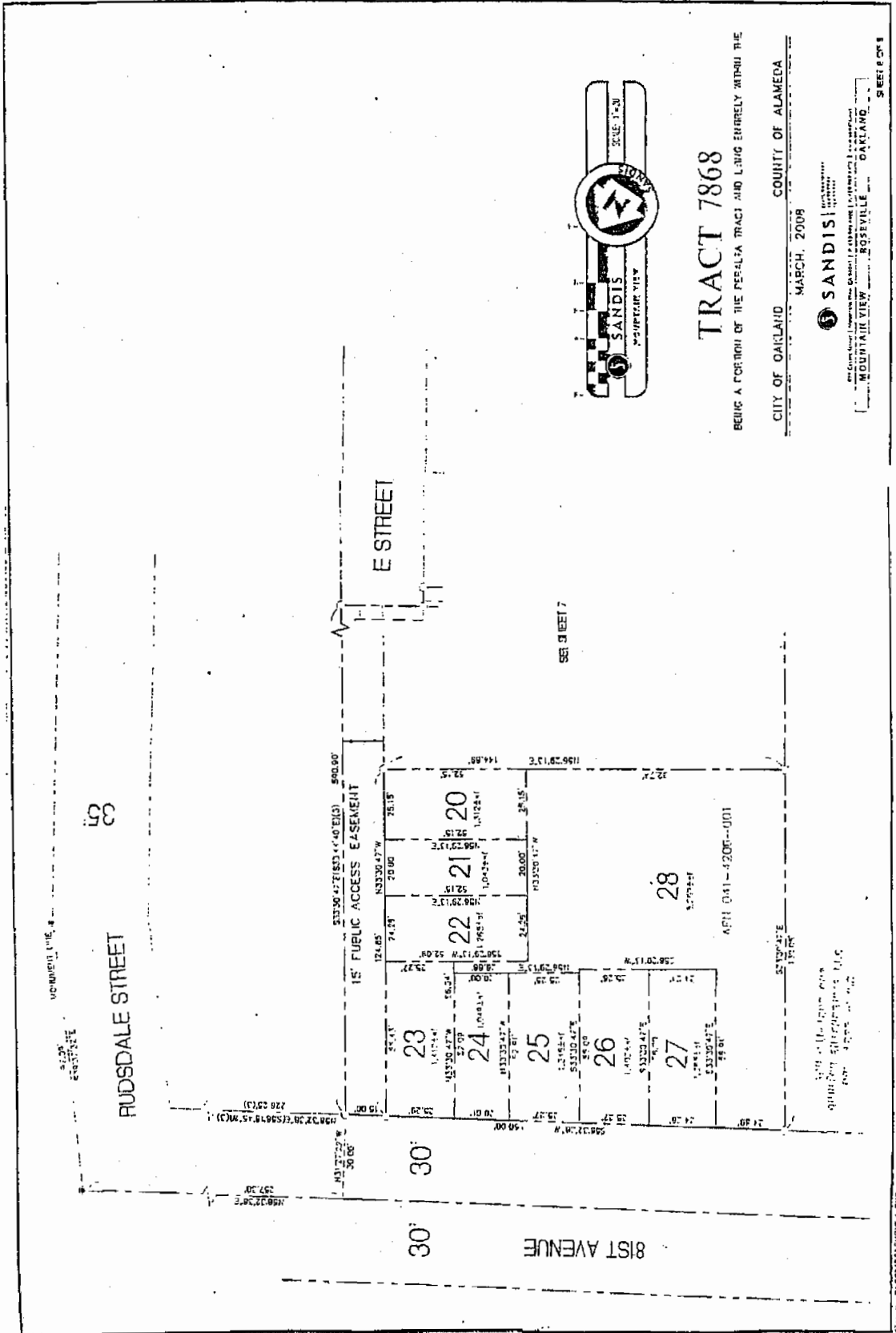
MOUNTAIN VIEW OAKLAND
ROSELLE OAKLAND

SHEET 6 OF 8



770 OAKLAND AVENUE
OAKLAND, CALIFORNIA 94612
PHONE: 510-434-1111

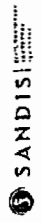
EXHIBIT A



TRACT 7868

BEING A PORTION OF THE PESALEA TRACT AND LING ENTIRELY WITHIN THE

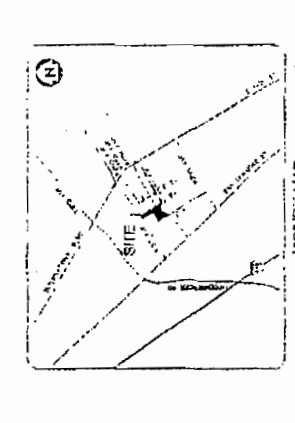
CITY OF OAKLAND MARCH, 2008 COUNTY OF ALAMEDA



ROSEVILLE OAKLAND

EXHIBIT B

TASSAFARONGA HOUSING OFFSITE IMPROVEMENT PLANS



Off-site Improvement Housing Plans
Tassafaronga Housing
Oakland Housing Authority

C0.01
OFF-SITE COVER SHEET

ABBREVIATIONS

Table with columns for abbreviations and their full names, including terms like 'ABBREVIATIONS', 'LEGEND', and 'CONSTRUCTION METHODS'.

CONSTRUCTION METHODS

Table with columns for construction methods and their descriptions, including terms like 'CONSTRUCTION METHODS', 'GENERAL NOTES', and 'FOUNDATION'.

GENERAL NOTES

GENERAL NOTES section containing numbered paragraphs of text detailing project requirements and specifications.

FOUNDATION

FOUNDATION section containing numbered paragraphs of text detailing foundation requirements and specifications.

GENERAL NOTES

GENERAL NOTES section containing numbered paragraphs of text detailing project requirements and specifications.

GENERAL NOTE

GENERAL NOTE section containing numbered paragraphs of text detailing project requirements and specifications.

SUBMITTALS

SUBMITTALS section containing numbered paragraphs of text detailing submission requirements and procedures.

PERMITS

PERMITS section containing numbered paragraphs of text detailing permit requirements and application processes.

PERMITS

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recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland
CEDA - Building Services
Dalziel Administration Building
250 Ogawa Plaza - 2nd Floor
Oakland, CA 94612
Attn: City Engineer

EXHIBIT C

-----space above for Recorder's use only-----

APPROVED FOR FORM AND LEGALITY

CITY ATTORNEY

SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

968 81st Avenue

Final Map - Tract No. 7868

Tassafaronga Affordable Housing Project

This Agreement is between the Oakland Housing Authority Foundation, (DEVELOPER), a California public benefit corporation (no. C1260637), and its successors or assigns, affiliated corporations, or partners, and the City of Oakland (CITY), a California municipal corporation, herein identified together as the PARTIES.

RECITALS

The DEVELOPER is the owner in fee title and subdivider of five (5) lots within the corporate limits of the City of Oakland, which are identified by the Alameda County Assessor as parcel numbers 041-4206-001-00, 041-4206-002-00, 041-4206-004-00, 042-4280-001-01, and 042-04281-007-04, and by the CITY as 968 81st Avenue, who has presented a Final Map, which is identified by the Alameda County Recorder as Tract No. 7868, to the Council of the City of Oakland that proposes a merger and re-subdivision of this platted land into twenty-seven (27) residential lots and two (2) additional lots for access and parking.

As a condition precedent to the approval of the Final Map, the CITY requires the irrevocable dedication of public easements shown on the Map. In addition, the CITY requires construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated easements that customarily include grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, communication, water, and natural gas utility mains and branch piping and wiring, fire hydrants, street light, electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto.

The DEVELOPER has asked the CITY and local public utility companies to accept the permanent maintenance of certain of the required public infrastructure improvements shown on the construction plans accompanying permit number PX0800059 and included in *Exhibit A*, attached hereto.

Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration by the CITY of its approval of the proposed Final Map and its vacation of public right-of-way and its conditional acceptance of the irrevocable offers of dedication of public easements and its acceptance of certain of the permanent maintenance of the required public infrastructure improvements, the PARTIES desire to establish an Agreement binding the DEVELOPER to complete the required improvements within the time duration set forth in Section 4 below.

THEREFORE, the PARTIES to this Agreement mutually agree as follows:

1. Approval of Final Map

Approval of the proposed Final Map No. 7868 by the CITY shall be conditioned upon recordation of this Agreement with the Alameda County Clerk-Recorder, as well as the DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Improvements

The DEVELOPER shall construct all required on-site and off-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth below in paragraph 3, Special Conditions.

3. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

A. Public infrastructure improvements shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction 2002 Edition and Standard Specifications for Public Works Construction 2002 Edition.

B. The time duration for the completion of required public infrastructure improvements, as set forth in paragraph 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten years.

C. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all Conditions of Approval for the Tassafaronga Affordable Housing Project and the Oakland Municipal Code, including section 15.04.780 and subsections 3304.6 and 3304.11. No work shall be performed on Saturdays or Sundays or holidays nor commence before 8:00 am local time nor be performed after 5:00 pm local time without the written authorization of the City Engineer.

D. Performance standards for the construction of required public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control.

E. The DEVELOPER shall execute an agreement for the maintenance of storm water pollutant pre-treatment facilities ("bioswales") and shall apply for an encroachment permit for facilities constructed within the public right-of-way.

F. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

4. Completion of Improvements

A. All construction of required public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of execution of this Agreement by the CITY, except those required improvements for which another completion date is stated in *Exhibit A* or set forth above in paragraph 3. Special Conditions. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.

B. The City Engineer may extend the time for completion of the required public infrastructure improvements. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle the DEVELOPER to an extension under this paragraph 4B.

C. An extension may be granted without notice to the DEVELOPER's surety, and extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement.

D. In the event that an extension is granted, DEVELOPER agrees to promptly extend the term of all surety bonds securing its performance under this Agreement, and/or provide additional bonds or other surety acceptable to the CITY. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure DEVELOPER's performance, the extension shall be void.

5. Acceptance of Dedications and Ownership of Improvements

Upon final approval of the public infrastructure improvement permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in paragraphs 7, Maintenance, and 8, Guarantee and Warranty.

6. Responsibility for Dedications and Improvements

Until the Certificate of Completion is unconditionally issued, the DEVELOPER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

7. Maintenance of Improvements

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.

8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required

improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special

Conditions. DEVELOPER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in *Exhibit A* and set forth above in paragraph 3, Special Conditions.

If at any time before the expiration of the guarantee and warrantee period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the DEVELOPER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the DEVELOPER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the DEVELOPER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure improvements for permanent maintenance, the DEVELOPER shall pay all fees and penalties and accrued interest to the CITY and other Public Agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the DEVELOPER fails to perform its obligations under this Agreement, DEVELOPER, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

12. Property Acquisition

If the DEVELOPER is unable to acquire property required for the construction of required improvements, the DEVELOPER agrees to execute the standard CITY Contract for Real Property Acquisition to provide for acquisition through eminent domain.

13. Security

The DEVELOPER shall present to the CITY surety bonds, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. **Faithful Performance Bond** in a face amount not less than \$ 3,446,091.00, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the on-site and off-site required public infrastructure improvements, to secure faithful performance of this Agreement by the DEVELOPER; and

2. **Labor and Materials Bond** in a face amount not less \$ 1,723,046.00, which is one-half of the full amount (fifty percent) of the City Engineer's total estimated cost for constructing the on-site

and off-site required public infrastructure improvements, to secure payment by the DEVELOPER to its contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

B. Before final approval of the public infrastructure permit, the following security shall be presented:

Maintenance Bond in a face amount not less than \$ 861,523.00, which is one-quarter (25%) of the full amount of the City Engineer's total estimated cost for constructing the on-site and off-site required public infrastructure improvements, to secure faithful performance of paragraphs 7, Maintenance, and 8, Guarantee and Warrantee, above. This Maintenance Bond shall remain in effect for not less than one year after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.

C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.

14. **Alternative Security**

In lieu of the bonds required above in paragraph 13, Security, alternative securities may be substituted by the DEVELOPER in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

15. **Hold Harmless**

The DEVELOPER shall indemnify, defend and hold the CITY and its officers, officials, employees, representatives, agents and volunteers harmless against any and all claims, injuries, damages, losses and suits, including attorney fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages directly caused by the sole gross negligence of the CITY and its officers, official, employees, representative, agents, or volunteers.

Not in limitation of the foregoing, DEVELOPER further agrees to defend and protect the CITY and its officers, officials, employees, representatives, agents and volunteers from all liability or claim because of, or arising out of the use of any patent or patented articles in the construction of said improvements.

DEVELOPER waives all claims and recourse against the CITY, including, without limitation, the right of contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incident to the work performed or failed to be performed under this Agreement, except claims and recourse arising directly from the sole gross negligence of the CITY and its officers, officials, employees, representatives, agents or volunteers.

This indemnification clause shall survive the termination of this Agreement.

16. **Insurance Required**

DEVELOPER shall procure and maintain for the duration of the Agreement sufficient insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance

1. **Commercial General Liability** insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

2. **Automobile Liability** with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.

3. **Worker's Compensation** insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

4. **Professional Liability/ Errors/ Omissions** insurance with limits not less than **\$1,000,000.00**.

5. **Builders' Risk/ Course of Construction** insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or
2. the DEVELOPER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the DEVELOPER, products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER, or automobiles owned, leased, hired or borrowed by the DEVELOPER. The

coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. The DEVELOPER's insurance coverage shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies required by this clause, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

4. The DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The insurer shall agree to waive all rights of subrogation against the CITY and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.

6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY. In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

E. Acceptability of Insurers

If the insurance company providing coverage is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

F. Verification of Coverage

DEVELOPER shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 20 10 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

G. Subcontractors

The DEVELOPER shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

17. Participation in Benefit Districts

This section is not applicable.

18. Actions to Enforce

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorneys' fees and expert witness fees, in addition to any other relief to which they may be entitled.

19. Beneficiaries, Heirs, Assigns, and Successors In Interest

This Agreement pertains to and runs with the real property included within Tract No. 7868, which land is expressly agreed to benefit from the privileges granted to DEVELOPER under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest of the DEVELOPER.

20. Attachments

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX0800059 Planning CMDV06184, CU07524, RZ06183

Resolutions: _____ C.M.S. _____ C.M.S.

Subdivision: Final Map - Track No. 7868 City Engineer's Estimate of the Cost of Improvements

Insurer: _____ Surety: _____

21. Constructive Notice

This Agreement shall be filed with the Alameda County Clerk-Recorder for recordation upon its execution by the PARTIES.

22. Effective Date

This Agreement shall become effective upon its execution by the PARTIES.

IN WITNESS WHEREOF, the DEVELOPER has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated below.

OAKLAND HOUSING AUTHORITY FOUNDATION *

CITY OF OAKLAND

signature

signature

name

by RAYMOND M. DERANIA
Interim City Engineer

title

date

date

* notarized acknowledgment required