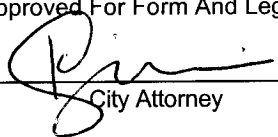


OFFICE OF THE CITY CLERK  
Introduced By  
2003 MAY 14 PM 2:40  
Councilmember

Approved For Form And Legality  
  
City Attorney

**OAKLAND CITY COUNCIL**

**RESOLUTION No. 8 1 2 8 8 C.M.S.**

**RESOLUTION SUMMARILY VACATING A PORTION OF A SEWER EASEMENT AT 25 CHADBOURNE WAY TO BRIAN AND SHELLEY TURNER**

**WHEREAS**, Brian and Shelley Turner, as "Permittee" and owners of the property described in a Grant Deed, recorded June 12, 2003, series no. 2003-345333, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 037A-3150-010-00, and identified by the City of Oakland as 25 Chadbourne Way, and more particularly described in *Exhibit A* attached hereto, has made an application to the Council of the City of Oakland (PPE07007) to summarily vacate an unused and unneeded three (3) feet long end-portion of a five (5) feet wide sanitary sewer public service easement located in the rear of said parcel; and

**WHEREAS**, said owners have also filed an application (RB0704396) with the Building Official of the City of Oakland to construct a proposed a room addition which would expand the existing living area of said owners single family dwelling by 258 square feet; and

**WHEREAS**, the proximity of said easement to said dwelling is such that said proposed room addition would encroach into said end-portion of said easement; and

**WHEREAS**, said easement was dedicated by the Sterling Development Company through a subdivision map for Tract 1614, filed May 16, 1956, series no. AL 52653, book 37 of maps, page 19, by the Alameda County Recorder, and accepted by the City of Oakland through Council Resolution No. 34365 C.M.S., attached hereto as *Exhibit B*; and

**WHEREAS**, the City Engineer of the City of Oakland, in consultation with the Public Works Agency, has determined that said end-portion of said easement has no existing surface or subsurface public utilities within it and has never been used for the sanitary sewer purpose for which it was dedicated and is not needed in the future for such purpose; and

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

**WHEREAS**, the limits of said easement are delineated diagrammatically in *Exhibit B*; and

**WHEREAS**, the limits of said end-portion of said easement proposed for vacation are delineated diagrammatically and texturally on *Exhibit C*, attached hereto, which was prepared from record

information by a qualified civil engineer who is licensed by the State of California to prepare metes and bounds surveys ; and

**WHEREAS**, said owners have also filed a permit (PX0700091) with the City Engineer to construct a new manhole within said easement and with sufficient clearance from said proposed room addition to provide improved access for City personnel to maintain an existing sanitary sewer main located with said easement; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with Section 15332 (Class 32: Infill Projects) and Section 15301 (minor alteration to existing structure) of the California Code of Regulations this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

**RESOLVED**: That the summary vacation, as conditioned herein under, of the end-portion of the existing public service easement, as delineated in *Exhibit C*, at 25 Chadbourne Way to the property owners, Brian and Shelley Turner, is hereby approved; and be it

**FURTHER RESOLVED**: That this vacation is hereby conditioned upon the final approval by the City Engineer of public infrastructure construction permit PX0700091 and the expiration of the one (1) year warrantee period; and

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

1. the Permittee, by the acceptance of this vacation, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out said vacation and regardless of responsibility for negligence; and
2. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the existing public service easement; and that by accepting this vacation, the Permittee agrees that it will use the easement area in the future at its own risk; and
3. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation

and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

4. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" ; and
5. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
6. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

**FURTHER RESOLVED:** That this resolution shall take effect upon its recordation by the Alameda County Clerk-Recorder; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 20 2008, 2008

PASSED BY THE FOLLOWING VOTE:

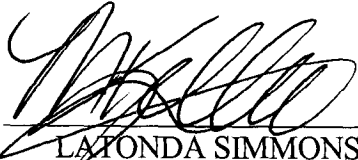
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

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

## **Exhibit A**

*Lands of the Shelley and Brian Turner, as described in a Grant Deed, recorded June 12, 2003, series no. 2003345444, by the Alameda County Clerk-Recorder*

All that certain real property situated in the City of Oakland, County of Alameda, State of California, described as follows:  
Lot 29, Tract 1614, filed May 15, 1956, in Book 37, Pages 19 and 20 of Maps, Alameda County Records.

APN: 037A-3150-010

Exhibit B

Delineation of sewer easement accepted by the City of Oakland in 1956 through Tract Map 1614 (by reference)

TRACT 1614, OAKLAND, ALAMEDA COUNTY, CALIFORNIA.

MAY 1956

BRYAN & MURPHY CIVIL ENGINEERS BERKELEY, CALIFORNIA

CONTINENTAL AUXILIARY COMPANY, a corporation, the trustee; and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association, the beneficiary, under those certain deeds of trust made by STERLING DEVELOPMENT COMPANY, a partnership, dated March 9, 1956, and recorded March 22, 1956, in Book 7975 of Official Records, at pages 33, 36, 39, 42 and 45, Records of Alameda County, hereby consent to the making and filing of the herein embodied map entitled, "TRACT 1614, OAKLAND, ALAMEDA COUNTY, CALIFORNIA.", and join in the offer to dedicate those parcels of land offered for dedication to public use as shown upon said map.

IN WITNESS WHEREOF, said CONTINENTAL AUXILIARY COMPANY and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, have caused their names and seals to be affixed hereto and this certificate to be executed by their duly authorized officers this 9th day of April A.D. 1956.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By [Signature] Vice President

By [Signature] Assistant Secretary

Seal

CONTINENTAL AUXILIARY COMPANY, TRUSTEE

By [Signature] Vice President

By [Signature] Assistant Secretary

Seal

STATE OF CALIFORNIA ) ss. COUNTY OF ALAMEDA )

On this 9th day of April A.D. 1956, before me A.W. Meiklejohn a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared E.E. Bracht and A. Ghiglietti known to me to be the Agent and Assistant Secretary respectively of CONTINENTAL AUXILIARY COMPANY, a corporation, and E.E. Bracht and A. Ghiglietti known to me to be the Vice President and Assistant Secretary respectively of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association, the

A more legible copy of this map is available for viewing at the Office of the City Engineer, City of Oakland, , 250 Frank H. Ogawa Plaza, Dalziel Administration Building, 2nd floor.

Exhibit B (continued)

Delineation of sewer easement accepted by the City of Oakland in 1956 through Tract Map 1614 (by reference)

consisting of four (4) sheets, numbered Sheet One (1), Sheet Two (2), Sheet Three (3), and Sheet Four (4), respectively; this certificate being upon Sheet One (1) thereof; that it has caused said map to be prepared for record and consents to the making and filing thereof; that said map particularly sets forth and describes all the lots intended for sale by number and their precise length and width; that said map particularly sets forth and describes those parcels of ground reserved for public purposes by their boundaries, courses and extent; that said parcels of ground so reserved for public purposes are intended for uses and purposes of public highways and are designated within the blue lines upon said map as STANTONVILLE COURT, YARMOUTH COURT, PEMBROKE COURT, STANTONVILLE DRIVE, CRESTMONT DRIVE, RISHELL DRIVE, KIMBERLIN HEIGHTS DRIVE, and CHADBOURNE WAY.

And the undersigned, STERLING DEVELOPMENT COMPANY, a partnership, hereby dedicates those parcels of ground lying within the boundaries of said STANTONVILLE COURT, YARMOUTH COURT, PEMBROKE COURT, STANTONVILLE DRIVE, CRESTMONT DRIVE, RISHELL DRIVE, KIMBERLIN HEIGHTS DRIVE, and CHADBOURNE WAY as designated and delineated and embraced within the blue lines upon the herein embodied final map, to the public for the uses and purposes of public highways.

And the undersigned, STERLING DEVELOPMENT COMPANY, a partnership, hereby dedicates to the City of Oakland, a municipal corporation, its successors and assigns forever, the right to construct, maintain, and operate sewers or conduits with their appurtenances in and under those strips of land shown upon said map and marked "Reserve 5 Ft. Wide", and "Reserve 8 Ft. Wide", all as embraced within the blue lines upon said map; and the right to enter upon said strips of land for the purpose of constructing, reconstructing, maintaining, or repairing said sewers or conduits with their appurtenances.

And the undersigned, STERLING DEVELOPMENT COMPANY, a partnership, hereby dedicates to the City of Oakland, a municipal corporation, its successors and assigns forever, the right to construct and maintain roadway slopes in and over the strips of land shown upon said map and marked "Slope Easement," all as embraced within the blue lines upon said map; and the right to enter upon said strips of land for the purpose of constructing, reconstructing, maintaining, or repairing said roadway slopes.

IN WITNESS WHEREOF, the undersigned STERLING DEVELOPMENT COMPANY, a partnership, has caused this instrument to be executed by its duly authorized attorney-in-fact on this 9th day of April, A.D. 1956.

STERLING DEVELOPMENT COMPANY, a partnership

By A.F. Oddstad  
By C.M. Peletz  
Its Attorney-in-fact  
127 Shasta St., Redwood City, Calif.

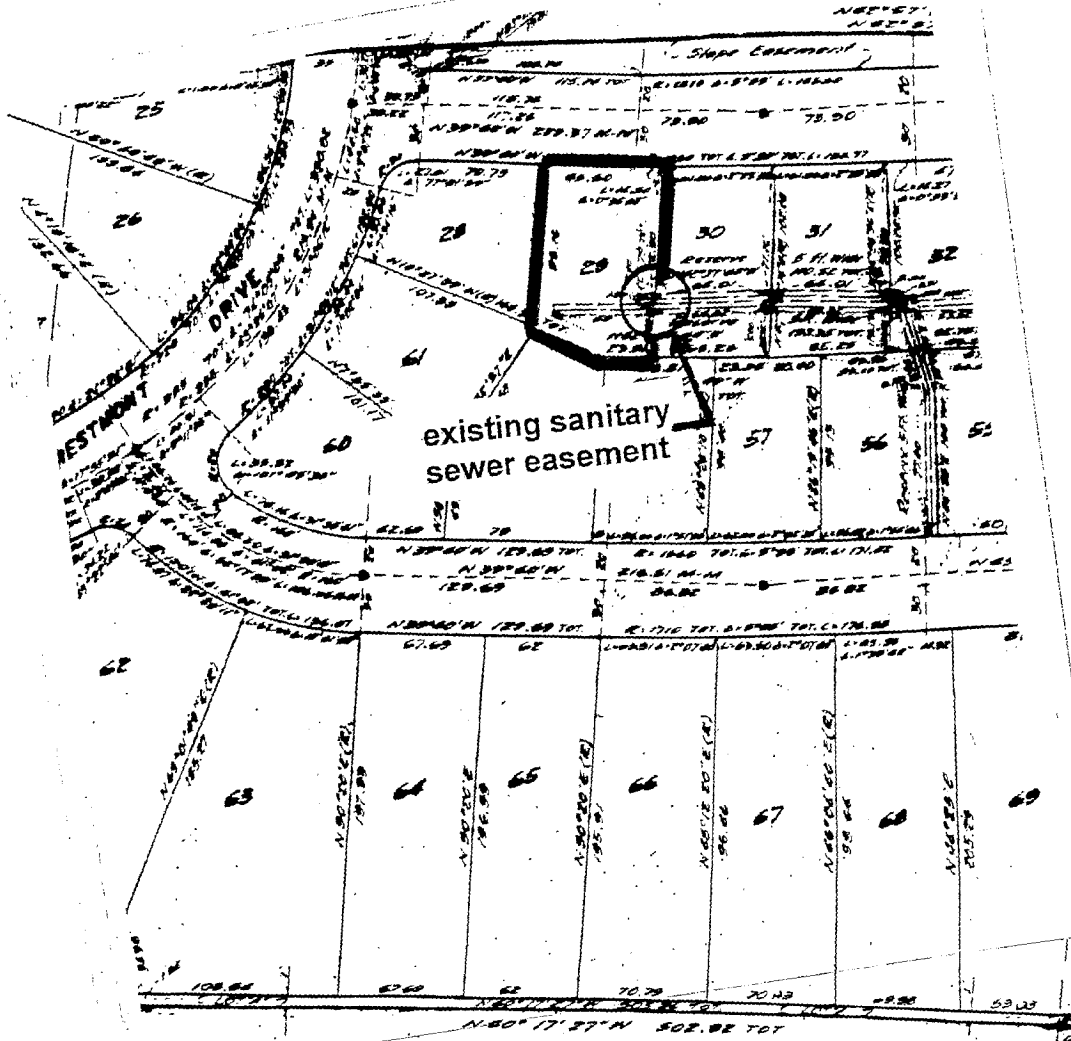
STATE OF CALIFORNIA) ss.  
COUNTY OF ALAMEDA )

On this 9th day of April in the year one thousand nine hundred and fifty six before me Alexander Blejha a Notary Public in and for said County, and State, residing therein, duly commissioned and sworn, personally appeared A.F. Oddstad and C.M. Peletz, known to me to be the persons whose names are subscribed to the within instrument as the attorney in fact of STERLING DEVELOPMENT COMPANY, a partnership, and acknowledged to me that

A more legible copy of this map is available for viewing at the Office of the City Engineer, City of Oakland, , 250 Frank H. Ogawa Plaza, Dalziel Administration Building, 2nd floor.

Exhibit B (continued)

Delineation of sewer easement accepted by the City of Oakland in 1956 through Tract Map 1614  
(by reference)



TRACT 1614,  
ALAMEDA COUNTY,  
CALIFORNIA.  
MAY 1956

ODDSTAD

AND

BASED ON  
MAY 1956  
GROUND

A more legible copy of this map is available for viewing at the Office of the City Engineer, City of Oakland, 250 Frank H. Ogawa Plaza, Dalziel Administration Building, 2<sup>nd</sup> floor.

## Exhibit C

### *Description Of The Resulting Public Service Easement*

Real property situated in the State of California, County of Alameda, City of Oakland, described as follows:

A portion of a 5 foot wide Reserve, over a portion of Lot 29, Tract 1614, filed May 16, 1956, in Book 37 of Maps, at Page 19 and 20, Official Records of Alameda County, described more particularly as follows:

A strip of land, 5 feet wide right angle measure, the centerline of which is described as follows:

Commencing at the intersection of the southeastern line of said Lot 29, with the southwestern line of Chadbourne Way, as shown on said map; thence along said southeastern line, south  $49^{\circ}45'52''$  west, 72.50 feet to the intersection of said southeastern line with the centerline of a 5 foot wide Reserve; thence along said centerline, north  $42^{\circ}37'44''$  west, 4.50 feet to the Actual Point of Beginning of herein described centerline; thence continuing along last said line, north  $42^{\circ}37'44''$  west, 3.00 feet to the terminus of said 5' reserve, and the terminus of the herein described centerline.

Contains 15 square feet, more or less.

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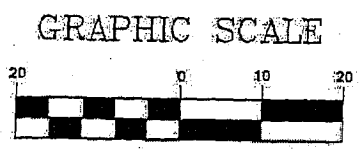
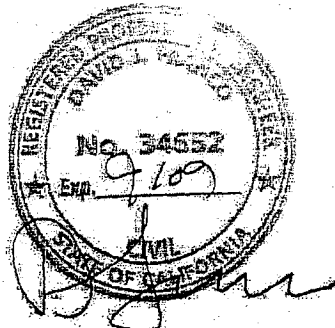
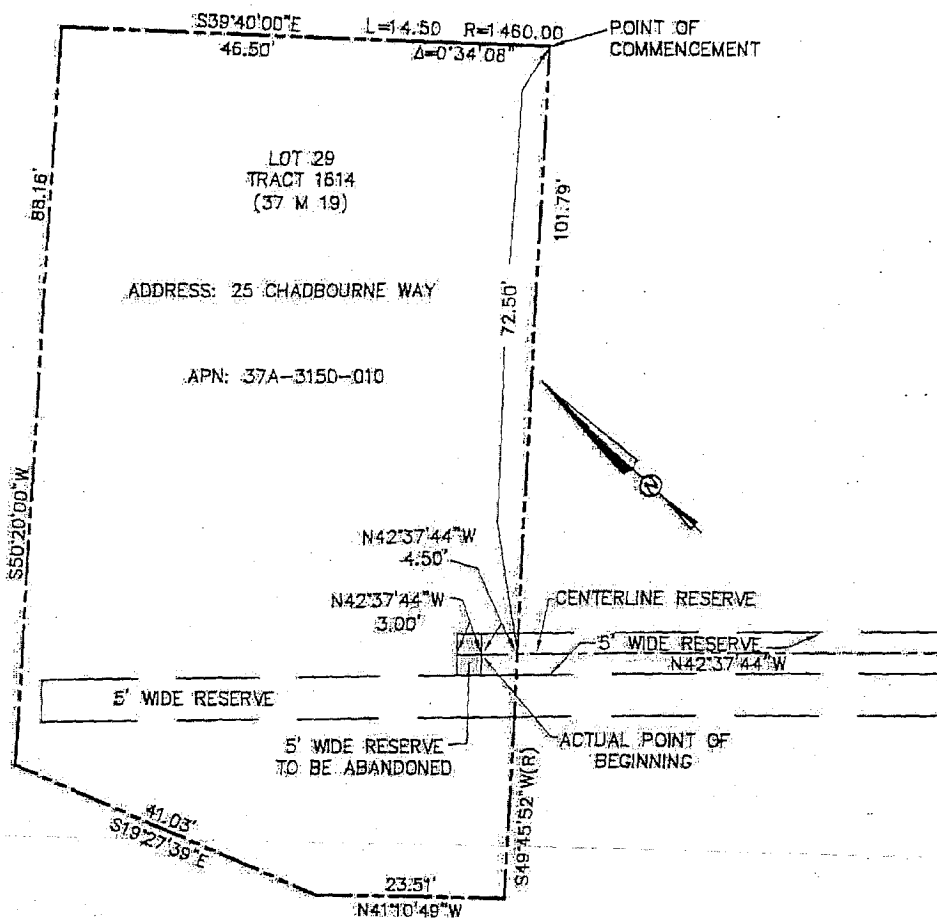


Exhibit C (continued)

Location Of The Resulting Public Service Easement

PLAT OF ABANDONMENT OF 5 FOOT WIDE RESERVE

CHADBOURNE WAY (50')



1 inch = 20 ft.