

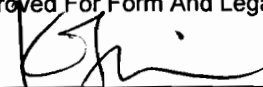
Introduced By

\_\_\_\_\_  
Councilmember

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 JAN 13 PM 6:02

Approved For Form And Legality



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

**OAKLAND CITY COUNCIL**

**RESOLUTION No. 82513 C.M.S.**

**SUMMARY VACATION OF AN UNUSED STORM DRAIN EASEMENT  
LOCATED AT 70 SOTELO AVENUE TO THE EPHRAIM HELLER  
SEPARATE PROPERTY TRUST**

**WHEREAS**, the Ephraim Heller Separate Property Trust, as Permittee and owner of two (2) lots identified as no. 39 and a portion of no. 38 on the original subdivision map entitled "Tract 517 Oakland and Piedmont", recorded December 17, 1936, by the Alameda County Recorder, and described in a grant deed, recorded June 26, 2007, series no. 2007237758, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048C-7179-020-00, and identified by the City of Piedmont as 70 Sotelo Avenue, and more particularly described in *Exhibit A* attached hereto, has made an application (PPE 09055) to the City Engineer of the City of Oakland to vacate summarily an unused public service easement that traverses a portion of said property wholly within the corporate limits of the City of Oakland; and

**WHEREAS**, said easement was dedicated by Ralph B. and Helen B. Pahlmeyer through a grant deed, recorded April 30, 1968, series no. BA46749, by the Alameda County Recorder, and is more particularly delineated in *Exhibit B* and described in *Exhibit C* attached hereto; and

**WHEREAS**, said easement was dedicated for the purpose of conveying rainwater through a buried culvert across said Lot 39 from its beginning point at the northeasterly property boundary adjoining parcel 048C-7179-017-01 at 6215 Wood Drive to its ending point at the southwesterly property boundary adjoining parcel 048C-7179-060-00 at 41 Glen Alpine Road; and

**WHEREAS**, said easement is five (5) feet wide and approximately four hundred and seventy-nine (479) feet long, as measured along its centerline, from its beginning point to its ending point; and

**WHEREAS**, the City Engineer has determined that said easement has never been used for the purpose for which it was dedicated more than forty (40) years ago and will not be needed for such purpose in the future; 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 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 does not have publicly maintained utilities with it; 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 vacation, as conditioned herein, of said public service easement to the Ephraim Heller Separate Property Trust is hereby granted; and be it

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

1. the Permittee (Ephraim Heller Separate Property Trust) 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
2. 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 workmen operating within the vacated area and for his own safety and the safety of any of his personnel; and
3. 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

4. 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
5. 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
6. the hereinabove conditions shall be binding upon the Permittee and his successors, heirs, and assigns, and upon the successive owners of said property; 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, FEB 02 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, ~~REID~~,  
AND PRESIDENT BRUNNER - 7

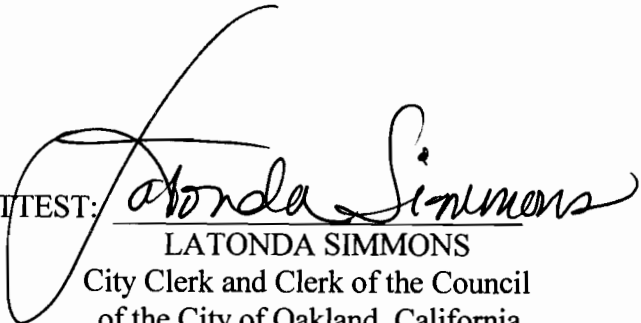
NOES -  $\phi$

ABSENT -  $\phi$

ABSTENTION -  $\phi$

Excused - Reid - 1

ATTEST:

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

## Exhibit A

*Lands of the Ephraim Heller Separate Property Trust, as described in a grant deed, recorded June 26, 2007, series no. 2007237758, by the Alameda County Clerk-Recorder*

PARCEL ONE:

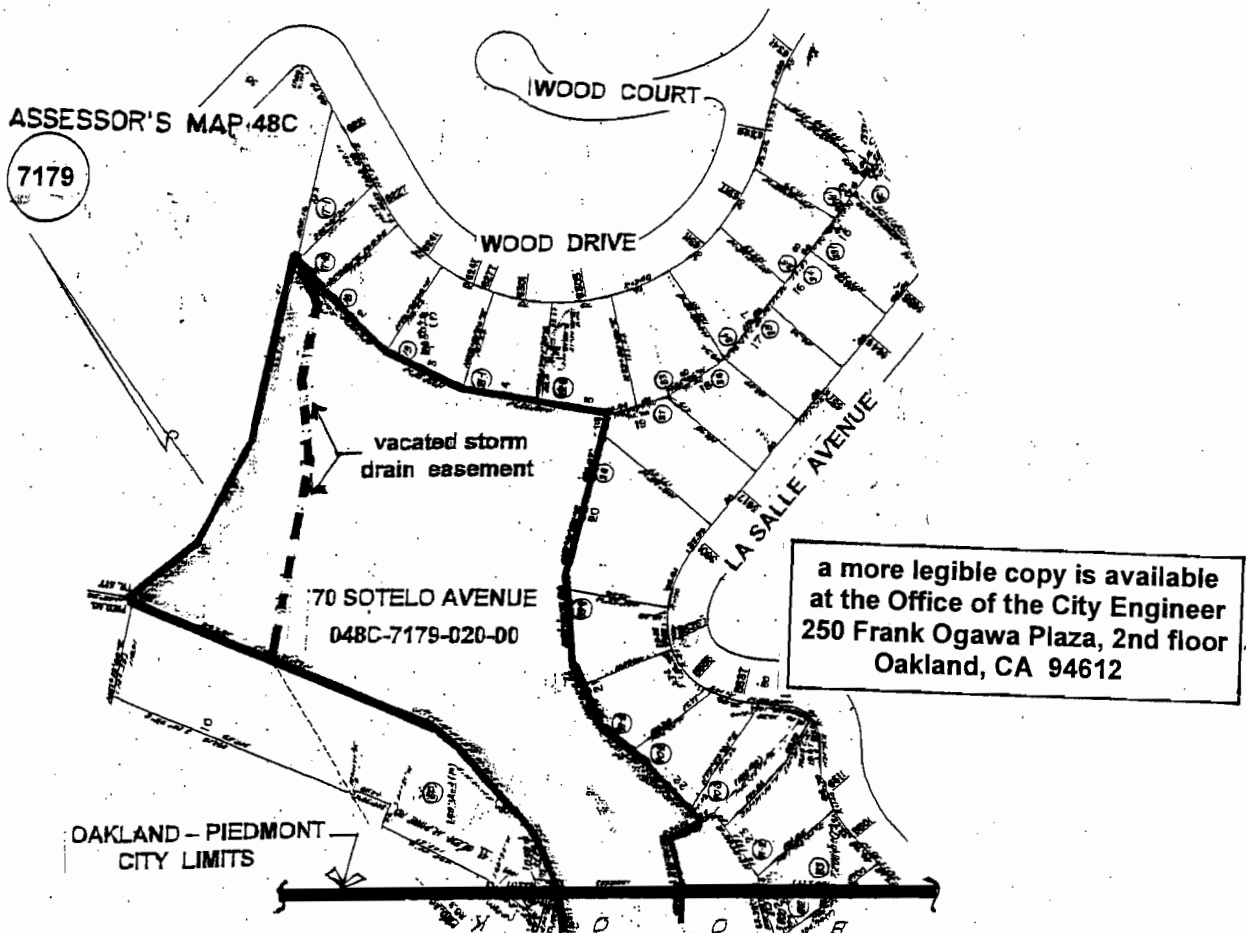
LOT 39, TRACT 517, FILED DECEMBER 17, 1936, MAP BOOK 14, PAGE 47, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

LOT 38, TRACT 517, FILED DECEMBER 17, 1936, MAP BOOK 14, PAGE 47, ALAMEDA COUNTY RECORDS.

EXCEPTING FROM PARCEL TWO;

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERN LINE OF SOTELO AVENUE, AS SHOWN ON SAID MAP, WITH THE SOUTHWESTERN LINE OF SAID LOT 38; AND RUNNING THENCE ALONG SAID LINE OF SOTELO AVENUE, NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 425.88 FEET, A DISTANCE OF 75 FEET; THENCE SOUTH 73 DEGREES 84 MINUTES 36 SECONDS EAST, 128 FEET, MORE OR LESS, TO THE SOUTHEASTERN LINE OF SAID LOT 38; THENCE ALONG THE LAST NAMED LINE, SOUTH 13 DEGREES 53 MINUTES WEST, 65 FEET, MORE OR LESS, TO SAID SOUTHWESTERN LINE OF SAID LOT 38; AND THENCE ALONG THE LAST NAMED LINE, NORTH 73 DEGREES 24 MINUTES 30 SECONDS WEST, 151.15 FEET TO THE POINT OF BEGINNING.



**Exhibit B**

*Location of the vacated storm drain easement, as shown on a grant deed,  
recorded April 30, 1968, series no. BA46479, by the Alameda County Recorder*

a more legible copy is available  
at the Office of the City Engineer  
250 Frank Ogawa Plaza, 2nd floor  
Oakland, CA 94612

vacated storm  
drain easement

## Exhibit C

*Metes and bounds of the vacated storm drain easement, as shown on a grant deed, recorded April 30, 1968, series no. BA46479, by the Alameda County Recorder*

A strip of land five (5) feet in width the center line of which is described as follows:

Beginning at the point of intersection of the northwestern boundary line of Lot 39 with a line drawn parallel with the boundary line common to Lots 1 and 39, as said lots are shown upon that certain grant "Tract 51., Oakland and Piedmont, California," filed December 17, 1959, in Map Book No. 14, at page 7, in the office of the Recorder of Alameda County, California, and distant westerly 2.50 feet therefrom, measured at right angles; and running thence along said parallel line S. 4<sup>0</sup> 00' 55" W., 60.00 feet; thence S. 46<sup>0</sup> 40' 00" E., 105.00 feet; thence S. 32<sup>0</sup> 00' 00" W., 97.00 feet; and thence S. 45<sup>0</sup> 35' 43" W., 218.55 feet to a point on the general western boundary line of said Lot 39 distant thereon S. 26<sup>0</sup> 12' 20" E., 202.00 feet from said northwestern boundary line of Lot 39.

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