

2010 JUL 15 PM 3:47

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: July 27, 2010

**RE: A Report And**

- **A Resolution Adopting Findings And Setting A Hearing To Receive Supporting Evidence And Public Comments And**
  - **An Ordinance Conditionally Abandoning A Portion Of A Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street and 3rd Avenue**
- To Facilitate Reconstruction Of The Downtown Education Complex By the Oakland Unified School District**
- 

### SUMMARY

The proposed resolution and ordinance will abandon a portion of a utility easement and a sewer main which crosses three (3) parcels owned by the Oakland Unified School District (OUSD) adjoining East 11th Street and 3rd Avenue. The portions of the two (2) streets were abandoned (vacated) in 1964, and a fifty-nine feet (59) wide utility easement was retained for the existing sewer system serving the neighborhood. OUSD will be expanding its Downtown Education Complex, and the reconstructed elementary school, high school, and child development center will encroach into the existing easement and over an existing sewer main. The abandonment will not adversely impact the remaining sewer system or other utilities in the reduced footprint of the easement.

### FISCAL IMPACT

Staff costs for processing the proposed easement vacation (PPE 09063) and sewer abandonment (PX 1000058) are covered by fees set by the Master Fee Schedule. The fees were paid by the Oakland Unified School District and deposited in the Community and Economic Development Agency's (CEDA) special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

### PROJECT DESCRIPTION

The Oakland Unified School District is expanding and reconstructing its Downtown Education Complex. The site is bounded by East 10th Street, East 11th Street, 2nd Avenue and 4th Avenue (see orientation schematic below). Building permitting and inspections will be done by the

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Office of the State Architect. Infrastructure permitting and inspections will be done by the Building Services Division of the Community and Economic Development Agency.

OUSD will reconstruct and remodel the following buildings:

- o La Escuelita Elementary School
- o Yuk Yau Child Development Center
- o Centro Infantil Child Development Center
- o Metwest High School
- o Willie D. Harper Building
- o Educational Television Station KDOL

The footprints of the new buildings will encroach into an existing utility easement and over an existing sanitary sewer main. The fifty-nine (59) feet wide easement was preserved for utilities when East 11th Street and 3rd Avenue were abandoned to OUSD in 1964. OUSD has filed permits to reduce the footprint of the easement and abandon the portion of the sewer system which would be under the reconstructed buildings. The Public Works Agency has determined that reducing the size of the easement and abandoning the sewer main will not adversely impact the effectiveness of the system or access by City maintenance personnel.

## **KEY ISSUES AND IMPACTS**

### **Required Findings For Vacating A Public Service Easement**

Staff has determined that the City Council may make the following findings for vacating the portion of the utility easement, as required by the statutes and ordinance indicated below:

- California Streets and Highways Code
  - o The vacation conforms with the City's adopted General Plan.
  - o The vacation will not impact future access for non-motorized transportation.
  - o The remaining portion of the public utility easement will be retained for continuing use.
  - o The vacation will not increase traffic or pedestrian inconvenience nor decrease traffic or pedestrian safety.

- California Public Resources Code

Vacation of a public utility easement is categorically exempted from the requirements of the California Environmental Quality Act (CEQA).

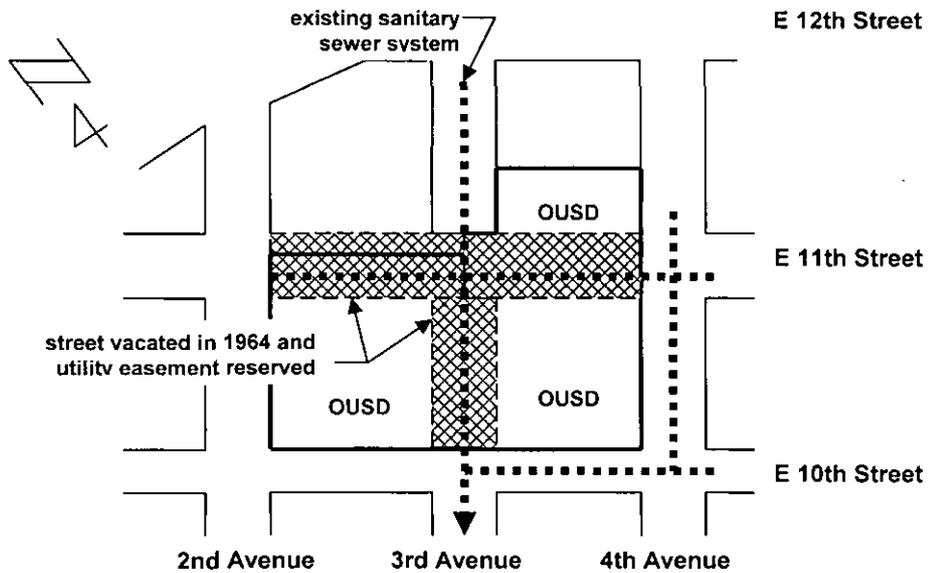
- Oakland Municipal Code

Vacation of a portion of the public utility easement and abandonment of a portion of the sanitary sewer system will not adversely impact the effectiveness of the sewer system or access by City maintenance personnel.

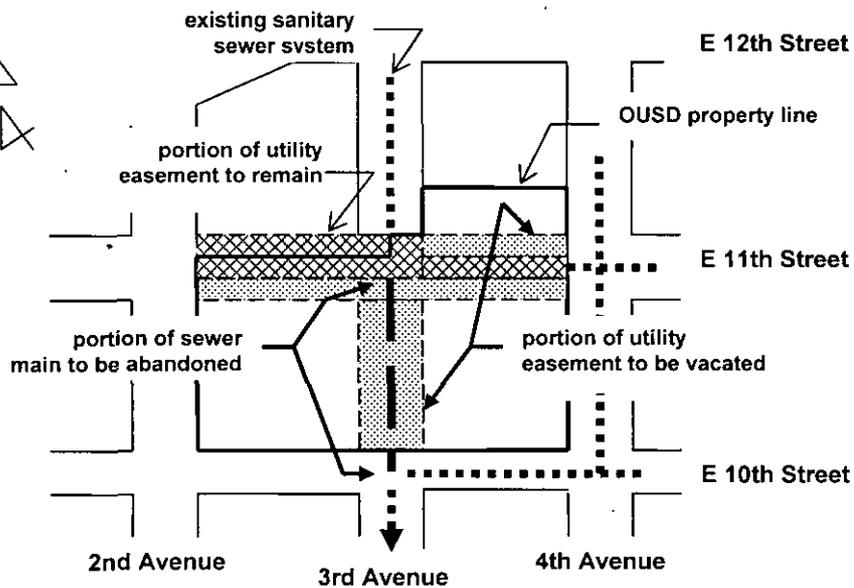
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**Orientation Schematics**

**Existing Easement And Sewer System**



**Abandoned Easement And Sewer Main**



## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

The proposed easement vacation will remove a portion of the sanitary sewer system serving the neighborhood from maintenance by the Public Works Agency without compromising the effectiveness of the sewer system.

### **Environmental**

The proposed ordinance has a standard condition of approval that requires the Oakland Unified School District to remediate any hazardous materials which may be discovered within the abandoned easement and to hold the City harmless from future litigation.

### **Social Equity**

The proposed vacation will support the expansion and modernization of two (2) public schools and a child development center.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits for the Downtown Development Center will conform with State requirements for handicapped accessibility.

## **RECOMMENDATIONS**

Staff recommends that the Committee accept this report and forward it to the City Council for consideration.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this report and

- adopt the proposed resolution of findings, and
- adopt the proposed ordinance vacating a portion of a public utility easement and abandoning a portion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue, subject to the following conditions:
  - The Oakland Unified School District shall start the infrastructure work to abandon the sanitary sewer main within three (3) years following adoption of the proposed ordinance.

- o The Oakland Unified School District shall complete the infrastructure work to abandon the sanitary sewer main within two (2) years following issuance of permits by the City Engineer.

Respectfully submitted,

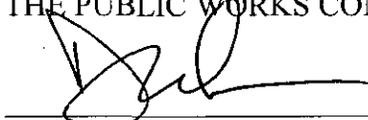


Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:

Raymond M. Derania  
Deputy Director - City Engineer  
Building Services Division

APPROVED AND FORWARDED TO  
THE PUBLIC WORKS COMMITTEE:



Office of the City Administrator

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~~2010 JUN 15 PM 3:47~~  
Councilmember

K. Jain  
City Attorney

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

**RESOLUTION ADOPTING FINDINGS AND SETTING A HEARING TO RECEIVE SUPPORTING EVIDENCE AND PUBLIC COMMENTS ON A CONDITIONAL VACATION OF A PORTION OF A PUBLIC UTILITY EASEMENT AND A CONDITIONAL ABANDONMENT OF A PORTION OF A SANITARY SEWER MAIN ADJOINING EAST 11th STREET AND 3rd AVENUE TO FACILITATE RECONSTRUCTION OF THE DOWNTOWN EDUCATION COMPLEX BY THE OAKLAND UNIFIED SCHOOL DISTRICT**

**WHEREAS**, pursuant to California Streets and Highways Code Section 8300 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 15, 2010, beginning at 5:30 o'clock, post meridian local time, to adopt findings for a proposed ordinance conditionally vacating a portion of public service easement and conditionally abandoning a apportion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue which are located across three contiguous parcels owned by the Oakland Unified School District; and

**WHEREAS**, said parcels are identified by the Alameda County Assessor with the numbers 019-029-014-07, 019-0023-001-01, and 019-0024-001-01, and by the City of Oakland with the addresses 1020 2nd Avenue, 1100 3rd Avenue, and 1029 4th Avenue, and by the Oakland Unified School District as the Downtown Education Complex; and

**WHEREAS**, said meeting also set a public hearing beginning at 5:30 o'clock, post meridian local time, in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on September 7, 2010, to receive supporting evidence and public comments on the adoption of an ordinance conditionally vacating said portion of a public service easement and conditionally abandoning said portion of a sanitary sewer main across contiguous parcels owned by the Oakland Unified School District; and

**WHEREAS**, pursuant to California Streets and Highways Code Sections 8312 and 8355, the Oakland Unified School District previously filed an application (PPE 09063) with the City Engineer of the City of Oakland requesting that the City of Oakland vacate said portion of a public service easement and abandon said portion of a sanitary sewer system, as shown on *Exhibit C* attached hereto; and

**WHEREAS**, pursuant to Resolution No. 44665 C.M.S. and Ordinance No. 7045 C.M.S, the Council of the City of Oakland abandoned the public rights-of-way in 1964 of East 11th Street between its intersections with 2nd Avenue and 4th Avenue and 3rd Avenue between its intersections with East 10th Street and East 11th Street; and

**WHEREAS**, pursuant to Resolution No. 44665 C.M.S. and Ordinance No. 7045 C.M.S, the City of Oakland permanently reserved a public service easement for existing and future publicly maintained utilities across the full length and width of said portions of vacated rights-of-way; and

**WHEREAS**; the City of Oakland has continuously maintained a sanitary sewer system and a storm water drainage system within said public service easement since its reservation in 1964; and

**WHEREAS**, the Oakland Unified School District will reconstruct and remodel the following improvements

- o La Escuelita Elementary School
- o Yuk Yau Child Development Center
- o Centro Infantil Child Development Center
- o Metwest High School
- o Willie D. Harper Building
- o Educational Television Station KDOL

located on said parcels; and

**WHEREAS**, pursuant to provisions of the California Building Code, said reconstruction will be permitted and inspected by the Office of the State Architect; and

**WHEREAS**, the metes and bounds establishing the perimeter dimensions and compass bearings, and circumscribed land area (planer projection), and the distances and bearings from established horizontal control monumentation of said portions of a public service easement proposed for vacation is fully delineated on a boundary survey prepared by KPC & Associates and entitled "Oakland Unified School District Site and Buildings", as shown on *Exhibit A* attached hereto; and

**WHEREAS**, said parcels were originally platted in Blocks 23, 24, and a portion of 29, as shown on the "Map of Clinton - H.A. Higley's Survey", recorded \_\_\_\_\_, in book B of maps, on page 537, by the Alameda County Recorder, as shown on *Exhibit B* attached hereto; and

**WHEREAS**, the Oakland Unified School District acquired fee simple interest to said parcels through a grant deed, recorded \_\_\_\_\_, series no. \_\_\_\_\_, by the Alameda County Recorder, a; and

**WHEREAS**, said land area comprising the said portion of the public service easement proposed for vacation is necessary to accomplish the reconstruction of the Downtown Educational Complex for the benefit of the residents and children of the City of Oakland; and

**WHEREAS**, said portion of the sanitary sewer main proposed for abandonment will be removed from the inventory of public infrastructure maintained by the City of Oakland; and

**WHEREAS**, the Superintendent of Streets of the City of Oakland, in his official capacity, has determined that abandonment of said portion of the sanitary sewer main will not adversely impact the efficient transport of effluent within the sewer sub-basin; and

**WHEREAS**, the City Engineer, in his official capacity, has further determined that the proposed vacation of said portion of the public service easement will not adversely impact current or future traffic or pedestrian access to the adjoining and surrounding real properties; and

**WHEREAS**, said portion of the public service easement proposed for vacation is wholly located within the corporate limits of the City Oakland; 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 CEQA Guidelines Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects) of the California Environmental Quality Act Guidelines, the proposed vacation is categorically exempted; and

**WHEREAS**, pursuant to California Streets and Highways Code Sections 8317, 8322, and 8323, facsimiles of the newspaper publication and public posting, attached hereto as *Exhibit C*, and an affidavit, attached as *Exhibit D*, confirming that the City Engineer completed the statutory requirements for notifying the public of the City's intention to vacate a portion of Peralta Street and of the locate, date, and time of public hearing to receive supporting evidence and public comments for the proposed vacation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8313 and Government Code Section 65402, the Secretary of the Planning Commission of the City of Oakland has determined that there is no map or diagram nor any expressed policies or provisions preventing the vacation of these portions of public rights-of-way and that the location, purpose, and extent of the vacation therefore conforms with the City's adopted General Plan; and

**WHEREAS**, pursuant to California Streets and Highways Code section 8340, the Pacific Gas and Electric Company has requested that a public service easement for utilities be reserved across the whole area of the portion of Peralta Street proposed for vacation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8348, the City Engineer has notified the serving public utilities his intention to recommend to the City Council that said portion of Peralta Street be vacated and that no public service easement be reserved in the vacated public service easement to install, maintain, operate, replace, remove or renew existing or future works is required for public convenience and necessity; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8348, the City Engineer has determined and the Oakland Unified School District has agreed that it shall assume the responsibility, at its sole expense and with permits issued by the City of Oakland, for abandoning existing publicly maintained utilities (permit PX 1000058) within said portion of the public service easement proposed for vacation and for reconstructing infrastructure and appurtenances as may be determined by the City Engineer to be necessary for the maintenance or re-

establishment of the efficient operation of public infrastructure and of safe access for maintenance personnel; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 892, the City Engineer has further determined that the proposed vacation of said portion of the public service easement will not limit public use of or impede public access for non-motorized transportation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8320, a plat delineating the metes and bounds may be used to establish the extent and location of the public service easement to be vacated, as shown in *Exhibit A* attached hereto; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public service easements and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; now, therefore, be it

**RESOLVED**; That pursuant to the California Streets and Highways Code, the California Government Code, and the California Public Resources Code, the Council of the City of Oakland hereby makes the following determinations:

- that the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); and
- that the proposed vacation conforms with the City of Oakland's adopted General Plan; and
- that the statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed; and
- that the Oakland Unified School District owns the fee interest of the real property encumbered by the portion of the public service easement proposed to be vacated; and
- the proposed vacation does not require reservation of a public service easement for existing or future subsurface or above-ground utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility; and
- the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- the proposed vacation will not increase traffic or pedestrian inconvenience nor decrease traffic or pedestrian safety; and be it
- the proposed vacation will benefit the general public and the residents and children of the City of Oakland by providing an enlarged and modern educational and health care facility; and be it

- the Oakland Unified School District shall be responsible, at its sole cost, for the abandonment of existing publicly maintained utilities, with permits issued by the City of Oakland, to the satisfaction of the City Engineer and for reconstructing existing public infrastructure and appurtenances as may be determined by the City Engineer to be necessary for the re-establishment of efficient infrastructure operation and safe access for maintenance personnel; and

**FURTHER RESOLVED;** That the plat attached hereto as *Exhibit A* does fully delineate the metes and bounds and the extent and location of the portion of the public service easement proposed for vacation; and be it

**FURTHER RESOLVED;** That Council of the City of Oakland will condition the vacation of said portion of the public service easement and abandonment of said portion of the sanitary sewer main by terms set forth in an ordinance of vacation; and be it

**FURTHER RESOLVED;** That a hearing to receive supporting evidence and public comments for a proposed ordinance that will conditionally vacate a portion of public service easement and conditionally abandon a apportion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue to facilitate reconstruction the Downtown Education Complex by the Oakland Unified School District will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on September 7, 2010, beginning at 5:30 o'clock, post meridian local time.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2010**

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

Metes And Bounds Delineating A Proposed Abandonment Of A Portion Of A Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street And 3rd Avenue To Facilitate Reconstruction Of The Downtown Education Complex By The Oakland Unified School District

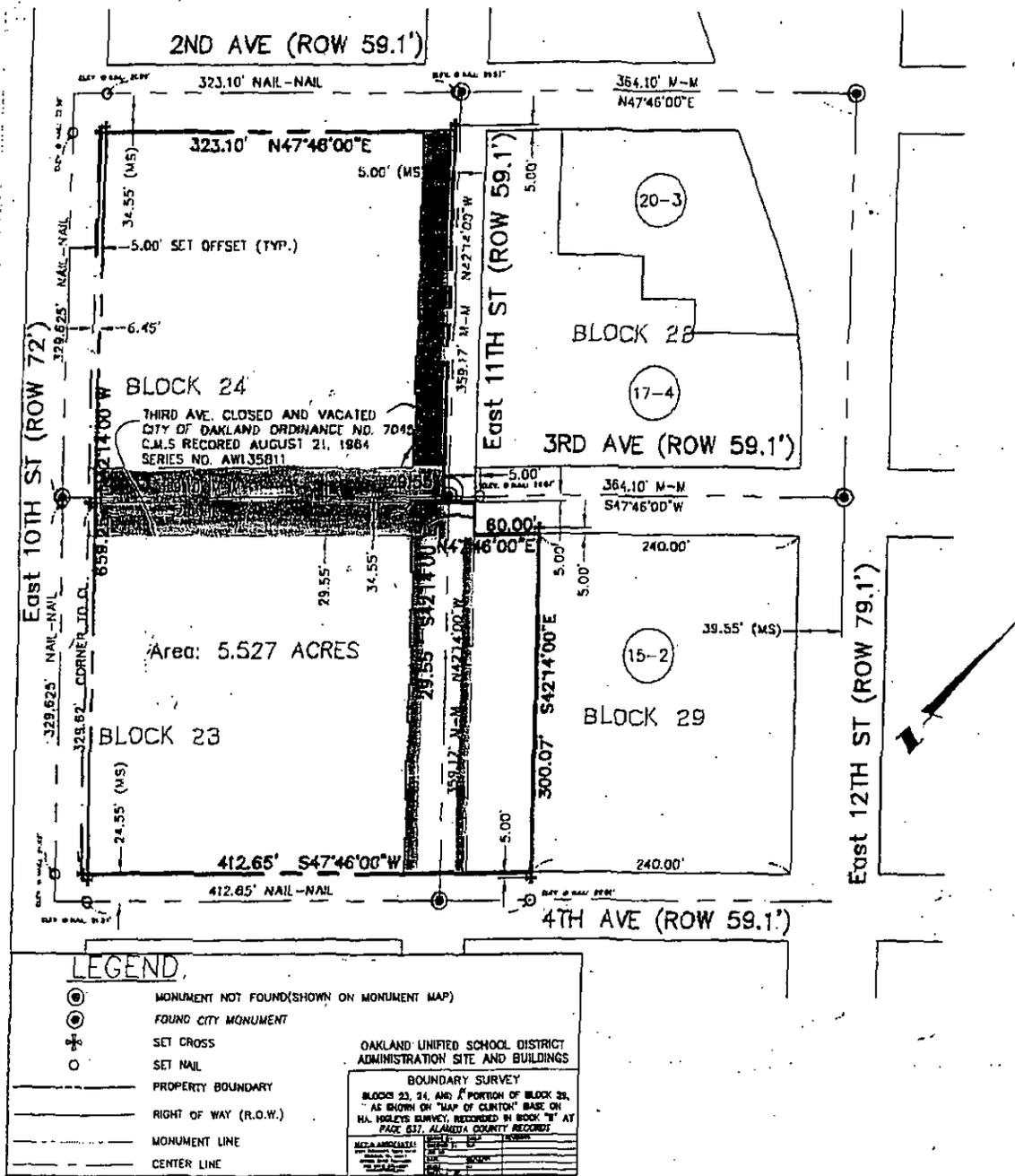
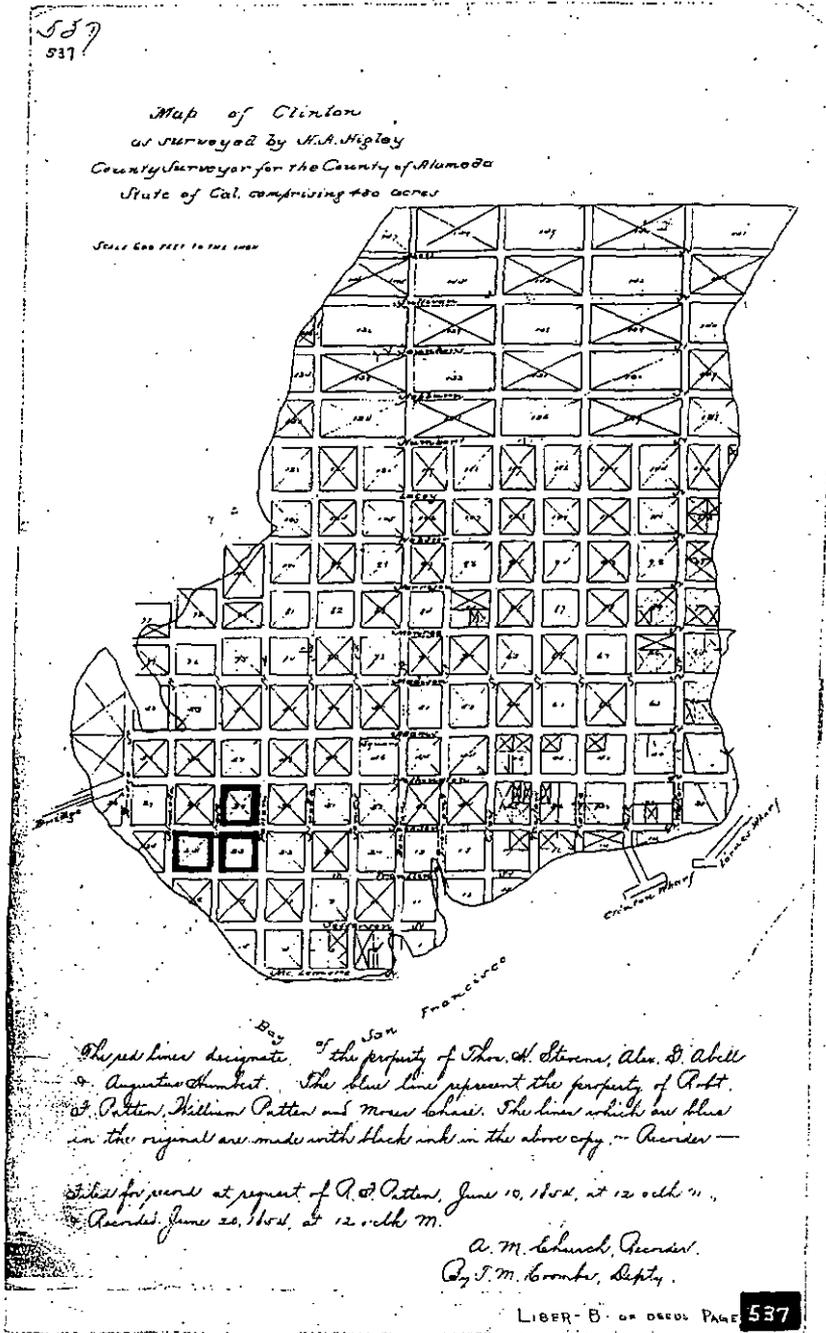


EXHIBIT B

Subdivision Map Entitled "Map Of Clinton, As Surveyed By H. A. Higley",  
Recorded June 20, 1854, In Book B Of Maps, Page 537, By The Alameda County Recorder



## EXHIBIT C

### **Notification Of A Public Hearing On A Proposed Abandonment Of A Portion Of A Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street And 3rd Avenue To Facilitate Reconstruction Of The Downtown Education Complex By The Oakland Unified School District**

#### **PUBLIC NOTICE**

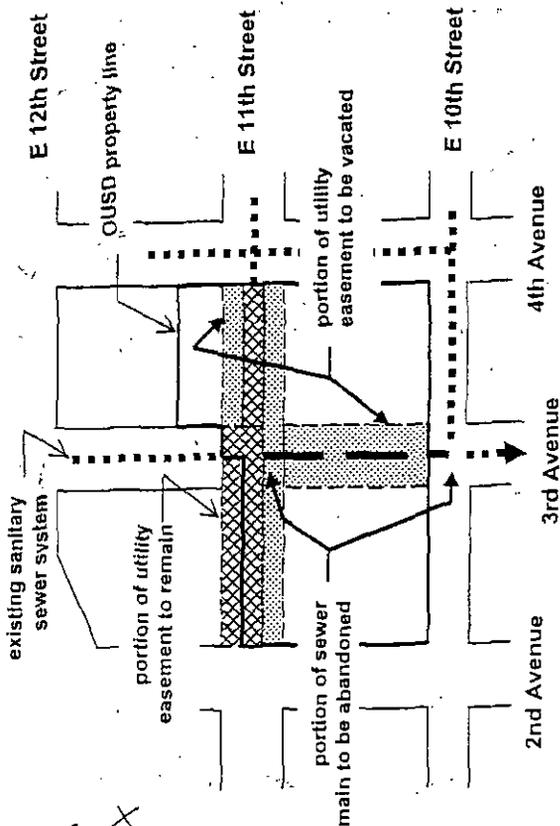
#### **Public Hearing For Abandoning A Public Utility Easement And A Sanitary Sewer Main**

Pursuant to California Streets and Highways Code section 8320 et seq., the Council of the City of Oakland will hold a public hearing in the Chamber of the City Council, Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on September 7, 2010, and September 21, 2010, beginning at 5:30 p.m., local time, to receive supporting evidence and public comments for a proposed ordinance conditionally vacating a portion of a public utility easement and abandoning a portion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue to facilitate reconstruction of the Downtown Education Complex by the Oakland Unified School District. A map fully delineating the proposed vacation and abandonment is available at the City of Oakland, Building Services Division, Dalziel Administration Building, Second Floor, 250 Frank H. Ogawa Plaza, Oakland, CA 94612.

EXHIBIT C

Notification Of A Public Hearing On A Proposed Abandonment Of A Portion Of A Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street And 3rd Avenue To Facilitate Reconstruction Of The Downtown Education Complex By The Oakland Unified School District

**PUBLIC NOTICE**



Pursuant to California Streets and Highways Code Section 8320 et seq., notice is given to the public that the Council of the City of Oakland intends to abandon a portion of a public utility easement and a sanitary sewer main adjoining East 11th Street and 3rd Avenue to facilitate reconstruction of the Downtown Educational Complex by the Oakland Unified School District.

Notice is also given to the public that the Council of the City of Oakland will hold a hearing to receive evidence supporting and public comments for the proposed conditional vacation in the Chamber of the City Council, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on September 7, 2010, and September 21, 2010, beginning at 5:30 p.m. local time.

*It is a misdemeanor to deface or to remove this posting. Violators are subject to a fine of \$1,000 and a jail sentence of 6 months.*

## EXHIBIT D

### Affidavit Certifying Notifications Of A Public Hearing On A Proposed Abandonment Of A Portion Of Public Utility Easement And A Sanitary Sewer Main Adjoining East 11th Street And 3rd Avenue To Facilitate Reconstruction Of The Downtown Education Complex By The Oakland Unified School District

Pursuant to California Streets and Highways Code Section 8322, I hereby certify that the following public notifications did occur on the dates and times and at the locations and for the durations indicated below:

#### Site Posting

Facsimiles of the attached placard were affixed before September 7, 2010, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along East 11th Street and 3rd Avenue, and have remained in place since then advising the public of a hearing on September 7, 2010, and September 21, 2010, at 5:30 p.m. local time, in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, to receive evidence and public testimony on the proposed abandonment of a portion of a public utilities easement and a sanitary sewer main delineated on the placard.

#### Newspaper Publication

The attached notice was published in the *Oakland Tribune* on July 7, 2010, and July 14, 2010, advising the public of a hearing on September 7, 2010, and September 21, 2010, beginning at 5:30 p.m. local time in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza to receive evidence and public testimony on the proposed abandonment of a portion of public utility easement and a sanitary sewer main adjoining East 11th Street and 3rd Avenue advising the public that a map delineating the portion of the public utility easement and sanitary sewer main proposed for abandonment is available at the Building Services counter on the Second Floor of the Dalziel Administration Building at 250 Frank H. Ogawa Plaza.

date July 15, 2010 by R M Derania  
RAYMOND M. DERANIA  
City Engineer  
Community and Economic Development Agency

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Councilmember

K Jain  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

**ORDINANCE CONDITIONALLY ABANDONING A PORTION OF A PUBLIC UTILITY EASEMENT AND A SANITARY SEWER MAIN ADJOINING EAST 11th STREET AND 3rd AVENUE TO FACILITATE RECONSTRUCTION OF THE DOWNTOWN EDUCATION COMPLEX BY THE OAKLAND UNIFIED SCHOOL DISTRICT**

**WHEREAS**, pursuant to California Streets and Highways Code Section 8300 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on September 7, 2010, beginning at 5:30 o'clock, post meridian local time, to adopt findings for a proposed ordinance conditionally vacating a portion of public service easement and conditionally abandoning a apportion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue which are located across three contiguous parcels owned by the Oakland Unified School District; and

**WHEREAS**, said parcels are identified by the Alameda County Assessor with the numbers 019-0029-014-07, 019-0023-001-01, and 019-0024-001-01, and by the City of Oakland with the addresses 1020 2nd Avenue, 1100 3rd Avenue, and 1029 4th Avenue, and by the Oakland Unified School District as the Downtown Education Complex; and

**WHEREAS**, the Oakland Unified School District acquired fee simple interest to said parcels through a grant deed, recorded \_\_\_\_\_, series no. \_\_\_\_\_ by the Alameda County Recorder; and

**WHEREAS**, said parcels were originally platted in Blocks 23, 24, and a portion of 29, as shown on the "Map of Clinton - H.A. Higley's Survey", recorded June 20, 1854, in book B of maps, on page 537, by the Alameda County Recorder, as shown on *Exhibit B* attached hereto; and

**WHEREAS**, pursuant to the California Streets and Highways Code, California Government Code, and California Public Resources Code, the Council of the City of Oakland has previously made the following statutory determinations by Resolution:

- that the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); and
- that the proposed vacation conforms with the City of Oakland's adopted General Plan; and

- that the statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed,; and
- that the Oakland Unified School District owns the fee interest of the real property encumbered by the portion of the public service easement proposed to be vacated; and
- the proposed vacation does not require reservation of a public service easement for existing or future subsurface or above-ground utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility; and
- the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- the proposed vacation will not increase traffic or pedestrian inconvenience nor decrease traffic or pedestrian safety; and be it
- the proposed vacation will benefit the general public and the residents and children of the City of Oakland by providing an enlarged and modern educational and health care facility; and be it
- the Oakland Unified School District shall be responsible, at its sole cost, for the abandonment of existing publicly maintained utilities, with permits issued by the City of Oakland, to the satisfaction of the City Engineer and for reconstructing existing public infrastructure and appurtenances as may be determined by the City Engineer to be necessary for the re-establishment of efficient infrastructure operation and safe access for maintenance personnel; and

**WHEREAS**, the City Engineer, in his official capacity, has made the following determinations:

- said land area comprising the portion of the public service easement proposed for vacation is necessary to accomplish the reconstruction of the Downtown Education Complex by the Oakland Unified School District for the benefit of the general public and the residents and children of the City of Oakland; and
- said infrastructure comprising the portion of the sanitary sewer main proposed for abandonment will be removed from the inventory of public infrastructure maintained by the City of Oakland; and
- the proposed vacation of said portion of the public service easement will not adversely impact current or future traffic or pedestrian access to the surrounding real properties; and
- the portion of the public service easement proposed for vacation is wholly located within the corporate limits of the City Oakland; and
- the proposed vacation of said portion of the public service easement will not limit public use of or impede public access for non-motorized transportation.

**WHEREAS**, the Superintendent of Streets of the City of Oakland, in his official capacity, has determined that abandonment of said portion of the sanitary sewer main will not adversely impact the efficient transport of effluent within the sewer sub-basin; 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 CEQA Guidelines Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects) of the California Environmental Quality Act Guidelines, the proposed vacation is categorically exempted; and

**WHEREAS**, a plat delineating the metes and bounds of the extent and location of the proposed vacation of said portion of the public service easement is attached hereto as *Exhibit A*; now, therefore,

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

1. The conditional vacation of a portion of a public service easement (permit PPE 09063) adjoining East 11th Street and 3rd Avenue, as delineated in the attached *Exhibit A*, is hereby ordered.
2. This order of vacation shall not except, exempt, and reserve a public service easement within the whole area of said vacated land for the benefit of companies regulated by the California Public Utilities Commission and the City of Oakland and the East Bay Municipal Utility District.
3. This order of vacation shall expire by limitation and become void in the event the Oakland Unified School District and its representatives, heirs, successors, and assigns and successive owners of said vacated portion of a public service easement, at their sole expense (both jointly and severally), fail to complete all of the following required actions within each of the time limitations set forth below:
  - a. within two (2) years following adoption of this ordinance, file a complete application with the City of Oakland and pay applicable fees for a Parcel Map Waiver or a Parcel Map describing and delineating the merger of said three (3) contiguous parcels which contain the portion of the public service easement not vacated by the adoption of this ordinance; and
  - b. within three (3) years following adoption of this ordinance, begin construction of the abandonment of said existing sanitary sewer main (permit PX 10900058); and
  - c. within five (5) years following adoption of this ordinance, obtain final approvals from the City Engineer of the City of Oakland for said required abandonment permits.

4. By the acceptance of the vacated portion of the public service easement, the Oakland Unified School District acknowledges each of and agrees to all of the following:
  - a. the Oakland Unified School district shall 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
  - b. 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 Unified School District agrees that it will use the vacated area in the future at its own risk; and
  - c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Oakland Unified School District 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. the Oakland Unified School District 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. the Oakland Unified School District 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 portion of the public service easement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
  - f. the Oakland Unified School District shall be responsible in perpetuity for the abandonment of all infrastructure improvements located within the vacated public service easement.
5. The hereinabove conditions shall be binding upon the Oakland Unified School District and the successive owners of said vacated portion of the public service easement and their representatives, heirs, successors, and assigns.
  6. Pursuant to California Streets and Highways Code Section 8336, this order of vacation shall not be complete unless and until this Ordinance has been filed with and recorded by the Alameda County Clerk-Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2010**

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

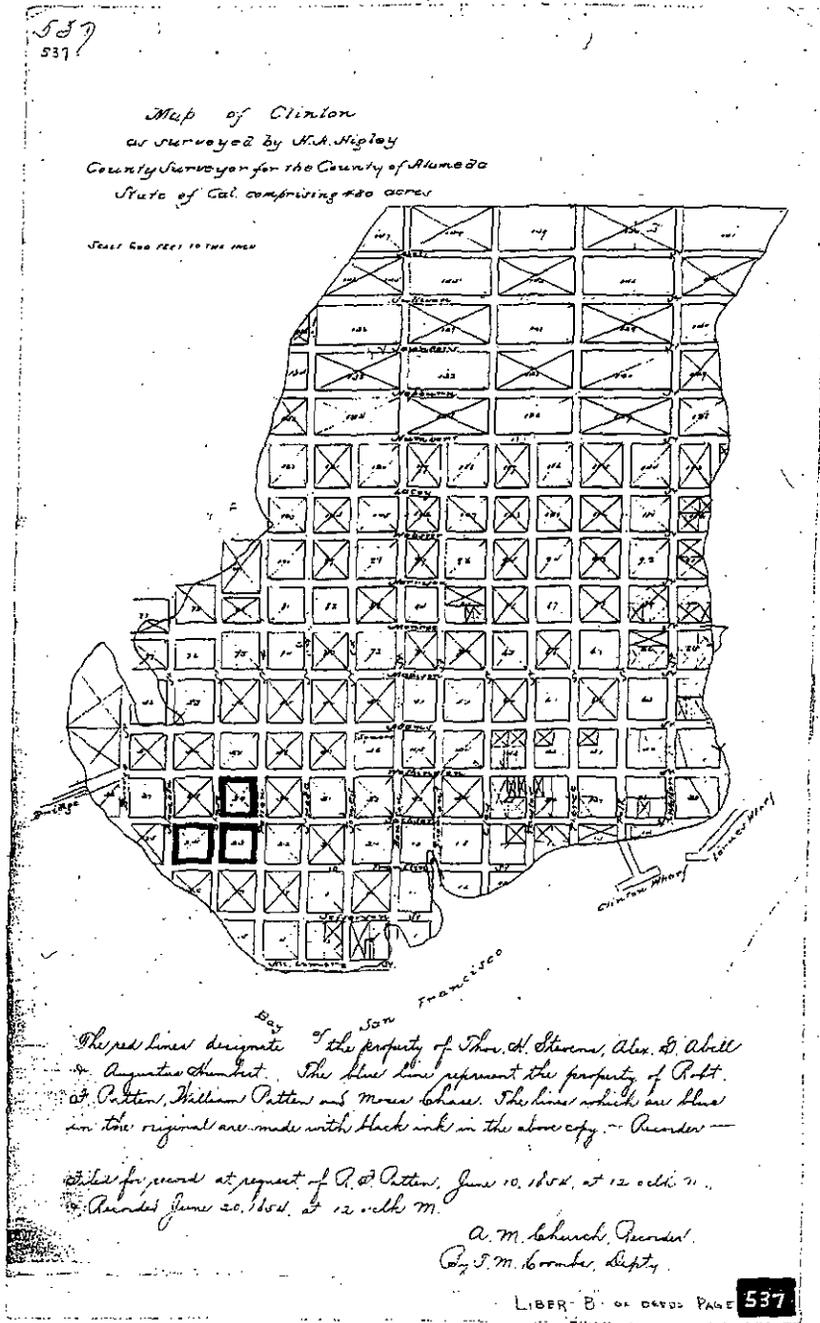
ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION \_\_\_\_\_



EXHIBIT B

Subdivision Map Entitled "Map Of Clinton, As Surveyed By H. A. Higley",  
 Recorded June 20, 1854, In Book B Of Maps, Page 537, By The Alameda County Recorder



## **NOTICE AND DIGEST**

### **ORDINANCE CONDITIONALLY VACATING A PORTION OF A PUBLIC UTILITY EASEMENT AND CONDITIONALLY ABANDONING A PORTION OF A SANITARY SEWER MAIN ADJOINING EAST 11th STREET AND 3rd AVENUE TO FACILITATE RECONSTRUCTION OF THE DOWNTOWN EDUCATION COMPLEX BY THE OAKLAND UNIFIED SCHOOL DISTRICT**

This ordinance will conditionally vacate a portion of a public utility easement and abandon a portion of a sanitary sewer main adjoining East 11th Street and 3rd Avenue which bifurcate three existing parcels owned by the Oakland Unified School District. The reconstruction of two (2) public schools and child development centers will be over the abandoned sewer main and within the vacated easement. The remaining portion of the easement and the sewer main system will not be effected by the construction.