

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION VACATING AN UNUSED PUBLIC SEWER EASEMENT LOCATED AT 1017 PORTAL AVENUE TO THE PROPERTY OWNER, DAVID MARSHALL PERKINS, AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, David Marshall Perkins, owner of real property known as 1017 Portal Avenue and described in a Grant Deed, recorded January 28, 1994, Series Number 94038139, by Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 011-0877-028-01, and more particularly described in *Exhibit A* attached hereto (Owner), has made an application (PPE2100054) to the City Engineer of the City of Oakland (City) to summarily vacate an unused public sewer easement which serves said parcel; and

WHEREAS, said easement was dedicated through the map "Map of Cocker Oaks" filed August 9, 1913, Map Book 28, Page 37, Alameda County Records; and

WHEREAS, the limits of the public sewer easement proposed for vacation are delineated diagrammatically and described textually in *Exhibits B and C* attached hereto and incorporated herein; and

WHEREAS, the City Engineer has determined that the public sewer easement proposed for vacation has never been used for the purpose for which it was dedicated in 1913; and

WHEREAS, the City Engineer has also determined that such easement is no longer needed by the City for future infrastructure improvements; 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 five (5) consecutive years immediately preceding the proposed vacation and there are no public utilities within the existing easement; the vacation will not occur until all the conditions have been satisfied, and that the City Administrator is instructed to not record the vacation until these conditions have been satisfied; and

WHEREAS, The Agenda Report recommends the City Council find and determine that the vacation is categorically exempt from the requirements of CEQA pursuant to Title 14

California Code of Regulations Section 15305 as a minor alteration in land use limitations; now, therefore, be it

RESOLVED: That the City Council has review all relevant documents relating to the summary vacation of the existing public sewer easement that is subject of this resolution; and be it

FURTHER RESOLVED: That the City Council finds and determines that the vacation is categorically exempt from the requirements of CEQA pursuant to Title 14 California Code of Regulations Section 15305 as a minor alteration in land use limitations; and be it

FURTHER RESOLVED: That the summary vacation of the public sewer easement to the Owner, as delineated in *Exhibit B* as conditioned herein, is hereby granted; and be it

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

1. the Owner (David Marshall Perkins), by the acceptance of this vacation of the existing public service easement, agrees and promises to indemnify, defend, and hold harmless the City of Oakland and its officials, officers, agents, employees, representatives and volunteers, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever arising out of or caused by the vacation of said public service easement and regardless of responsibility for negligence; and
2. the Owner 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 Owner agree that they will use the easement area in the future at their own risk, and are responsible for their activities and the activities of their workmen operating within the vacated area and for their own safety and the safety of any of their personnel; and
3. the Owner acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement areas, and hereby waive and fully release and forever discharge the City of Oakland and its officials, officers, directors, employees, agents, representatives 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 Owner further acknowledges that they understand and agree that they hereby expressly waive all rights and benefits which they now have 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 Owner recognizes that by waiving the provisions of Civil Code Section 1542, they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decision to request said vacation, regardless of whether Owner’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 Owner and their 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,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Exhibit A: Description of the Private Property Encumbered by the Easement (2 pages)
Exhibit B: Graphic Delineation of the Public Service Easement Proposed for Vacation (1 page)
Exhibit C: Legal Description of the Public Service Easement Proposed for Vacation (1 page)

LEGAL DESCRIPTION

The land referred to in this Report is situated in the State of California, City of Oakland, County of Alameda, and is described as follows:

PARCEL 1:

Beginning at a point of the northeastern line of Portal, formerly Florada Avenue, distant thereon South $76^{\circ} 59'$ East 33.64 feet from the point of intersection thereof, with the northwestern boundary line of Lot 11, as said avenue and lot are shown on the map herein referred to; running thence North $76^{\circ} 59'$ West along said line of Portal Avenue 56.49 feet; thence North $40^{\circ} 45'$ East 56.40 feet to the point of intersection with the direct extension southeasterly of the southwestern boundary line of Lot 12, as said lot is show on said map; thence South $49^{\circ} 15'$ East along said extended line 50 feet; thence South $40^{\circ} 45'$ West 30.11 feet to the point of beginning.

Being a portion of Lots 10 and 11, "Map of Crocker Oaks", filed August 9, 1913, Map Book 28, Page 37, Alameda County Records.

PARCEL 2:

Beginning at the point of intersection of the northeastern line of Portal, formerly Florada Avenue, with a line drawn parallel with the northwestern line of Lot 11 and distant at right angles 30 feet southeasterly therefrom as said Portal Avenue and Lot 22 are shown on the map herein referred to; running thence North $40^{\circ} 45'$ East along said parallel line so drawn 33.77 feet to the point of intersection thereof, with the southwestern line (or the direct extension northwesterly thereof) of that certain piece of parcel of land described in the deed from Helen A. Starr and L.V. Starr, her husband, to Beatrice E. Tibbitts and Jonathan C. Tibbitts, her husband, dated August 18, 1931, recorded August 19, 1931, Book 2627 OR, Page 417, Alameda County Records; thence South $49^{\circ} 15'$ East along the last named line 37.97 feet to the western line of said Portal Avenue; thence following the line of said avenue, southerly, southwesterly and westerly 58.60 feet, more or less, to the point of beginning.

Being a portion of Lot 11, "Map of Crocker Oaks", filed August 9, 1913, Map Book 28, Page 37, Alameda County Records.

Assessors Parcel No. 011-0877-026-01

EXHIBIT A: (Continued)

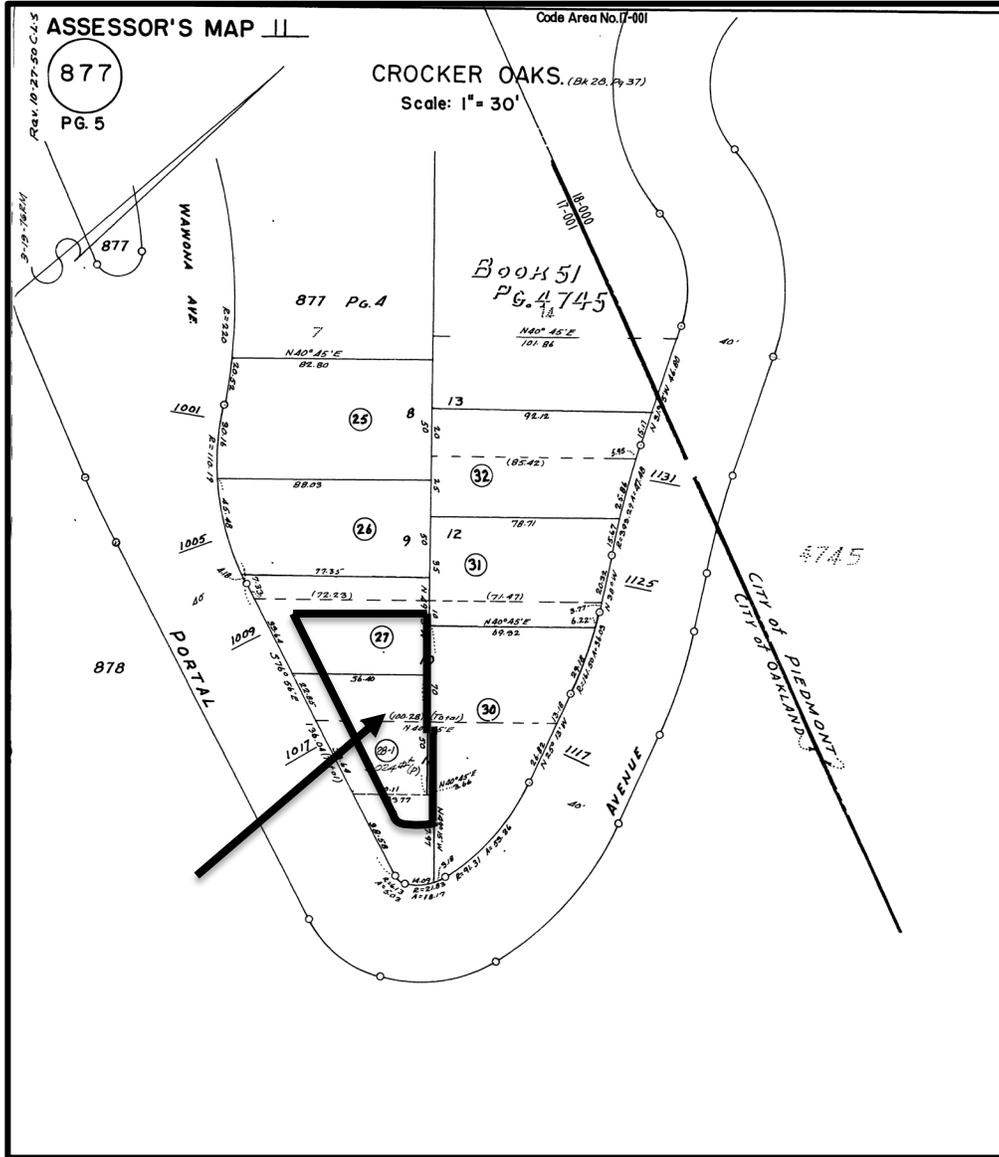
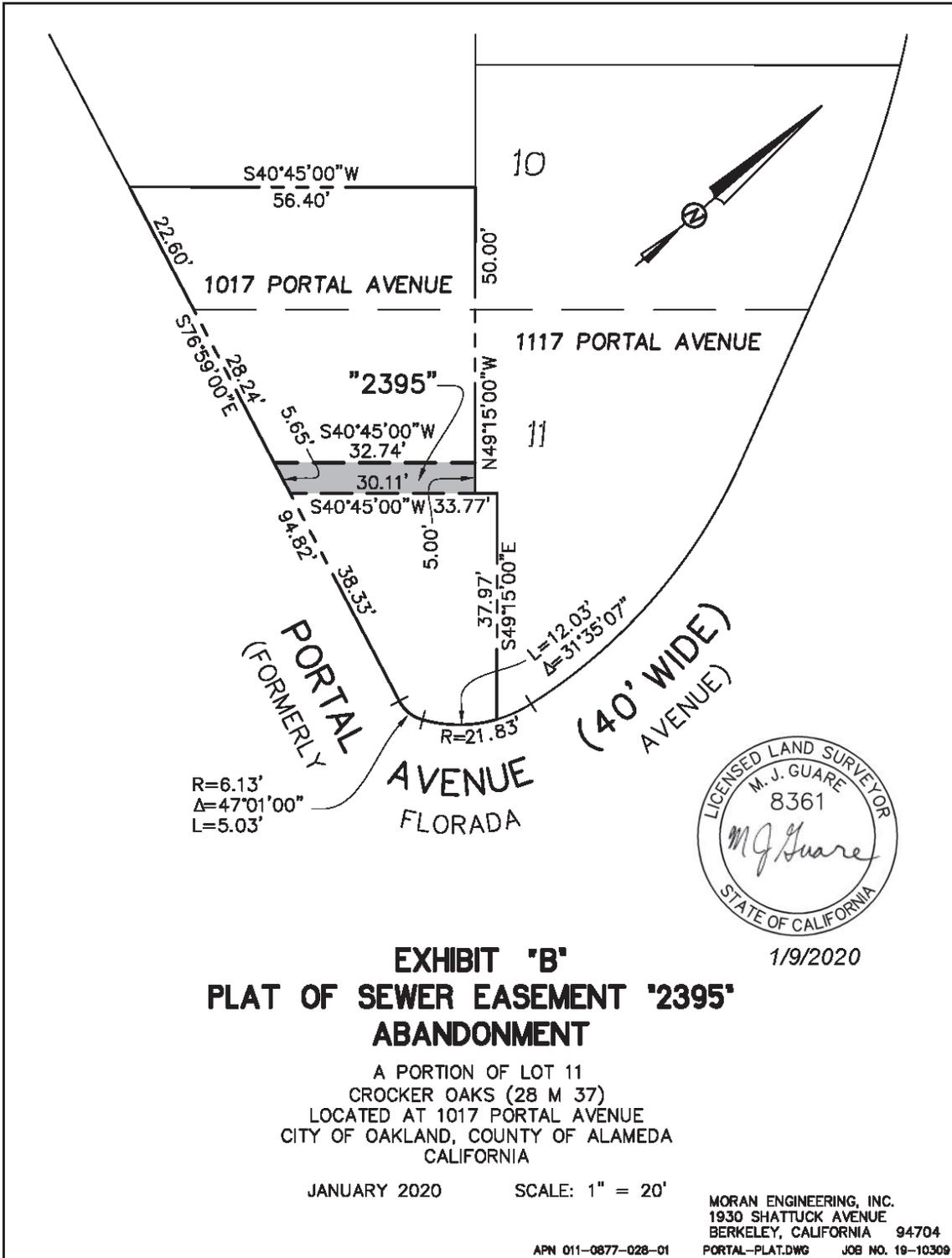


EXHIBIT B: Graphic Delineation of the Public Sewer Easement Proposed for Vacation



A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.

EXHIBIT C: Legal Description of the Public Sewer Easement Proposed for Vacation

EXHIBIT "A"

LEGAL DESCRIPTION
OF SEWER EASEMENT "2395"
OVER 1017 PORTAL AVENUE FOR THE BENEFIT OF
1117 PORTAL AVENUE, OAKLAND
FOR ABANDONMENT PURPOSES

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

All that portion of Lot 11, as said lot is shown on the map of Crocker Oaks, filed August 9, 1913 in Book 28 of Maps, Page 37, Alameda County Records, lying within the following described area:

Beginning at a point on the northeastern line of Portal Avenue distant thereon South 76° 59' 00" East, 28.24 feet from the northwestern line of Lot 11 as said lot and avenue are shown on said map; thence along said line South 76° 59' 00" East, 5.65 feet; thence North 40° 45' 00" East, 30.11 feet; thence North 49° 15' 00" West, 5.00 feet; thence South 40° 45' 00" West, 32.74 feet to the Point of Beginning;

And containing 157 square feet of land, more or less.

The above described area is shown on Exhibit "B", attached hereto and made a part hereof.



1/9/2020

10309 Portal EaseLD.doc

1/8/2020

A more legible copy is available at the Office of the Director, DOT, City of Oakland, 250 Frank H. Ogawa Plaza, 4th floor.