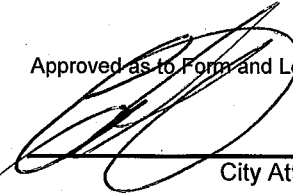


2019 SEP 12 AM 5:00 RESOLUTION No. 87856 C.M.S.



City Attorney

Introduced by Councilmember _____

RESOLUTION SUMMARILY VACATING AN UNUSED PUBLIC UTILITY EASEMENT LOCATED AT 3 DRURY COURT TO THE PROPERTY OWNERS, BENJAMIN EDWARD WAYNE AND VALERIE K. MIZUHARA.

WHEREAS, Benjamin Edward Wayne and Valerie K. Mizuhara (“Owners”), owners of real property known as 3 Drury Court and described in a Grant Deed, recorded March 22, 2018, Series No. 2018057597, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048H-7651-059-01, and more particularly described in *Exhibit A* attached hereto, have made an application (PPE 1900052) to the City Engineer of the City of Oakland to summarily vacate an unused public service easement which serves said parcel; and

WHEREAS, said Owners have applied for building permits for construction of a new single family dwelling (RBC 1902361), a new pool house (RBC 1902362) and new retaining walls (RBC 1902364); and

WHEREAS, the proximity of said easement to said dwelling, pool house, and retaining walls is such that the proposed structures would encroach into the existing public service easement; and

WHEREAS, said easement was dedicated through the map “Claremont Knolls Extension” filed January 15, 1926, in book 5 of maps at page 44, Alameda County Records; and

WHEREAS, the limits of the public service 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 service easement proposed for vacation has never been used for the purposes for which it was dedicated more than ninety (90) years ago; and

WHEREAS, the City Engineer has also determined that there are no public utilities within the public service easement proposed for vacation, and that such easement is no longer needed by the City and the utility companies 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; and

WHEREAS, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), and 15303 (small structures); now, therefore, be it

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

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

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

1. the Owners (Benjamin Edward Wayne and Valerie K. Mizuhara), by the acceptance of this vacation of the existing public service easement, agree and promise 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 Owners acknowledge 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 Owners 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 Owners acknowledge 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 Owners further acknowledge 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 Owners recognize 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 Owners 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, SEP 17, 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR ~~AND~~ AND PRESIDENT KAPLAN →

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 1 *Mad*

ATTEST

LaTonda Simmons
 LaTonda Simmons
 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)

EXHIBIT A: Description of the Private Property Encumbered by the Easement

Address 3 Drury Court

Parcel no. 048H-7651-059-01

Deed no. 2018057597

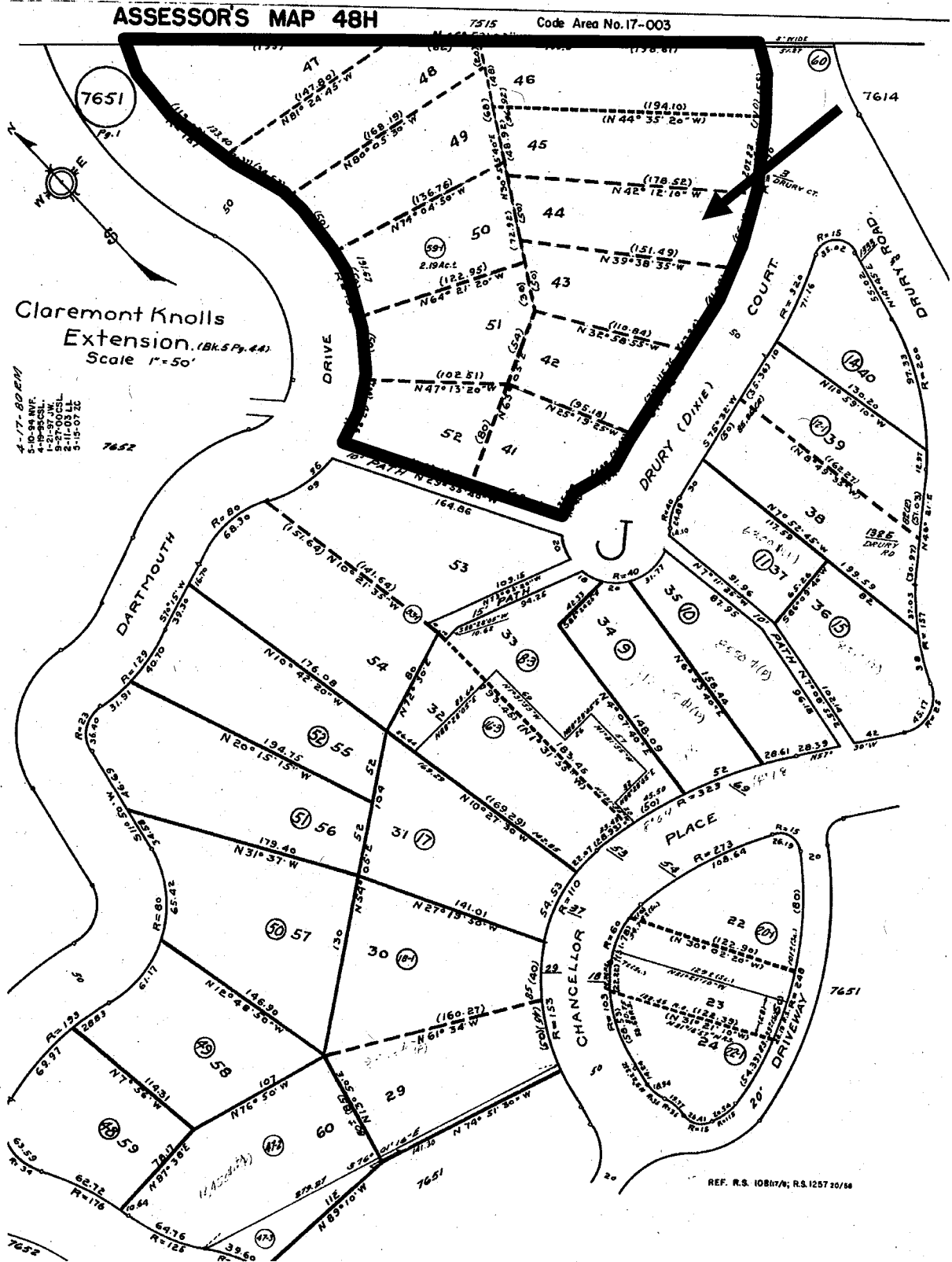
Recorded March 22, 2018

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOTS 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, AND 52 IN BLOCK J, AS SHOWN ON THE MAP "CLAREMONT KNOLLS EXTENSION" FILED IN BOOK 5 OF MAPS AT PAGE 44, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

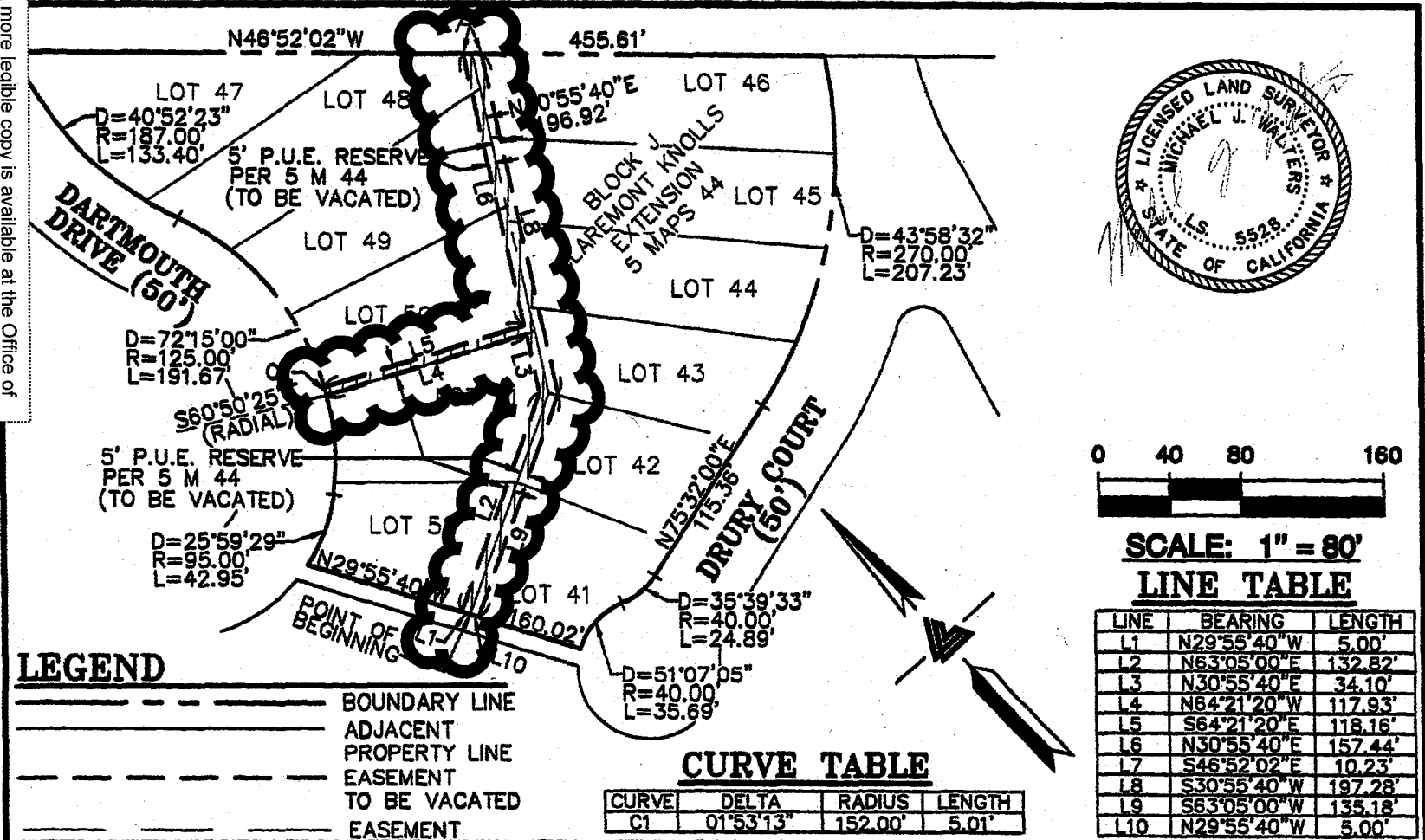
BEGINNING AT A POINT ON THE NORTHERN LINE OF DRURY COURT, FORMERLY DIXIE COURT, AT THE MOST SOUTHERN CORNER OF SAID LOT 41 AND RUNNING THENCE ALONG THE WEST LINE OF LOTS 41 AND 52 NORTH 29°55'40" WEST 160.02 FEET TO THE SOUTH LINE OF DARTMOUTH DRIVE; THENCE NORTHEASTERLY ALONG SAID SOUTHERN LINE 368.03 FEET TO THE MOST NORTHERN CORNER OF SAID LOT 47; THENCE ALONG THE NORTHEAST LINE OF LOTS 46, 47 AND 48 SOUTH 46°52'02" EAST 455.61 FEET TO THE NORTH LINE OF SAID DRURY COURT AT THE MOST EASTERN CORNER OF SAID LOT 46; THENCE SOUTHWESTERLY ALONG SAID LINE OF DRURY COURT 383.17 FEET TO THE POINT OF BEGINNING.

EXHIBIT A: (Continued)



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

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 3017 DOUGLAS BLVD, # 300
 ROSEVILLE, CA 95661
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 (F) (916) 797-7363

EXHIBIT "B"
LANDS OF MINUHARA, 3 DRURY COURT
PLAT TO ACCOMPANY
LEGAL DESCRIPTION FOR
QUITCLAIM OF PUBLIC UTILITY EASEMENTS
OAKLAND, ALAMEDA COUNTY, CALIFORNIA
 APN: 048H-7651-059-01 JOB #2180765C1

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

**LEGAL DESCRIPTION FOR
THE ABANDONMENT OF
PUBLIC UTILITY EASEMENTS
OAKLAND, ALAMEDA COUNTY, CALIFORNIA**

BEING A PORTION OF THAT REAL PROPERTY AS DESCRIBED IN THAT CERTAIN DEED, FILED MARCH 22, 2018 AS DOCUMENT NO. 2018057597, SAID DEED DESCRIBING LOTS 41 THROUGH 52, IN BLOCK J, AS SHOWN ON THE MAP "CLAREMONT KNOLLS EXTENSION", FILED IN BOOK 5 OF MAPS AT PAGE 44, ALAMEDA COUNTY RECORDS, IN THE CITY OF OAKLAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 52, AS SAID LOT IS SHOWN ON SAID MAP; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT 52 NORTH 29°55'40" WEST 5.00 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE OF SAID LOT 52, NORTH 63°05'00" EAST 132.82 FEET; THENCE NORTH 30°55'40" EAST 34.10 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY LINE OF LOT 51, SAID POINT BEING ON THE DIVISION LINE OF LOTS 50 AND 51, AS LOTS ARE SHOWN ON SAID MAP; THENCE ALONG SAID DIVISION LINE OF SAID LOTS 50 AND 51 OF SAID MAP, NORTH 64°21'20" WEST 117.93 FEET TO THE EASTERLY RIGHT OF WAY LINE OF DARTMOUTH DRIVE, A FIFTY (50) FOOT ROAD, AS SHOWN ON SAID MAP, SAID POINT BEING A POINT ON A CURVE, CONCAVE SOUTHWESTERLY, HAVING A CENTRAL ANGLE OF 01°53'13", A RADIUS OF 152.00 FEET, AND A RADIAL BEARING OF SOUTH 60°50'25" EAST; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY 5.01 FEET; THENCE LEAVING SAID RIGHT OF WAY, SOUTH 64°21'20" EAST 118.16 FEET; THENCE NORTH 30°55'40" EAST 157.44 FEET TO A POINT ON THE NORTHERLY EXTERIOR BOUNDARY OF THE LANDS AS DESCRIBED IN SAID DEED, THENCE ALONG THE NORTHERLY EXTERIOR BOUNDARY OF SAID DEED, SOUTH 46°52'02" EAST 10.23 FEET; THENCE LEAVING THE NORTHERLY EXTERIOR BOUNDARY OF SAID DEED, SOUTH 30°55'40" WEST 197.28 FEET; THENCE SOUTH 63°05'00" WEST 135.18 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LOT 41, AS LOT IS SHOWN ON SAID MAP; THENCE ALONG SAID SOUTHWESTERLY LINE OF SAID LOT 41, NORTH 29°55'40" WEST 5.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,899 SQUARE FEET, MORE OR LESS.

THE ABOVE DESCRIPTION SHOWN ON EXHIBIT "B" AND BY REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

PREPARED BY OR UNDER
THE SUPERVISION OF:


MICHAEL J. WALTERS, PLS 5528

05-09-19
DATE

