

AGENDA ITEM NO. 1 D  
 COUNCIL MEETING 02/09/2012

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

February 9, 2012

**FROM:** PATRICK N. WIEMILLER, Director  
 Public Works Department

**BY:** SCOTT L. MOZIER, PE, City Engineer/Assistant Director  
 Public Works Department, Traffic and Engineering Services Division



- SUBJECT:**
1. ADOPT A FINDING OF CATEGORICAL EXEMPTION PER STAFF DETERMINATION, PURSUANT TO SECTION 15305/CLASS 5 OF THE CEQA GUIDELINES, ENVIRONMENTAL ASSESSMENT NO. EA-11-019
  2. ADOPT A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC SEWER EASEMENT AND A PUBLIC TEMPORARY CONSTRUCTION EASEMENT BETWEEN EAST BELMONT AND EAST WHITE AVENUES EAST OF NORTH MILLBROOK AVENUE (LOCATED IN COUNCIL DISTRICT NO. 7)

## RECOMMENDATIONS

Staff recommends that the City Council:

1. Adopt a finding of Categorical Exemption per staff determination, pursuant to Section 15305/Class 5 of the CEQA Guidelines, Environmental Assessment No. EA-11-019.
2. Adopt the attached resolution ordering the summary vacation of a public sewer easement and a public temporary construction easement between East Belmont and East White Avenues, east of North Millbrook Avenue.

## EXECUTIVE SUMMARY

The City of Fresno's Department of Public Utilities (DPU) is requesting the vacation of a public sewer easement and a public temporary construction easement (TCE) between East Belmont and East White Avenues east of North Millbrook Avenue as shown on Exhibit "A" of the attached resolution. DPU has recently relocated the sewer line and abandoned the sewer pipeline within the sewer easement proposed to be vacated. The purpose of the vacation is to eliminate the public easements no longer needed by the City and remove the encumbrance of them from the affected property. DPU is the only department or agency that has an interest in these public easements, therefore it was not necessary to have this proposal reviewed by other agencies or City departments as the easements cannot be used for any other public purpose.

## BACKGROUND

The City of Fresno's Department of Public Utilities (DPU) is requesting the vacation of a public sewer easement and a public temporary construction easement (TCE) between East Belmont and East White Avenues east of North Millbrook Avenue as shown on Exhibit "A" of the attached resolution. The sewer easement was dedicated to the City of Fresno by that Indenture dated March 10, 1954 and recorded in Book 3427 at Page 642, Official Records of Fresno County and the TCE was

## REPORT TO THE CITY COUNCIL

### Summary Vacation of a Sewer and a Temporary Construction Easement

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dedicated to the City of Fresno by that Indenture dated March 10, 1954 and recorded in Book 3427 at Page 639, Official Records of Fresno County. DPU has recently relocated the sewer line into Belmont, Millbrook, and White Avenues and abandoned the sewer pipeline within the public sewer easement proposed to be vacated. Said TCE Indenture has language stating "This conveyance shall terminate without notice to either party on April 1, 1955". Because there was no notice given to the Grantor or Grantee of the TCE termination, staff feels it's prudent to vacate it by the attached resolution so it becomes a matter of public record that the TCE has been terminated and vacated. The purpose of the vacation is to eliminate the public easements no longer needed by the City and remove the encumbrance of them from the affected property. DPU is the only department or agency that has an interest in these easements, therefore it was not necessary to have this proposal reviewed by other agencies or City departments as the easements cannot be used for any other public purpose.

The provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public service easement (which would include public sewer easements and temporary easements for construction) when the easement has been superseded by relocation and there are no other public facilities located within the easement, which is the case for the sewer easement, or when the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation, which is the case for the TCE. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required.

The vacation, if approved by the Council, will become effective when the vacating resolution is recorded in the office of the Fresno County Recorder.

The City Attorney's Office has reviewed and approved the attached resolution as to form.

### **ENVIRONMENTAL FINDING**

The City of Fresno's Department of Public Utilities requests authorization to vacate a 12 foot wide easement and right-of-way for public sewer purposes and a 30-foot wide temporary easement and right-of-way for construction purposes. These easements are depicted on Exhibit A of the attached resolution. Because these easements only allow for the construction and placement of a sewer main and would not allow a street, alley or any other utility facility to be constructed within the easements, the City of Fresno Department of Public Utilities is the only department or agency that has an interest in these easements. The Department of Public Utilities is requesting these vacations because the sewer line has been removed and relocated and the easements are no longer needed.

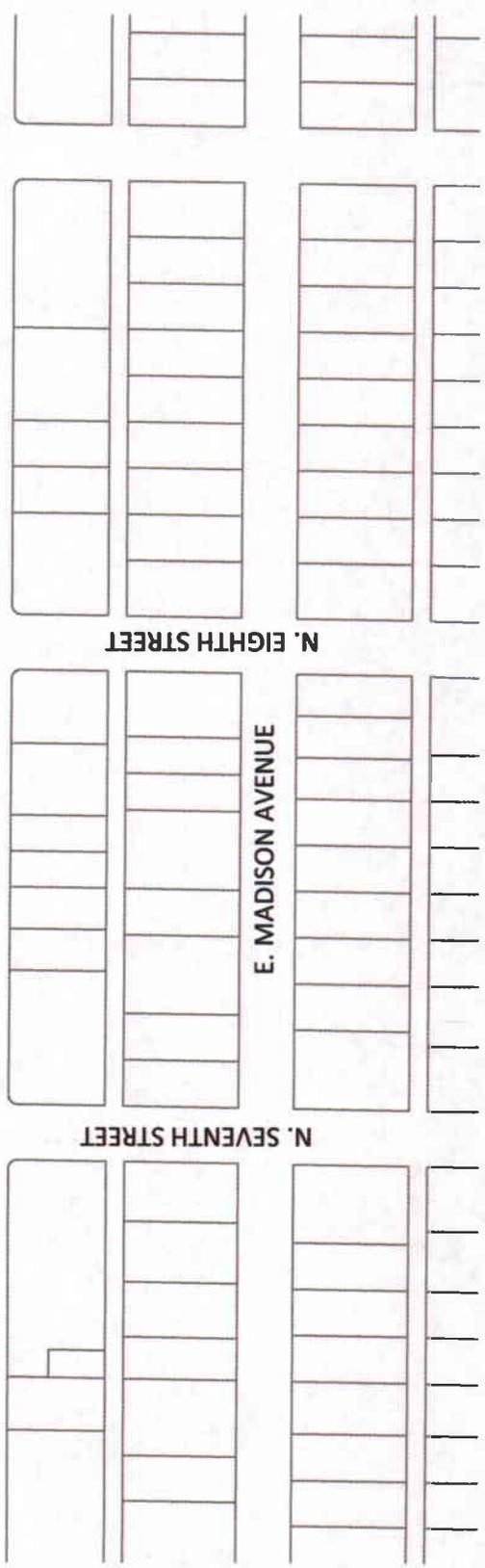
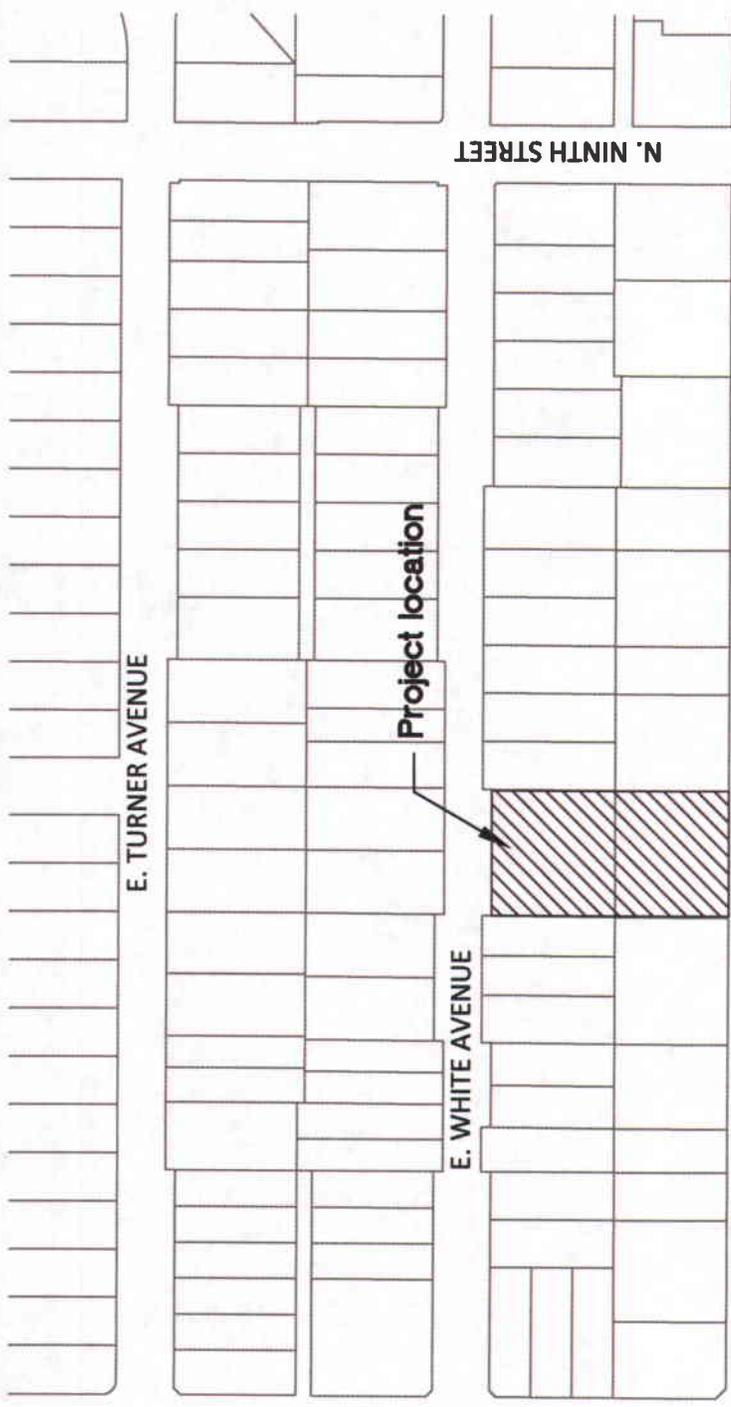
This project is exempt under Section 15305/Class 5 of the State of California CEQA Guidelines. Under the Class 5 exemption, minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density are exempt from the provisions of CEQA. The above described project complies with the conditions described in Section 15305/Class 05 of the California CEQA Guidelines. The project does not involve the construction of structures or the physical alteration of land. The sewer line no longer exists on this site and the vacation request will simply remove the easement as it exists on paper. Once these easements are removed, the property owner will be able to build structures in the area where these easements exist, and thus the land use limitations that currently exist on this property will be removed.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines Section 15300.2 apply to this project.

**FISCAL IMPACT**

There will be no impact to the City's General Fund.

- Attachments:**
- 1. Vicinity Map**
  - 2. Environmental Assessment No. EA-11-019**
  - 3. Resolution**



**ATTACHMENT 1**  
**VICINITY MAP**

**CITY OF FRESNO  
CATEGORICAL EXEMPTION  
ENVIRONMENTAL ASSESSMENT NO. EA-11-019**

**THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY  
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS  
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.**

**APPLICANT:** City of Fresno  
Department of Public Utilities, Wastewater Division  
5607 West Jensen Avenue  
Fresno, California 93706

**PROJECT LOCATION:** 3788 E. White Avenue  
On the south side of Belmont Avenue between Millbrook  
Avenue and Ninth Street  
(APN: 454-282-55)

**PROJECT DESCRIPTION:** The City of Fresno requests authorization to vacate a 12-foot wide easement and right-of-way for public sewer purposes and a 30-foot wide temporary easement and right-of-way for construction purposes. These easements are depicted on the attached Exhibit A. Because these easements only allow for the construction and placement of a sewer main and would not allow a street, alley or any other utility facility to be constructed within the easements, the City of Fresno Department of Public Utilities is the only department or agency that has an interest in these easements. The Department of Public Utilities is requesting these vacations because the sewer line has been removed and relocated and the easements are no longer needed.

**This project is exempt under Section 15305/Class 5 of the State of California CEQA Guidelines.**

**EXPLANATION:**

Under the Class 5 exemption, minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density are exempt from the provisions of CEQA.

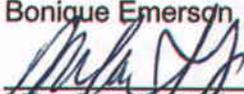
The above described project complies with the conditions described in Section 15305/Class 05 of the California CEQA Guidelines. The project does not involve the construction of structures or the physical alteration of land. The sewer line no longer exists on this site and the vacation request will simply remove the easement as it exists on paper. Once these easements are removed, the property owner will be able to build structures in the area where these easements exist, and thus the land use limitations that currently exist on this property will be removed.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines Section 15300.2 apply to this project.

Date: December 21, 2011

Prepared By: Bonique Emerson, Planner

Submitted By:

  
\_\_\_\_\_  
Mike Sanchez, Planning Manager  
City of Fresno  
Development and Resource Mgmt. Department  
(559) 621-8277

**Recording Requested By:**  
Public Works Department  
City of Fresno  
No Fee-Gov't. Code Sections  
6103 and 27383

**When Recorded, Mail To:**  
City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESOLUTION NO. \_\_\_\_\_

ADOPT A RESOLUTION APPROVING THE SUMMARY VACATION OF A PORTION OF A SEWER EASEMENT AND A TEMPORARY CONSTRUCTION EASEMENT BETWEEN EAST BELMONT AND EAST WHITE AVENUES EAST OF NORTH MILLBROOK AVENUE

WHEREAS, the Council has elected to proceed under the provisions of the Public Streets, Highways, and Service Easements Vacation Law (Division 9, Part 3 of the California Streets and Highways Code), and specifically Chapter 4 (commencing with Section 8330) thereof, to summarily vacate a public sewer easement and a public temporary construction easement between East Belmont and East White Avenues, east of North Millbrook Avenue; and

WHEREAS, the public sewer easement and the public temporary construction easement proposed to be vacated are shown on Exhibit "A", which is attached and incorporated in this Resolution; and

WHEREAS, the purpose of the proposed vacation is to eliminate the public easements no longer needed by the City and remove the encumbrance of them from the affected property; and

WHEREAS, the public sewer easement was dedicated to the City of Fresno by that Indenture dated March 10, 1954 and recorded in Book 3427 at Page 642, Official Records of Fresno County, and the public temporary construction easement was dedicated to the City of

Fresno by that Indenture dated March 10, 1954 and recorded in Book 3427 at Page 639, Official Records of Fresno County; and

WHEREAS, the City of Fresno's Department of Public Utilities is the only department or agency that has an interest in these easements, therefore it was not necessary to have this proposal reviewed by other agencies or City departments as the easements cannot be used for any other public purpose; and

WHEREAS, the provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public service easement (which would include public sewer easements and public temporary easements for construction) when the easement has been superseded by relocation and there are no other public facilities located within the easement, which is the case for the sewer easement, or when the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation, which is the case for the temporary construction easement. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required; and

WHEREAS, staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemptions set forth in CEQA Guidelines Section 15305/Class 5; and

WHEREAS, the Council desires to summarily vacate a public sewer easement and a public temporary construction easement between East Belmont and East White Avenues, east of North Millbrook Avenue as shown on Exhibit "A".

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY AS

FOLLOWS:

1. Based upon the review and consideration of the environmental documentation provided, the adoption of the proposed vacation is in the best interest of the City of Fresno. The Council finds that this project is exempt under Section 15305/Class 5 of the State of California CEQA Guidelines. The City of Fresno's Department of Public Utilities requests authorization to vacate a 12 foot wide easement and right-of-way for public sewer purposes and a 30-foot wide temporary easement and right-of-way for construction purposes. These easements are depicted on Exhibit A of the attached resolution. Because these easements only allow for the construction and placement of a sewer main and would not allow a street, alley or any other utility facility to be constructed within the easements, the City of Fresno Department of Public Utilities is the only department or agency that has an interest in these easements. The Department of Public Utilities is requesting these vacations because the sewer line has been removed and relocated and the easements are no longer needed.

This project is exempt under Section 15305/Class 5 of the State of California CEQA Guidelines. Under the Class 5 exemption, minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density are exempt from the provisions of CEQA. The above described project complies with the conditions described in Section 15305/Class 05 of the California CEQA Guidelines. The project does not involve the construction of structures or the physical alteration of land. The sewer line no longer exists on this site and the vacation request will simply remove the easement as it exists on paper. Once these easements are removed, the property owner will be able to build structures in the area where these easements exist, and thus the land use limitations that currently exist on this property will be removed.

None of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

2. The public sewer easement and the public temporary construction easement between East Belmont and East White Avenues, east of North Millbrook Avenue as shown on Exhibit "A" is hereby vacated.

3. The City Clerk of the City of Fresno shall certify to the passage of this Resolution and shall cause a certified copy, attested by the Clerk under the seal of the City of Fresno, to be recorded in the Office of the County Recorder of the County of Fresno, State of California.

4. This vacation shall become effective on the date this resolution is recorded.

5. From and after the date this resolution is recorded, the public sewer easement between East Belmont and East White Avenues, east of North Millbrook Avenue as shown on Exhibit "A" shall no longer constitute a public sewer easement, and the public temporary construction easement between East Belmont and East White Avenues, east of North Millbrook Avenue as shown on Exhibit "A" shall no longer constitute a public temporary construction easement.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF FRESNO )  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

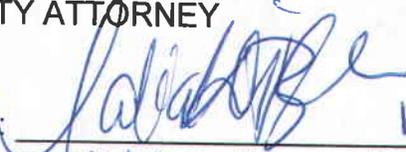
Mayor Approval: \_\_\_\_\_, 2012  
Mayor Approval/No Return: \_\_\_\_\_, 2012  
Mayor Veto: \_\_\_\_\_, 2012  
Council Override Vote: \_\_\_\_\_, 2012

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_, Deputy

APPROVED AS TO FORM:

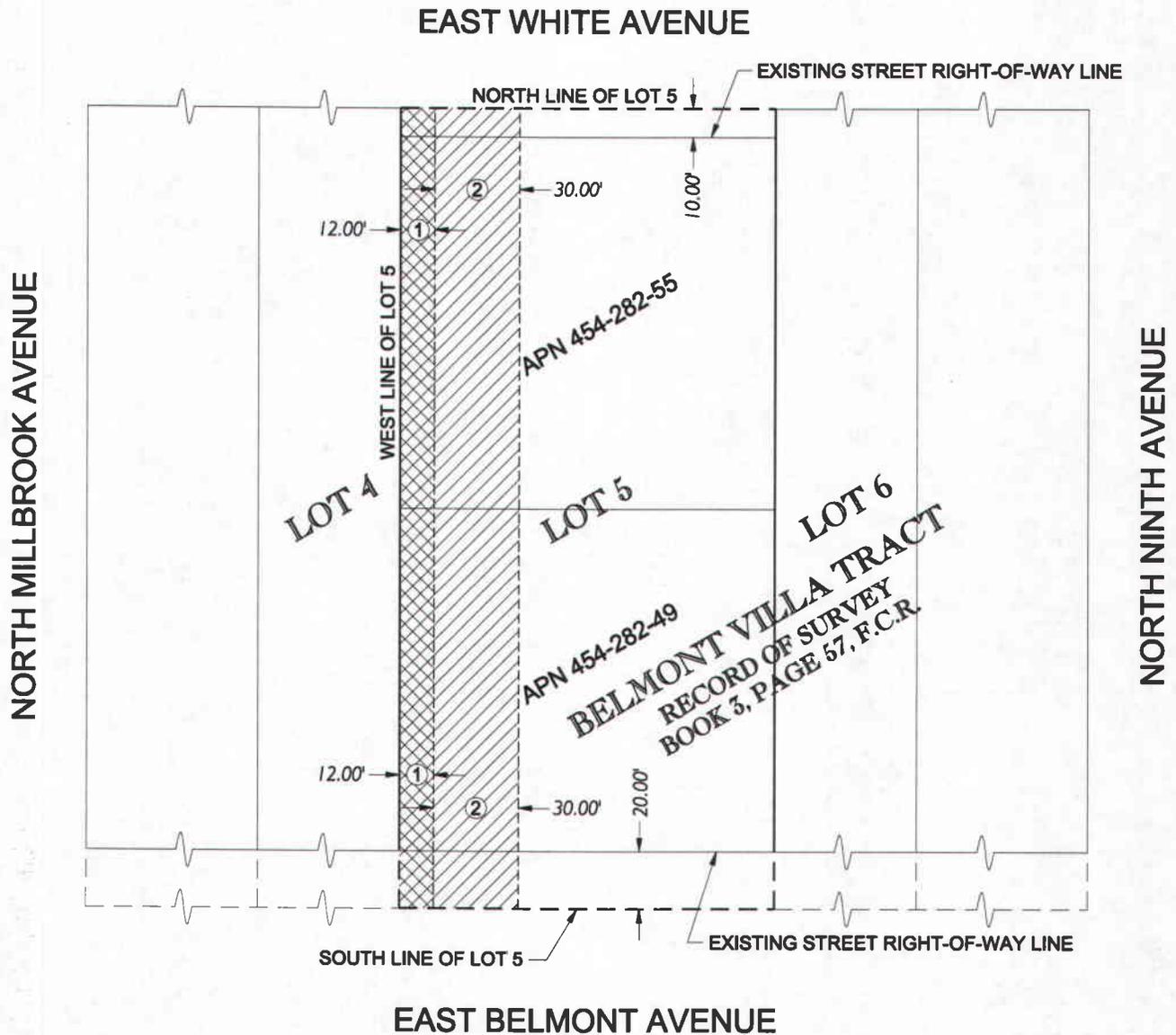
JAMES C. SANCHEZ  
CITY ATTORNEY

By:  1/23/12  
Patricia Calmei-Barrido Deputy

PW File No. 11614

Summary Vac. of a sewer easement and TCE between Belmont & White, east of Millbrook.

# EXHIBIT "A"



① = EASEMENT FOR PUBLIC SEWER PURPOSES DEDICATED BY THAT INDENTURE RECORDED APRIL 1, 1954 IN BOOK 3427 AT PAGE 642, O.R.F.C. SAID EASEMENT DESCRIBED AS: THE WEST 12 FEET OF LOT 5 OF BELMONT VILLA TRACT AS SAID LOT IS SHOWN ON THE MAP OF BELMONT VILLA TRACT RECORDED IN VOLUME 3 AT PAGE 57 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

② = TEMPORARY CONSTRUCTION EASEMENT DEDICATED BY THAT INDENTURE RECORDED APRIL 1, 1954 IN BOOK 3427 AT PAGE 639, O.R.F.C. SAID EASEMENT DESCRIBED AS: THE EAST 30 FEET OF THE WEST 42 FEET OF LOT 5 OF BELMONT VILLA TRACT AS SAID LOT IS SHOWN ON THE MAP OF BELMONT VILLA TRACT RECORDED IN VOLUME 3 AT PAGE 57 OF RECORD OF SURVEYS, FRESNO C

 INDICATES PUBLIC SEWER EASEMENT TO BE VACATED

 INDICATES TEMPORARY CONSTRUCTION EASEMENT TO BE VACATED