



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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### AGENDA TITLE:

Non- Motorized Transportation Pilot Program – Sausalito Stairs – Consideration to Approve Easement Agreement with Property Owners at the Filbert Stair Site.

### RECOMMENDED MOTION:

Adopt a Resolution of the City Council of the City of Sausalito Authorizing the City Manager to Execute an Easement Agreement at the Filbert Stairs Site.

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### SUMMARY

The purpose of this item is to allow the Council to consider entering into an easement agreement with property owners at 204 Cazneau. The easement agreement defines rights and responsibilities regarding the Filbert Stair which is proposed to be reconstructed. Additional easements are needed to enable reconstruction of the stair along the existing alignment with Federal Non-Motorized Transportation Pilot Program Funds.

Staff recommends the City Council adopt the attached Resolution approving the easement agreement and authorizing the City Manager to execute it on the City's behalf.

### DISCUSSION

In 2006 Marin County issued a call for projects to be funded by the Federal Non-Motorized Transportation Pilot Program. The City proposed several stairway projects.

The City was successful in securing funds to rehabilitate a stair between Filbert and Cazneau and to construct a new stair adjacent to 595 and 591 Sausalito Boulevard, the Sausalito-Prospect Stair site. The total grant amount is for \$340,000. The City executed a funding agreement with Caltrans totaling \$56,000 to enable the preparation of Plans, Specifications, Estimate and to perform necessary environmental reviews (NEPA and CEQA).

A subsequent grant for construction funding is expected to occur once the design is completed and the right-of-way and environmental review are certified in accordance with established procedures.

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Meeting Date: April 6, 2010  
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The City issued a Request for Proposals (RFP) for Engineering Design and Environmental Compliance in December, 2008. In January, 2009 the Council awarded an agreement to Questa Engineering Corp.

In January 2009 the City Council awarded a contract to Questa Engineering Corp. to perform preliminary engineering services (engineering design and environmental compliance).

Development on the Sausalito-Prospect Stair site was formally halted by the City Council in September, 2009, in response to neighborhood opposition to this stair.

In the summer of 2009 Questa transmitted a survey showing portions of the existing Filbert Stair as being outside the existing Public Right of Way and public easements. Federal Funds cannot be used to construct private improvements. Sausalito, as the Lead Agency, must certify that the land underlying the improvement is public in order to receive construction funds.

The concept for Filbert is to reconstruct the stairs, in concrete, in approximately the same location as currently exists. In order to continue project development the City needs to either relocate the stair into existing easements or to acquire easements from affected property owners. A decision needed to be made regarding the location and improvement of the stairs.

Staff held meetings and discussions with the neighborhood residents and property owners on how to proceed. The consensus was that there was support for keeping and improving a stair facility in the general location of the existing stair.

At the meeting it was also determined that the full history of stair is unknown. Attendees acknowledged some uncertainty as to the ownership and liability responsibility for the facility. Public Works staff indicated that the facility is not routinely maintained as a part of normal maintenance activities, though some "triage" repairs have been made through the years to minimize risks.

We subsequently had an additional meeting and discussions with Property owners at 190, 194 and 204 Cazneau as the existing stair and path encroaches onto these properties. The owners can support replacing the stair in approximately the same location as currently exists. To enable reconstruction in the existing location requires additional grant of Easement. This is expected to enable the City to certify that it has the right-of-way for constructing the new facilities. The owners of 204 Cazneau have agreed to grant the City an easement in exchange for executing a Easement Agreement. Discussion with 190 and 194 Cazneau continue but are not final. 204 Cazneau have agreed to allow a minor reconfiguration to move some of the route into an existing easement on the property allowing the project to advance whether or not 190 and 194 agree on easement agreement terms.

The City Attorney drafted a model easement agreement which was forwarded to the property owners for review. 204 Cazneau is a two unit Townhome Condominium co-owned by Barbara Crane and Nersi/Mojgan Abadian Hemati. 190 Cazneau is a single family dwelling that is owned by Mark Petri and operated as a rental unit. 194 Cazneau is a Single Family owned by Kimberly Schickle (formerly Kimberly Meek) and operated as an owner occupied duplex residence. The agreements define rights and responsibilities. The agreement formally clarifies terms that have been variously asserted or rejected in the past by property owners and the City.

In exchange for easement (and right-of-way) the city constructs a high standard facility with Federal Funds, operates it as a public facility and accepts maintenance and operational liability.

Approval of these agreements are necessary to complete design, then certify the right-of-way and environmental documents. Staff is attempting to complete outstanding project management steps to enable request for Construction from Caltrans funding by late April or Early May. If all is in order staff expect that Caltrans would issue by midsummer a document called an "E-76" which authorizes the City to solicit bids. Construction would occurs as soon as practicable and after formal award by the City Council.

## **FISCAL IMPACT**

The requested action has no fiscal impact. While points can be made that defining the rights and responsibilities regarding the operation of the stair may have future maintenance and liability costs. there is much evidence to suggest that the facility already is public by virtue of known public use. Denying these responsibilities may have added costs to defend claims.

The Project has no impact on the General Fund. The Project is identified in the City Budget as funded with General Capital Funds which is further supported by the a Grant by the Federal Government Non-Motorized Transportation Pilot Program up to a total amount of \$340,000.


## **STAFF RECOMMENDATIONS**

Adopt a Resolution of the City Council of the City of Sausalito approving of Easement Agreements for Filbert Stairs and Authorizing the City Manager to execute the agreement on behalf of the City.

## **ATTACHMENTS**

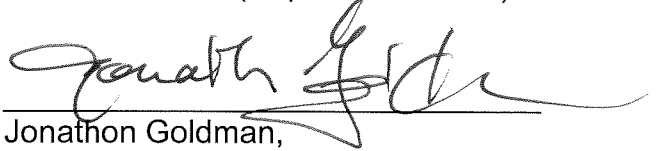
Resolution  
Easement Agreement  
Survey  
Maps

PREPARED BY:



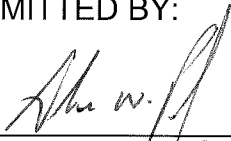
Todd Teachout,  
City Engineer

REVIEWED BY (Department Head):



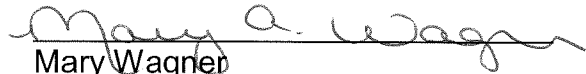
Jonathon Goldman,  
Director of Public Works

SUBMITTED BY:



Adam W. Politzer  
City Manager

REVIEWED BY:



Mary Wagner  
City Attorney

RESOLUTION \_\_\_-10

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO APPROVING OF EASEMENT AGREEMENTS WITH PROPERTY OWNERS OF 204 CAZNEAU AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS NECESSARY FOR THE TRAFNER OF PROPERTY RIGHTS AS NECESSARY TO ENABLE THE RECONSTRUCTION OF FILBERT STAIRS.

**WHEREAS**, the City desired to reconstruct stairs adjacent to 204 Cazneau, and

**WHEREAS**, the City hired consultants to develop plans and other factual information to enable compliance with state and federal regulations for grant funded projects, and

**WHEREAS**, surveyors discovered that a portion of the stair was located outside of existing public right-of-way, and

**WHEREAS**, it is necessary to reconstruct the grant funded stair within public right-of-way.

**WHEREAS**, Barbara S. Crane, Nersi Hemati, and Mojgan Abadian Hemati, owners of 204 Cazneau have agreed to dedicate easement right-of-way to the City in exchange for the right and responsibility for reconstructing and operating these stairs, and

**WHEREAS**, the terms of these agreements have been more completely described in Easement Agreements attached as Exhibits A.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Sausalito:

1. Approves of the terms of the said Easement Agreements.
2. Authorizes the City Manager to execute said Easement Agreements on behalf of the City.

AYES: Councilmembers:  
NOES: Councilmembers:  
ABSTAIN: Councilmembers:

\_\_\_\_\_  
Mayor, City of Sausalito

ATTEST:

\_\_\_\_\_  
City Clerk

Recording Requested by and when  
Recorded Mail to:

CITY OF SAUSALITO  
420 Litho Street  
Sausalito, CA 94965  
Attn: City Clerk

DOCUMENTARY TRANSFER TAX \$ NONE

FREE RECORDING REQUESTED PURSUANT  
TO GOV'T CODE SECTION 6103

### EASEMENT AGREEMENT

This Easement Agreement (the "Agreement") is made this \_\_\_<sup>th</sup> day of \_\_\_\_\_ 2010, ("Effective Date") by and between the CITY OF SAUSALITO, a California municipal corporation ("City"), on the one hand, and Barbara S. Crane AND Nersi and Mojgan Abadian Hemati, (collectively, the "Owners"), on the other hand.

#### RECITALS

A. City is the owner of a public right of way located in the City of Sausalito, County of Marin, California, commonly identifiable as Filbert Stair (the "City ROW").

B. Nersi & Mojgan Abadian Hemati, [Husband and Wife/Individual], are the owners of that certain improved real property located in the City of Sausalito, County of Marin, California, commonly identifiable as Assessor's Parcel Number 064-203-30, having a street address of 204B Cazneau, and as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "ABC Property").

C. Barbara S. Crane, [Individual], is the owner of that certain improved real property located in the City of Sausalito, County of Marin, California, commonly identifiable as Assessor's Parcel Number 064-203-31, having a street address of 204A Cazneau, and as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "XYZ Property").

D. The XYZ Property and the ABC Property are collectively referred to as the "Burdened Properties."

E. The Burdened Properties contain a pedestrian walkway historically used by the public. The City desires to utilize public funds to repair and improve the pedestrian walkway. Owners desire to continue to allow use of the pedestrian walkway by the public

provided that the City maintains the walkway and agrees to fully indemnify and defend the Owners as provided herein.

NOW, THEREFORE, in consideration of these Recitals and the conditions and covenants hereinafter contained the parties agree as follows:

### **Terms and Conditions**

#### **1.1 Grants of Easement.**

For valuable consideration, the receipt of which is hereby acknowledged, the Owners for themselves and their grantees, successors and assigns, hereby grant to, and for the use and benefit of, the City and its grantees, successors and assigns, a non-exclusive, perpetual easement and right-of-way on, over, and across the Burdened Properties as depicted on Exhibit "C", subject to the terms and conditions more particularly set forth below, for the purpose of allowing City to maintain an approximately five feet (5') wide public use/recreational walkway for pedestrian use and such other non-motorized recreation activity such as walking, (the "Pedestrian Easement"). City shall have the right, in its sole discretion, to restrict or limit public use of and access to the Pedestrian Easement.

#### **1.2 Improvements.**

The City may construct and/or install certain improvements in, on, and along the Pedestrian Easement (the "Improvements").

#### **1.3 Maintenance.**

City shall bear all costs of maintaining, repairing, and replacing the Pedestrian Easement in a clean and safe condition. Such maintenance, repair and replacement obligations shall include, but are not limited to, repair of potholes, keeping the Pedestrian Easement free from debris and weeds, repairing damage due to ordinary wear, and replacing the surface of the Pedestrian Easement as necessary. City shall have the sole right and responsibility to contract for repair and maintenance services for the Pedestrian Easement.

#### **1.4 No Obstruction of Easement.**

Owners or their agent shall not block, obstruct or in any way interfere with City's use of the Pedestrian Easement. No fences, walls or other barriers will be constructed in such a manner as to interfere with City's use of the Pedestrian Easement pursuant to the terms set forth herein. Owners shall not construct buildings, improvements, fences and/or landscape across the Pedestrian Easement without the prior written consent of City.

4/15/8

1.5 Indemnification. City agrees to defend, indemnify and hold harmless the Owners and/or their tenants and authorized agents, from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including attorney's fees, costs and expenses in connection therein), arising from, in connection with, or in any manner related to, the use of the Pedestrian Easement, except for any such claim arising out of the sole negligence or willful misconduct of the Owners, their tenants, or their agents.

1.6 Establishment of Easements. The Pedestrian Easement described in this instrument shall be deemed established upon the recording of this document and the obligations, burdens and benefits contained in this Agreement shall run with the land and shall be binding upon the City and Owners and their respective successors and assigns, superior to all other subsequently recorded encumbrances affecting any portion of the City ROW and the Burdened Properties.

1.7 Easement in Perpetuity. The Pedestrian Easement shall continue in full force and effect in perpetuity.

### **General Terms**

2.1 Binding on Successors. The Pedestrian Easement and the rights and obligations hereunder will be binding upon and will inure to the benefit of the assignees and successors in interest of each of the parties so long as such assignees or parties own all or any portion of the respective property interests. The Pedestrian Easement may not be separately assigned or conveyed, and the rights and obligations described herein and the Pedestrian Easement created hereunder are specifically appurtenant to and for the benefit of each of the property interests of the parties.

2.2 Amendments. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective permitted successors in interest, which expressly states that it is an amendment of this Agreement, and that is recorded in the Records Office of Marin County, California.

2.3 Authority to Execute. Each party warrants that the individual(s) signing this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party.

2.4 Notices. All notices, requests, demands, and other communication given or required to be given hereunder shall be in writing and personally delivered or sent by United States registered or certified mail, return receipt requested, or sent by nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:



If to City:

City of Sausalito  
Attn: City Manager  
420 Litho Street  
Sausalito, CA 94965

If to Nersi and Mojgan Abadian Hemati:

Nersi Hemati  
204B Cazneau  
Sausalito, CA 94965

If to Barbara S. Crane:

Barbara Crane  
204A Cazneau  
Sausalito, CA 94965

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt records as the date of delivery or as the date of first attempted delivery to the address of the addressee, if sent by mail. Any party may change its address for purposes of this section by giving notice to the other party.

2.5 Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

2.6 No Additional Easements. Both City and Owners agree that during the term of this Agreement no other additional easement or easements shall be granted on, under, or over the Pedestrian Easement without obtaining the prior written consent of the City and Owners, which consent shall not be unreasonably withheld.

2.7 Effect of Waiver. Waiver by any party in whole or in part, expressly or by acquiescence, of any portion of this Agreement shall not constitute a waiver of any other portion of this Agreement. A party's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or a party's waiver of any breach hereunder, shall not relieve the other parties of any of their obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the party's actions are intentional or unintentional.

2.8 Severability. Each provision, condition, covenant, and restriction in this Agreement shall be considered severable. In the event any provision, condition, covenant, and restriction in this Agreement is declared invalid or void for any reason, such provision shall not affect any other provision, condition, covenant, and restriction herein. The void or invalid provision, condition, covenant, and restriction will be deemed not a part of this Agreement, and the remainder hereof shall continue in full force and effect.

2.9 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first above written.

“CITY”

CITY OF SAUSALITO, a municipal corporation

By: \_\_\_\_\_,  
Mayor, City of Sausalito

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

“BURDENED PROPERTIES”

Nersi Hemati, Husband,

By: \_\_\_\_\_

Mojgan Abadian Hemati, Wife

By: \_\_\_\_\_

Barbara S. Crane, an individual \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF THE ABC PROPERTY

Real property in the City of Sausalito, County of Marin, State of California, described as follows:

[insert legal]

APN: \_\_\_\_\_

EXHIBIT "B"

LEGAL DESCRIPTION OF THE XYZ PROPERTY

Real property in the City of Sausalito, County of Marin, State of California, described as follows:

[insert legal]

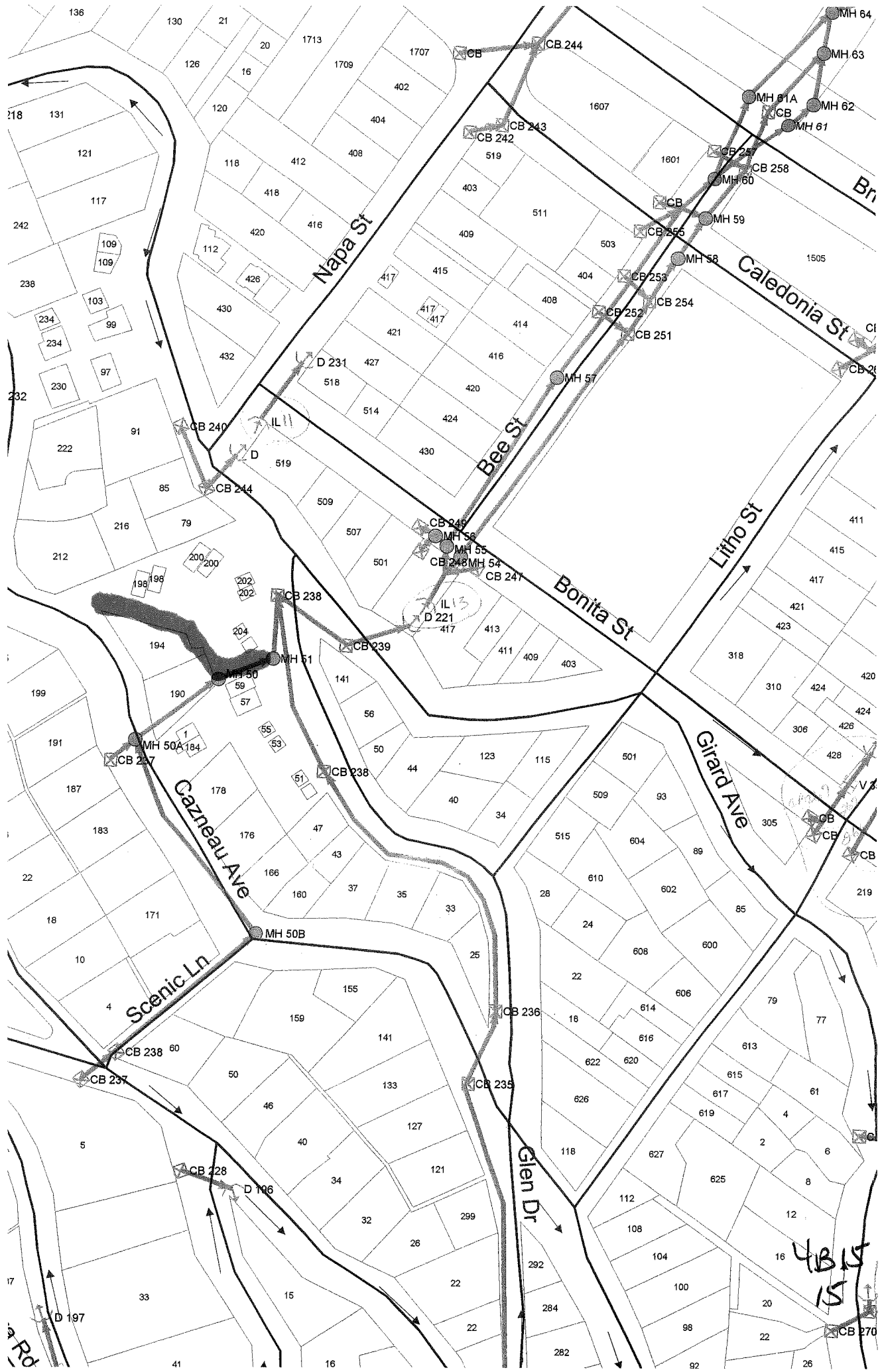
APN: \_\_\_\_\_

EXHIBIT "C"

SITE MAP OF PROPERTIES AND DEPICTION OF EASEMENT

[To Be Inserted]

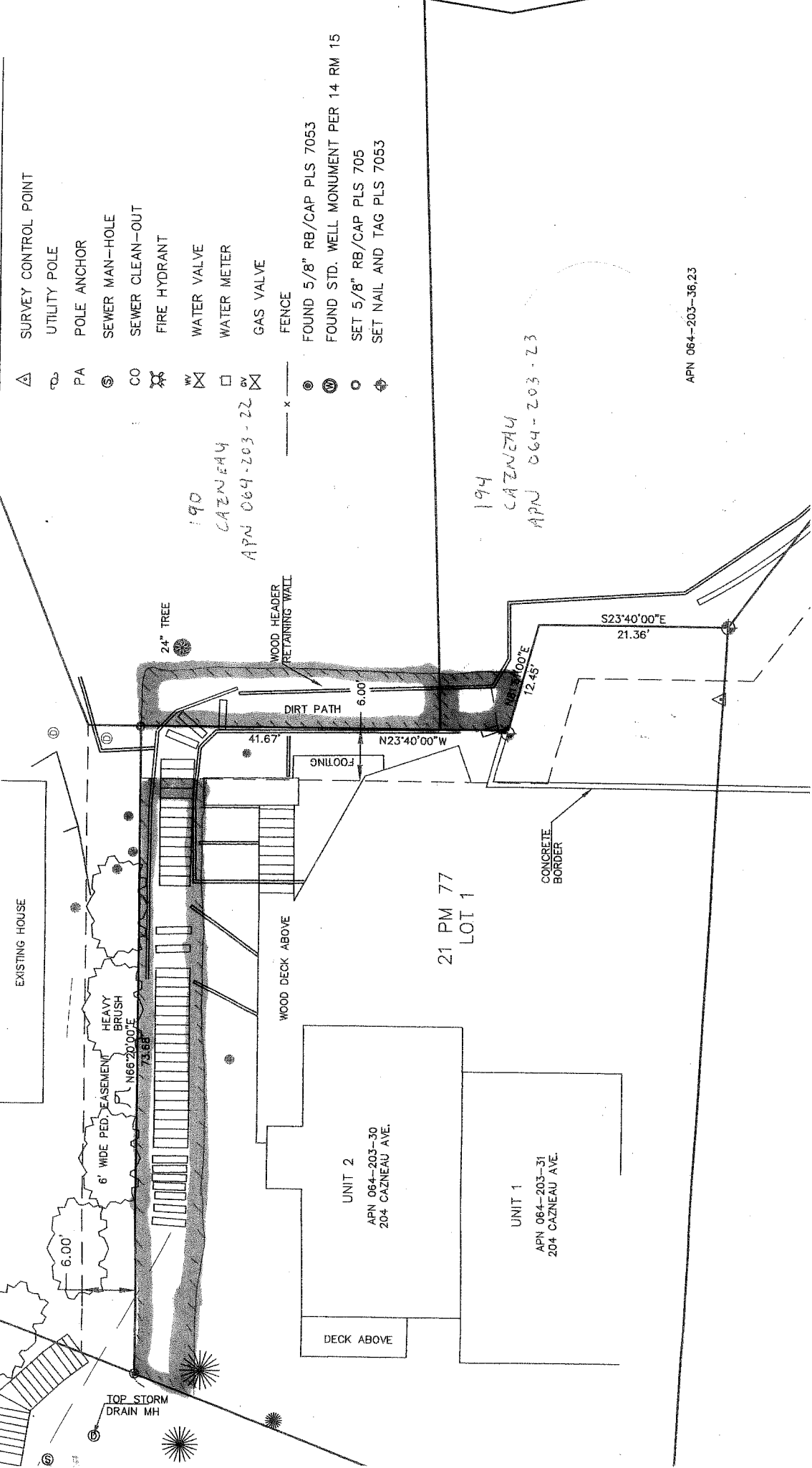
Vicinity Map Filbert Stair



Easement Agreement Areas

LEGEND

- △ SURVEY CONTROL POINT
- UTILITY POLE
- PA POLE ANCHOR
- ⊙ SEWER MAN-HOLE
- ⊙ CO SEWER CLEAN-OUT
- ⊙ FIRE HYDRANT
- ⊙ WY WATER VALVE
- ⊙ WATER METER
- ⊙ GAS VALVE
- x — FENCE
- ⊙ FOUND 5/8" RB/CAP PLS 7053
- ⊙ FOUND STD. WELL MONUMENT PER 14 RM 15
- ⊙ SET 5/8" RB/CAP PLS 705
- ⊙ SET NAIL AND TAG PLS 7053



190  
CAZNEAU  
APN 064-203-22

194  
CAZNEAU  
APN 064-203-23

APN 064-203-36,23

4B15  
16