

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Resolution No. 2015-35 Approving Joint Sewer Line

DATE: July 16, 2015

### **City Council Goals:**

To provide for effective and efficient delivery of City services. (#1)

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)

### **Purpose:**

To formally approve the continued use of a joint sewer line and to ensure appropriate recordation of this approval.

### **Recommendation:**

Approve Resolution No. 2015-35, "Granting Approval for a Joint Sewer Line Serving Residences in the 100 Block of Tulare Street".

### **Background:**

One of the ongoing challenges carried over from the early development of central Brisbane is the issue of joint private sewer lines. These private multi-party lines remain somewhat prevalent in the steeper terrain portions of the City; typically, several homes on the downhill side of a street will come together at a joint line in a private easement traversing a property on the uphill side of the next lower road, and then join the public sewer system in that lower street.

When properly maintained these lines are no more problematic than the City's public system; unfortunately, the lines in many cases are neglected, and when problems do arise that create sanitary sewer overflows there is often a lack of "enthusiasm" and consensus from the serviced parties to contribute financially to the required repairs. The Municipal Code's prohibition on joint sewer lines, unless formally approved by the Council, seems to understand this difficulty.

The four (4) parties to the proposed Joint Sewer Line Agreement have all indicated their consent by signing the Agreement and apportioning the costs of any required future repairs. This Agreement also gives the City the right to perform the work and back-charge the parties to the Agreement. This agreement language gives the City a significantly enhanced tool to deal with owners who might not be inclined to perform necessary repairs to prevent private sanitary sewer overflows.

**Discussion:**

The owner of the parcels on Santa Clara Street primarily burdened by the joint sewer line first approached the uphill neighbors regarding his request to relocate the line to be contiguous with the property lines of his parcels. That owner then approached the city and requested assistance with obtaining formal approval of the to-be relocated joint sewer line. A part of that conversation included the City Engineer’s technical requirements (e.g., the use of “butt-welded” high-density polyethylene pipe and the placement of a control manhole at the 90-degree turn proposed in the lateral) for the relocation plans that will be required if the Council approves the agreement.

The signed Agreement was prepared by the City Attorney for conformance with Municipal Code §13.04.430. The ultimate installation will satisfactorily provide service to the three (3) uphill addresses in the 100 block of Tulare Street and place no additional burden on the existing easement traversing two parcels on Santa Clara Street. This Agreement and the approving Resolution are consistent with City council’s approval of joint sewer laterals in the 600 block of Sierra Point Road (ca. 2007) and the 200 block of Humboldt Road (ca. 2014).

If approved, the City Clerk will file a copy of the approved resolution in each of the address files for the five (5) parcels identified in same, and will forward the “Joint Sewer Line Agreement” to San Mateo County for recordation, and file a copy of the recorded agreement in each of the five (5) parcels’ address files.

**Fiscal Impact:**

None as a result of the actions recommended herein.

**Measure of Success**

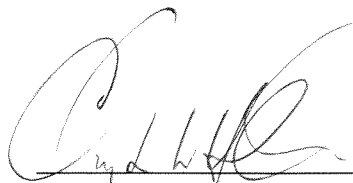
A mechanism by which the city can ensure, and if necessary, enforce, the maintenance of joint sewer lines that will assist in the prevention of sanitary sewer overflows.

**Attachments:**

- Resolution No. 2015-35
- Joint Sewer Line Agreement



\_\_\_\_\_  
Director of Public Works/City Engineer



\_\_\_\_\_  
City Manager

**RESOLUTION NO. 2015-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BRISBANE GRANTING APPROVAL FOR A JOINT SEWER LINE  
SERVING RESIDENCES IN THE 100 BLOCK OF TULARE STREET**

**WHEREAS**, conditions are such that the Brisbane Director of Public Works/City Engineer finds the only practical means of connecting certain properties on Tulare Street to the City's public sewer system using a gravity line is through a joint sewer line; and

**WHEREAS**, the Director of Public Works/City Engineer recommends the City Council waive the "an easement of not less than ten (10) feet in width" requirement found in paragraph 13.04.430.G of the Municipal Code and allow a three (3) feet and five (5) feet in width easement for a portion of private joint sewer line providing service to the addresses in the Agreement described below; and

**WHEREAS**, the parties wishing to use this line have petitioned the Council to find good cause therefore to grant approval for a joint sewer line serving 136 Tulare Street, 154 Tulare Street, and 160 Tulare Street; and

**WHEREAS**, the parties petitioning the Council have all signed a "Joint Sewer Line Agreement" dated June 26, 2015, said document being prepared by the Brisbane City Attorney for conformance with Section 13.04.430 of the Municipal Code and to be recorded separately in the Official Records of San Mateo County,

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of  
Brisbane as follows:**

1. Pursuant to Section 13.04.430 of the Municipal Code, approval is granted for a joint sewer line for the purpose of providing gravity sewer service to the following described parcels:

136 Tulare Street, Assessor's Parcel Number 007-342-050

154 Tulare Street, Assessor's Parcel Number 007-342-040

160 Tulare Street, Assessor's Parcel Number 007-342-030

2. The approved joint sewer line is primarily located on the following parcels:

007-342-170

007-342-180

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Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2015-35 was duly and regularly adopted at the regular meeting of the Brisbane City Council on \_\_\_\_\_, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Sheri Marie Spediacci, City Clerk

RECORDING REQUESTED BY:  
City of Brisbane

AFTER RECORDATION MAIL TO:  
City of Brisbane  
Department of Public Works  
50 Park Place  
Brisbane, CA 94005

THIS SPACE FOR RECORDER'S USE

## JOINT SEWER LINE AGREEMENT

THIS AGREEMENT, dated June 26, 2015, by and between HERMANN G. GERDES and HELGA GERDES, TRUSTEES, UDT dated April 15, 2000 ("Gerdes"), GEOFFREY ALEXANDER LINDSAY, an unmarried man ("Lindsay"), WILLIAM H. DETTMER and LINDA M. DETTMER, husband and wife, as Joint Tenants ("Dettmer"), and NEAL E. HEMMING, a married man ("Hemming") collectively referred to herein as "Owners", is made with reference to the following facts:

A. Gerdes is the owner of the real property located on Santa Clara Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Numbers 007-342-170 and 007-342-180, and more particularly described as Parcel 1 in Exhibit "A" attached hereto and made a part hereof.

B. Lindsay is the owner of the real property located at 154 Tulare Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-342-040, and more particularly described as Parcel 2 in Exhibit "A" attached hereto and made a part hereof.

C. Dettmer is the owner of the real property located at 160 Tulare Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-342-030, and more particularly described as Parcel 3 in Exhibit "A" attached hereto and made a part hereof.

D. Hemming is the owner of the real property located at 136 Tulare Street, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-342-050, and more particularly described as Parcel 4 in Exhibit "A" attached hereto and made a part hereof.

E. Lindsay, Dettmer, and Hemming share an existing, private sanitary sewer line that runs across Parcel 1.

F. Owners desire to relocate and upgrade the existing joint sanitary sewer line pursuant to the execution of multiple Easement Deeds between the parties, and have applied to the City of Brisbane ("City") for approval to construct such sewer line. The location of a new sewer line easement into which will be placed a new joint sanitary sewer line shall be as shown in Exhibits "B" and "C" attached hereto and made a part hereof. The relocated joint sewer line will remain a private sanitary sewer line, to be owned and maintained by Lindsay, Dettmer and Hemming, and will not be dedicated to, nor owned or maintained by, City.

G. City is willing to approve the proposed relocated and upgraded joint sewer line, on condition that the sewer line is constructed in accordance with plans and specifications to be approved by City's Director of Public Works/City Engineer, and on the further condition that Owners substantially comply with the requirements of Section 13.04.430 of the Brisbane Municipal Code pertaining to the installation and maintenance of joint sewer lines.

H. Owners desire to enter into this Agreement for the purpose of establishing their respective rights and obligations with regard to the joint sewer line and to implement the requirements of Section 13.04.430 of the Brisbane Municipal Code.

**NOW, THEREFORE, the parties agree as follows:**

1. The upgraded joint sewer line shall be located entirely within the sewer line easement, shall be designed in compliance with all applicable building codes, and shall be constructed in accordance with plans and specifications approved in writing by City's Director of Public Works/City Engineer. Prior to the commencement of any work, Owners shall obtain from City all permits and other approvals for the work as may be required by the Brisbane Municipal Code and shall pay all fees and costs relating thereto.

2. City may inspect the work at any time or times during the course of construction. The completed joint sewer line shall not be placed into service until final inspection approval of the sewer line has been issued by City.

3. Cost allocations.

a. All costs of installation and construction of the upgraded joint sewer line shall be borne by Gerdes. Costs of any necessary repairs to existing private sewer laterals shall be borne by the individual owners of the private lateral. In the event of dispute between the Owners as to the location of the point of connection between the relocated joint sewer line and the existing private sewer lateral, the Director of Public Works/City Engineer's determination shall be final.

b. All future maintenance, repair and replacement costs of the portion of the joint sewer line to be installed in the sewer line easement shown on Exhibit "B" (including the not depicted control manhole to be installed at the easternmost end of this easement) shall be shared equally by Lindsay, Dettmer, and Hemming.

c. All future maintenance, repair and replacement costs of the portion of the joint sewer line to be installed in the sewer line easement shown on Exhibit "C" (excluding the not depicted control manhole to be installed at the northernmost end of this easement) shall be shared equally by Lindsay and Dettmer.

d. In the event of any failure or refusal by Lindsay, Dettmer or Hemming to pay that Owner's share of the cost, the other Owners (including Gerdes) may advance such cost and bring appropriate legal proceedings against the delinquent Owner for collection of the same, plus costs and attorney's fees.

e. In the event the owner of any other property desires to connect to the joint sewer line, and provided the joint sewer line has sufficient capacity to accommodate the additional sewage flow, the connecting owner shall be required to reimburse Owners for a proportionate share of all costs and expenses incurred by Owners to that time for the construction, maintenance, repair and replacement of the joint sewer line. The connecting owner shall also be required to become a party to this Agreement and be bound by all of the terms and conditions contained herein, including the requirement to obtain a properly recorded easement for the portion of the joint sewer line they intend to utilize.

4. Decisions relating to future maintenance.

a. Decisions relating to the future maintenance, repair or replacement of the joint sewer line to be installed in the easement shown on Exhibit "B" can be made by

any two (2) of the three (3) Owners (Lindsay, Dettmer, and Hemming), with multiple owners of the same property being counted as a single Owner.

b. Decisions relating to the future maintenance, repair or replacement of the joint sewer line to be installed in the easement shown on Exhibit "C" shall be made jointly by the two (2) Owners (Lindsay and Dettmer), with multiple owners of the same property being counted as a single Owner.

c. No work shall be performed until a consent to the scope and cost of the work has been obtained from the requisite number of Owners; provided, however, in the event emergency repairs to the joint sewer line are needed and all of the affected Owners cannot be immediately contacted, any one or more of the other Owners may authorize the emergency repair work to be performed and such Owner(s) shall be entitled to collect a proportionate share of the cost from the non-consenting Owner(s).

5. No Owner shall interrupt the continuity of service provided by the joint sewer line in a manner that will cause damage or interfere with use of the sewer line by the other Owners, other than such reasonable interruption as may be necessary for the performance of needed maintenance, repair or replacement.

6. In the event of any failure by Owners to maintain, repair or replace the joint sewer line in proper operating condition and City determines that the sewer line is in a condition that presents a hazard to the public health or safety, City may give Owners written notice to perform the corrective work and upon the failure by Owners to do so within the time specified in the notice, City may cause such work to be performed and charge each Owner an equal share of all costs and expenses City may incur in connection therewith. Should any Owner fail to pay such charges within fifteen (15) days from the date of billing, City may bring a civil action against the delinquent Owner for collection of such charges and City may also record a nuisance abatement lien against the delinquent Owner's property and foreclose the same in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

7. The joint sewer line shall be and remain a private sewer line owned entirely by Owners and will not be offered for acceptance to City. Owners acknowledge that City has no responsibility to maintain, repair or replace the joint sewer line, nor shall City have any liability for any loss or damage to persons or property resulting from any failure or



malfunction of the joint sewer line. Owners shall indemnify, defend and hold City harmless from and against any claim, demand, cost, expense, or liability, including attorney's fees, arising from or related to the ownership, operation or maintenance of the joint sewer line or by the failure by Owners to perform any of their obligations under this Agreement.

8. In the event legal action shall become necessary to enforce or interpret this Agreement, the prevailing party or parties shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.


9. This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

**IN WITNESS WHEREOF**, Owners have executed this Agreement the day and year first above written.

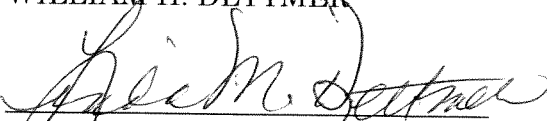
HERMANN G. GERDES and HELGA GERDES, TRUSTEES, UDT dated April 15, 2000

  
HERMANN G. GERDES, TRUSTEE

  
HELGA GERDES, TRUSTEE

  
GEOFFREY ALEXANDER LINDSAY

  
WILLIAM H. DETTMER

  
LINDA M. DETTMER

  
NEAL E. HEMMING

A notary certificate is required for all signatures.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

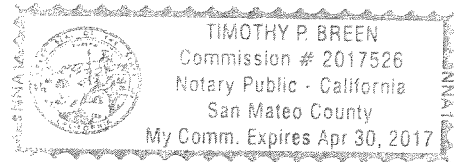
State of California  
County of San Mateo )

On June 26, 2015 before me, Timothy P. Breen, Notary Public  
(insert name and title of the officer)

personally appeared Hermann G. Gerdes and Helga Gerdes,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are  
subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/they executed the same in  
~~his~~/~~her~~/their authorized capacity(ies), and that by ~~his~~/~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Timothy P. Breen (Seal)

## ACKNOWLEDGMENT

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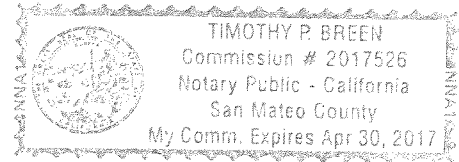
State of California  
County of San Mateo)

On June 26, 2015 before me, Timothy P. Breen, Notary Public  
(insert name and title of the officer)

personally appeared Geoffrey Alexander Lindsay,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in  
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Timothy P Breen (Seal)

## ACKNOWLEDGMENT

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State of California  
County of San Mateo)

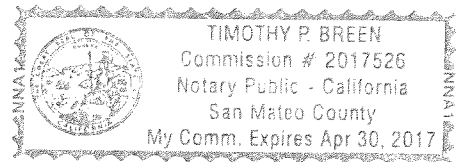
On June 29 2015 before me, Timothy P. Breen, Notary Public  
(insert name and title of the officer)

personally appeared William H. Dettmer and Linda M. Dettmer,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~are  
subscribed to the within instrument and acknowledged to me that ~~he~~~~she~~/they executed the same in  
~~his~~~~her~~/their authorized capacity(ies), and that by ~~his~~~~her~~/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Timothy P Breen (Seal)



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Mateo )

On June 29, 2015 before me, Timothy P. Breen, Notary Public  
(insert name and title of the officer)

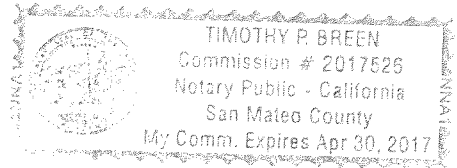
personally appeared Neal E. Hemming,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in  
his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Timothy P. Breen

(Seal)



## **EXHIBIT "A"**

### **PARCEL 1**

**(APN 007-342-170, 007-342-180)**

**Property of Gerdes**

007-342-170 - LOT 29, IN BLOCK 40, AS SHOWN ON THE AMENDED MAP OF SUBDIVISION ONE, TWO AND THREE OF THE CITY OF VISITACION, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AS PER MAP DATED OCTOBER 14, 1908 AND RECORDED IN BOOK 6 OF MAPS, AT PAGE 45, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

007-342-180 - LOTS 30 AND 31, IN BLOCK 40, AS SHOWN ON THE AMENDED MAP OF SUBDIVISION ONE, TWO AND THREE OF THE CITY OF VISITACION, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AS PER MAP DATED OCTOBER 14, 1908 AND RECORDED IN BOOK 6 OF MAPS, AT PAGE 45, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

### **PARCEL 2**

**(APN 007-342-040)**

**Property of Lindsay**

LOTS 8, 9, 10 AND 11, IN BLOCK 40, AS SHOWN ON THE AMENDED MAP OF SUBDIVISION ONE, TWO AND THREE OF THE CITY OF VISITACION, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AS PER MAP DATED OCTOBER 14, 1908 AND RECORDED IN BOOK 6 OF MAPS, AT PAGE 45, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

### **PARCEL 3**

**(APN 007-342-030)**

**Property of Dettmer**

LOTS 5, 6 AND 7, IN BLOCK 40, AS SHOWN ON THE AMENDED MAP OF SUBDIVISION ONE, TWO AND THREE OF THE CITY OF VISITACION, COUNTY OF

SAN MATEO, STATE OF CALIFORNIA, AS PER MAP DATED OCTOBER 14, 1908 AND RECORDED IN BOOK 6 OF MAPS, AT PAGE 45, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

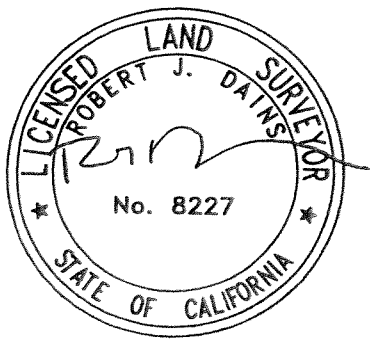
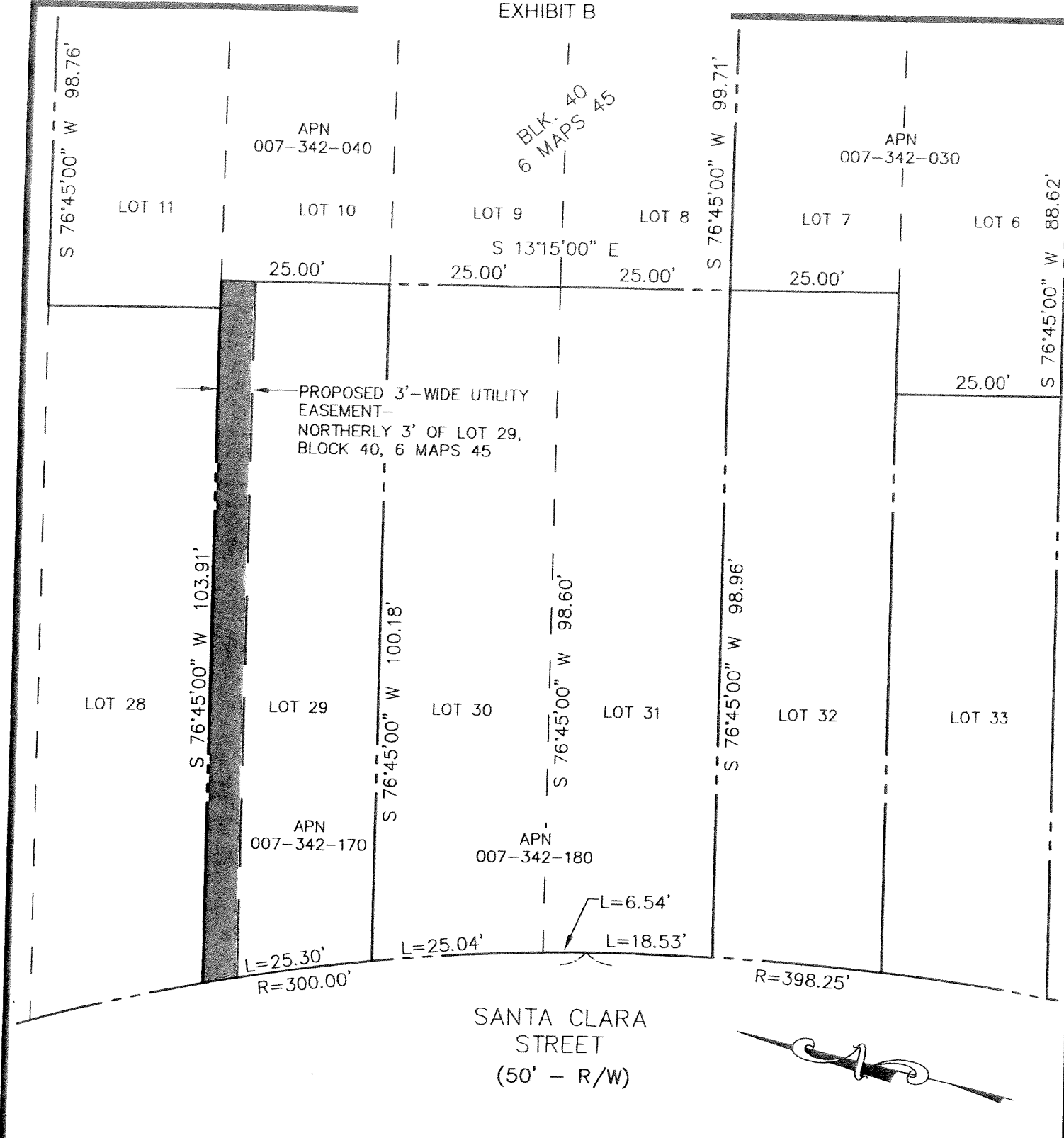
**PARCEL 4**

**(APN 007-342-050)**

**Property of Hemming**

LOT 12 ELY 91.97 FT. MOL OF LOT 13, IN BLOCK 40, AS SHOWN ON THE AMENDED MAP OF SUBDIVISION ONE, TWO AND THREE OF THE CITY OF VISITACION, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AS PER MAP DATED OCTOBER 14, 1908 AND RECORDED IN BOOK 6 OF MAPS, AT PAGE 45, RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

EXHIBIT B



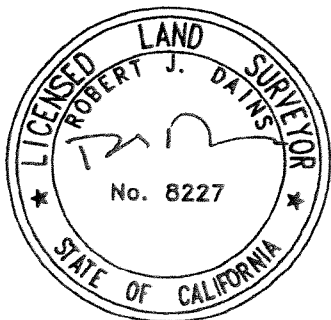
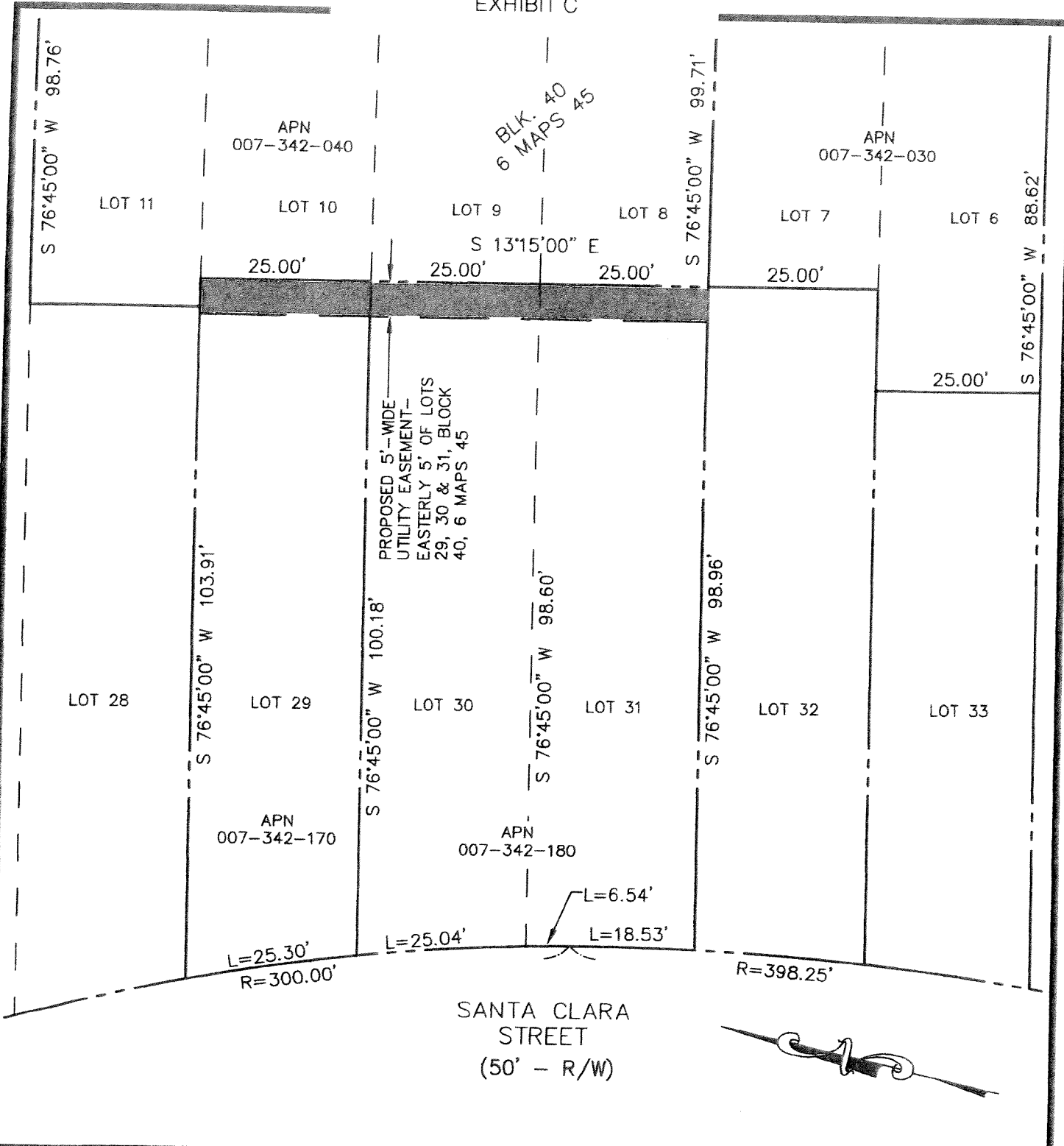
TITLE: PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PROPOSED UTILITY EASEMENT PURPOSES  
BRISBANE SAN MATEO COUNTY CALIFORNIA

PLAT: RJD	SCALE: 1" = 20'	DATE: 05-05-15	JOB #: 14-509
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**DAINS LAND SURVEYING**  
rdains@dainslandsurveying.net  
(650) 743-0831



EXHIBIT C



TITLE: PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR PROPOSED UTILITY EASEMENT PURPOSES  
BRISBANE SAN MATEO COUNTY CALIFORNIA

PLAT: RJD	SCALE: 1" = 20'	DATE: 11-19-14	JOB #: 14-509
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**DAINS LAND SURVEYING**  
rdains@dainslandsurveying.net  
(650) 743-0831