

City of Piedmont
COUNCIL AGENDA REPORT

DATE: July 7, 2025

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of Resolution Ordering the Summary Vacation of a Public Service Easement Located at 161 Scenic Avenue

RECOMMENDATION

By a single motion, take the following actions regarding vacating the easement for maintenance of the retaining wall at 161 Scenic Avenue:

1. Approve the attached Resolution Ordering the Summary Vacation of a Public Service Easement Located at 161 Scenic Avenue;
2. Direct the City Clerk to record the Resolution.

BACKGROUND

There is an existing retaining wall on Scenic Avenue that extends across the existing parcel at 161 Scenic Avenue. Most of the retaining wall is on land that is privately owned and maintained. However, there is a portion of the wall that is encumbered by a Construction, Repair, Replacement, Access, Maintenance, and Use Easement in favor of the City of Piedmont. No building permit was issued to 161 Scenic Avenue for this portion of the retaining wall and roadway, and it is likely that the retaining wall is owned by the City of Piedmont for the below described reasons.

In 1962, Royal Milligan requested City approval of a variance and parcel map subdivision application to create two lots on the property at 161 Scenic Avenue. Mr. Milligan explained to the Planning Commission on November 12, 1962 that the request to subdivide the property was due to recent storm damage. According to news coverage of the Oakland Tribune, catastrophic storms had inflicted severe damage to Piedmont, Oakland, and all of East Bay on October 11, 12, and 13, 1962, including landslides in hilly areas of Piedmont (Page 4, Oakland Tribune, October 14, 1962). Following Planning Commission adoption of a resolution recommending City Council approval of the variance and parcel map, the requested subdivision parcel map application was submitted for City Council consideration on November 19, 1962.

On March 13, 1963, the City Council considered the grant of an easement proposed by Royal Milligan as part of the requested variance and parcel map subdivision application for 161 Scenic Avenue. The purpose of the easement dedication to the City of Piedmont was to “construct, repair, replace, maintain and use” a retaining wall on the property at 161 Scenic Avenue and beneath a portion of Scenic Avenue roadway. Then-Superintendent of Streets A.L. Boscow advised the Council that to properly protect the City, Mr. Milligan was willing to grant the

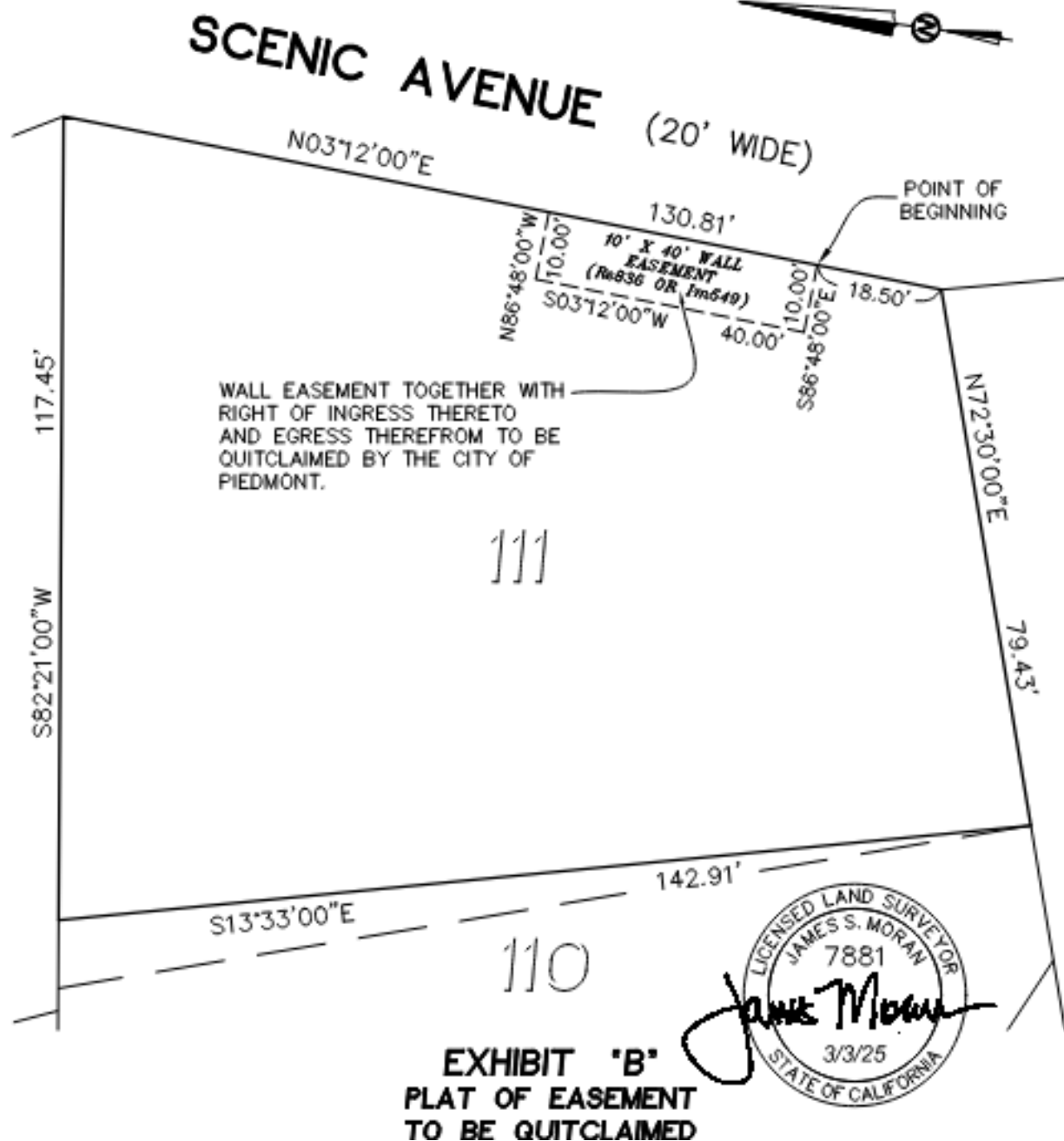
easement. The City Council adopted Resolution 23-63 accepting the easement dedication. The actual subdivision had not yet occurred, and there are no records that a final map was recorded for the subdivision.

It is likely that a portion of the retaining wall at 161 Scenic Avenue was construction by the City of Piedmont to improve and provide additional roadway width while minimizing the impact to the nearby property, as shown in current conditions and in the survey of completed construction on Scenic Avenue, dated April 1966, and approved by the City Engineer.

DISCUSSION

Based on staff's review, the existing easement is no longer necessary as the retaining wall structure is generally intended for the betterment and protection of private property. The property owner at 161 Scenic has requested to take responsibility of the retaining wall and roadway and has requested the City to vacate the easement. Staff agrees with this request.

The improvements to Parcel B proposed by the applicant will include improvements that are attached to the wall, as well as built over the wall. Staff agrees with this request by the applicant, as the City should not be maintaining retaining wall structures on private property that have private improvements connected to them. Furthermore, the private improvements will extend over the existing wall and easement, thereby eliminating easy access to the wall and the City's ability to perform proper maintenance. The following page show the easement.



FISCAL IMPACT

There is no direct fiscal impact associated with quitclaiming the existing easement.

CITY ATTORNEY REVIEW

The City Attorney has reviewed the Staff Report.

By: Daniel Gonzales, Public Works Director
John Wanger, City Engineer

Attachment: Resolution

RESOLUTION NO. _____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PIEDMONT
ORDERING THE SUMMARY VACATION OF A PUBLIC SERVICE EASEMENT LOCATED
AT 161 SCENIC AVENUE**

WHEREAS, California Streets and Highways Code (“S&H Code”) Section 8300 *et seq.* permits the vacation of public streets, highways and easements under specific conditions; and

WHEREAS, under S&H Code Section 8333(a), the City has the authority to summarily vacate a public service easement if 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. S&H Code Section 8333(c) provides that the City may vacate an easement if it is determined to be excess by the easement holder and there are no other public utilities located within the easement; and

WHEREAS, Sections 8335 and 8336 of the S&H Code provide that the City Council may summarily vacate a public service easement by adopting a resolution of vacation and following the procedures outlined in the S&H Code; and

WHEREAS, There is an existing retaining wall on Scenic Avenue that extends across the existing parcel, with most of the retaining wall privately owned and maintained, with only a portion of the wall encumbered by a maintenance easement in favor of the City of Piedmont; and

WHEREAS, Based on the improvements proposed with a new development on 161 Scenic, including a new driveway that connects to Scenic Avenue and to the existing retaining wall; and proposed backfill of the area under the driveway, the easement is determined to be excess by the City of Piedmont; and

WHEREAS, 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; and

WHEREAS, vacation of the easement is consistent with the General Plan; and

WHEREAS, the City now desires to vacate the easement.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF THE CITY OF
PIEDMONT DOES RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:**

1. The City Council finds that all of the above recitations are true and correct and, accordingly, are incorporated as a material part of this Resolution.
2. The City Council hereby finds that pursuant to Section 8333(a) of the S&H Code, the easement described and depicted in Exhibit A (“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, and in accordance Section 8333(c), it has been determined to be excess, and there are no other public utilities located there. The Easement is hereby vacated. From and after the date this Resolution is recorded the Easement shall no longer constitute a public easement.
3. The City Clerk shall certify to the adoption of this Resolution and pursuant to S&H Code Section 8336(a), cause a certified copy of this Resolution to be recorded in the Office of the Recorder of Alameda County.

DULY AND REGULARLY ADOPTED this _____.

CITY OF PIEDMONT

ATTEST:

APPROVED AS TO FORM:

Attachment: Exhibit A

WHEN RECORDED RETURN TO:

City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

QUITCLAIM DEED
(PUBLIC CORPORATION)

THE CITY OF PIEDMONT QUITCLAIMS ALL RIGHT, TITLE AND INTEREST TO:

***Olga Kaplan and Brendan Gallagher, Trustees of the Kaplan Gallagher Family Trust, U/A
dated August 3, 2018***

All that Real Property situated within the State of California, County of Alameda, described as follows:

See attached Exhibit A and as depicted on Exhibit B.

A.P.N. 050-4572-044-01

Date_____202_

By:_____

Mayor, City of Piedmont

By:_____

State of California)
County of Sonoma)

Signature _____

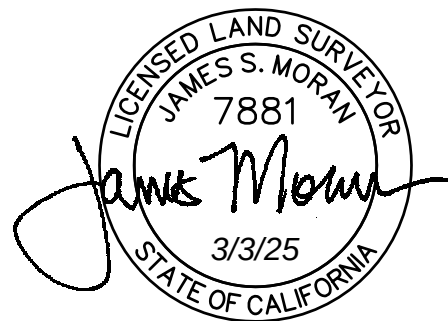
EXHIBIT "A"**WALL EASEMENT
TOGETHER WITH THE RIGHT OF INGRESS
THERE TO AND EGRESS THEREFROM****TO BE QUITCLAIMED BY THE CITY OF PIEDMONT****OVER A PORTION OF THE PROPERTY KNOWN AS 161 SCENIC AVENUE**

All that real property in the City of Piedmont, County of Alameda, State of California, described as follows:

A portion of Lot 111 as said lot is shown on the "Amended Map of Alta Piedmont Tract, Oakland Township, Alameda Co., Cal. 1905", filed March 27, 1905 in Book 20 of Maps, Page 41, in the Office of the County Recorder of Alameda County, said portion being described in the Grant of Easement from Royal S. Milligan and Emilie H. Milligan to the City of Piedmont, recorded March 26, 1963 on Reel 836, Image 549, Official Records of Alameda County, more particularly described as follows:

Beginning at a point on the western line of Scenic Avenue, as said avenue is shown on said map, distant thereon North 3° 12' East, 18.50 feet from the point of intersection thereof with the southern line of said Lot 111; thence along said line of Scenic Avenue North 3° 12' East, 40.00 feet; thence leaving said line North 86° 48' West, 10.00 feet; thence South 3° 12' West, 40.00 feet; thence South 86° 48' East, 10.00 feet to the point of beginning.

See Exhibit "B", attached hereto and made a part hereof.





SCENIC AVENUE (20' WIDE)

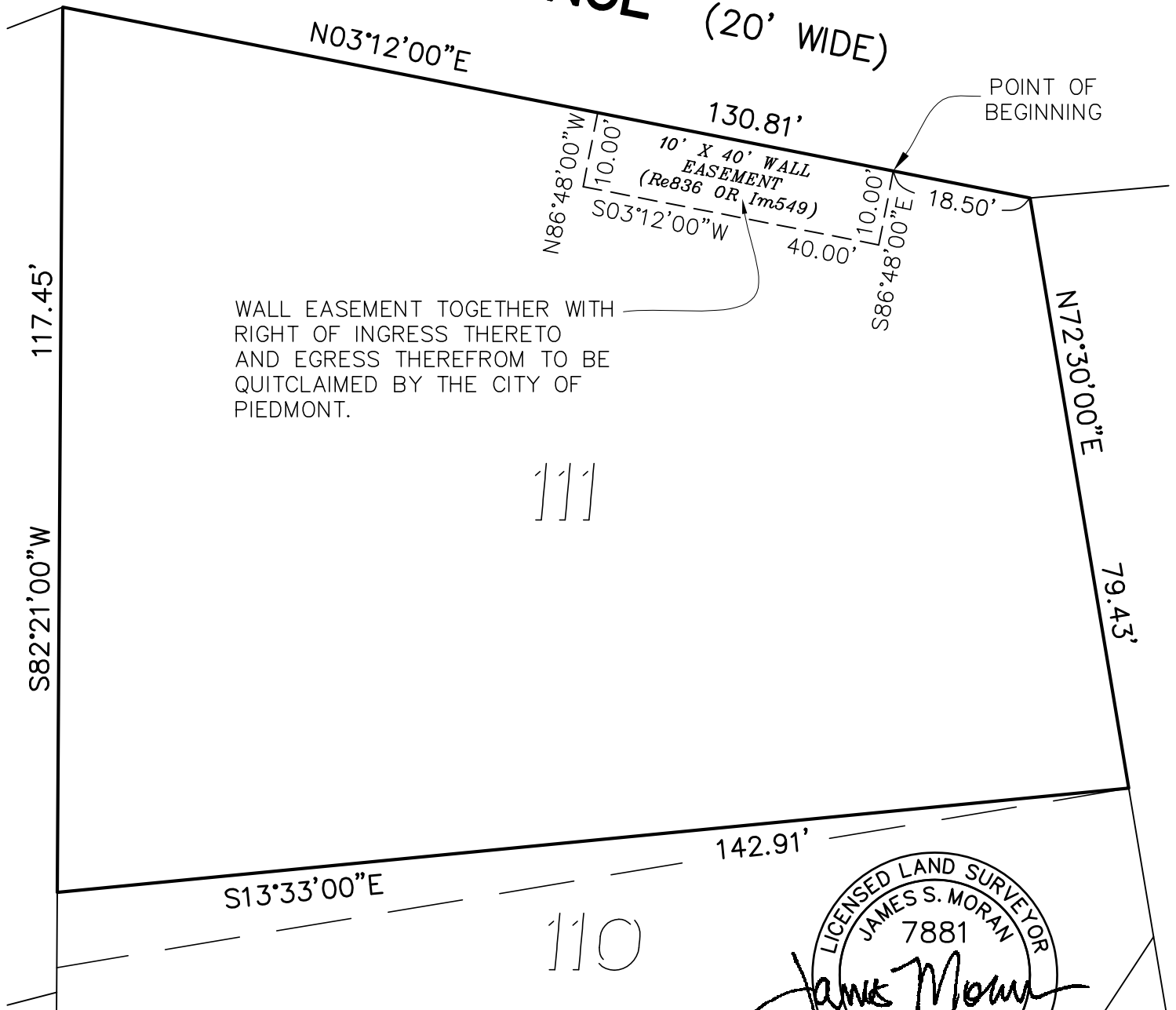


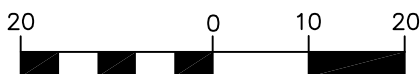
EXHIBIT "B"

PLAT OF EASEMENT TO BE QUITCLAIMED

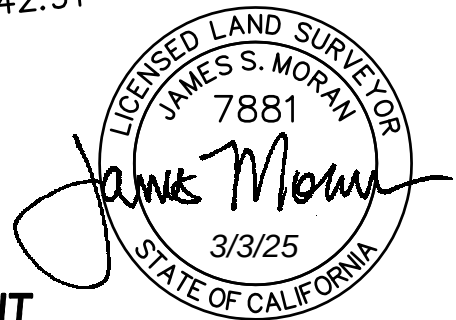
BEING A PORTION OF LOT 111,
AMENDED MAP OF ALTA PIEDMONT TRACT (20 M 41)
CITY OF PIEDMONT, COUNTY OF ALAMEDA, CALIFORNIA

MARCH 2025

SCALE: 1" = 20'



1 inch = 20 ft.



MORAN ENGINEERING, INC.
1930 SHATTUCK AVENUE
BERKELEY, CALIFORNIA 94704