

ORDINANCE NO. 2002- 19

An ordinance declaring a public necessity for the acquisition of a 0.7413 acre stormwater drainage easement that is a part of, over, across, upon, and under certain privately owned real property located in the following area of Victoria County, Texas and being described as follows:

a 4.4409 acre tract in Subdivision Number Twenty-One (21) of the Welder, Holland, Buhler Subdivision in the S.A. & M.G. RR Company Survey, Abstract No. 324, in Victoria County, Texas, as described in the warranty deed conveyed from Rodney Mutschler, Roy A. Henke, and Edward J. Ganem, individually and as the "John Stockbauer Joint Venture," to Sutherland Lumber Southwest, Inc. by warranty deed dated July 29, 1993, recorded in Volume 74, Page 490 of the Official Records of Victoria County, Texas, and being out of and a part of that certain 46.4995 acre tract conveyed by Levada J. Groll and Doris Stange to Dennis J. Caka, Rodney Mutschler, Roy Henke, Edward J. Ganem, and T. Daniel McCue by deed dated December 2, 1977, and recorded in Volume 958, Page 191, of the Deed Records of Victoria County, Texas

for the public purposes of placing, constructing, operating, inspecting, repairing, maintaining and using stormwater drainage facilities to include ditches, drains, dams, spillways, culverts and outfalls by the City of Victoria on the Easement Tract for the City of Victoria Whispering Creek Improvement Project, all in Victoria County, Texas, authorizing all appropriate action of the City of Victoria in the institution and prosecution of condemnation proceedings to acquire any such needed stormwater drainage easement rights; ratifying and affirming all prior acts and proceedings done or initiated by attorneys, agents and employees of the City of Victoria to acquire such easements, authorizing all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings to survey, specify, define and secure the necessary property rights; declaring the sections of this ordinance to be severable one from the other in the event any section of this ordinance is determined to be invalid, and declaring an effective date.

The City of Victoria ("City") has determined that the acquisition of a stormwater drainage easement over, across, upon, and under the aforementioned privately owned real properties located in Victoria County, Texas is necessary and desirable for the public purpose of draining property in the Whispering Creek drainage basin, and has previously budgeted funds to be expended for these purposes, an adequate part of which remains on hand for such purposes; and

Employees, agents and attorneys acting for the City have acquired and surveyed certain of the needed property rights to certain privately owned real properties and are in the process of surveying, defining and negotiating for the acquisition of such other easements and related property rights to certain privately owned real properties as may be needed on behalf of the City; and

In connection with the acquisition of the easement rights described in this ordinance and any related property rights to certain privately owned real properties, it may be necessary for the City to enter upon such properties to survey the needed property interests so that they may be defined and described with specificity for inclusion in any easement agreement or deed or, if necessary, as part of any filings to institute proceedings in eminent domain to acquire the necessary property rights.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VICTORIA:

1.

Public necessity requires that the City acquire a 0.7413 acre permanent stormwater drainage easement as described in the **Drainage Easement**, which is attached hereto and incorporated herein, over, across, upon, and under certain privately owned real property for the public purposes of the placing, constructing, operating, inspecting, repairing, maintaining and using stormwater drainage facilities to include ditches, drains, dams, spillways, culverts and outfalls by the City of Victoria on the Easement Tract for the City of Victoria Whispering Creek Improvement Project, which is located in the City of Victoria, Victoria County, Texas, and which will improve the drainage of property in the Whispering Creek drainage basin. Public necessity also requires the City to acquire any other necessary rights of ingress and egress over and across these lands,

either through purchase or by the process of eminent domain, and to take all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings to survey, specify, define and secure the necessary property rights.

2.

The property which is the subject of Section 1 of this ordinance for which a stormwater drainage easement set forth in the proposed easements attached to this ordinance as **Drainage Easement** for the placing, constructing, operating, inspecting, repairing, maintaining and using stormwater drainage facilities to include ditches, drains, dams, spillways, culverts and outfalls by the City of Victoria on the Easement Tract for the City of Victoria Whispering Creek Improvement Project, which is located in the City of Victoria, Victoria County, Texas that is required is described below and in greater detail in the **Drainage Easement** attached hereto and made a part of this ordinance for all purposes, which grants to the City of Victoria, Texas a stormwater drainage easement and other related rights over, across, upon, and in a **0.7413 acre tract** in real property in Victoria, Texas that is a part of, over, across, upon, and under:

a 4.4409 acre tract in Subdivision Number Twenty-One (21) of the Welder, Holland, Buhler Subdivision in the S.A. & M.G. RR Company Survey, Abstract No. 324, in Victoria County, Texas, as described in the warranty deed conveyed from Rodney Mutschler, Roy A. Henke, and Edward J. Ganem, individually and as the "John Stockbauer Joint Venture," to Sutherland Lumber Southwest, Inc. by warranty deed dated July 29, 1993, recorded in Volume 74, Page 490 of the Official Records of Victoria County, Texas, and being out of and a part of that certain 46.4995 acre tract conveyed by Levada J. Groll and Doris Stange to Dennis J. Caka, Rodney Mutschler, Roy Henke, Edward J. Ganem, and T. Daniel McCue by deed dated December 2, 1977, and recorded in Volume 958, Page 191, of the Deed Records of Victoria County, Texas.

3.

The City, acting by and through its retained attorneys, is hereby directed and authorized to institute and prosecute to conclusion all necessary proceedings to condemn the property interests described in Sections 1 and 2 of this Ordinance and exhibits described therein to acquire such interests in land as the City is unable to acquire through negotiation by reason of its inability to agree with the owners of the land as to the value of such interest in land, and to take any other legal action necessary or incidental to such acquisitions or eminent domain proceedings to survey, specify, define and secure the necessary property rights.

4.

All acts and proceedings done or initiated by the employees, agents and attorneys of the City for the acquisition of such property interest rights are hereby authorized, ratified, approved, confirmed and validated and declared to be valid in all respects as of the respective dates of such acts and proceedings, with and in regard to the owners from whom such rights have been or are being purchased or acquired.

5.

If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

6.

This ordinance shall be effective on final passage and approval.

PASSED FIRST READING, this the 14TH day of OCTOBER, 2002.

AYES: 6

NAYS: 0

ABSTENTIONS: 0

PASSED SECOND READING, this the 5TH day of NOVEMBER, 2002.

AYES: 6

NAYS: 0

ABSTENTIONS: 0

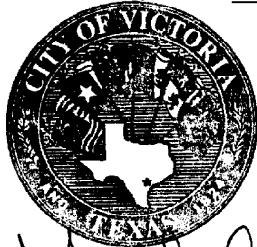
PASSED THIRD READING, this the 5TH day of NOVEMBER, 2002.

AYES: 7

NAYS: 0

ABSTENTIONS: 0


APPROVED AND ADOPTED, this the 5TH day of NOVEMBER, 2002.

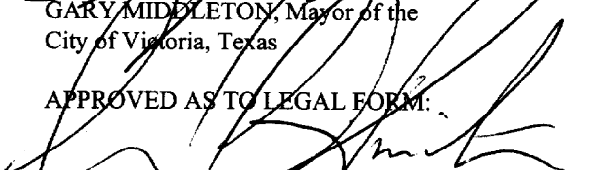


ATTEST:


SCARLET SWOBODA, City Secretary

Distribution: Legal Department
 City Manager
 Department of Utilities
 Department of Public Works


GARY MIDDLETON, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

DAVID ATMAR SMITH, City Attorney

Copies Sent: NOVEMBER 7, 2002

Drainage Easement

State of Texas §
County of Victoria §

Sutherland Lumber-Southwest, Inc., a Delaware corporation (described in this instrument as "Grantor"), as the owner of that certain real property (described in this instrument as the "Property") described as being a 4.4409 acre tract in Subdivision Number Twenty-One (21) of the Welder, Holland, Buhler Subdivision in the S.A. & M.G. RR Company Survey, Abstract No. 324, in Victoria County, Texas, as described in the warranty deed conveyed from Rodney Mutschler, Roy A. Henke, and Edward J. Ganem, individually and as the "John Stockbauer Joint Venture," to Sutherland Lumber Southwest, Inc. by warranty deed dated July 29, 1993, recorded in Volume 74, Page 490 of the Official Records of Victoria County, Texas, and being out of and a part of that certain 46.4995 acre tract conveyed by Levada J. Groll and Doris Stange to Dennis J. Caka, Rodney Mutschler, Roy Henke, Edward J. Ganem, and T. Daniel McCue by deed dated December 2, 1977, and recorded in Volume 958, Page 191, of the Deed Records of Victoria County, Texas, hereby grants to the **City of Victoria, a Texas municipal corporation** (described in this instrument as the "Grantee"), the below-described rights and easements in and to the Property. All exhibits identified in this Agreement are attached and incorporated as if fully set forth herein by reference. The Grantee's mailing address is The City of Victoria, Attn: Legal Department, P. O. Box 1758, Victoria, Texas 77902-1758

1. Character and Granting of Easement

This easement granted by this instrument is an easement in gross and is granted for \$_____ of valuable consideration, the receipt and sufficiency of which is hereby acknowledged and professed. This easement is assignable, either in whole or in part.

2. Location

This drainage easement is granted out of the Property and is depicted in **Exhibit A** and hereinafter referred to as the "Easement Tract." The Easement Tract is more particularly described in **Exhibit B**, which is attached hereto and incorporated herein.

3. Purpose and Scope of Easement

This easement, with its rights and privileges, shall be used only for the purpose of placing, constructing, operating, inspecting, repairing, maintaining and use of stormwater drainage facilities to include ditches, drains, dams, spillways, culverts and outfalls by the City of Victoria on the Easement Tract. This grant of easement includes the following rights:

- (a) the right to excavate, clear, fill, inspect, install, relocate, remove, cover, resurface, alter and otherwise make use of the surface of the Easement Tract;
- (b) the right to inundate, and to create or allow upon the Easement Tract impoundments of water in connection with the use and operation of the drainage facilities;
- (c) the right to inspect, install, maintain, remove, dispose of, cover, demolish, restore, replace and otherwise make use of any and all vegetation (including trees), soil, natural features, improvements, fixtures, equipment and other property that is or may be located on the Easement Tract;
- (d) the right to enter the Easement Tract with persons and vehicles;
- (e) the right to cut and trim trees and shrubbery and the right to remove soil, debris, blockages and other materials that may encroach on the Easement Tract or adversely affect the use or functionality of the drainage facilities; and
- (f) the right to install concrete or other lining, culverts, pipes, bridges, and other structures in the Easement Tract to allow or manage erosion or the movement of water, mud, debris, persons, equipment or vehicles in, through, along or across the ditch.

4. Grantor's Use of Easement Tracts

Subject to the rights of Grantee in and to the Easement Tract, Grantor reserves the right to use and enjoy the surface of easement tracts, provided that Grantor shall not undertake any activity or course of conduct that would alter or would, over time or upon the occurrence of other circumstances, tend to alter the grade at any point of the surface of the Easement Tract, nor shall Grantor otherwise in any manner act in such a way as shall tend to obstruct, hinder, impair or interfere with the present or prospective exercise of any rights granted to Grantee under this easement. Grantor shall not construct any structure on the easement unless the Grantee determines that the structure will not interfere with the rights granted under this easement.

5. Miscellaneous

This easement (a) shall be binding upon Grantors and their respective heirs and legal representatives, successors and assigns; (b) shall be governed by and construed in accordance with the laws of the State of Texas and of the United States of America; and (c) may be executed in several counterparts, and each counterpart, when so executed and delivered shall constitute an original easement, and all such separate counterparts shall constitute but one and the same easement. The exhibits appended hereto are incorporated in and made a part of this easement, the same as if copied and set forth at length. The captions in this easement agreement are for convenience only, and shall be accorded no substantive meaning in the interpretation hereof.

Executed this ____ day of _____, 2002, at Victoria, Texas.

GRANTOR: Sutherland Lumber-Southwest, Inc., a Delaware corporation

by: _____
(signature)

(typed name & title)

Acknowledgment

The State of Texas
County of Victoria

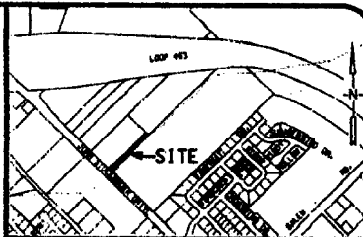
This instrument was acknowledged before me on the ____ day of _____, 2002 by _____, the _____ of **Sutherland Lumber-Southwest, Inc., a Delaware corporation**, on behalf of said corporation.

Notary Public

EXHIBIT "A"

DRAINAGE EASEMENT

BEING a 0.7413 acre (32,293 square feet) tract of land situated in Subdivision Number Twenty-one (21) of the Weider, Holland, Buhler Subdivision in the S.A. & M.G. RR Company Survey, Abstract No. 324, Victoria County, Texas and being a portion of that certain 4.4409 acre tract of land as conveyed from Rodney A. Mutschler, et al to Sutherland Lumber Southwest, Inc., according to Instrument recorded in Volume 74, Page 490 of the Official Records of Victoria County, Texas.



VICINITY MAP

LOT 1, BLOCK 1
WANDA'S SUBDIVISION NO. 1
VOLUME 6, PAGE 369
PLAT RECORDS

6.549 ACRE
REMAINDER OF
10.0 ACRES
EDGAR GLOOR, ET UX
TO
L. A. SPARKMAN, ET UX
VOLUME 219, PAGE 592
DEED RECORDS

S 45°43'01" E
55.00'

BEARINGS BASED ON BEARINGS
OF RECORD IN VOLUME 219, PAGE 592,
VOLUME 958, PAGE 191, DEED RECORDS
AND VOLUME 74, PAGE 490, OFFICIAL
RECORDS, VICTORIA COUNTY, TEXAS.

0.7413 ACRE
(32293 SQUARE FEET)

28.439 ACRE
REMAINDER OF
46.4995 ACRES
LEVADA J. GROLL, ET VIR
TO
RODNEY MUTSCHLER, ET AL
VOLUME 358, PAGE 191
DEED RECORDS

4.4409 ACRES
RODNEY A. MUTSCHLER, ET AL
TO
SUTHERLAND LUMBER SOUTHWEST, INC.
VOLUME 74, PAGE 490
OFFICIAL RECORDS

N 45°00'00" E 586.96'

S 45°00'00" W 587.32'

CENTERLINE OF DITCH

FIELDNOTE POINT
OF BEGINNING

S 45°20'36" E 275.00'

N 45°20'36" W 660.08'

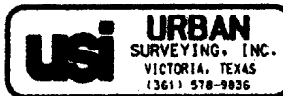
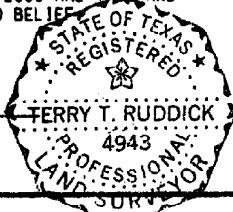
N 45°20'36" W
55.00'

(BASIS OF BEARING)

JOHN STOCKBAUER DRIVE (90' R.O.W.)

THE ABOVE PLAT AND ACCOMPANYING FIELDNOTE DESCRIPTION WERE PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION IN SEPTEMBER 1999 AND JULY 2000 ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Terry T. Ruddick
TERRY T. RUDDICK
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS NO. 4943
7/12/00



SCALE: 1" = 100'
JOB NO. S10B71.1

Exhibit A

DRAINAGE EASEMENT
0.7413 ACRE
(32,293 SQUARE FEET)

THE STATE OF TEXAS}
THE COUNTY OF VICTORIA}

BEING a 0.7413 acre (32,293 square feet) tract of land situated in Subdivision Number Twenty-one (21) of the Welder, Holland, Buhler Subdivision in the S.A. & M.G. RR Company Survey, Abstract No. 324, Victoria County, Texas and being a portion of that certain 4.4409 acre tract of land as conveyed from Rodney A. Mutschler, et al to Sutherland Lumber Southwest, Inc., according to instrument recorded in Volume 74, Page 490 of the Official Records of Victoria County, Texas, said 0.7413 acre tract of land being more fully described by metes and bounds as follows:

BEGINNING at a point in the northwest right-of-way line of John Stockbauer Drive (90.0' R.O.W.), said point being the south corner of the herein described tract and the west corner of the certain 28.439 acre remainder of that 46.4995 acre tract as conveyed from Levada J. Groll, et vir to Rodney Mutschler, et al according to instrument recorded in Volume 958, Page 191 of the Deed Records of said County, said point bears North 45 deg. 20' 36" West, (Basis of Bearing) a distance of 660.08 feet from a 5/8 inch diameter iron rebar found marking the south corner of the 28.439 acre tract;

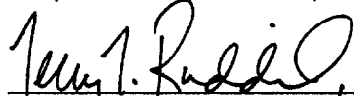
THENCE, North 45 deg. 20' 36" West, with the northeast right-of-way line of John Stockbauer Drive, a distance of 55.00 feet to a point for the south corner of the herein described tract;

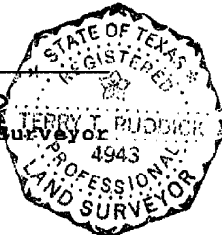
THENCE, North 45 deg. 00' 00" East, parallel to an 55 feet northwest of the southeast line of said 4.4409 acre tract, a distance of 586.96 feet to a point for the north corner of the herein described tract and being in the northeast line of said 4.4409 acre tract, further being in the southwest line of that certain 6.549 acre remainder of that 10.0 acre tract of land as conveyed from Edgar Gloor, et ux to L. A. Sparkman, et ux according to instrument recorded in Volume 219, Page 592 of the Deed Records of said County;

THENCE, South 45 deg. 43' 01" East, with the common line of said 6.549 acre tract, a distance of 55.00 feet to a point for the east corner of the herein described tract and being the common corner of the 6.549 acre tract and the 4.4409 acre tract and further being in the northwest line of the 28.439 acre tract;

THENCE, South 45 deg. 00' 00" West, with the common line of the 28.439 acre tract, a distance of 587.32 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds, a 0.7413 acre (32,293 square feet) tract of land, more or less.

The foregoing field note description and accompanying survey plat were prepared from an actual survey made on the ground under my supervision in September, 1999 and July, 2000 and are true and correct to the best of my knowledge and belief. Bearings are based on bearings of record in Volume 74, Page 490, Official Records, Victoria County, Texas.


Urban Surveying, Inc. 7/17/00
By: Terry T. Ruddick
Registered Professional Land Surveyor
Texas No. 4943



S10871-1

Exhibit B