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OAKLAND

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OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION No. 83713 - C.M.S.

Introduced by Councilmember _____

**A RESOLUTION OF NECESSITY DECLARING PROPERTY INTEREST AT
JENSEN STREET (BETWEEN APNs 033-2250-013-01 and 033-2203-002)
NECESSARY FOR PUBLIC USE IN THE 42ND AVENUE AND HIGH
STREET ACCESS IMPROVEMENT PROJECT AND AUTHORIZING THE
CITY TO INITIATE CONDEMNATION PROCEEDINGS FOR THE
ACQUISITION OF THOSE PROPERTY INTERESTS.**

WHEREAS, The City of Oakland, lead agency for this project, has received authorization from the Regional Transportation Improvement Program to proceed with the 42nd Avenue/High Street Access Improvement Project (the "Project") in Alameda County. The Project objective is to provide circulation improvements for local roadways at the I-880/SR-77 (42nd Avenue) interchange. Specifically, circulation and intersection capacity improvements are proposed for 42nd Avenue (SR-77), High Street, and Alameda Avenue, and local street realignments are proposed for Howard Street, Oakport Street, and Jensen Street; and

WHEREAS, The proposed project will improve access for vehicles traveling between I-880 and the cities of Oakland and Alameda via 42nd Avenue and High Street. Additionally, the proposed improvements will relieve local traffic congestion, freeway ramp backups and promote business and economic development opportunities for both the Port of Oakland and the City of Oakland; and

WHEREAS, The Project goal is to extend 42nd Avenue to the south from I-880 to Alameda Avenue; to extend Jensen Street to the west connecting High Street to the newly created 42nd Avenue; and to expand High Street to include dual left-turn lanes in both directions at the frontage road intersections of Oakport Street and Coliseum Way; and

WHEREAS, On October 2, 2001, the City Council adopted a Mitigated Negative Declaration (Resolution No. 76735 C.M.S.) prepared for the Project under the requirements of the California Environmental Quality Act (CEQA), showing that the Project would have no significant environmental impacts (the "2001 MND"); and

WHEREAS, The City has prepared an Addendum to the 2001 MND for the Project, pursuant to CEQA (the "2012 Addendum"), which shows that the City can rely on the previously adopted Mitigated Negative Declaration and that no further environmental review is required; and

WHEREAS, On November 9, 2010, the City council adopted Ordinance No. 13044 C.M.S. authorizing negotiation by City staff members of voluntary agreements to acquire the Property Rights for the Project; and

WHEREAS, Construction of the Project as planned and designed will require a fee interest of ±7,400 square feet between parcels 033-2250-013-01 and 033-2203-002; and

WHEREAS, The fee interest (hereafter, the “Property”) is described and depicted more specifically on Exhibit C-1 to this Resolution; and

WHEREAS, The City commissioned an appraisal of the Property, which has since been updated, reviewed and approved by a qualified review appraiser; and

WHEREAS, The City has made a diligent, good faith effort to locate the Owner of Record for the Property by engaging the title insurer for the Project to perform a title search of the chain of title for the Property. Public records along with the title search revealed that the Property was last owned by the Leona Chemical Company; and

WHEREAS, The City initiated a business entity records search with the California Secretary of State on May 25, 2011, to locate the Leona Chemical Company and discovered that the company had been dissolved in 1933. Subsequent research did not reveal who may have succeeded in any unrecorded transaction to the Leona Chemical Company's undistributed assets; and

WHEREAS, Because the City was unsuccessful in locating the Owner of Record and the successor to the Leona Chemical Company after performing a reasonable, diligent search pursuant to Section 7267.2 of the California Government Code, the City has not made any offer to purchase the Property; and

WHEREAS, The City has not provided notice in the manner specified in Section 1245.235 of the California Code of Civil Procedure to the persons whose property interests are to be acquired pursuant to this Resolution, and whose names and addresses appear on the last equalized county assessment roll for the Property, because such persons could not be identified nor located after a reasonable, diligent search by the City; and

WHEREAS, The City effected service on the owners of the parcel by publication and posting at the Property such that the owners of record were given an opportunity to appear and be heard on the following matters referred to in Section 1240.030 of the California Code of Civil Procedure:

- a) Whether the public interest and necessity require the Project;
- b) Whether the proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- c) Whether the acquisition of the Property is necessary for the Project; and
- d) Whether the offer required by Section 7267.2 of the California Government Code has been made to the owners of record, or whether the owners could not be found.

WHEREAS, The City is authorized by the Constitution and statutes of the State of California, including, without limitation, sections 37350, 37350.5, 37351, 37353, 40401 and 40404 of the Government Code, to acquire real property by eminent domain for public purposes including improving and widening streets within the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakland that it hereby finds, determines, and declares as follows, on the basis of the evidence presented orally and in writing at the hearing at which the adoption of this resolution was considered:

1. That the public interest and necessity require the 42nd Avenue/High Street Access Improvement Project;
2. That the Project is planned and located in a manner which will be most compatible with the greatest public good and the least private injury;
3. That the acquisition by the City of Oakland of the Property described and depicted in Exhibit C-1 attached to this Resolution for the construction of the roadway improvements at High Street is necessary for the Project; and
4. That the City has not made an offer to the owners of record to purchase the Property, because the owner could not be located despite the City's reasonable, diligent search to locate said owner.

BE IT FURTHER RESOLVED:

That the City Council has independently reviewed and considered the environmental analysis for the Project, including without limitation the 2012 Addendum and the 2001 MND, and in the exercise of its independent judgment and based on the substantial evidence in the record, hereby finds and determines, that acquisition of the Property for the Project and completion of the Project as anticipated will have no significant environmental impacts and that none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, are present in that (1) there are no substantial changes to the project that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; (2) there are no substantial changes in circumstances that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the 2001 MND; and (3) there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2001 MND was adopted, which is expected to result in (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 2001 MND, or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2001 MND, and which would substantially reduce significant effects of the project, but the City declines to adopt them. Thus, in considering approval of the Resolutions of Necessity, the City can rely on the previously adopted 2001 MND, as documented in the 2012 Addendum.

BE IT FURTHER RESOLVED: The City Council hereby adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program. Adoption of this Program will

constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of the Public Resources Code. All proposed mitigation measures are capable of being fully implemented by the efforts of the City of Oakland or other identified public agencies of responsibility.

BE IT FURTHER RESOLVED: The Environmental Review Officer is directed to file a Notice of Determination with the appropriate agencies.

BE IT FURTHER RESOLVED: The City of Oakland Real Estate Division is certified as a Level 3 Qualified Local Agency, allowing the City's Real Estate Division to acquire the required Project property rights with funds provided by the California Department of Transportation.

BE IT FURTHER RESOLVED: The City has authority under California Government Code Sections 37350, 37350.5, 37351, 37353, 40401 and 40404 to acquire the Property for the Project.

BE IT FURTHER RESOLVED: That funds for the acquisition of these property rights have previously been budgeted and appropriated by the City and are available from the Grant Fund State of California Department of Transportation (2140), 42nd Avenue High Street Right of Way Project (C98530), Acquisition of Right of Way Account (57111), and Capital Improvement Project Transportation Services Organization (92246).

BE IT FURTHER RESOLVED: The City of Oakland shall acquire the Property for the Project.

BE IT FURTHER RESOLVED: The City Attorney and Real Estate Division may continue negotiations with the owners of record for the Property in an effort to acquire the Property for the Project in the most just and expeditious manner possible.

BE IT FURTHER RESOLVED: The City Attorney or its designee is hereby authorized (a) to take all steps necessary to commence legal proceedings, in a court of competent jurisdiction, in the name of the City of Oakland, (b) to acquire the Property by eminent domain, (c) to deposit the total sum of probable compensation fixed by appraisal with the State Treasurer in the State Condemnation Deposits Fund, as provided by statute; (d) to seek and obtain an Order for Possession of said property rights in accordance with the provisions of the eminent domain law, and (e) to bring such proceedings to final judgment should further negotiations fail to produce a settlement acceptable to the owners of record and to the City.

FEB 7 2012

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

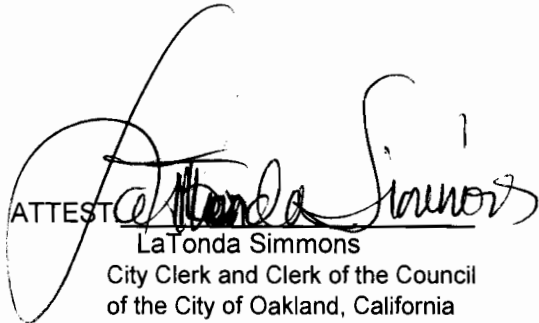
ATTEST 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit C-1

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

Commencing at a point in the Northwesterly line of High Street, distant thereon South $45^{\circ} 40'$ West Eight Hundred Seventy-One and $41/100$ (871.41) feet from the Southerly line of Lloyd Avenue, as said Lloyd Avenue is laid down, delineated and so designated upon that certain Map entitled "Map of the Subdivisions of the Northeast Portion of the Sather Tract" etc., filed December 6th, 1902, in the Office of the County Recorder of said County of Alameda; and running thence along said Northwesterly line of said High Street North $45^{\circ} 40'$ East Forty-One and $16/100$ (41.16) feet; thence Northerly on the arc of a circle of Four Hundred Fifty-Seven, and $80/100$ (457.80) feet radius, deflecting to the right or Eastward, a distance of One Hundred Fifty-Three and $41/100$ (153.41) feet to a point in the Southerly boundary line of the right of way of Central Pacific Railroad Company, distant thereon North $89^{\circ} 29'$ West One Hundred Ninety-Six and $85/100$ (196.85) feet from the point of intersection of said Southerly boundary line of said right of way with said Northwesterly line of said High Street; thence along said Southerly boundary line of said right of way North $89^{\circ} 29'$ West Forty and $64/100$ (40.64) feet, and thence Southerly on the arc of a circle of Four Hundred Ninety-Seven and $80/100$ (497.80) feet radius, deflecting to the left or Eastward and concentric with said arc of Four Hundred Fifty-Seven and $80/100$ (457.80) feet radius, a distance of One Hundred Eighty-five and $6/100$ (186.06) feet to the point of commencement.

Being a portion of that certain piece or parcel of land conveyed by that certain Deed from Josephine F. Bruguiere to the Bruguiere Company, a corporation dated May 25th, 1903, and recorded in Liber 938 of Deeds, at Page 389, of the Office of the County Recorder of said County of Alameda.

2203

Scale: 1" = 60'

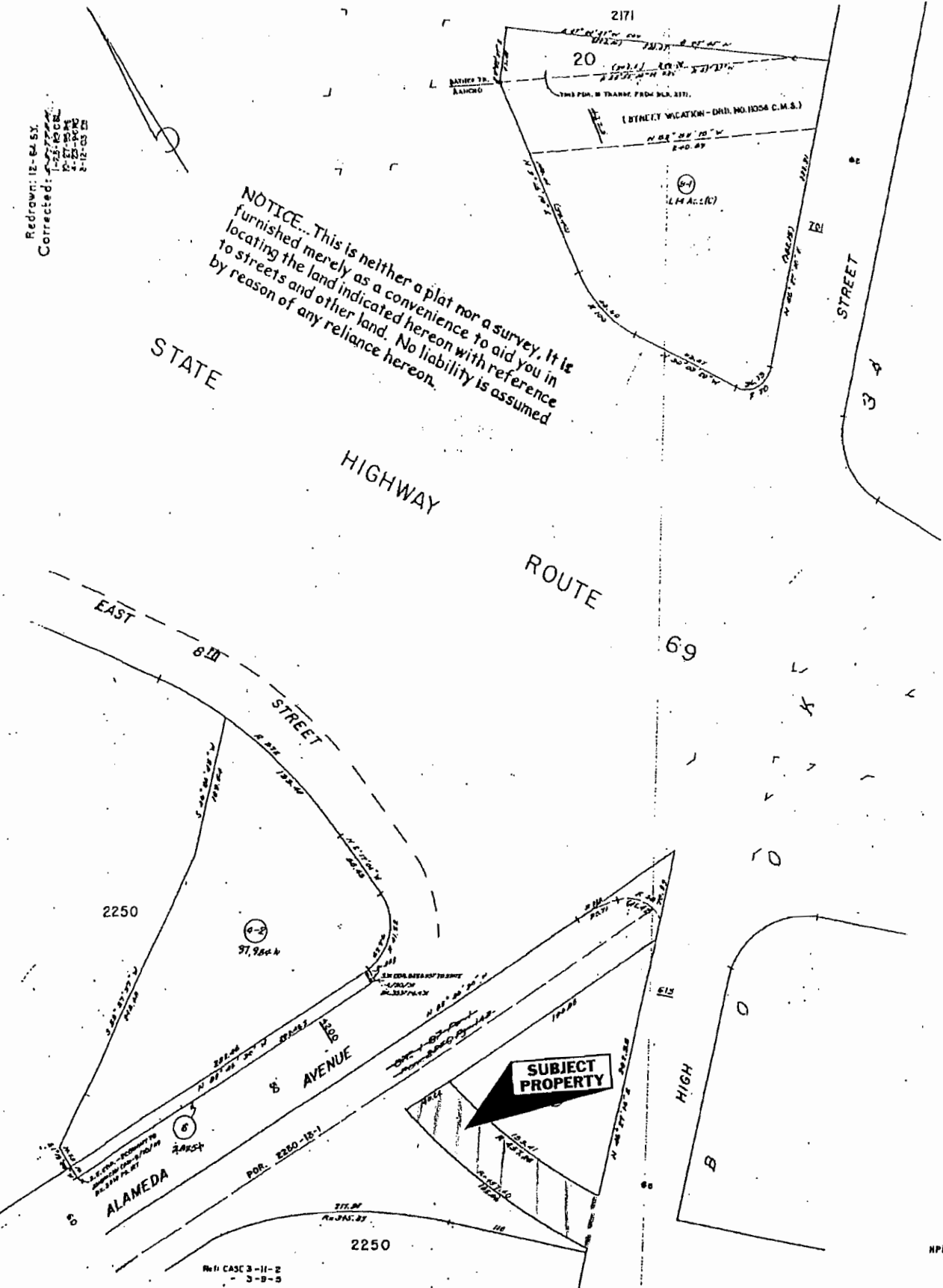
RANCHO SAN ANTONIO (A.M. PERALTA et al) (Pat. Dk. A Pg. 669)
MAP OF SUBDIVISION OF THE NORTHWEST POR. OF THE BATHER TRACT W/1

Exhibit C-1

Redrawn: 12-64 SX
Corrected: 1-21-65
1-21-65
1-21-65
1-21-65

NOTICE... This is neither a plat nor a survey. It is furnished merely as a convenience to aid you in locating the land indicated hereon with reference to streets and other land. No liability is assumed by reason of any reliance hereon.

STATE
HIGHWAY
ROUTE
69



NPN-8-1