

2010 MAY 27 AM 10:19

Councilmember

Approved for Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. 13023 - C.M.S.

**AN ORDINANCE CONDITIONALLY VACATING A PORTION OF PERALTA STREET AT ITS INTERSECTION WITH 36th STREET WITHOUT COST TO THE EMERYVILLE REDEVELOPMENT AGENCY TO FACILITATE CONSTRUCTION OF THE AMBASSADOR AFFORDABLE HOUSING PROJECT**

**WHEREAS**, pursuant to California Streets and Highways Code Section 8300 et seq., a public meeting was held in the Chamber of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 15, 2010, beginning at 5:30 o'clock, post meridian local time, to receive supporting evidence and public comments for a proposed ordinance conditionally vacating a portion of Peralta Street at its intersection with 36th Street to the owner of the northeasterly adjoining parcel, the Emeryville Redevelopment Agency; and

**WHEREAS**, the Emeryville Redevelopment Agency acquired the fee simple interest to said northeasterly parcel adjoining said portion of Peralta Street proposed for vacation from Wilson Associates through a partnership grant deed, recorded July 10, 2003, series no. 2003-00400215, by the Alameda County Clerk-Recorder; and

**WHEREAS**, said adjoining northeasterly parcel is depicted as a portion of Lot 1 in Block 685 on the original subdivision map entitled "Map No. 2 of Watts Tract Oakland", recorded November 17, 1876, in book 6 of maps, page 13, by the Alameda County Recorder, as shown on *Exhibit B* attached hereto, and is identified as parcel number 049-0481-017-00 by the Alameda County Assessor and is identified by the City of Oakland as 1168 36th Street; and

**WHEREAS**, pursuant to the California Streets and Highways Code, California Government Code, and California Public Resources Code, the Council of the City of Oakland has previously made the following statutory determinations by Resolution:

- the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); and
- terms of performance may be imposed on the adjoining property owner, the Emeryville Redevelopment Agency, which condition the vacation; and
- the proposed vacation conforms with the adopted General Plan of the City of Oakland; and

- the statutory requirements for properly noticing the public through conspicuous site posting and newspaper publication of the location and extent of the proposed vacation and the public hearing to receive supporting evidence and public comments were completed; and
- the Emeryville Redevelopment Agency owns the underlying fee simple interest in the portion of the public right-of-way proposed to be vacated; and
- the proposed vacation requires the reservation of a public service easement across the whole of the vacated area for existing or future subsurface or above-ground utilities owned and maintained either by companies regulated by the California Public Utilities Commission or by the City of Oakland or by the East Bay Municipal Utility to install, maintain, operate, replace, remove or renew infrastructure facilities and appurtenances as required for public convenience and necessity; and
- the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- the proposed vacation will not increase traffic or pedestrian inconvenience nor decrease traffic or pedestrian safety; and
- the proposed vacation will benefit the general public and the residents of the City of Oakland fiscally by decreasing the cost of maintaining the public street and increasing the revenue derived from the general levy of property taxes and environmentally by decreasing emissions of the products and components of combustion produced by spark and combustion ignited engines; and be it

**WHEREAS**, the City Engineer, in his official capacity, has made the following determinations:

- said land area comprising the portion of Peralta Street proposed for vacation is necessary to accomplish the construction of a multiple-family affordable housing project (The Ambassador) for the benefit of the citizens of the City of Emeryville and the City of Oakland; and
- said land area comprising the portion of Peralta Street proposed for vacation will be added by the Alameda County Assessor to the general levy of property taxes, a portion of which will accrue to the City of Oakland; and
- said land area comprising the portion of Peralta Street proposed for vacation will be removed from the inventory of public streets maintained by the City of Oakland; and
- the proposed vacation of said portion of Peralta Street will not adversely impact current or future traffic or pedestrian access to the surrounding real properties; and
- the portion of Peralta Street proposed for vacation is wholly located within the corporate limits of the City Oakland; and

- the proposed vacation of said portion of Peralta Street will not limit public use of or impede public access for non-motorized transportation.

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) and Section 15332 (Class 32: Infill Projects) of the California Environmental Quality Act Guidelines, the proposed vacation is categorically exempted; and

**WHEREAS**, the City Engineer has determined and the Emeryville Redevelopment Agency has agreed that the Emeryville Redevelopment Agency shall assume the responsibility, at its sole expense and with permits obtained from the City of Oakland, for relocating existing public utilities within said portion of Peralta Street proposed for vacation and for reconstructing street paving, sidewalks, curbs, gutters, traffic control devices, striping, electrical and communications cabling, storm drainage and sanitary sewer facilities, potable water mains and fire hydrants, and similar appurtenances as may be determined by the City Engineer to be necessary for the restoration of publicly maintained infrastructure and safe access for pedestrians and traffic; and

**WHEREAS**, a plat delineating the metes and bounds of the extent and location of the proposed vacation of said portion of Peralta Street is attached hereto as *Exhibit A*; now, therefore,

**THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

1. The conditional vacation of a portion of the Peralta Street public right-of-way at its intersection with 36th Street to the Emeryville Redevelopment Agency, as delineated in the attached *Exhibit A*, without valuable consideration to the City of Oakland is hereby ordered.
2. This order of vacation shall except, exempt, and reserve a public service easement within the whole area of said vacated land for the benefit of companies regulated by the California Public Utilities Commission and the City of Oakland and the East Bay Municipal Utility District to install, access, maintain, operate, replace, remove, or renew subsurface and above-ground utilities and necessary appurtenances, which include, but are not limited to, potable water piping, natural gas piping, fuel oil piping, sanitary sewer and storm water piping and access structures, and electrical and communications cabling.
3. This order of vacation shall expire by limitation and become void in the event the Emeryville Redevelopment Agency and its representatives, heirs, successors, and assigns and successive owners of said vacated portion of the Peralta Street public right-of-way, at their sole expense (both jointly and severally), fail to complete all of the following required actions within each of the time limitations set forth below:

- a. within two (2) years following adoption of this ordinance, complete a Quiet Title action, pursuant to California Code of Civil Procedure section 760 et seq., for the acquisition of the underlying fee simple interest in the vacated portion of Peralta Street; and
  - b. within one (1) year following adoption of this ordinance, file a complete application with the City of Oakland and pay applicable fees for a Parcel Map Waiver describing and delineating the merger of the vacated portion of Peralta Street with the adjoining northeasterly parcel and other contiguous lots and vacated public right-of-way; and
  - c. within three (3) years following adoption of this ordinance, file complete infrastructure permit applications with the City of Oakland and pay applicable fees and provide required security deposits for the relocation of existing and the installation of new public infrastructure improvements, which include, but are not limited to, potable water piping, natural gas piping, fuel oil piping, sanitary sewer and storm water piping, electrical and communications cabling, sidewalk, curb, gutter, storm water catchments, roadway paving and striping, traffic control devices, horizontal control monumentation, street lighting, street trees and irrigation; and
  - d. within five (5) years following adoption of this ordinance, obtain final approvals from the City Engineer of the City of Oakland for said required infrastructure permits.
4. By the acceptance of the vacated section of the Peralta Street public right-of-way, the Emeryville Redevelopment Agency acknowledges each of and agrees to all of the following:
- a. the Emeryville Redevelopment Agency shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out said vacation and regardless of responsibility for negligence; and
  - b. the City of Oakland makes no representations or warranties as to the conditions beneath said vacated section of the public right-of-way; and that by accepting this vacation, the Emeryville Redevelopment Agency agrees that it will use the vacated area in the future at its own risk; and
  - c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Redevelopment Agency hereby waives and fully releases and forever discharges the City of Oakland and its officers, officials, representatives, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect,

known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

- d. the Emeryville Redevelopment Agency understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
  - e. the Emeryville Redevelopment Agency recognizes by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
  - f. the Emeryville Redevelopment Agency shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements located within the vacated public right-of-way, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, communications cabling, sanitary sewer piping, storm water piping, and fire hydrants but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission or maintained by the City of Oakland or the East Bay Municipal Utility District.
5. The hereinabove conditions shall be binding upon the Emeryville Redevelopment Agency and the successive owners of said vacated portion of the Peralta Street public right-of-way and their representatives, heirs, successors, and assigns.

6. Pursuant to California Streets and Highways Code Section 8336, this order of vacation shall not be complete unless and until this Ordinance has been filed with and recorded by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 6 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BROOKS, DE LA FUENTE~~, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and  
PRESIDENT BRUNNER - 6

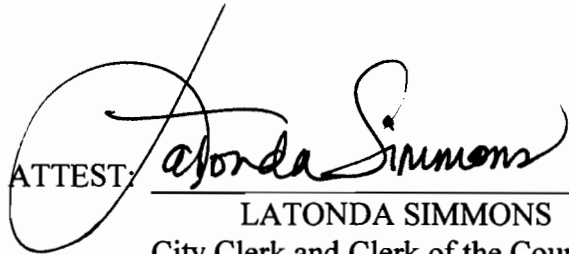
NOES - 0

ABSENT - Brooks - 1

ABSTENTION - 0

Excused - De La Fuente - 1

ATTEST:



LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

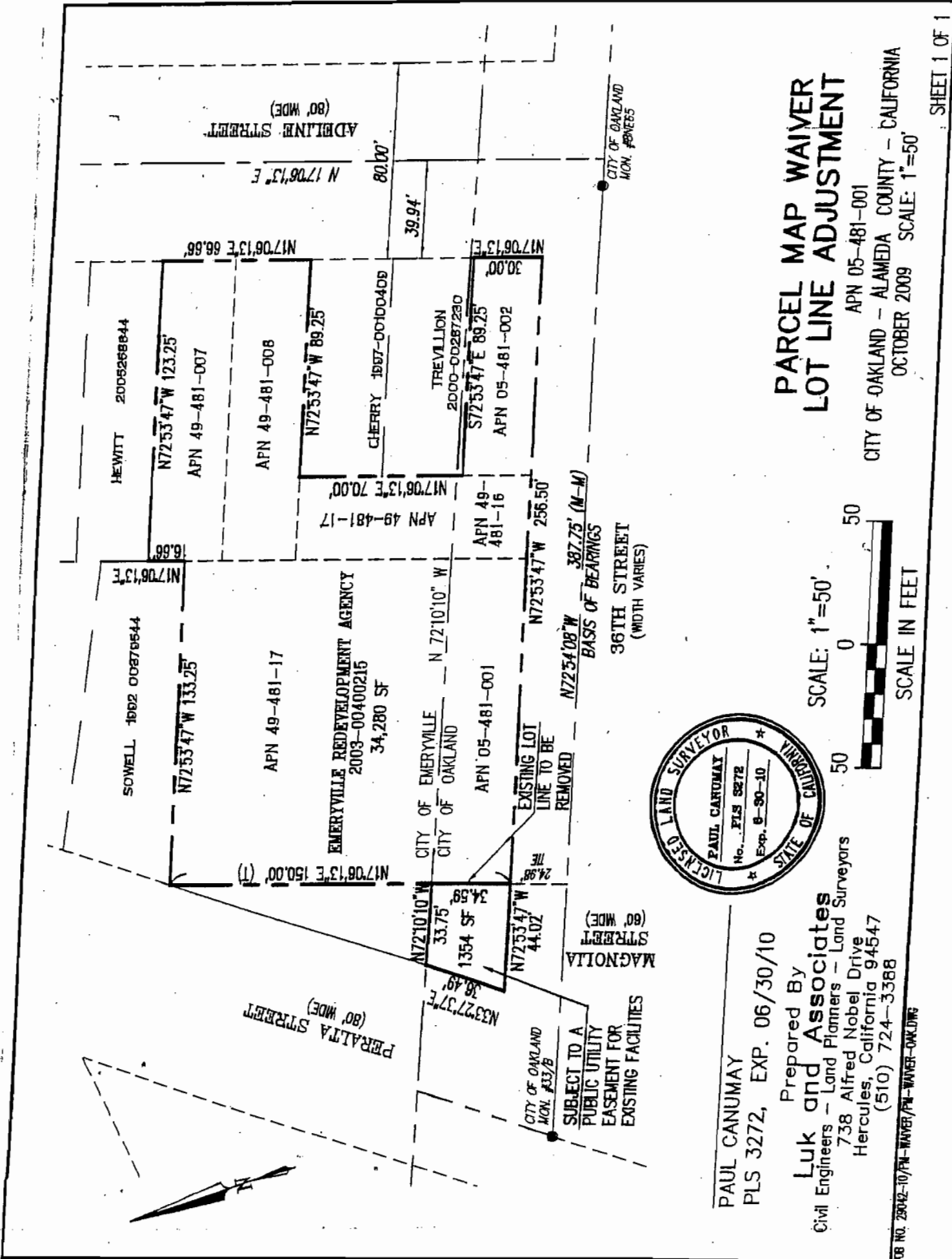
Introduction Date JUN 15 2010

DATE OF ATTESTATION

7-15-10

EXHIBIT A

Metes And-Bounds-Delineating-The-Proposed-Vacation-Of-A-  
Portion-Of-Peralta-Street-At-Its-Intersection-With-36th-Street



PARCEL MAP WAIVER  
LOT LINE ADJUSTMENT

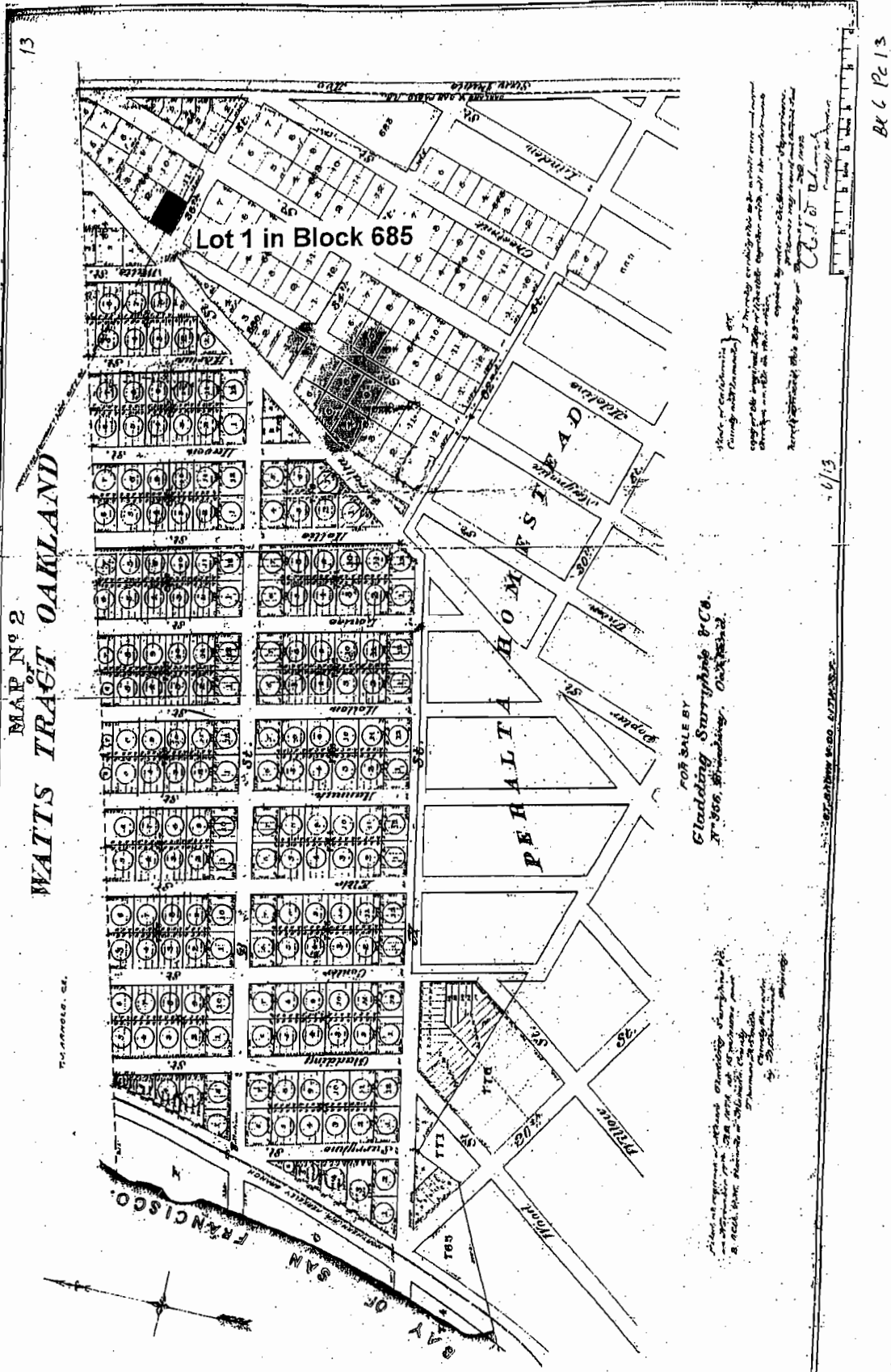
APN 05-481-001  
CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA  
OCTOBER 2009 SCALE: 1"=50'



PAUL CANUMAY  
PLS 3272, EXP. 06/30/10  
Prepared By  
**Luk and Associates**  
Civil Engineers - Land Planners - Land Surveyors  
738 Alfred Nobel Drive  
Hercules, California 94547  
(510) 724-3388

EXHIBIT B

Subdivision Map Entitled "Map No. 2 of Watts Tract Oakland", Recorded November 17, 1876, In Book 6 Of Maps, Page 13, By The Alameda County Recorder





## **NOTICE AND DIGEST**

### **ORDINANCE CONDITIONALLY VACATING (ABANDONING) A PORTION OF PERALTA STREET AT ITS INTERSECTION WITH 36th STREET WITHOUT COST TO THE EMERYVILLE REDEVELOPMENT AGENCY TO FACILITATE CONSTRUCTION OF THE AMBASSADOR AFFORDABLE HOUSING PROJECT**

This ordinance will conditionally vacate a 1,354 square feet portion of Peralta Street at the northeast corner of its intersection with 36h Street without cost to the adjoining property owner, the Emeryville Redevelopment Agency, for the construction of a multiple family affordable housing project.