

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
2006 JUL 11 PM 4:37

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 11, 2006

RE: **A Report And Resolution Granting PCL Associates LLC A Revocable And Conditional Permit To Allow Vaults And Electrical Transformers For New and Existing Buildings At 1199 Pine Street To Encroach Under The Sidewalk Along Pine Street and 12th Street**

SUMMARY

A resolution has been prepared granting PCL Associates LLC, a California limited liability company (no. 200412410256) and owner of the property at 1199 Pine Street (APN 006-0029-02-01), a conditional and revocable permit that will allow concrete vaults with electrical transformers to encroach under the sidewalk along Pine Street and 12th Street.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit will be covered by fees set by the Master Fee Schedule and paid by the developer and will be deposited in the General Purpose Fund (1010), Engineering Services Organization (88432), Encroachment Permits Account (42314), Engineering and Architectural Plan Approval (PS30). The standard conditions of the encroachment permit require the property owner to maintain liability and property damage insurance and to include the City as a named insured.

KEY ISSUES AND IMPACTS

The 2.8 acre site is bounded by 11th Street, Pine Street, and 12th Street and is being developed as part of the Wood Street Development Project for the Pacific Cannery Lofts residential condominiums. Two existing buildings will be renovated and a companion building will be constructed that will have 98 live/ work dwelling units, 62 townhouses, and a four story parking garage. The Planning Commission has approved the Environmental Impact Report (ER030023), General Plan Amendment (GP04545), Final Development Plan (PUD05489), Rezoning (RZ04544), and a Vesting Tentative Parcel Map (TPM8552).

The three below-sidewalk concrete vaults will be approximately 4.5 feet wide and 8.5 feet long and will encroach approximately 6 feet beyond the property line. The transformers, which will be maintained by Pacific Gas and Electric, will be accessed through removable covers set flush with the pedestrian walking surface. The subsurface encroachment will not interfere with the public's use of the right-of-way or the maintenance of underground public utilities.

SUSTAINABLE OPPORTUNITIES

Economic

The residential housing project will provide opportunities for professional services and

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construction related jobs for the Oakland community. An additional 160 dwelling units (new condominiums) will be added to the Oakland market.

Environmental

Land use approvals and construction permits for real property improvements and new buildings require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and pollutant runoff.

Social Equity

The residential housing project will assist the economic revitalization of West Oakland and will increase housing ownership opportunities for Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for the new building will conform with State and City requirements for handicapped accessibility.

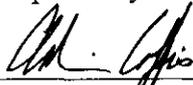
RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution authorizing a conditional and revocable permit for under sidewalk PG&E transformer vaults to encroach under the public sidewalk.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution approving a conditional and revocable encroachment permit for PCL Associates LLC to allow three electrical transformer vaults to encroach under the public sidewalk along Pine Street and 12th Street for new and existing buildings at 1199 Pine Street.

Respectfully submitted,

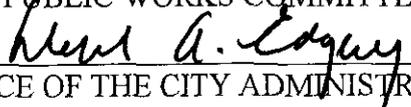


CLAUDIA APPIO
Development Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

OFFICE OF THE CITY CLERK

Introduced by

2006 JUN 29 PM 4:38

Councilmember

Approved for Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**A RESOLUTION GRANTING PCL ASSOCIATES LLC A REVOCABLE AND
CONDITIONAL PERMIT TO ALLOW VAULTS AND ELECTRICAL TRANSFORMERS
FOR NEW AND EXISTING BUILDINGS AT 1199 PINE STREET TO ENCROACH
UNDER THE PUBLIC SIDEWALK ALONG PINE STREET AND 12th STREET**

WHEREAS, PCL Associates LLC ("Permittee"), a California limited liability company (no. 200412410256) and owner of the property described in a Grant Deed, recorded October 13, 2004, Series No. 2004460159, at the Office of the County Recorder, Alameda County, California, commonly known as 1199 Pine Street (APN 006-0029-02-01) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a conditional encroachment permit to allow the installation of three concrete vaults with electrical transformers under the public sidewalk along Pine Street and 12th Street; and

WHEREAS, the transformers are necessary to provide electrical power for new buildings and will be maintained by the Pacific Gas and Electric Company (PG&E); and

WHEREAS, the location of the encroachment has been approved by PG&E; and

WHEREAS, the limit of the encroachment is delineated in Exhibits B and C attached hereto; and

WHEREAS, the encroachment and its location will not interfere with the use by the public of the roadway or sidewalk or buried utilities; and

WHEREAS, on March 16, 2005, the Planning Commission certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations in connection with the approval of the Wood Street project, which EIR certification, Findings and Statement of Overriding Considerations were affirmed and adopted by the City Council on May 17, 2005; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the encroachment permit as conditioned herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. 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 Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial

importance” as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

RESOLVED, that the City Council’s action approving the encroachment permit, as conditioned herein, complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED, that the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow the installation of two concrete vaults with electrical transformers under the public sidewalk along Pine Street and 12th Street for new and existing buildings at 1199 Pine Street; and be it

FURTHER RESOLVED, that the encroachment permit is hereby conditioned by the following special requirements:

1. the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and
2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insureds the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a *certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and*
5. the Permittee, by the acceptance of this conditional permit, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, assigns, successors, and volunteers from any and all claims, demands, lawsuits and judgments for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or *maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and*
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and

understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and

7. the Permittee, by the acceptance of this conditional permit, shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and

9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and

10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibits B and C; and

11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, 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

13. the Permittee further acknowledges that it 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

14. the Permittee recognizes that 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 execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED, that this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

FURTHER RESOLVED, that the City Clerk is hereby directed to file a certified copy of this resolution for recordation with the Office of the Alameda County Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006.

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

BEGINNING AT A POINT MARKING THE INTERSECTION OF THE WESTERLY EXTENSION OF THE CENTER LINE OF 13TH STREET, AS SAID STREET NOW EXISTS, AND THE SOUTHEASTERLY RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD; THENCE ALONG THE CENTER LINE OF SAID 13TH STREET, SOUTH 56° 33' 27" EAST, 155.21 FEET, MORE OR LESS, TO THE NORTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO WALKUP COMPANY, RECORDED JULY 19, 1941, BOOK 4111, PAGE 27; THENCE SOUTH 48° 19' 43" WEST, ALONG SAID NORTHWEST LINE, 31.04 FEET, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF 13TH STREET; THENCE SOUTH 56° 33' 27" EAST, ALONG SAID SOUTHEAST LINE, 54.36 FEET, MORE OR LESS, TO THE NORTHEASTERLY EXTENSION OF THE EASTERLY LINE OF PINE STREET; THENCE SOUTHWESTERLY ALONG SAID EASTERLY LINE EXTENDED, SOUTH 33° 26' 33" WEST, 260.01 FEET TO THE NORTHERLY LINE OF 12TH STREET, AS SAME NOW EXISTS; THENCE NORTH 56° 33' 27" WEST, 60.00 FEET ALONG SAID NORTHERLY LINE TO THE WESTERLY LINE OF PINE STREET, AS SAID STREET NOW EXISTS; THENCE SOUTH 33° 26' 33" WEST ALONG SAID WESTERLY LINE, 340.00 FEET TO THE NORTHERLY LINE OF 11TH STREET, AS SAID STREET NOW EXISTS; THENCE ALONG SAID NORTHERLY LINE AND THE WESTERLY EXTENSION THEREOF, NORTH 56° 33' 27" WEST, 303.87 FEET TO THE SOUTHEASTERN LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY; THENCE NORTHEASTERLY ALONG SAID RIGHT OF WAY, A DISTANCE OF 267.80 FEET, MORE OR LESS, TO A POINT, SAID POINT MARKING THE INTERSECTION OF THE SOUTHEASTERN LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S RIGHT OF WAY WITH THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF 12TH STREET, AS SAID STREET NOW EXISTS; THENCE CONTINUING ALONG THE SAID RAILROAD RIGHT OF WAY, NORTH 48° 19' 43" EAST, 382.86 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE WESTERLY EXTENSION OF THE CENTER LINE OF 13TH STREET, AS SAID STREET NOW EXISTS, SAID POINT OF INTERSECTION BEING ALSO THE TRUE POINT OF BEGINNING

PARCEL 2:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF PINE STREET, AS SAID STREET NOW EXISTS, WITH THE NORTHEASTERLY LINE OF 11TH STREET, AS SAID STREET NOW EXISTS; RUNNING THENCE ALONG SAID LINE OF 11TH STREET, NORTH 56° 33' 27" WEST, 250.02 FEET, MORE OR LESS, TO A POINT ON THE PERALIA GRANT LINE, AS SAID GRANT LINE IS DESCRIBED IN THE DEED FROM PACIFIC IMPROVEMENT COMPANY AND OAKLAND WATER FRONT COMPANY TO PACIFIC COAST CANNING COMPANY, RECORDED FEBRUARY 23, 1912, BOOK 2020 OF DEEDS, PAGE 254, BEING THE ACTUAL POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 56° 09' 33" WEST, ALONG SAID GRANT LINE, 19.76 FEET; THENCE NORTH 56° 33' 27" WEST, 49.85 FEET, MORE OR LESS, TO A POINT ON THE SOUTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC COMPANY; THENCE NORTHEASTERLY ALONG SAID LINE,



18.59 FEET, MORE OR LESS, UNTIL INTERSECTED BY A LINE DRAWN NORTH 56° 33' 27" WEST FROM THE ACTUAL POINT OF BEGINNING; THENCE SOUTH 56° 33' 27" EAST, 53.85 FEET; MORE OR LESS, TO THE ACTUAL POINT OF BEGINNING.

PARCEL 3:

COMMENCING AT A POINT MARKING THE INTERSECTION OF THE WESTERLY EXTENSION OF THE CENTERLINE OF 13TH STREET, AS SAID STREET NOW EXISTS, AND THE SOUTHEASTERLY RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD; THENCE ALONG THE CENTERLINE OF SAID 13TH STREET, SOUTH 56° 33' 27" EAST, 155.21 FEET, MORE OR LESS, TO A POINT ON THE NORTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO WALKUP COMPANY, RECORDED JULY 19, 1941, BOOK 4111, PAGE 27, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE CENTERLINE OF SAID 13TH STREET, SOUTH 56° 33' 27" EAST, 46.39 FEET TO THE NORTHEASTERLY EXTENSION OF THE EASTERLY LINE OF PINE STREET; THENCE SOUTHWESTERLY ALONG SAID EASTERLY LINE EXTENDED SOUTH 33° 26' 33" WEST, 30.00 FEET TO THE WESTERLY EXTENSION OF THE SOUTHWESTERN LINE OF 13TH STREET; THENCE ALONG SAID SOUTHWESTERN LINE NORTH 56° 33' 27" WEST, 54.36 FEET TO THE NORTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO WALKUP COMPANY; THENCE ALONG SAID NORTHWEST LINE NORTH 48° 19' 43" EAST, 31.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO GRANTOR, ITS SUCCESSORS OR ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE ABOVE DESCRIBED PARCEL, AND IN SUCH A MANNER AS NOT TO DAMAGE THE SURFACE OF THE ABOVE DESCRIBED PARCEL, OR TO INTERFERE WITH THE USE THEREOF BY CENTRAL STATION LAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND HAMILTON SENIOR HOMES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (COLLECTIVELY "GRANTEE"), ITS SUCCESSORS OR ASSIGNS; PROVIDED, HOWEVER, THAT GRANTOR, ITS SUCCESSORS OR ASSIGNS, WITHOUT THE PRIOR WRITTEN PERMISSION OF GRANTEE, ITS SUCCESSORS OR ASSIGNS, SHALL NOT CONDUCT ANY MINING ACTIVITIES OF WHATSOEVER NATURE ABOVE A PLANE FIVE HUNDRED FEET (500') BELOW THE SURFACE OF THE ABOVE DESCRIBED PARCEL, AS RESERVED BY UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION ("GRANTOR"), IN THE GRANT DEED DATED DECEMBER 12, 2000, TO CENTRAL STATION LAND, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND HAMILTON SENIOR HOMES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, RECORDED DECEMBER 15, 2000, SERIES NO. 2000-366393, OFFICIAL RECORDS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA.

Handwritten signature and initials, possibly 'DK' and 'PS', in black ink.

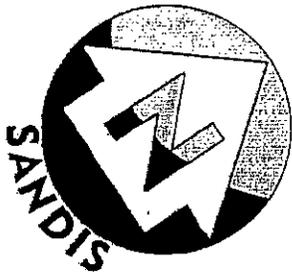


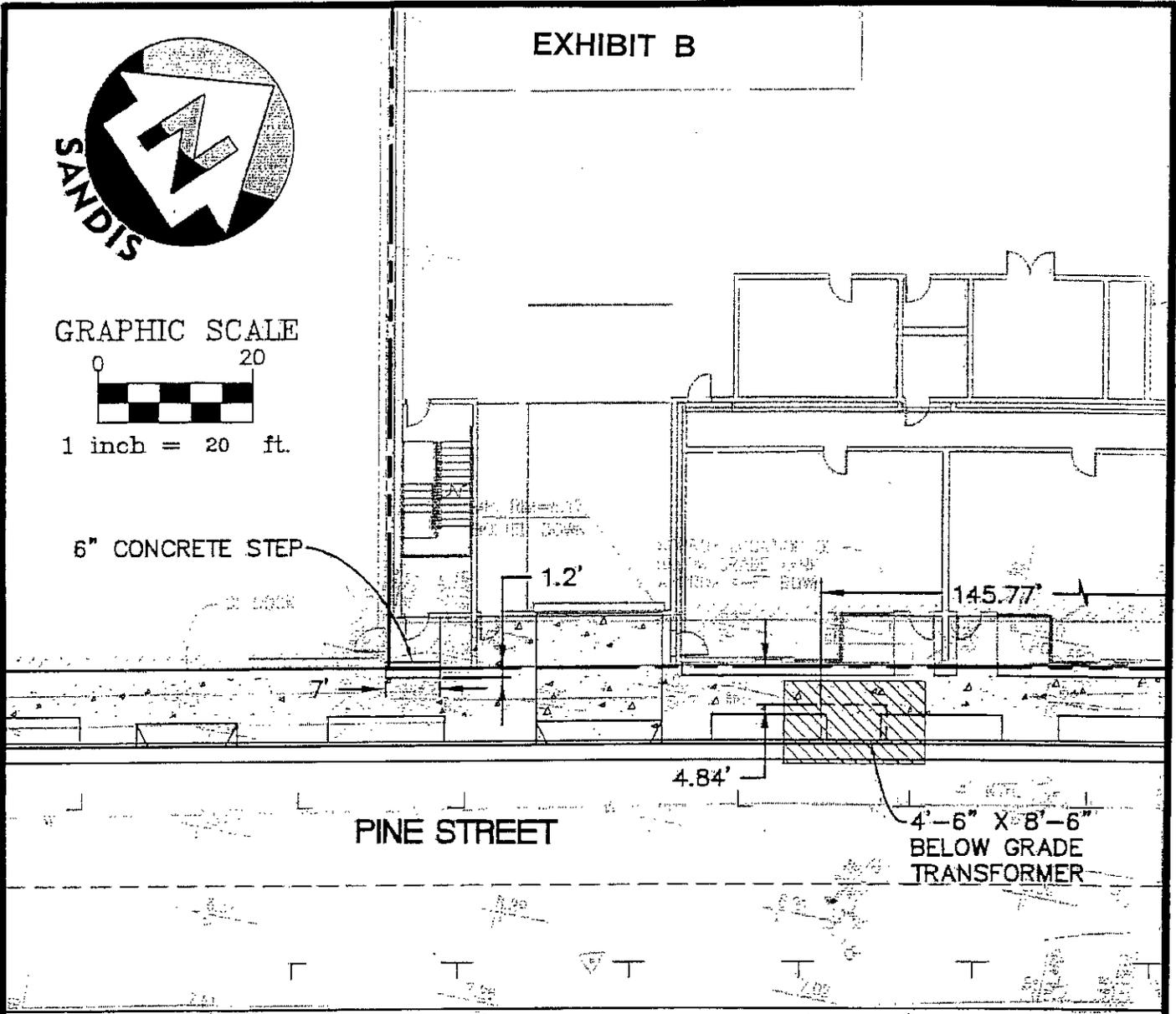
EXHIBIT B

GRAPHIC SCALE



1 inch = 20 ft.

6" CONCRETE STEP



PINE STREET

4'-6" X 8'-6"
BELOW GRADE
TRANSFORMER



SANDIS

CIVIL ENGINEERS
SURVEYORS
PLANNERS

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MOUNTAIN VIEW

ROSEVILLE

GARLAND

DATE: 06/02/06
SCALE: 1"=20'
DRAWN BY: RAB
APPROVED BY: MAK
DRAWING NO: 604122

PACIFIC CANNERY LOFTS
PINE STREET IMPROVEMENTS
ENCROACHMENT EXHIBIT

OAKLAND

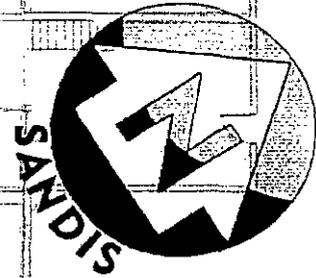
CALIFORNIA

SHEET

1

OF 2 SHEETS

EXHIBIT C



GRAPHIC SCALE



1 inch = 20 ft.

4.84'

79.77'

32.24'

4'-6" X 8'-6"
BELOW GRADE
TRANSFORMER

4'-6" X 8'-6"
BELOW GRADE
TRANSFORMER

2.62'

12TH STREET



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MOUNTAIN VIEW ROSEVILLE OAKLAND

DATE: 06/02/06
SCALE: 1"=20'
DRAWN BY: RAE
APPROVED BY: MAK
DRAWING NO: 604122

PACIFIC CANNERY LOFTS
PINE STREET IMPROVEMENTS
ENCROACHMENT EXHIBIT

OAKLAND

CALIFORNIA

SHEET

2

of 2 SHEETS