

2010 MAY 27 AM 10:19

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: June 8, 2010

**RE: A Report And**

- **A Resolution Adopting Findings And Setting A Hearing To Receive Supporting Evidence And Public Comments And**
- **An Ordinance Conditionally Vacating A Portion Of Peralta Street At The Northeast Corner Of Its Intersection With 36th Street**

**Without Cost To The Emeryville Redevelopment Agency To Facilitate Construction Of The Ambassador Affordable Housing Project**

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### SUMMARY

The proposed resolution and ordinance will abandon (vacate) the west-bound right-turn lane at the northeast corner of the Peralta Street and 36th Street intersection without cost to the Emeryville Redevelopment Agency. The adjoining parcels have been assembled to construct a multiple-unit, multiple-story affordable housing project with garage parking. The street vacation will "square-off" the corner of the intersection and convert the asphalt area to a green-space area for the building. The intersection will be reconstructed and existing underground utilities will be relocated. The vacation will not be final until the infrastructure work has been completed

### FISCAL IMPACT

Staff costs for processing the proposed vacation (PPE 09064) are covered by fees set by the Master Fee Schedule. The fees were paid by the Emeryville Redevelopment Agency and deposited in the Community and Economic Development Agency's (CEDA) special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

### PROJECT DESCRIPTION

The City of Emeryville and the Community and Economic Development Agency have been discussing the Ambassador Affordable Housing Project since 2003 (refer to *Exhibit A*). As the project's design evolved, the vacation of a portion of Peralta Street at the northeast corner of its intersection with 36th Street was proposed both to the City of Oakland and the City of Emeryville. The vacated area became necessary to accommodate an increased building footprint and maintain green-space for residents (refer to *Exhibit B*). Construction of the Ambassador Affordable Housing Project is scheduled to begin in November 2010.

Item: \_\_\_\_\_  
Public Works Committee  
June 8, 2010

## **KEY ISSUES AND IMPACTS**

### **Vacation Of Public Right-Of-Way**

Staff has determined that the City Council may make the following findings for vacating the portion of the Peralta Street right-of-way, as required by the statutes and ordinance indicated below:

- California Streets and Highways Code
  - ✓ The vacation conforms with the City's adopted General Plan.
  - ✓ The vacation will not impact future access for non-motorized transportation.
  - ✓ At the request of Pacific Gas and Electric, a public utility easement will be retained for future use.
  - ✓ The vacation will not increase traffic or pedestrian inconvenience nor decrease traffic or pedestrian safety.

- California Public Resources Code

Vacation of public right-of-way is categorically exempted from the requirements of the California Environmental Quality Act (CEQA).

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

The proposed street vacation will add property to the tax base for the City and decrease the cost of street maintenance and will provide construction job opportunities for Oakland residents.

### **Environmental**

The proposed ordinance has a standard condition of approval that requires the Emeryville Redevelopment Agency to remediate any hazardous material which may be discovered within the vacated right-of-way and to hold the City harmless from future litigation.

### **Social Equity**

The proposed vacation will support the development of an affordable housing project and assist the economic growth and revitalization of the City of Oakland, which will encourage the infusion and recurrence of diverse multi-cultural activities, businesses, and events.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits for the required public infrastructure improvements will conform with State and City requirements for handicapped accessibility.

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**RECOMMENDATIONS**

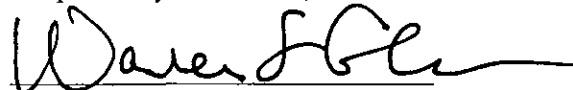
Staff recommends that the Committee accept this report and forward it to the City Council for consideration.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this report and

- adopt the proposed resolution of findings, and
- adopt the proposed ordinance vacating a portion of Peralta Street at its intersection with 36th Street, subject to with the following conditions:
  - ✓ the Emeryville Redevelopment Agency shall pay fees and obtain construction permits and inspections from the City Engineer to realign the intersection and relocate utilities within three (3) years following adoption of the proposed ordinance.
  - ✓ the Emeryville Redevelopment Agency shall complete the construction of the Peralta Street improvements and the relocation of utilities within two (2) years following issuance of permits by the City Engineer.
  - ✓ the Emeryville Redevelopment Agency shall complete a Quite Title action within two (2) years following adoption of the proposed ordinance.

Respectfully submitted,

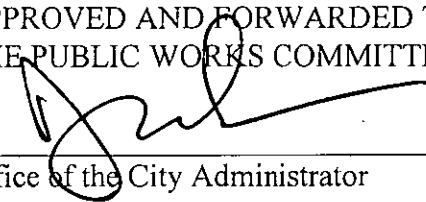


Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:

Raymond M. Derania  
Deputy Director - City Engineer  
Building Services Division

APPROVED AND FORWARDED TO  
THE PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Attachments: Exhibit A - correspondence  
Exhibit B - building footprint

Item: \_\_\_\_\_  
Public Works Committee  
June 8, 2010

EXHIBIT A

RECEIVED

DEC 07 2004

PLANNING DEPARTMENT



# CITY OF OAKLAND

Community and Economic Development Agency, Planning & Zoning Services Division  
260 Frank H. Ogawa Plaza, Suite 3330, Oakland, California, 94612-2032

November 30, 2004

Charles Bryant  
Planning and Building Director  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

**SUBJECT:** Proposed Residential Project at the Ambassador Laundry Building at 36<sup>th</sup> and Magnolia Streets

Dear Charlie:

This letter is in response to your most recent request about the planning and building permit process for the Ambassador Laundry Building at 36<sup>th</sup> and Magnolia Streets, as delineated in your letter of September 10, 2004. A small portion of the proposed project is located within the Oakland City limits. From your most recent description and plans, the original project, as described in December 2003, has been modified from the redevelopment of this site for 62 units to the redevelopment for 55 residential units, along with three adjacent properties (APN 5-481-1, 5-482-2 and 49-481-16). Also, whereas the original design had involved incorporating the existing brick Ambassador laundry building into the project, the revised plans call for demolition of this building to be replaced by all new construction on site, including demolition of an existing bungalow to be replaced with two units.

The City of Oakland appreciates your willingness to take this project on as this building and the surrounding area are seriously blighted. As we have previously discussed, it would be efficient to designate one City as the lead agency for the purposes of the planning and building permit process. Given that the majority of land is within the City of Emeryville, I accept your offer to manage this process, under the following requirements and conditions:

- 1) The planning review, environmental review, building plan check, demolition permit and building permit processes may be administered by the City of Emeryville for this project. I request that the City of Oakland be contacted prior to the issuance of each permit so that we are able to provide any comments and concerns prior to the issuance of that permit. These comments may include but are not limited to construction site staging and access, hours of construction, public improvements and encroachments within the City of Oakland right of way, adequate directional signs, etc. I further request that you forward any copies of land use approvals, approved plans and building permits to the City of Oakland for our records.

The proposed modifications within Oakland's right-of way on Magnolia, Peralta and 36<sup>th</sup> Street will require careful review and consideration with both the Oakland Building Division and Public Works Agency. As we have previously discussed, I will coordinate a meeting to review these issues and coordinate the public improvements accordingly.

## EXHIBIT A

Charles Bryant  
City of Emeryville - Ambassador Laundry Project  
November 30, 2004

Page 2

- 2) Toward this end, I have two requests. First, please forward the traffic study and full schematic improvement plans for the proposal to me for distribution to appropriate City staff. Second, please include a condition of approval within your planning permits stipulates that the final approval of the project is contingent upon review, consideration and acceptance of these improvements by the City of Oakland.
- 3) Finally, I request that prior to the issuance of an occupancy permit for the project, that the emergency access and response protocols be confirmed by our respective Police and Fire Departments, so any confusion regarding jurisdiction can be minimized, such as how the project will be identified by address, etc.

I look forward to working with you and improving this part of our respective cities. Please call me should you have further questions or need clarification about any of the points outlined in this letter.

Sincerely,



CLAUDIA CAPPIO  
Development Director, City of Oakland

cc: Deborah Edgorty, City Manager, Oakland  
John Flores, City Manager, Emeryville  
Calvin Wong, Building Official, Oakland  
Raul Godinez, Public Works Agency, Oakland  
Wlad Wlassowkey, Traffic Services Division

EXHIBIT A



**CITY OF EMERYVILLE**

INCORPORATED 1896

1333 PARK AVENUE  
EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4300 FAX: (510) 658-8095

March 2, 2005

Claudia Cappio, Director of Development  
City of Oakland  
250 Frank Ogawa Plaza, Third Floor  
Oakland, California 94612

Greetings Claudia,

You may recall that on December 9<sup>th</sup> 2004, the City of Emeryville Planning Commission approved a Use Permit for a 55-unit low income housing project at the site of the Ambassador Laundry building and three adjoining properties located at 36<sup>th</sup> and Magnolia Streets. As a portion of the site was located within the Oakland city limits, your office ceded jurisdiction for all permits including planning, demolition and building permits to the City of Emeryville. One of the conditions of approval of the Use Permit requires the City of Emeryville Planning Director to inform the City of Oakland upon receipt of demolition and building permit applications at least two weeks prior to issuance of either permit to provide opportunity to comment. I hereby inform you that we are currently processing a demolition permit to tear down the existing Ambassador Laundry building. If you have any questions or comments on the demolition permit please submit them by March 16<sup>th</sup> 2005. Absent any comments from City of Oakland, we shall issue a demolition permit for the Ambassador Laundry building on or after March 17<sup>th</sup> 2005.

Yours truly,

Charles S. Bryant, AICP  
Director of Planning and Building

cc: Miroo Desai, Senior Planner  
Maurice Kaufmann, Senior Civil Engineer

EXHIBIT A

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Community and Economic Development Agency  
Planning & Zoning Services Division

(510) 238-3941  
FAX (510) 238-6538  
TDD (510) 238-3254

July 1, 2009

Charles Bryant  
Planning and Building Director  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

RE: Ambassador Laundry Building, 36<sup>th</sup> and Adeline

Dear Charlie;

This letter reaffirms the decision of the City of Oakland to allow the City of Emeryville to process entitlements for the Ambassador Laundry building at 36<sup>th</sup> and Adeline. This decision was first conveyed in a letter dated November 30, 2004 (attached) and all conditions of that letter are hereby incorporated into this reaffirmation.

We look forward to the chance to review and comment on this project and work with the City of Emeryville to complete the project.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Angstadt", written over a horizontal line.

Eric Angstadt  
Deputy Director, CEDA  
City of Oakland

## EXHIBIT A



### EMERYVILLE REDEVELOPMENT AGENCY

1333 PARK AVENUE  
EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4300 FAX: (510) 596-4389

October 8, 2009

Tim Low  
Supervising Civil Engineer  
City of Oakland  
Public Works Department  
1 Frank Ogawa Plaza  
Oakland, CA 94612

RE: Ambassador Housing, Street Vacation Application  
1168 - 36<sup>th</sup> Street, Emeryville, CA  
APN: 005-0481-001

Dear Mr. Low:

Thank you for meeting with the development team for the Ambassador project on August 19, 2009 to discuss the application process and timing for requesting a street vacation of that portion of Magnolia Street and the associated traffic island, located adjacent to the Redevelopment Agency of the City of Emeryville's property at 1168 36<sup>th</sup> Street. As we discussed, the Emeryville Redevelopment Agency owns the adjacent property and is working with Resources for Community Development (RCD) to develop an affordable, workforce housing development on this property. The majority of the property is located in the City of Emeryville; however, a small portion of it is located in the City of Oakland. We are now submitting the application and associated materials for the discussed street vacation to both the City of Emeryville and the City of Oakland. The area of the proposed street vacation would be utilized for a private green space along with both Cities' required sidewalks. The Redevelopment Agency feels that this would be an attractive public improvement and also lessen traffic conflict between drivers at the merge of Peralta and Magnolia Streets.

In meetings with representatives of the both the City of Oakland and the City of Emeryville, Eric Angstadt (Oakland Planning Director) and Maurice Kaufman (Emeryville Public Works Director) have respectively stated that neither city's public works departments have the capacity to maintain a public park in this area; nor does the Redevelopment Agency feel that a public park in the proposed area is the most defensible and best use. We are now submitting the materials required by the City of Oakland as part of its street vacation application process. Eric Angstadt, Planning Director of the City of Oakland, confirmed in the attached July 1, 2009 letter, that the City of Oakland is ceding planning entitlement approvals to the City of Emeryville for the development.



## EXHIBIT A

The Emeryville Redevelopment Agency has selected RCD to develop the property and is planning to apply for state and federal financing to supplement our own commitment of redevelopment funds to this affordable, workforce housing development. In terms of timing, the first financing application is projected to be due on March 1, 2010. In order for the development to be competitive for financing, the development must demonstrate that it has secured full entitlements for the development. The City of Emeryville Planning Department intends to include the street vacation as a condition of the entitlements approval. We would appreciate if you would expeditiously process our request for a street vacation for the portion of the proposed area in the City of Oakland.

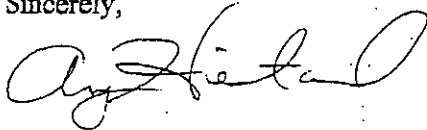
Please find attached the street vacation submittal which was prepared by our selected developer, Resources for Community Development (RCD), and their civil engineer, Luk and Associates.

This submittal includes two (2) sets of the following as well as the required application fee:

- 1) Current title reports;
- 2) Photographs;
- 3) Draft Parcel Map waiver plat;
- 4) Vacation & traffic exhibit;
- 5) Updated traffic report;
- 6) City of Oakland letter from Eric Angstadt confirming City of Emeryville jurisdiction for Planning entitlements approval.

Thank you very much for your expeditious review and processing. Should you have any questions with regard to the application, please contact me with regard to Redevelopment Agency matters (510.596.4354), George or Jackie Luk with regard to civil engineering matters (510.724.3388), and Lihbin Shiao with regard to developer matters (510.531.9911).

Sincerely,

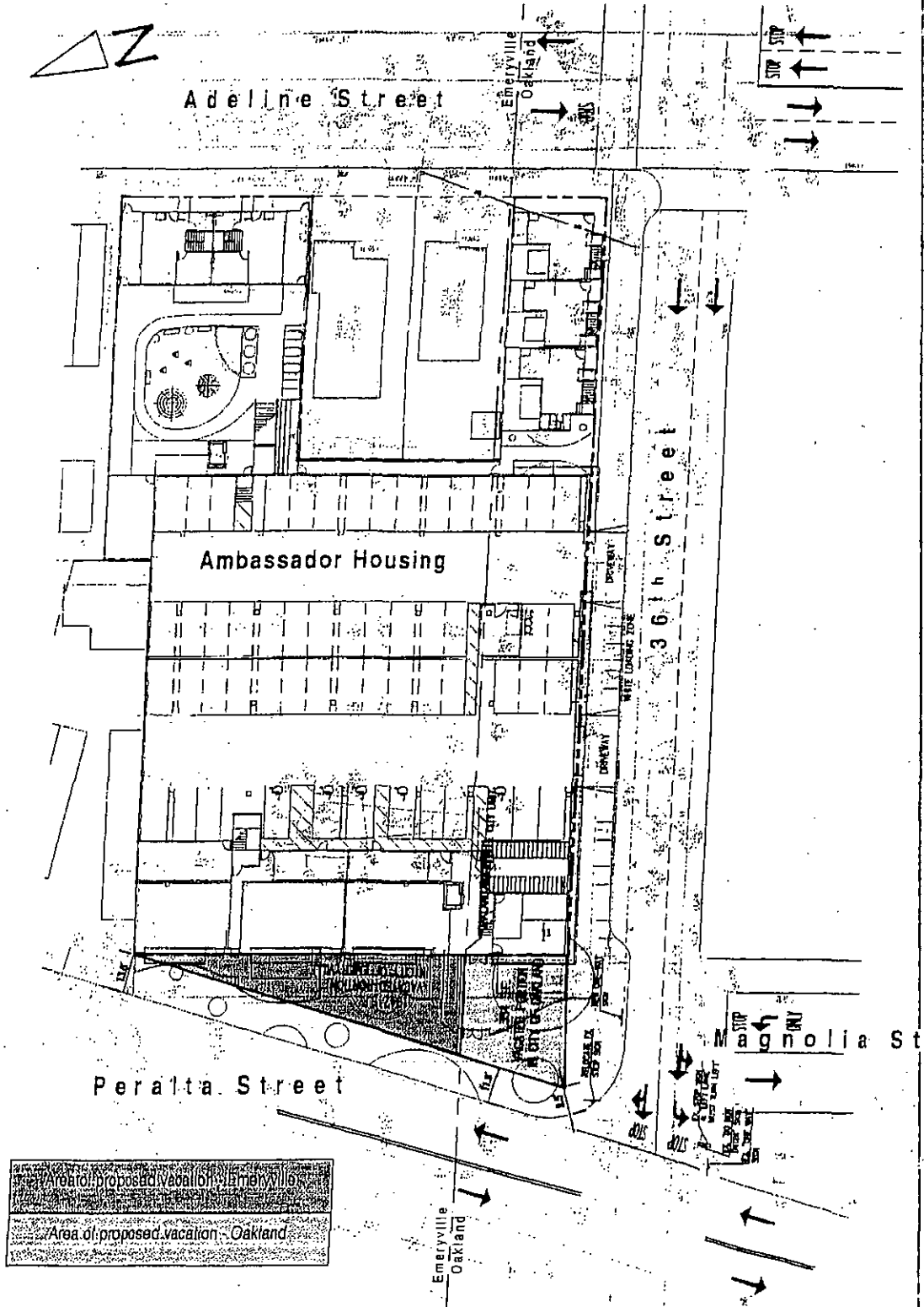


Amy Hiestand  
Projects Coordinator

- cc. Eric Angstadt, City of Oakland, Planning Department  
Maurice Kaufman, City of Emeryville, Public Works Department  
Charles Bryant & Miroo Desai, City of Emeryville, Planning Department  
Lisa Motoyama, RCD  
George Luk & Jackie Luk, Luk & Associates  
Lihbin Shiao, Mosaic Urban Development, LLC

# EXHIBIT B

## Proposed street vacation 1168 36<sup>th</sup> Street at Magnolia and 36<sup>th</sup> Streets



FILED  
Introduced by THE CITY CLERK  
OFFICE OAKLAND

Approved for Form and Legality

~~2010~~ MAY 27 AM 10:19  
City Member

  
City Attorney

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

**RESOLUTION ADOPTING FINDINGS AND SETTING A HEARING TO RECEIVE SUPPORTING EVIDENCE AND PUBLIC COMMENTS ON A PROPOSED CONDITIONAL VACATION OF 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 adopt findings for a proposed ordinance conditionally vacating a portion of Peralta Street at its intersection with 36th Street without valuable consideration to the owner of the northeasterly adjoining parcel, the Emeryville Redevelopment Agency; and

**WHEREAS**, said meeting also set a hearing beginning at 5:30 o'clock, post meridian local time, 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 July 6, 2010, to receive supporting evidence and public comments on said proposed ordinance conditionally vacating said portion of Peralta Street; and

**WHEREAS**, pursuant to California Streets and Highways Code Sections 8312 and 8355, the Emeryville Redevelopment Agency has previously filed an application (PPE09064) with the City Engineer of the City of Oakland requesting that the City of Oakland vacate said portion of Peralta Street to the Redevelopment Agency without valuable compensation to the City of Oakland; and

**WHEREAS**, the Emeryville Redevelopment Agency has filed a companion application with the City of Emeryville requesting that the City of Emeryville similarly vacate an adjoining triangular-shaped portion of Peralta Street without valuable consideration, as shown on *Exhibit C* attached hereto; and

**WHEREAS**, the metes and bounds establishing the perimeter dimensions and compass bearings, and circumscribed land area (planer projection), and the distances and bearings of property corners from established horizontal control monumentation of said portion of Peralta Street proposed for vacation is fully delineated on the plat entitled "Parcel Map Waiver Lot Line Adjustment", as shown on *Exhibit A* attached hereto; and

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

**WHEREAS**, the City Engineer has determined with reasonable certainty from a thorough examination of the available historical public records that the public rights-of-way of Peralta Street, 36th Street, and Magnolia Street were first used as public streets beginning at some time following the original division of the abutting and surrounding real properties, as shown on the 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

**WHEREAS**, said adjoining northeasterly parcel is depicted on said subdivision map as a portion of Lot 1 in Block 685, 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**, the City Engineer has further determined with reasonable certainty from a thorough examination of the available historical public records that the State of California had not yet established a legislative mechanism, either by statute or prescriptive easement or otherwise, for cities and counties to own the underlying fee simple interest of public right-of-way at the time of said original division of the abutting real property; and

**WHEREAS**, pursuant to California Code of Civil Procedure section 880 et seq., the City Engineer has further determined with reasonable certainty that the Emeryville Redevelopment Agency owns the underlying fee interest in said portion of the public right-of-way of Peralta Street proposed for vacation; and

**WHEREAS**, 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

**WHEREAS**, said portion of Peralta Street proposed for vacation, which comprises 1,354 square feet of land area (planer projection), 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

**WHEREAS**, said portion of Peralta Street proposed for vacation will be removed from the inventory of public streets maintained by the City of Oakland; and

**WHEREAS**, the City Engineer, in his official capacity, has further determined that the proposed vacation of said portion of Peralta Street will not adversely impact current or future traffic or pedestrian access to the adjoining and surrounding real properties; and

**WHEREAS**, the portion of Peralta Street proposed for vacation is wholly located within the corporate limits of the City Oakland; and

**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**, pursuant to California Streets and Highways Code Sections 8317, 8322, and 8323, facsimiles of the newspaper publication and public posting, attached hereto as *Exhibit C*, and an affidavit, attached as *Exhibit D*, confirming that the City Engineer completed the statutory requirements for notifying the public of the City's intention to vacate a portion of Peralta Street and of the locate, date, and time of public hearing to receive supporting evidence and public comments for the proposed vacation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8313 and Government Code Section 65402, the Secretary of the Planning Commission of the City of Oakland has determined that there is no map or diagram nor any expressed policies or provisions preventing the vacation of these portions of public rights-of-way and that the location, purpose, and extent of the vacation therefore conforms with the City's adopted General Plan; and

**WHEREAS**, pursuant to California Streets and Highways Code section 8340, the Pacific Gas and Electric Company has requested that a public service easement for utilities be reserved across the whole area of the portion of Peralta Street proposed for vacation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8348, the City Engineer has notified the serving public utilities his intention to recommend to the City Council that said portion of Peralta Street be vacated and that public service easement be reserved in the vacated public right-of-way to install, maintain, operate, replace, remove or renew existing or future works is required for public convenience and necessity; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8348, the City Engineer has determined and the Emeryville Redevelopment Agency has agreed that it shall assume the responsibility, at its sole expense and with permits issued by 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 communication 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**, pursuant to California Streets and Highways Code Section 892, the City Engineer has further determined that the proposed vacation of said portion of Peralta Street will not limit public use of or impede public access for non-motorized transportation; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8320, a plat delineating the metes and bounds may be used to establish the extent and location of the public right-of-way to be vacated, as shown in *Exhibit A* attached hereto; and

**WHEREAS**, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; now, therefore, be it

**RESOLVED**; That pursuant to the California Streets and Highways Code, the California Government Code, and the California Public Resources Code, the Council of the City of Oakland hereby makes the following determinations:

- that the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); and
- that the proposed vacation conforms with the City of Oakland's adopted General Plan; and
- that 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
- that the Emeryville Redevelopment Agency owns the underlying fee interest in the public right-of-way proposed to be vacated; and
- the proposed vacation requires reservation of a public service easement 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; 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 be it
- 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
- the Emeryville Redevelopment Agency shall be responsible, at its sole cost, for the relocation of existing publicly maintained utilities and the restoration of publicly maintained infrastructure and appurtenances, with permits issued by the City of Oakland, to the satisfaction of the City Engineer; and

**FURTHER RESOLVED;** That the plat attached hereto as *Exhibit A* does fully delineate the metes and bounds and the extent and location of the portion of Peralta Street proposed for vacation; and be it

**FURTHER RESOLVED;** That Council of the City of Oakland will condition the vacation of said portion of Peralta Street to the Emeryville Redevelopment Agency without valuable compensation to the City Of Oakland by terms set forth in an ordinance of vacation; and be it

**FURTHER RESOLVED;** That a hearing to receive supporting evidence and public comments for a proposed ordinance that will conditionally vacate a portion of Peralta Street at its intersection with 36th Street without cost to the Emeryville Redevelopment Agency will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on June 15, 2010, beginning at 5:30 o'clock, post meridian local time.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2010**

PASSED BY THE FOLLOWING VOTE:

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

NOES -

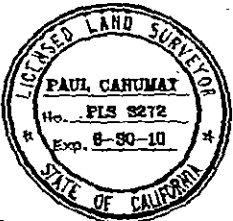
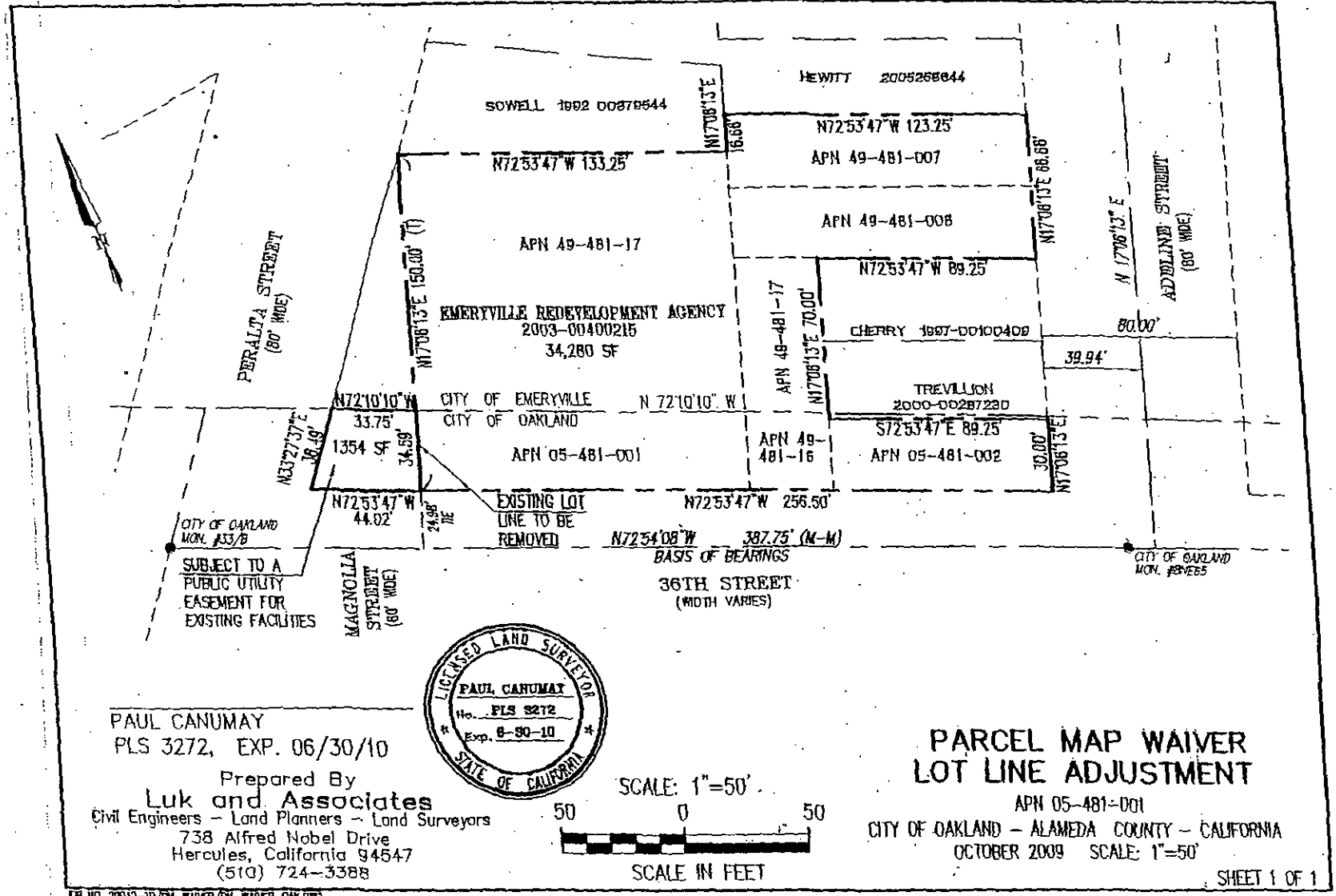
ABSENT -

ABSTENTION -

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

EXHIBIT A

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



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

**PARCEL MAP WAIVER  
 LOT LINE ADJUSTMENT**

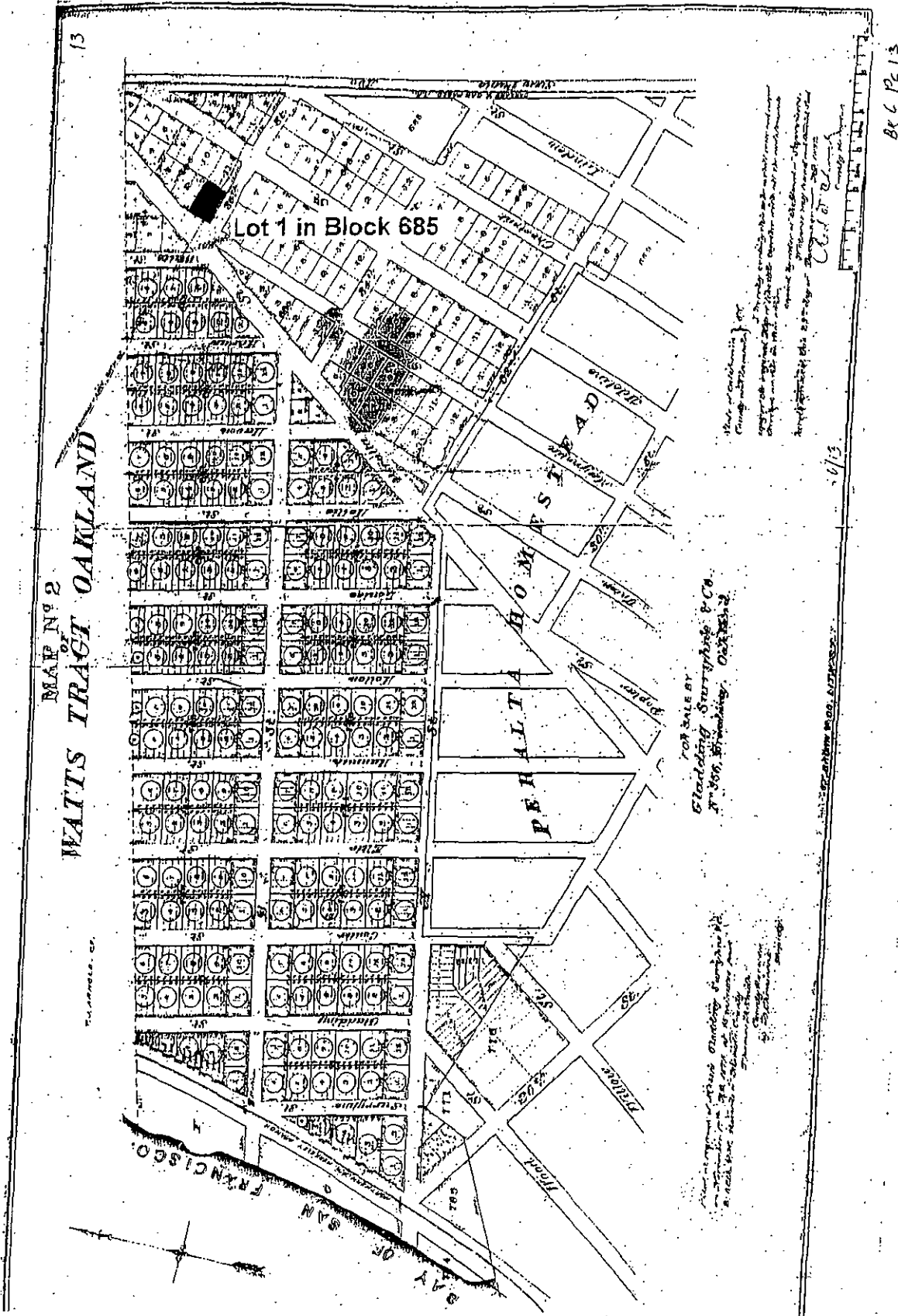
APN 05-481-001  
 CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA  
 OCTOBER 2009 SCALE: 1"=50'

JOB NO. 29042-10/PW-WAIVER/PW-WAIVER-OKL.DWG



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



## EXHIBIT C

### Notifications Of A Public Hearing On A Proposed Vacation Of A Portion Peralta Street At Its Intersection With 36th Street

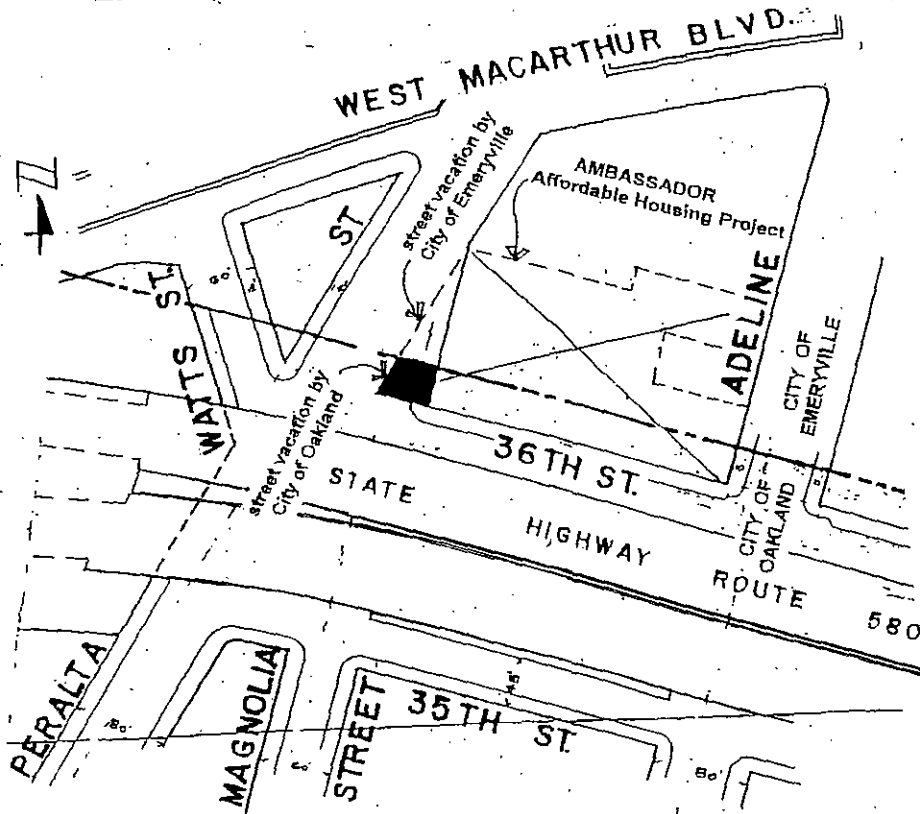
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#### PUBLIC NOTICE

##### Public Hearing For Abandoning A Public Street

Pursuant to California Streets and Highways Code section 8320 et seq., the Council of the City of Oakland will hold a public hearing in the Chamber of the City Council, Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 15, 2010, beginning at 5:30 p.m., local time, to receive supporting evidence and public comments for a proposed ordinance conditionally vacating (abandoning) a portion of Peralta Street at its intersection with 36th Street without cost to the abutting property owner, the Emeryville Redevelopment Agency, to facilitate the construction the Ambassador Affordable Housing Project. A map fully delineating the proposed abandonment is available at the City of Oakland, Building Services Division, Dalziel Administration Building, Second Floor, 250 Frank H. Ogawa Plaza, Oakland, CA 94612.

# PUBLIC NOTICE



Notifications Of A Public Hearing On A Proposed Vacation Of  
A Portion Peralta Street At Its Intersection With 36th Street

EXHIBIT C

Pursuant to California Streets and Highways Code Section 8320 et seq., notice is given to the public that the Council of the City of Oakland intends to vacate (abandon) a portion of the Peralta Street at its intersection with 36th Street without cost to the Emeryville Redevelopment Agency to facilitate the construction of the Ambassador Affordable Housing Project.

Notice is also given to the public that the Council of the City of Oakland will hold a hearing to receive evidence supporting and public comments for the proposed conditional vacation in the Chamber of the City Council, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 15, 110, beginning at 5:30 p.m. local time.

*It is a misdemeanor to deface or to remove this posting. Violators are subject to a fine of \$1,000 and a jail sentence of 6 months.*

**EXHIBIT D**

**Affidavit Certifying Notifications Of A Public Hearing On A Proposed Vacation  
Of A Portion Of Peralta Street At Its Intersection With 36th Street Without Cost  
To The Emeryville Redevelopment Agency**


Pursuant to California Streets and Highways Code Section 8322, I hereby certify that the following public notifications did occur on the dates and times and at the locations and for the durations indicated below:

**Site Posting**

Facsimiles of the attached placard were affixed before June 15, 2010, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along Peralta Street, Magnolia Street, and 36th Street, and have remained in place since then advising the public of a hearing on June 15, 2010, at 5:30 p.m. local time, in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, to receive evidence and public testimony on the proposed vacation of a portion of the public right-of-way delineated on the placard.

**Newspaper Publication**

The attached notice was published in the *Oakland Tribune* on May 20, 2010, and May 27, 2010, advising the public of a hearing on June 15, 2010, beginning at 5:30 p.m. local time in the Chambers of the Council of the City of Oakland, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza to receive evidence and public testimony on the proposed vacation of a portion of Peralta Street at its intersection with 36th Street without cost to the Emeryville Redevelopment Agency and advising the public that a map delineating the portion of the public right-of-way proposed for vacation is available at the Building Services counter on the Second Floor of the Dalziel Administration Building at 250 Frank H. Ogawa Plaza.

date May 28, 2010 by   
RAYMOND M. DERANIA  
City Engineer  
Community and Economic Development Agency

2010 MAY 27 AM 10:19

Councilmember

Approved for Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ 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 of 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, \_\_\_\_\_, 2010

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

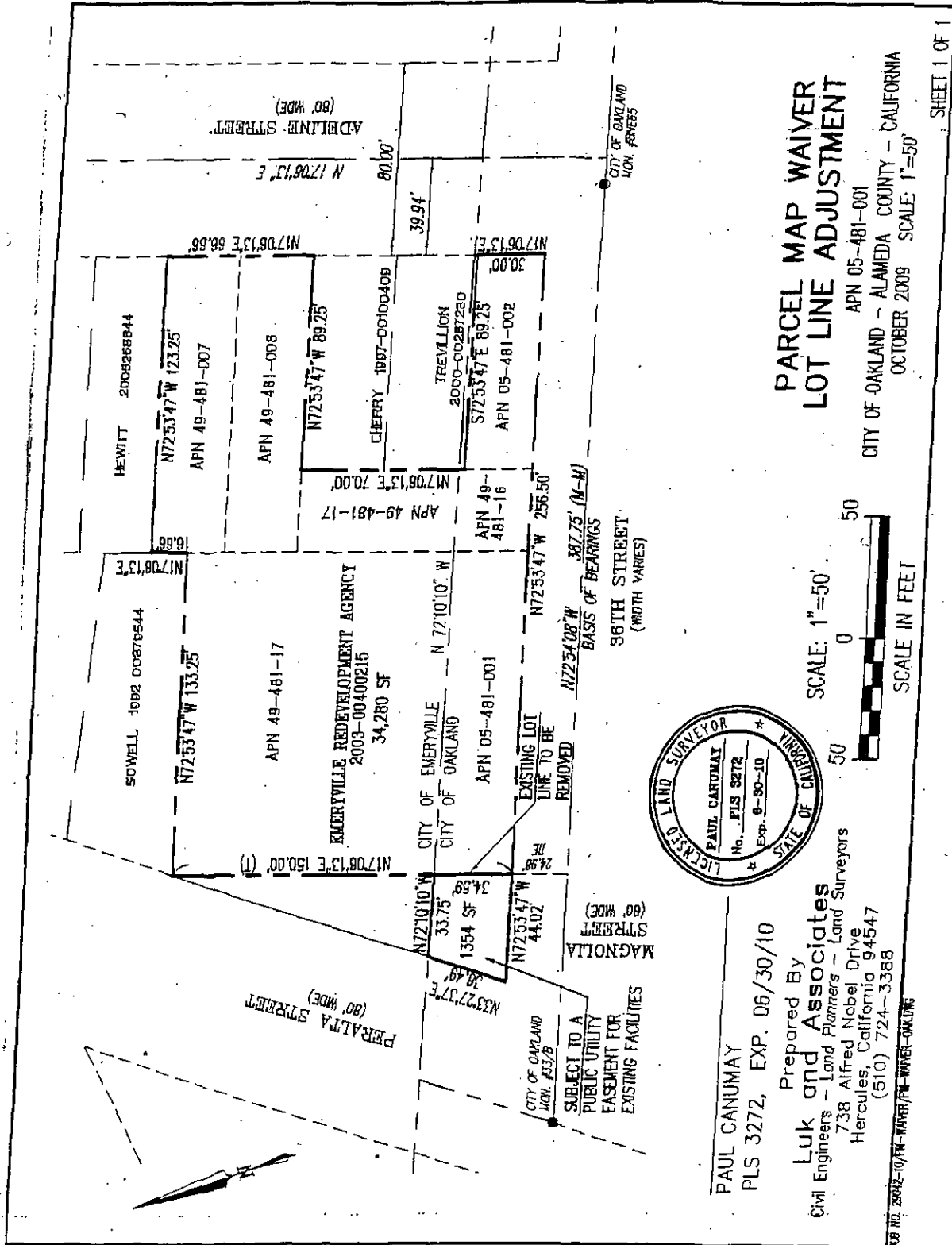
ABSTENTION -

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

DATE OF ATTESTATION \_\_\_\_\_

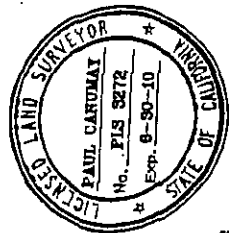
EXHIBIT A

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

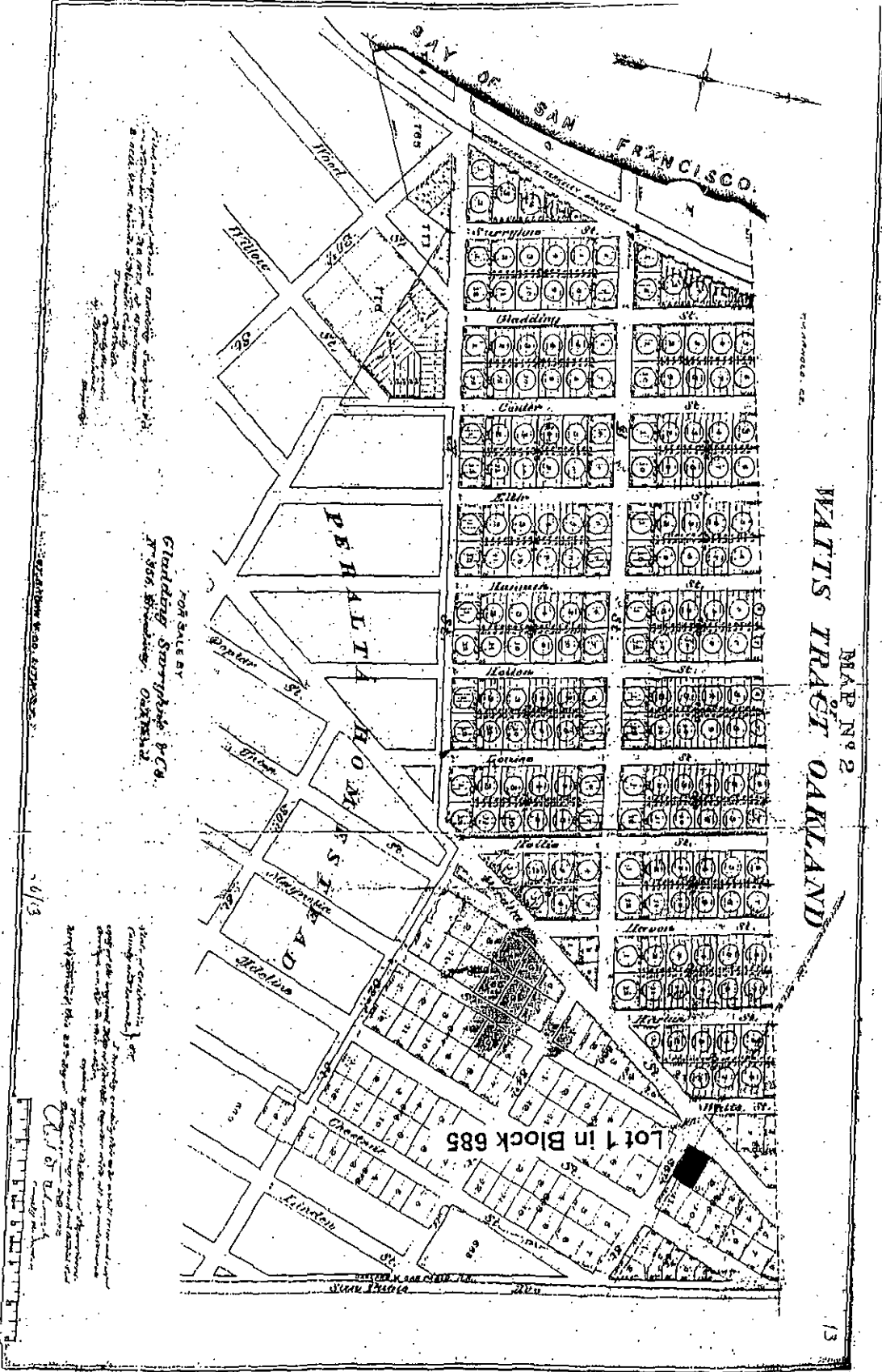
APN 05-481-001  
CITY OF OAKLAND - ALAMEDA COUNTY - CALIFORNIA  
OCTOBER 2009 SCALE: 1"=50'



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



NOT SALE BY  
 Standard Surveyors, P.C.S.  
 1556 Broadway, Oakland

6/13

BR 6 P 13

## **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.