

Introduced by THE CITY CLERK
OFFICE OF OAKLAND

Approved for Form and Legality

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


City Attorney

OAKLAND CITY COUNCIL

Resolution No. 82842 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, JUN 15 2010, 2010

PASSED BY THE FOLLOWING VOTE:

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

NOES - 0

ABSENT - 0

ABSTENTION - 0

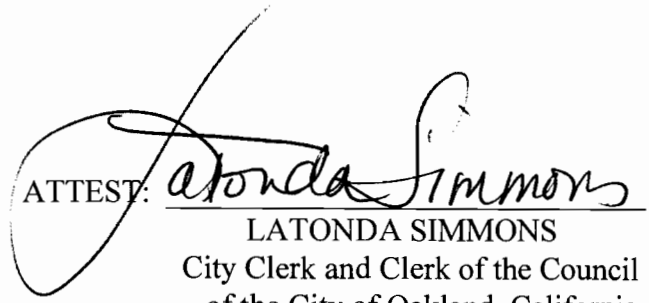
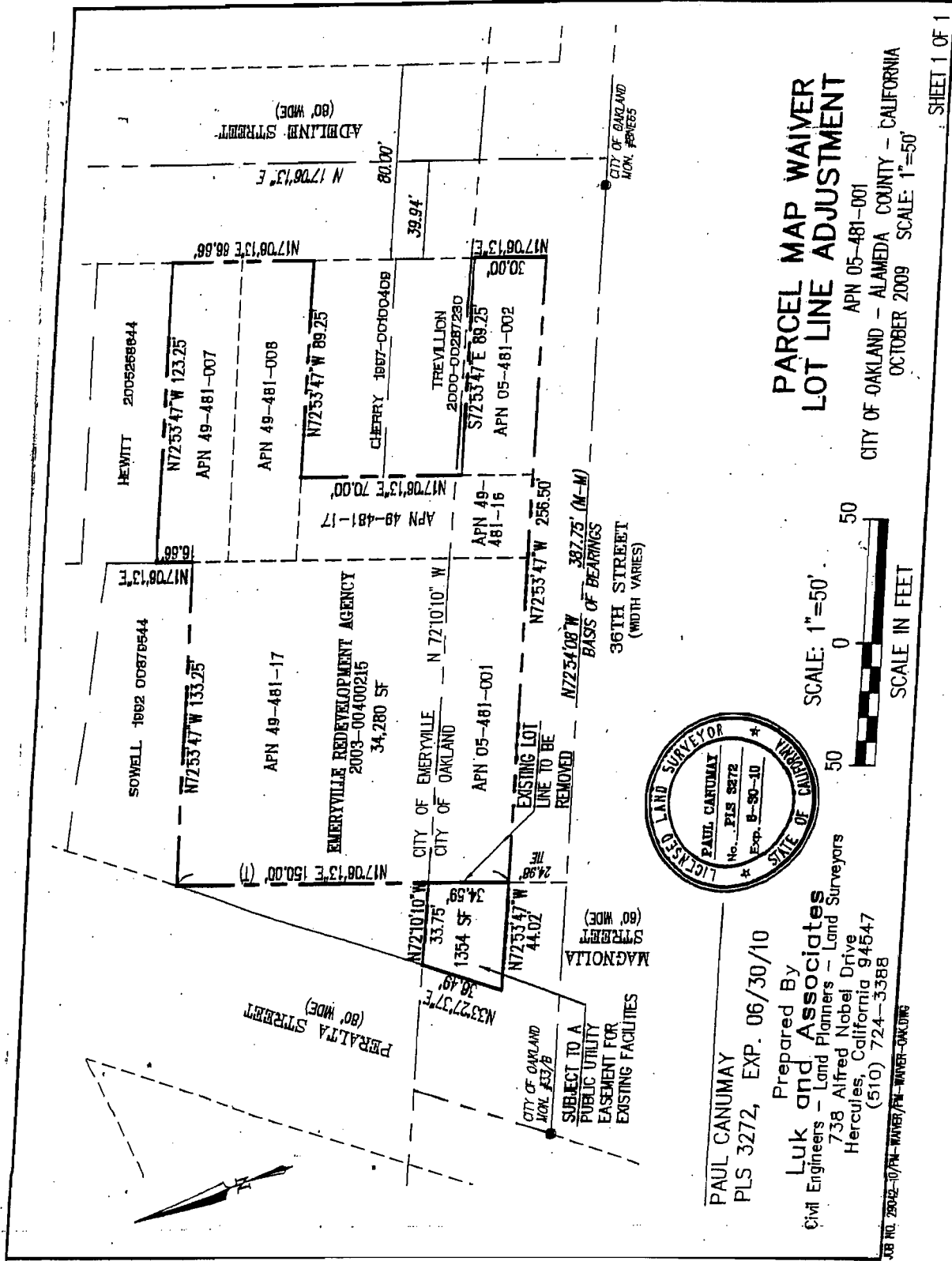
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Metes 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

JOB NO. 20042-10/PN-WAIVER/PL-WAIVER-OAKLAND

EXHIBIT C

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

PUBLIC NOTICE

Public Hearing For Abandoning A Public Street

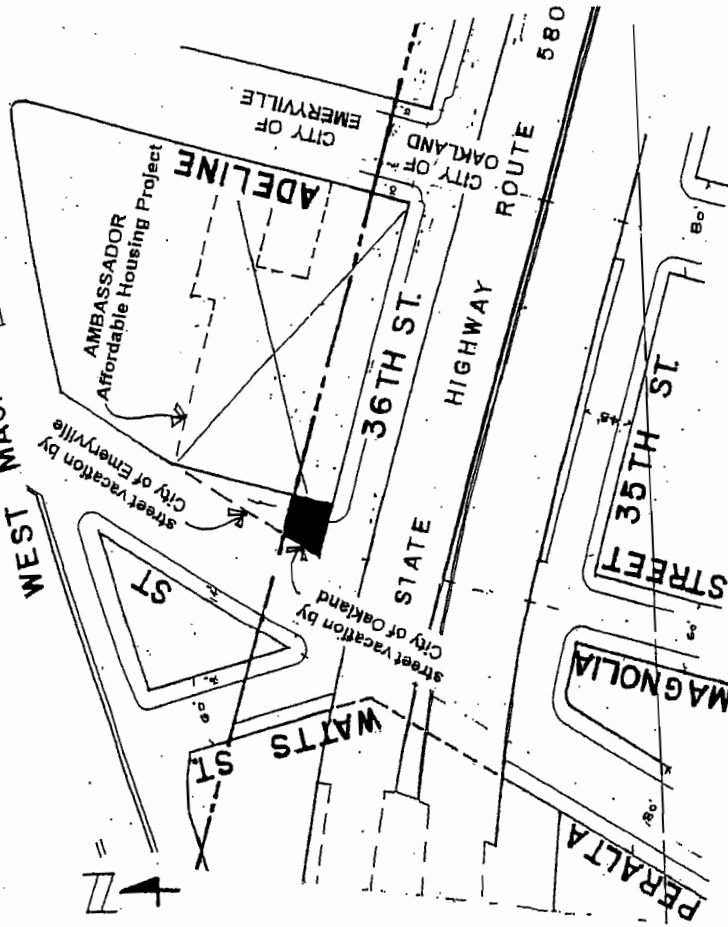
Pursuant to California Streets and Highways Code section 8320 et seq., the Council of the City of Oakland will hold a public hearing in the Chamber of the City Council, Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on June 15, 2010, beginning at 5:30 p.m., local time, 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.

EXHIBIT C

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

PUBLIC NOTICE

WEST MACARTHUR BLVD.



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, 1980, 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**

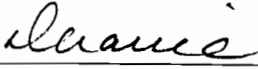
Pursuant to California Streets and Highways Code Section 8322, I hereby certify that the following public notifications did occur on the dates and times and at the locations and for the durations indicated below:

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