

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 MAY 29 PM 3:02

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 10, 2008

RE: **A Report And A Resolution Adopting Findings And Setting A Hearing To Receive Supporting Evidence On A Proposed Conditional Vacation Without Cost To Duke Energy Oakland LLC Of A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West For A Future Expansion And "Green" Modernization Of An Existing Electrical Power Generating Facility**

SUMMARY

A resolution has been prepared adopting findings and setting a hearing for the City Council to receive supporting evidence and public comments on a proposed conditional vacation to the abutting parcel owner, Duke Energy Oakland LLC (DEO), of a one (1) block section of Jefferson Street from its intersection with Embarcadero West to its westerly terminus at the Port of Oakland property line. The proposed vacation of the public right-of-way will provide necessary land area for a pending "green" modernization (installation of emission control equipment and conversion to natural gas) of the former Pacific Gas and Electric power generating plant. Access onto Port property is provided from Martin Luther King Jr. Way. The vacation is conditioned upon the completion by DEO of a Quiet Title court action within one (1) year and the issuance of building permits within two (2) years (a General Plan amendment may be required).

The process for vacating public right-of-way is prescribed by the California Streets and Highways Code (section 8300 et seq.). Staff has completed the public announcement requirements: site posting, newspaper publication, and utility company notifications. Three (3) meetings of the City Council are required to complete the vacation process. The first two (2) meetings are sequential on the same evening and will adopt specific findings by resolution and then receive public testimony for the initial reading of the proposed vacation ordinance, which staff has prepared in a companion report. The third meeting of the City Council will complete the final reading of the vacation ordinance. Staff recommends that the meetings be scheduled for the June 21 and July 15 agendas of the City Council.

FISCAL IMPACT

The staff costs for processing the proposed street vacation are covered by fees set by the Master Fee Schedule. The fees were paid by the applicant and deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The property owner owns the underlying fee interest in the public right-of-way and will acquire title of the vacated street without additional cost.

Item No. _____
Public Works Committee
June 10, 2008

KEY ISSUES AND IMPACTS

▪ **“Peaker Plant” Modernization**

The power plant was originally constructed by Pacific Gas and Electric in 1917 and was purchased by Duke Energy Oakland LLC, a Delaware corporation and California limited liability company (no. 199811210073), in 1998. The historic building (OCHS rating A1+) is a “peaker plant”, which generates electricity intermittently during high demand. The Port of Oakland supports the plant’s modernization and the vacation of Jefferson Street.

DEO is preparing an application to the California Public Utilities Commission to modernize the facility, which will include the installation of modern emissions control equipment, and to change from fuel oil to natural gas (or “biofuel”). DEO plans to begin construction in 2010 and complete the expansion and modernization by 2012. The City permitting process may include a General Plan amendment for removing the fuel oil tank and expanding the facility on the south side of Jefferson Street.

▪ **Public Benefit**

The land area required for the proposed “green” modernization, which will significantly reduce emissions of particulate matter and carbon, is dependent upon the incorporation of the vacated right-of-way. The City permitting process may include a General Plan amendment. In addition, 2,400 square feet of the vacated right-of-way will be added to the property tax rolls.

▪ **Project Infrastructure Requirements**

The property owner will construct sidewalk, curb, and gutter across the Jefferson Street intersection to close access from Embarcadero. The existing subsurface utilities (gas, water, sewer) in Jefferson Street only serve the power plant and will be relocated by the owner during the modernization.

▪ **Right-Of-Way Ownership**

Staff’s review of historical records, documents provided by the property owner’s title company, and subdivision law indicate that easements for public streets were dedicated by the subdivider to the City with the original subdivision in 1883. Ownership of the underlying fee simple interest in the right-of-way has devolved (laches) in the intervening years from the subdivider to the abutters (Code of Civil Procedure section 880 et seq.). Consequently, title for the vacated right-of-way easement will transfer to DEO without additional compensation to the City.

▪ **Determinations Required By State Statutes**

The California Streets and Highways Code requires that a local jurisdiction make the following determinations for a proposed vacation of right-of-way:

- ✓ the vacation will conform with the City’s adopted General Plan; and

- ✓ the vacated right-of-way will require dedication of a public easement for existing or future utility lines; and
- ✓ the public was notified by site postings and newspaper publications of two (2) sequential public meetings, one adopting specific findings and the second receiving public comments for the proposed vacation; and
- ✓ the vacation will not impact current or future access for non-motorized transportation; and
- ✓ the vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety.

The California Public Resources Code further requires that a local jurisdiction determine that a project complies with the requirements of the California Environmental Quality Act (CEQA). Vacation of public right-of-way is categorically exempted.

▪ **Conditions Of Vacation**

Staff is recommending that the vacation be conditioned upon the following:

- ✓ dedication to the City of a public utility easement (Government Code section 7050) within one (1) year; and
- ✓ completion by DEO of a Quiet Title court action (Code of Civil Procedure section 760 et seq.) within one (1) year to conclude the extinguishment of potential claims from heirs of the original subdivider; and
- ✓ completion by DEO of a Parcel Map Waiver within one (1) year to adjust (or merge) the property lines of the abutting parcels; and
- ✓ issuance of building and infrastructure permits within two (2) years for the modernization of the power generating facilities; and
- ✓ final approval of building and infrastructure permits within two (2) years following issuance for the modernization of the power generating facilities.

SUSTAINABLE OPPORTUNITIES

Economic

The modernization project will provide opportunities for professional services and construction related jobs for the Oakland community.

Environmental

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

Social Equity

The modernization project will reduce the emissions of particulate matter which is primary contributor to respiratory health hazards for the public and the citizens of Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

Restorative sidewalk along Embarcadero West will conform with City requirements for handicapped accessibility.

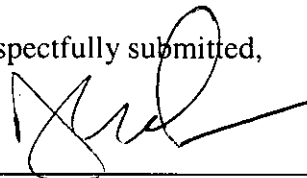
RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council for their scheduled meeting on June 17, 2008.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution adopting findings for the proposed conditional vacation and setting a hearing for the June 17, 2008, agenda of the City Council to receive supporting evidence and public comments on and complete the first reading for a proposed conditional vacation of a one (1) block section Jefferson Street from its intersection with Embarcadero West to its westerly terminus at the Port of Oakland property boundary without cost to the abutting parcel owner, Duke Energy Oakland LLC.

Respectfully submitted,



DAN LINDHEIM

Director

Community and Economic Development Agency

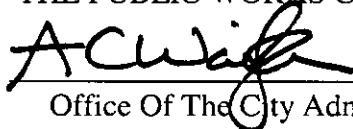
Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



Office Of The City Administrator

Item No. _____
Public Works Committee
June 10, 2008

Introduced by

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 29 PM 3:02
OAKLAND CITY COUNCIL

Approved for Form and Legality

Guan Jan
City Attorney

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 ONE (1) BLOCK SECTION OF JEFFERSON STREET WEST OF ITS INTERSECTION WITH EMBARCADERO WEST WITHOUT COST TO DUKE ENERGY OAKLAND LLC

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 17, 2008, beginning at 7:01 p.m. local time to adopt findings for a proposed ordinance conditionally vacating a one (1) block section of Jefferson Street between its intersection with Embarcadero West (formerly First Street) and its westerly terminus at the property boundary of the Port of Oakland to the owners of the northerly and southerly adjoining parcels, Duke Energy Oakland LLC, a Delaware Corporation and California limited liability company (no. 199811210073); and

WHEREAS, said meeting also set a hearing beginning at 7:02 p.m. 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 June 17, 2008, to receive supporting evidence and public comments on said proposed ordinance conditionally vacating said section of Jefferson Street; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8312 and 8355, Duke Energy Oakland LLC has previously filed an application (PPE08055) with the City Engineer of the City of Oakland requesting that the City vacate said section of Jefferson Street to them without valuable compensation to the City; and

WHEREAS, the metes and bounds establishing the length and width of said section of Jefferson Street proposed for vacation is delineated on the map entitled "Record of Survey Pacific Gas and Electric Company", recorded July 25, 1975, book 9 of maps, page 100, by the Alameda County Recorder, as shown on *Exhibit A* attached hereto; and

WHEREAS, said property owners acquired title to the northerly parcel (APN 0000-0410-007-00) and southerly parcel (APN 0000-0410-008-00) adjoining said section of Jefferson Street proposed for vacation through a grant deed from Pacific Gas and Electric, series no. 98235428, recorded July 6, 1998, by the Alameda County Clerk-Recorder; and

WHEREAS, the validity of the title of said northerly and southerly parcels adjoining said section of the public right-of-way of Jefferson Street proposed for vacation was conclusively established

against any future claim for legal or equitable right, title, estate, lien, or interest, or other cloud thereon through a Judgment Quieting Title, issued by the Superior Court of Alameda County, recorded November 10, 1910, book 1841 of deeds, page 63, by the Alameda County Recorder, in favor of Pacific Gas and Electric, a California Corporation; and

WHEREAS, title of property currently owned by the Port of Oakland adjoining the westerly terminus of Jefferson Street proposed for vacation was originally acquired by the City of Oakland through a grant deed, recorded February 2, 1915, in book 2330 of deeds, page 58, by the Alameda County Recorder; and

WHEREAS, the City Engineer has determined with reasonable certainty from a thorough examination of the available historical public records that the public right-of-way of Jefferson Street from its western terminus with the property boundary of the Port of Oakland was first used as a public street beginning at some time following the original division of the abutting and surrounding real properties, as shown on the map entitled "Map of Oakland and Vicinity Official Map by W. F. Boardman", recorded April 25, 1883, book 17 of maps, page 14, by the Alameda County Recorder; 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 interest of public right-of-way at the time of the 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 Duke Energy Oakland LLC owns the underlying fee interest in said section of the public right-of-way of Jefferson Street proposed for vacation; and

WHEREAS, said land area comprising the whole of the section of Jefferson Street proposed for vacation is necessary to accomplish an expansion and modernization of the existing power generating facility for the purpose of reducing the amounts of fossil fuel used to propel the electricity turbines and reducing the resulting products and components of combustion released into the environment, including the emissions of carbon, heat, and particulate matter detrimental to the health of the citizens of the City of Oakland; and

WHEREAS, said land area comprising the whole of the section of Jefferson 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

WHEREAS, said land area comprising the whole of the section of Jefferson Street proposed for vacation will be removed from the inventory of public streets maintained by the City of Oakland; and

WHEREAS, the Port of Oakland has installed permanent barricades at the westerly terminus of Jefferson Street across the full width of said public right-of-way to impede public access to its property and its terminal operations; and

WHEREAS, the Chief Engineer of the Port of Oakland, in his official capacity, has determined that adequate access to its property and its terminal operations is currently provided from Martin Luther King Junior Way, which is one (1) block northerly of Jefferson Street; and

WHEREAS, the Chief Engineer of the Port of Oakland, in his official capacity, has further determined that the proposed vacation of said portion of Jefferson Street will not adversely impact current or future access to Port property and its terminal operations; and

WHEREAS, the public right-of-way of Jefferson Street easterly of its terminus at the property boundary of the Port of Oakland is wholly located within the corporate limits of the City Oakland; 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 B*, and an affidavit, attached as *Exhibit C*, confirming that the City Engineer completed the statutory requirements for notifying the public of the City's intention to vacate a portion of Jefferson 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 8348, the City Engineer has notified the serving public utilities his intention to recommend to the City Council that said section of Jefferson Street be vacated and that the dedication of a public service easement in the vacated public right-of-way to maintain, operate, replace, remove or renew the existing 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 Duke Energy Oakland LLC has agreed that it shall assume the responsibility, at its sole expense and to the satisfaction of the City Engineer, for relocating existing public utilities within said section of Jefferson Street proposed for vacation as may be necessary to accomplish said expansion and modernization of the existing power generating facility; and

WHEREAS, pursuant to California Streets and Highways Code Section 892, the City Engineer has further determined that the proposed vacation of said section Jefferson 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 map 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 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 Duke Energy Oakland LLC owns the underlying fee interest in the public right-of-way proposed to be vacated; and
- the proposed vacation is categorically exempted from the California Environmental Quality Act (CEQA); and
- the proposed vacation requires dedication by Duke Energy Oakland LLC of a public service easement for existing or future subsurface or above-surface 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 and pedestrian inconvenience nor decrease traffic and pedestrian safety; and be it
- the proposed vacation will benefit the public and the citizens 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; and be it

FURTHER RESOLVED; That the map attached hereto as *Exhibit A* does fully delineate the metes and bounds of the section of public right-of-way proposed for vacation; and be it

FURTHER RESOLVED; That Council of the City of Oakland will condition the vacation of said section of Jefferson Street to Duke Energy Oakland LLC 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 section of Jefferson Street to Duke

Energy Oakland LLC will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on June 17, 2008, at 7:02 p.m. local time.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

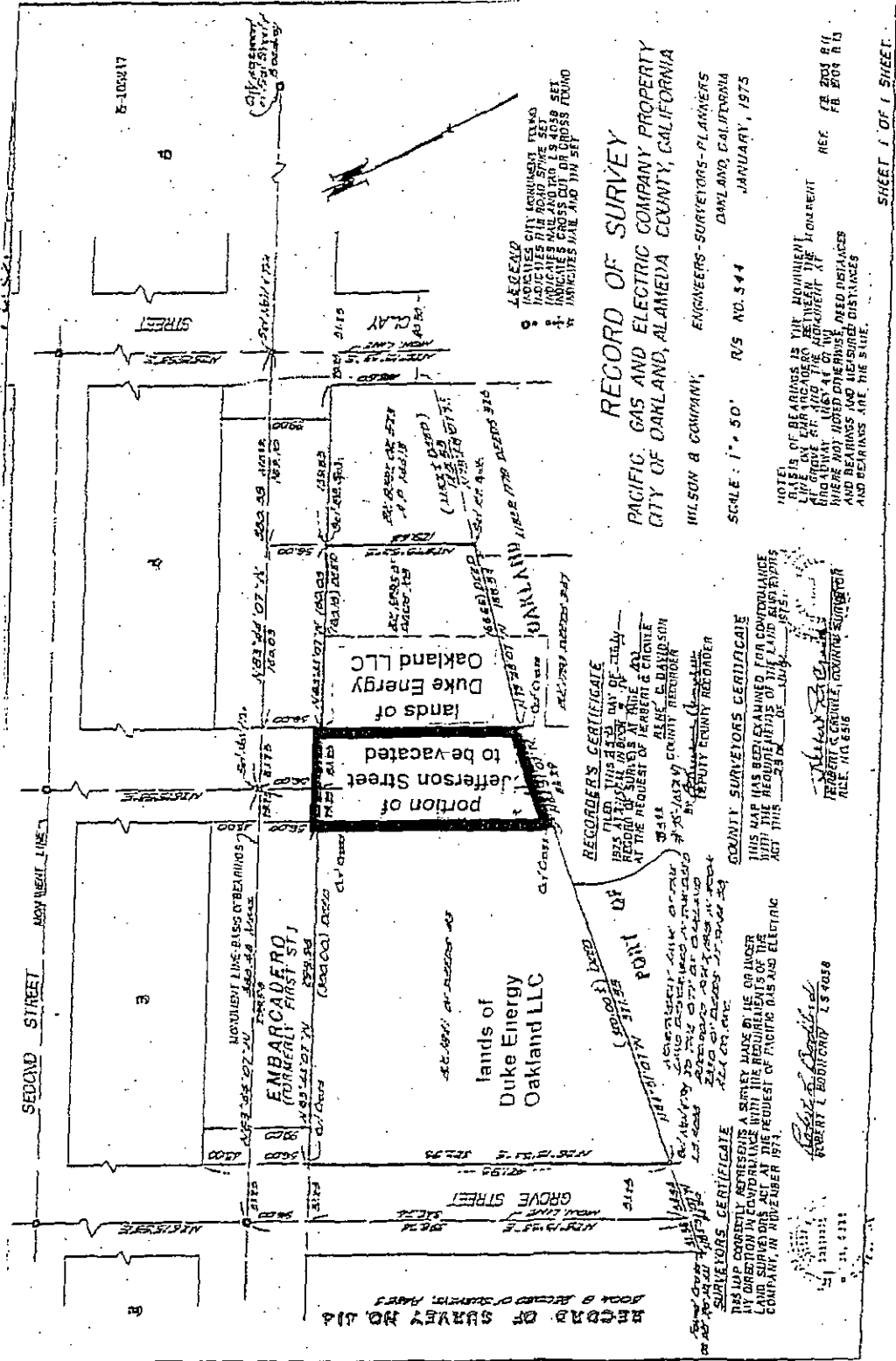
ABSTENTION -

ATTEST: _____

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

EXHIBIT A

Proposed Vacation Of A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West Without Cost To Duke Energy Oakland LLC

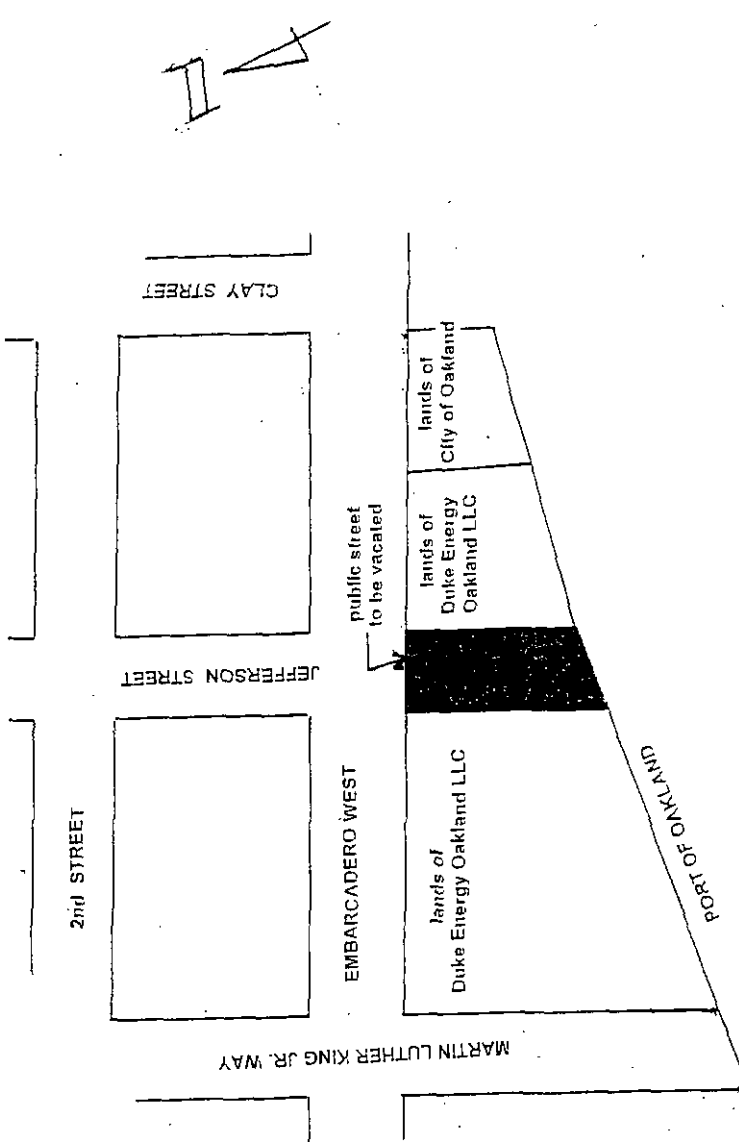


SHEET 1 OF 1 SHEET

EXHIBIT B

Public Notification Of A Public Hearing On A Proposed Vacation Of A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West Without Cost To Duke Energy Oakland LLC

PUBLIC NOTICE



2nd STREET

JEFFERSON STREET

CLAY STREET

EMBARCADERO WEST

lands of Duke Energy Oakland LLC

lands of Duke Energy Oakland LLC

lands of City of Oakland

PORT OF OAKLAND

public street to be vacated

MARTIN LUTHER KING JR. WAY

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 a one (1) block section the public right-of-way for Jefferson Street west of its intersection with Embarcadero West without cost to the adjoining property owner, Duke Energy Oakland LLC, for the purpose of modernizing an existing electrical power generating facility.

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 17, 2008, beginning at 7:02 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 B

Public Notification Of A Public Hearing On A Proposed Vacation Of A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West Without Cost To Duke Energy Oakland LLC

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 17, 2008, beginning at 7:02 p.m. local time, to receive supporting evidence and public comments for a proposed ordinance conditionally abandoning (vacating) the public right-of-way for a one (1) block section of Jefferson Street west of its intersection with Embarcadero West in the Jackson Square District without cost to the abutting property owner, Duke Energy Oakland LLC, for the purpose of modernizing an existing electrical power generating facility. A map fully delineating the proposed abandonment is available at the City of Oakland, Building Services Division, Dale Administration Building, Second Floor, 250 Frank H. Ogawa Plaza, Oakland, CA 94612.

The Oakland Tribune, #2786121
May 8, 15, 2008

Legal Notice

EXHIBIT C

Affidavit Certifying Notifications Of A Public Hearing On A Proposed Vacation Of A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West Without Cost To Duke Energy Oakland LLC

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 3, 2008, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along Embarcadero West, Jefferson Street, and Martin Luther King Jr. Way, and have remained in place since then advising the public of a hearing on June 17, 2008, at 7:01 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 8, 2008, and May 15, 2008, advising the public of a hearing on June 17, 2008, at 7:02 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 one (1) block section of Jefferson Street between its intersection with Embarcadero West and its westerly terminus at the Port of Oakland without cost to Duke Energy Oakland LLC and further 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 June 3, 2008

by Derania

RAYMOND M. DERANIA

Interim City Engineer

Community and Economic Development Agency