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OAKLAND

Approved for Form and Legality

Councilmember

2005 DEC -1 PM 6:45

F. Faiz

City Attorney

OAKLAND CITY COUNCIL
79626

Resolution No. _____ C.M.S.

**RESOLUTION ADOPTING FINDINGS AND SETTING A HEARING TO RECEIVE
SUPPORTING EVIDENCE AND PUBLIC COMMENTS ON A PROPOSED VACATION
TO THE PORT OF OAKLAND OF FERRO STREET FROM ITS INTERSECTION
WITH MIDDLE HARBOR ROAD TO ITS WESTERN TERMINUS**

Whereas, the Board of Port Commissioners of the Port of Oakland, in its official capacity, has previously determined that an expansion of the operations of the EMS marine terminal berths 60, 61, 62, and 63 in the Oakland Middle Harbor Area along the Oakland Inner Harbor is essential to maintain and enhance the efficiency and productivity of marine cargo operations, currently provided by American Presidents Lines; and

Whereas, the Board of Port Commissioners, in its official capacity, has further determined that these enhancements in marine cargo operations for the EMS terminal will generate increased long-term revenue for the Port of Oakland, the City of Oakland, and the surrounding region; and

Whereas, the Board of Port Commissioners, in its official capacity, has therefore proposed a reconfiguration of the EMS marine terminal and companion improvements to the real property that is landward of and contiguous to these berths; and

Whereas, in preparation for the proposed improvements, the Board of Port Commissioners, in its official capacity, has previously terminated business leases and demolished buildings that had fronted on and were accessed from Ferro Street; and

Whereas, in accordance with Section 713 of the Charter of the City of Oakland, the Board of Port Commissioners, in its official capacity, has previously determined that a vacation of Ferro Street by the City of Oakland is a necessary element and essential component of the improvements of real property for the proposed expansion of the marine cargo terminal operations; and

Whereas, the public right-of-way of Ferro Street from its intersection with Middle Harbor Road to its western terminus is wholly located within the boundaries of the Port Area of the City of Oakland; and

Whereas, in accordance with California Streets and Highways Code Sections 8312 and 8355, the Board of Port Commissioners, in its official capacity, has requested that the City vacate Ferro Street from its intersection with Middle Harbor Road to its western terminus; and

Whereas, the Community and Economic Development Agency (CEDA) of the City of Oakland has determined with reasonable certainty from a thorough examination of the available historical public records that the public right-of-way of Ferro Street from its intersection with Middle Harbor Road to its western terminus was first used as a public street beginning at some time following the original division of the abutting real properties as shown on the Plats B & C Partition Deed prepared by Joseph K. Irving and on Whitcher's Official Map of Oakland, circa 1860 and 1880; and

Whereas, CEDA has 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, CEDA has therefore determined with reasonable certainty that the abutting property owner, the Port of Oakland, owns the underlying fee interest in the public right-of-way of Ferro Street; and

Whereas, in accordance with Section 15301 of the California Environmental Quality Act Guidelines, CEDA has determined that the vacation of these public rights-of-way is categorically exempted from the California Environmental Quality Act; and

Whereas, in accordance with California Streets and Highways Code Sections 8317, 8322, and 8323, facsimiles of the newspaper publication and public posting and an affidavit are attached as Exhibit C confirming that CEDA has completed the statutory requirements for notifying the public of the City's intention to vacate portions of these public rights-of-way and of the public hearing to receive supporting evidence and public comments for the proposed vacation; and

Whereas, in accordance with California Streets and Highways Code Section 8313 and Government Code Section 65402, the Board of Port Commissioners, acting in its official capacity, 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 Port's adopted General Plan; and

Whereas, previous structure demolitions by the Port of Oakland have obviated the need for continued supply of potable water in the area of the proposed expanded terminal operations from the existing East Bay Municipal Utility District pipeline buried within Ferro Street; and

Whereas, in accordance with California Streets and Highways Code Section 8348, the Port of Oakland has notified the serving public utilities and the City of Oakland Public Works Agency of its desire that Ferro Street be vacated, and CEDA has determined from the responses that dedication of public service easements in the vacated public right-of-way to maintain, operate, replace, remove or renew the existing works is not required for public convenience and necessity for potable water service nor for public sanitary sewer service; and

Whereas, in accordance with California Streets and Highways Code Section 8348, CEDA has determined and the Port of Oakland has agreed that the Port shall assume the responsibility at its sole expense for the maintenance, repair, and replacement in perpetuity of public storm water piping buried within Ferro Street; and

Whereas, in accordance with California Streets and Highways Code Section 8348, CEDA has further determined and the Port of Oakland has further agreed that the Port shall remove from Ferro Street at its sole expense buried public potable water piping currently owned and maintained by the East Bay Municipal Utility District and sanitary sewer piping currently owned and maintained by the City of Oakland; and

Whereas, in accordance with California Streets and Highways Code Section 8348, CEDA has further determined that an agreement among the Port of Oakland, the United States Navy, and the Pacific Gas and Electric Company (PG&E), in accordance with its existing public utility franchise rights, requires that PG&E retain a public service easement within Ferro Street for existing buried electrical power cables that connect PG&E's substation C near Jack London Square with the Port's Davis substation; and

Whereas, pursuant to California Streets and Highways Code Section 892, CEDA has further determined that vacation of portions of the public rights-of-way 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 or text describing metes and bounds may be used to establish the extent and location of the public right-of-way to be vacated; 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 the Port of Oakland owns the underlying fee interest in Ferro Street; and be it

Further Resolved, that a map and a textural description attached hereto as Exhibit A does fully describe and delineate the public right-of-way proposed for vacation; and be it

Further Resolved, that the proposed vacation of Ferro Street conforms with the General Plan adopted by the Board of Port Commissioners of the Port of Oakland; and be it

Further Resolved, that in accordance with Section 15301 of the California Environmental Quality Act Guidelines, the proposed vacation of Ferro Street is categorically exempted from the requirements of the California Environmental Quality Act (CEQA); and be it

Further Resolved, that the retention of a public service easement within the public right-of-way proposed for vacation to maintain, operate, replace, remove or renew existing buried electrical power cables owned and maintained by the Pacific Gas and Electric Company is required for public convenience or necessity; and be it

Further Resolved, that the proposed vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety, and be it

Further Resolved, that the City Council of the City of Oakland may condition the vacation of Ferro Street, by terms set forth in an ordinance of vacation, for the maintenance, repair, and replacement by the Port of Oakland at its sole expense of the existing buried public storm water piping currently maintained by the City of Oakland; and be it

Further Resolved, that the City Council of the City of Oakland may further condition the vacation of Ferro Street to the Port of Oakland, by terms set forth in an ordinance of vacation, for the removal and termination by the Port of Oakland at its sole expense to buried public sanitary sewer and potable water piping to the satisfaction of the City Engineer of the City of Oakland and the East Bay Municipal Utility District; and be it

Further Resolved, that the proposed vacation the public right-of-way does not limit public use of or impede public access for non-motorized transportation; and be it

Further Resolved, that the statutory requirements for conspicuous site posting of the proposed vacation and newspaper publication of the pending public hearing of the proposed vacation have been completed, as evidenced by the attached Exhibits B and C; and be it

Further Resolved, that a hearing to receive supporting evidence and public comments for a proposed ordinance that would conditionally vacate Ferro Street to the Port of Oakland will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on January 17, 2006, at 7:01 p.m. local time.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 20 2005, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES - 0

ABSENT - 0

ABSTENTION 0


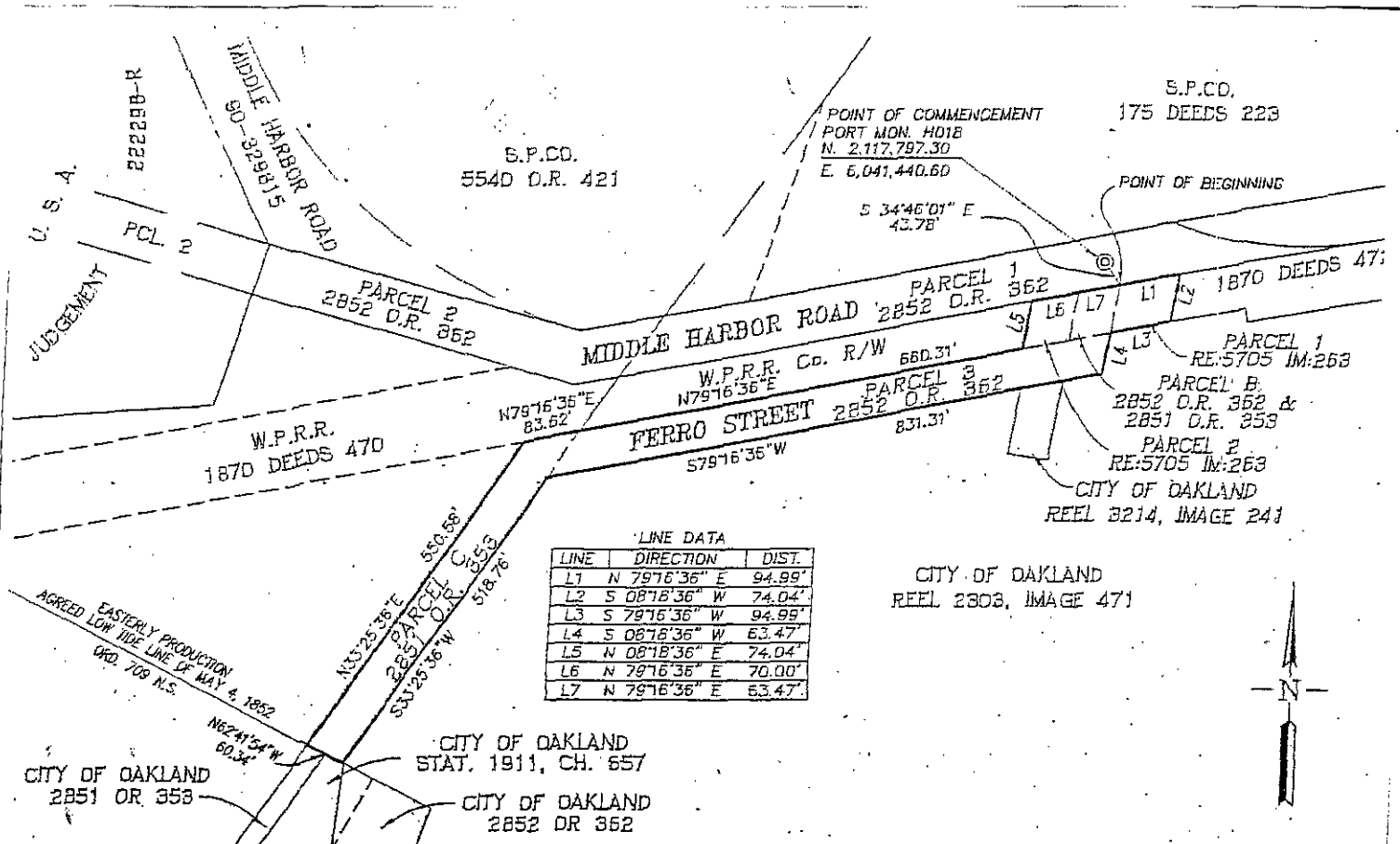
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Location And Limits Of The Proposed Vacation Of Ferro Street



NOTE:
 BEARINGS AND DISTANCES ARE BASED UPON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE III. ALL DISTANCES ARE GRID. MULTIPLY HEREON SHOWN DISTANCES BY 1.0000708 TO OBTAIN GROUND DISTANCES.

PORT OF OAKLAND
 LAND SURVEYS AND MAPPING
 530 Water Street
 Oakland, California

PLAT TO ACCOMPANY LEGAL DESCRIPTION
STREET VACATION
FERRO STREET

DRAWN BY: JRM	Field Bk
CHECKED BY: ()	Wrk. Ord: 019713
SCALE: 1" = 200'	Data File
DATE: 10/25/96	Revision: 3
SHEET 1 OF 1	Rev. date: 8/2/99
DRAWING FILE: FERROVAC.DWG	
FILE LOC.: ..\TRANSBAY\019713\JRM\	

Exhibit B

An Affidavit Certifying Public Notifications Of A Public Hearing On Proposed Vacation Of Ferro Street

Pursuant to California Streets and Highways Code Section 8320, I hereby certify that the following public notification did occur before the date and time and at the locations indicated below:

Site Posting

The attached placard was affixed before December 13, 2005, to City street light poles in the public right-of-way at intervals not exceeding 300 feet on Ferro Street and have remained in place since then advising the public of a hearing on December 20, 2005, at 7:01 p.m., 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 schedule a meeting on January 17, 2006, at the same time and same location to receive evidence and public testimony on the proposed vacation of portions of the public rights-of-way delineated on the placard.

Newspaper Publication

The attached notice was published in twice in the *Oakland Tribune* not less than two weeks before December 13, 2005, advising the public of a hearing on January 17, 2006, at 7:01 p.m., 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 schedule a meeting on January 17, 2006, at the same time and same location to receive evidence and public testimony on the proposed vacation of portions of the public rights-of-way and further advising the public that a map delineating the portions of the rights-of-way proposed for vacation is available at the Building Services counter on the second floor of the Dalziel Administration building, 250 Frank H. Ogawa Plaza.

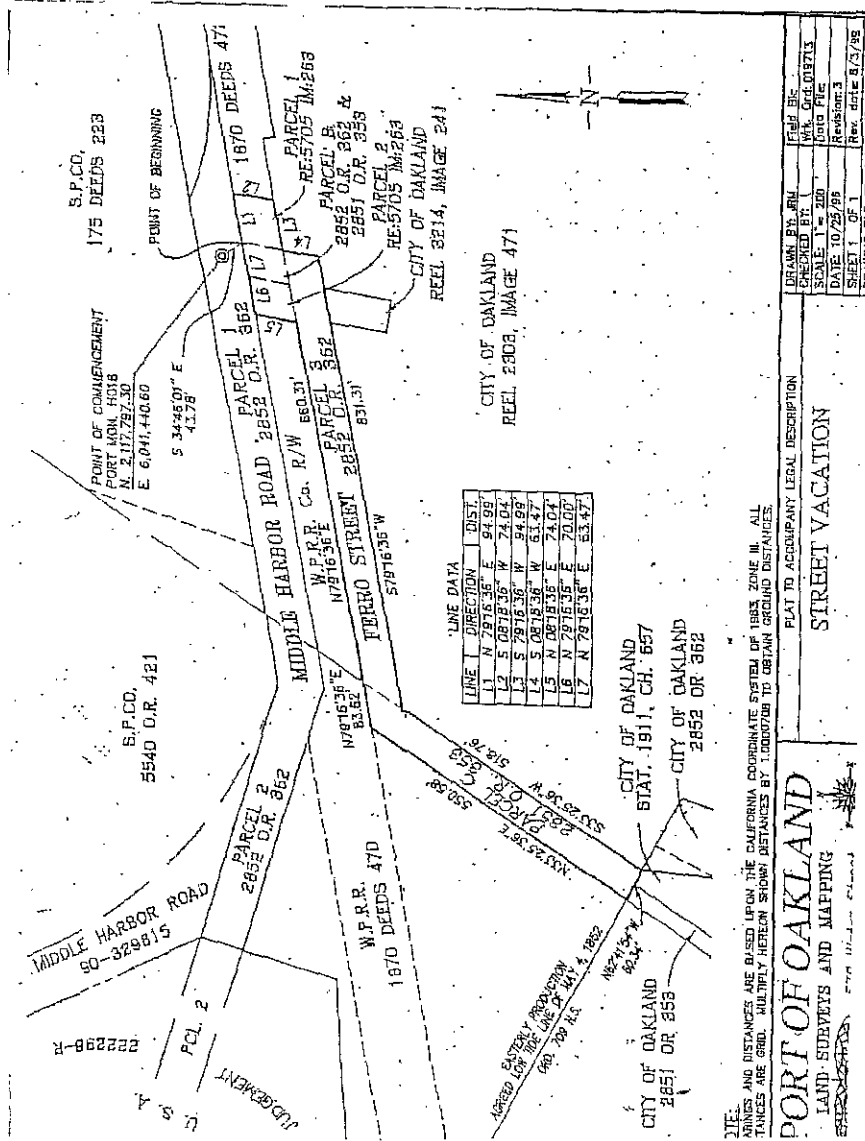
by RM Derania

RAYMOND M. DERANIA
Interim City Engineer
Community and Economic Development Agency

Exhibit C

Public Notifications Of A Public Hearing On A Proposed Vacation Of Ferro Street

PUBLIC NOTICE



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 to the Port of Oakland the public right-of-way for Ferro Street between its intersection with Middle Harbor Road and its westerly terminus for the purpose of expanding containerized marine cargo operations.

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 January 17, 2006, at 7:01 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 C

Public Notifications Of A Public Hearing On A Proposed Vacation Of Ferro Street

PUBLIC NOTICE

PUBLIC HEARING FOR VACATION OF A PUBLIC STREET

Pursuant to California Streets and Highways Code section 8320 eq 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 January 17, 2006, at 7:01 p.m. local time to receive evidence supporting and public comments for a proposed ordinance vacating to the to the Port of Oakland the public right-of-way for Ferro Street between its intersection with Middle Harbor Road and its westerly terminus for the purpose of expanding containerized marine cargo operations. A map fully delineating the proposed vacations is available at the City of Oakland, Building Services Division, Dalziel Administration Building, Second Floor, 250 Frank H. Ogawa Plaza, Oakland, CA 94612.

The Oakland Tribune, #579617
October 31;
November 7, 2005