

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 13, 2006

2006 JUN - 1 PM 12: 45

RE: **A Report And Resolution Granting Peralta Street LLC A Revocable And Conditional Permit To Allow Vaults And Electrical Transformers For New Buildings At 2847 Peralta Street To Encroach Under The Sidewalk Along Hannah Street and Peralta Street**

SUMMARY

A resolution has been prepared granting Peralta Street LLC a California limited liability company (no. 200516610132) and owner of the property at 2847 Peralta Street (APN 007-0589-018-02), a conditional and revocable permit (ENMJ 06154) that will allow concrete vaults with electrical transformers to encroach under the sidewalk along Hannah Street and Peralta Street.

FISCAL IMPACT

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

KEY ISSUES AND IMPACTS

The 1.7 acre site is bounded by Hannah Street, Peralta Street, and Helen Street and is being developed as a mixed-use residential project. The multiple story buildings will have 76 condominiums, 24 live/ work units, 38,155 square feet of commercial space, and 151 parking spaces. The Planning Commission approved a Major Conditional Use Permit and Design Review for the project on January 18, 2006 (CMD05476). A Tentative Parcel Map (TPM8837) and a site-grading permit (GR0600068) have been submitted for review.

The two below-sidewalk concrete vaults will be approximately 4.5 feet wide and 6 feet long and will encroach approximately 13 feet beyond the property line. The transformers, which will be maintained by Pacific Gas and Electric, will be accessed through removable covers set flush with the pedestrian walking surface. The subsurface encroachment will not interfere with the public's use of the right-of-way or the maintenance of underground public utilities.

SUSTAINABLE OPPORTUNITIES

Economic

The new mixed-use residential project will provide opportunities for professional services and construction related jobs for the Oakland community. An additional 38,000 square feet

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of commercial space will be added to the Oakland tax base and 100 housing units (new condominiums) will be added to the Oakland market.

Environmental

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

Social Equity

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

DISABILITY AND SENIOR CITIZEN ACCESS

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

RECOMMENDATIONS

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

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution approving a conditional and revocable encroachment permit for Peralta Street LLC to allow two electrical transformer vaults to encroach under the public sidewalk along Hannah Street and Peralta Street for new buildings at 2847 Peralta Street.

Respectfully submitted,



CLAUDIA CAPPIO

Development Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

Introduced by

OFFICE OF THE CLERK
CITY OF OAKLAND

Approved for Form and Legality

2006 JUN -1 PM 12:46

F. Fair

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S. _____

**A RESOLUTION GRANTING PERALTA STREET LLC A REVOCABLE AND
CONDITIONAL PERMIT TO ALLOW ELECTRICAL TRANSFORMER VAULTS FOR
NEW BUILDINGS AT 2847 PERALTA STREET TO ENCROACH UNDER THE PUBLIC
SIDEWALK ALONG HANNAH STREET AND PERALTA STREET**

WHEREAS, Peralta Street LLC ("Permittee"), a California limited liability company (no. 200516610132) and owner of the property described in a Grant Deed, recorded August 26, 2005, Series No. 2005367700, at the Office of the County Recorder, Alameda County, California, commonly known as 2847 Peralta Street (APN 007-0589-018-02) and more particularly described in Exhibit A attached hereto, has made application to the Council of the City of Oakland for a conditional encroachment permit (ENMJ06154) to allow the installation of two concrete vaults with electrical transformers under the public sidewalk along Hannah Street and Peralta Street; and

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

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

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

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

WHEREAS, 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 Guideline Section 15332 (Class 32: Infill Projects) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED, that the encroachment permit, as conditioned herein, does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED, that the encroachment, as conditioned herein and delineated in Exhibits B and C, is hereby granted for a revocable permit to allow the installation of two concrete vaults with electrical transformer under the public sidewalk along Hannah Street and Peralta Street for new buildings at 2847 Peralta Street; and be it

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

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

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

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

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

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

12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" ; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006.

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Exhibit A-1

Lands of Peralta Street LLC

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

PARCEL ONE:

Portion of Lot 11, Block N, Lands of the Peralta Homestead Assn., filed April 17, 1868, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, formerly Hellen Street, distant thereon southerly, 325 feet from the southern line of 32nd, formerly a street; running thence along said line of Helen Street southerly, 25 feet; thence at a right angle westerly, 133 feet; thence at a right angle northerly, 25 feet; and thence at a right angle easterly, 133 feet to the point of beginning.

PARCEL TWO:

A portion of Lots 11 and 12, in Block N, Map of the Lands of the Peralta Homestead Association, filed April 17, 1868, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, distant thereon southerly, 350.00 feet from the point of intersection thereof with the southern line of 32nd Street, as said streets are shown on said map; running thence southerly along said line of Helen Street, 100.00 feet; thence at a right angle westerly 133.00 feet to a point on the eastern line of parcel of land described in the Deed from Harmon L. Richards, to P.B.R. Properties, Inc., a California corporation, recorded May 6, 1959, in Book 9017 OR, Page 534; thence at a right angle northerly along the last named line, a distance of 100.00 feet; thence at a right angle easterly, 133.00 feet to the point of beginning.

PARCEL THREE:

Lot 4, and the northwestern 50 feet of Lot 3, in Block N, according to the Map of the Lands of the Peralta Homestead Assn., filed April 17, 1868, in Book 3 of Maps, Page 26, Alameda County Records.

PARCEL FOUR:

Portion of Lot 1, in Block "N" as said lot and block are shown on the "Map of the Lands of the Peralta Homestead Assn. Oakland, Alameda Co.," filed April 17, 1868, in Book 3 of Maps, at Page 26, in the office of the County Recorder of Alameda County, described as follows:

Beginning at the intersection of the eastern line of Hannah Street as shown on said map with the northwestern line of Peralta Street, as said street now exists 80 feet wide; and running thence along said line of Hannah Street northerly 141.71 feet thence at right angles easterly 133 feet; thence at right angles southerly 16.34 feet to said northwestern line of Peralta Street; and thence along said last named line southwesterly 182.77 feet to the point of beginning.

Exhibit A-2

Lands of Peralta Street LLC

Portion of Lots 12 and 13, in Block "N", as said lot and block are shown on the "Map of the lands of the Peralta Homestead Assn., Oakland, Alameda Co.," filed April 17, 1868, in Book 3 of Maps, at Page 26, Alameda County Records, described as follows:

Beginning at the intersection of the northwestern line of Peralta Street, 80 feet wide, with the western line of Helen St, formerly Horton Street, as said last named street is shown on said map; running thence along said line of Helen Street northerly 40 feet, more or less, to a point distant thereon southerly 450 feet from the southern line of 32nd Street, as said street is shown on said map; thence at right angles westerly 133 feet; thence at right angles southerly, along the last named line, 50 feet; thence at right angles easterly 61.90 feet to the northwestern corner of the tract of land described in the Deed by Luise Caddy to Joseph De Veere, dated June 21, 1920, recorded June 25, 1920, in Book 2943 of Deeds, at Page 192, Alameda County Records; thence southerly parallel with said line of Hellen Street, and the extension thereof, 59.09 feet to the said line of Peralta Street, thence along the last named line northeasterly 97.67 feet to the point of beginning.

PARCEL SIX:

Beginning at a point on the northwesterly line of Peralta Street, distant thereon southwesterly ninety-seven (97) feet, eight (8) inches from the point of intersection thereof with the southwesterly line of Helen or Horton Street; running thence southwesterly along said line of Peralta Street; ~~eighty-five and 11/100 (85.11) feet; thence northerly parallel with Hannah Street, one hundred sixteen (116) feet, nine (9) inches; thence at right angles easterly sixty-one and 90/100 and 90/100 (61.90) feet; thence southerly fifty-eight and 40/100 (58.40) feet and to the point of beginning.~~

Being a portion of Lot thirteen (13), in Block "N" as laid down and delineated upon that certain Map entitled, "Map of the Lands of the Peralta Homestead Assn., Oakland, Alameda County," filed April 17, 1868, in the office of the County Recorder of said Alameda County, said Block "N" being identical with Block Numbered 786, as per Boardman's Map of Oakland and Vicinity on file in the said County Recorder's Office.

PARCEL SEVEN:

Beginning at a point on the eastern line of Hannah Street, distant thereon southerly, 500 feet from the point of intersection thereof with the southern line of 32nd, formerly "A" Street; running thence southerly along said line of Hannah Street, 100 feet; thence at right angles easterly, 133 feet; thence at right angles northerly, 100 feet, thence at right angles, westerly 133 feet, to the point of beginning.

Being Lot No. 2, in Block Lettered "N", as said lot and block are delineated and so designated upon that certain map entitled, "Map of the Lands of the Peralta Homestead Assn., Oakland, Alameda County, surveyed April 4, 1868", etc., filed April 17, 1868, in the office of the County Recorder of said Alameda County, said Block "N" being identical with Block No. 786 as per

Exhibit A-3

Lands of Peralta Street LLC

PARCEL EIGHT:

Beginning at a point on the eastern line of Hannah Street distant thereon 286 feet, 8 inches, northerly from the northwestern line of Peralta Street (being that recognized prior to the widening of said Peralta Street) running thence northerly along the said eastern line of Hannah Street 50 feet; thence at right angles easterly 133 feet; thence at right angles southerly 50 feet; and thence at right angles westerly 133 feet to the point of beginning.

Being the southern 1/2 of Lot 3, in Block "N" as said lot and block are shown on the "Map of the Lands of Peralta Homestead Assn." filed April 17, 1868, in Book 3 of Maps, at Page 26, Alameda County Records.

PARCEL NINE:

A portion of Lot 11, Block N, Map of the Lands of the Peralta Homestead Association, filed April 17, 1968, Map Book 3, Page 26, Alameda County Records, described as follows:

Beginning at a point on the western line of Helen Street, formerly Horton Street, distant thereon southerly, 300 feet from the intersection thereof with the southern line of 32nd Street, formerly "A" Street, thence southerly along said line of Helen Street, 25 feet, thence westerly, parallel with said line of 32nd Street, 133 feet; thence northerly, parallel with said line of Helen Street, 25 feet, and thence easterly, parallel with said line of 32nd Street, 133 feet to the point of beginning.

Exhibit B

Locations of Electrical Transformer Vaults

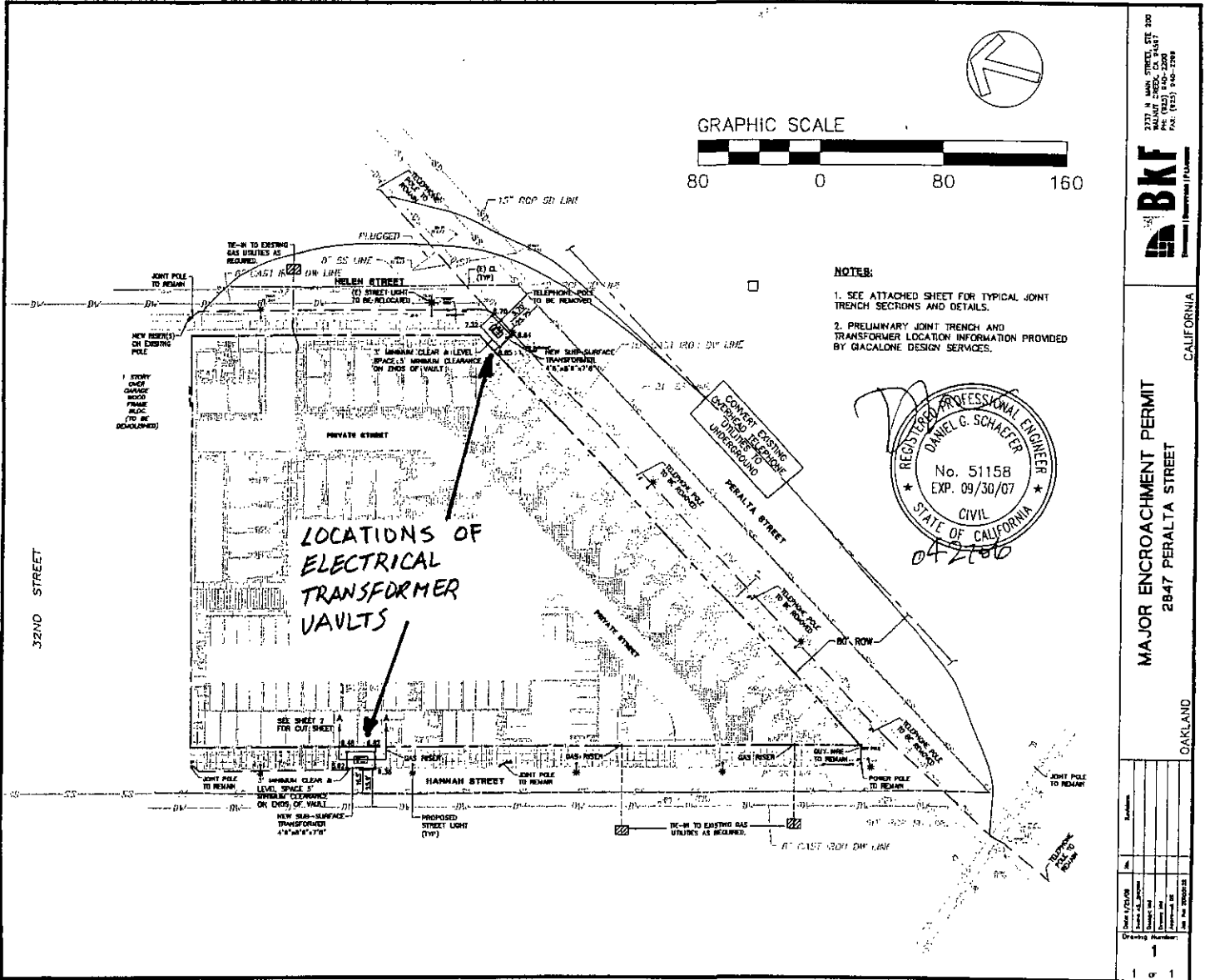


Exhibit C

Isometric View of Electrical Transformer Vaults

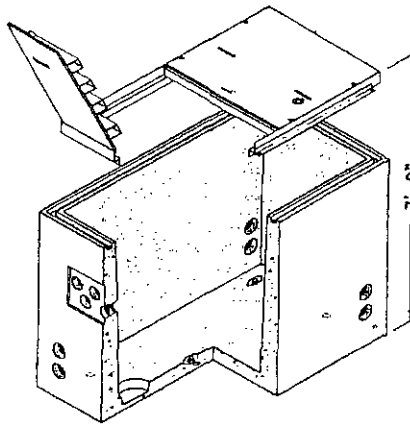
4'-6" x 8'-6" x 6'-0"

PRECAST CONCRETE VAULTS w/ INCIDENTAL TRAFFIC COVERS

**4'-6" x 8'-6" x 6'-0" I.D.
INCIDENTAL SPLICE ENCLOSURE
CODE No. : 04-3411**

ASSEMBLY INCLUDES:

- * 4'-6" x 8'-6" x 6'-0" I.D. VAULT
CODE No. 04-3376
- * 4'-6" x 8'-6" (NOM) INCIDENTAL
QUICK RELEASE, SLIP RESISTANT,
ALUMINUM PLATE,
SPLICE COVER ASSEMBLY
CODE No. 03-1831



**4'-6" x 8'-6" x 6'-6" I.D.
INCIDENTAL SPLICE ENCLOSURE
CODE No. : 08-0325**

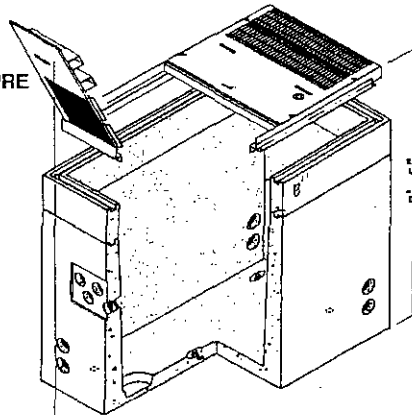
ASSEMBLY INCLUDES:

- * SAME AS ABOVE WITH A
4'-6" x 8'-6" x 0'-6" I.D. RISER
CODE No. 04-3197

**4'-6" x 8'-6" x 7'-6" I.D.
INCIDENTAL TRANSFORMER ENCLOSURE
CODE No. : 04-3371**

ASSEMBLY INCLUDES:

- * 4'-6" x 8'-6" x 6'-0" I.D. VAULT
CODE No. 04-3376
- * 4'-6" x 8'-6" x 1'-8" I.D. RISER
CODE No. 04-3377
- * 4'-6" x 8'-6" (NOM) INCIDENTAL
QUICK RELEASE, SLIP RESISTANT,
ALUMINUM PLATE, & EPOXY
COATED GRATE
TRANSFORMER COVER ASSEMBLY
CODE No. 03-1830



UTILITY VAULT

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DRAWING MAY NOT CONFORM TO THE MOST CURRENT SPECIFICATION