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Approved for Form and Legality



Office of the City Attorney

Councilmember

OAKLAND CITY COUNCIL

Ordinance No. 13294 - C.M.S.

AN ORDINANCE VACATING TO THE CITY OF OAKLAND A PORTION OF THE PUBLIC RIGHT-OF-WAY OF THOMAS BERKLEY WAY (FORMERLY KNOWN AS 20TH STREET) FROM ITS INTERSECTION AT HARRISON STREET TO ITS INTERSECTION WITH LAKESIDE DRIVE

WHEREAS, the City of Oakland, a California municipal corporation, is the owner of the public right of way known as Thomas Berkley Way between its intersection with Harrison Street and its intersection with Lakeside Drive; and

WHEREAS, pursuant to California Streets & Highways Code section 8320, the City has filed an application (PPE1400052) to the City Engineer of the City of Oakland to initiate a proceeding to vacate the public right-of-way of said segment of Thomas Berkley Way to facilitate construction of the Lakeside Green Streets Project; and

WHEREAS, the City is also the owner of real property abutting said portion of Thomas Berkley Way proposed for vacation (commonly known as 274 19th Street), supports the reconfiguration of the Harrison Street, Thomas Berkeley Way, and Lakeside Drive intersection, and agrees to exercise its presumed right and accept without cost the portion of Thomas Berkley Way proposed for vacation; and

WHEREAS, as described in a separate companion Resolution, and based on all the evidence submitted, the Council of the City of Oakland hereby makes the following statutory findings:

- that the Council of the City of Oakland may adopt terms of performance by an abutting property owner that condition the vacation; and
- that both the City Planning Commission and the City Council have determined that the location, purpose and extent of the proposed vacation conform 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 City of Oakland owns the underlying fee simple interest in both the portion of Thomas Berkley Way proposed to be vacated, and the parcel abutting that portion of Thomas Berkley Way proposed to be vacated; and
- that the proposed vacation will reserve, and except from the vacation, a public service easement to maintain, operate, replace, remove, or renew public utility facilities; and
- that the proposed vacation does not limit public use or impede public access for non-motorized transportation; and
- that the proposed vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety; and
- that said vacation will benefit the public and the citizens of Oakland with new, safer access routes to Lake Merritt and will increase the current size of Snow Park; and

WHEREAS, the extent of the portion of Thomas Berkley Way proposed for vacation is shown in a schematic attached hereto as *Exhibit A* and is delineated in the metes and bounds attached hereto as shown in *Exhibit B*; and

WHEREAS, after a duly noticed public meeting on January 13, 2015, the Public Works Committee voted to recommend the proposal to the City Council; and

WHEREAS, pursuant to California Streets and Highways Code Section 8320 et seq., the City conducted a duly noticed public hearing on February 3, 2015, to receive evidence offered by interested members of the public, and to adopt findings to vacate a portion of the improved public right-of-way of Thomas Berkley Way between its intersection at Harrison Street and its intersection with Lakeside Drive to the abutting property owner, the City of Oakland; and

WHEREAS, pursuant to California Streets & Highways Code section 8324, the City Council may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until said conditions have been satisfied; and

WHEREAS, the proposed partial vacation of Thomas Berkley Way relies on the previously certified Final Environmental Impact Report for the Measure DD Implementation Project (Resolution No. 81180 C.M.S., adopted April 1, 2008) (“EIR”); and

WHEREAS, the EIR provides analysis of the environmental impacts of the proposed partial vacation of Thomas Berkley Way and supports all levels of approval necessary to implement the partial vacation; and

WHEREAS, the proposed partial vacation of Thomas Berkley Way would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the partial vacation that have not already been analyzed in the EIR; and

WHEREAS, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional

CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163 are present, in that (1) there are no substantial changes proposed to the project or the circumstances under which the project is undertaken that would result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the Measure DD EIR; and (2) there is no new information of substantial importance, as defined in CEQA Guidelines section 15162(a)(3); and

WHEREAS, as a separate and independent basis, the project is also exempt from CEQA review pursuant to CEQA Guidelines Section 15183, projects consistent with a community plan, general plan or zoning; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are an integral part of this Ordinance.

SECTION 2. The vacation of a portion of the public right of way of Thomas Berkley Way between its intersections at Harrison Street and Lakeside Drive, as delineated in the attached *Exhibit A*, without cost to the abutting property owner, the City of Oakland, complies with CEQA and is hereby ordered.

SECTION 3. This order of vacation does reserve, and except from the vacation, a public service easement to maintain, operate, replace, remove, or renew public utility facilities.

SECTION 4. Access to the vacated right-of-way by the general public may be controlled or prohibited by the City, subject to the final inspection approvals by the City Engineer and Fire Chief of the City of Oakland of infrastructure improvements for the construction of the reconfigured intersection of the Harrison Street and Lakeside Drive portions of the Thomas Berkley Way right-of-way by the City of Oakland.

SECTION 5. Pursuant to California Streets and Highways Code section 8325, this order of vacation shall not be complete unless and until this Ordinance has been filed for recording with the Alameda County Clerk-Recorder.

SECTION 6. Reconstruction of the reconfigured intersection shall be completed by the City of Oakland using Measure DD funding under the City's Capital Improvement Program.

SECTION 7. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 9. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 17 2015

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY -8

NOES - Ø

ABSENT - Ø

ABSTENTION - Ø

ATTEST *Latonda Simmons*
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION 2/19/15

Introduction Date
FEB 03 2015

EXHIBIT A
Schematic of the Thomas Berkley Way Vacation

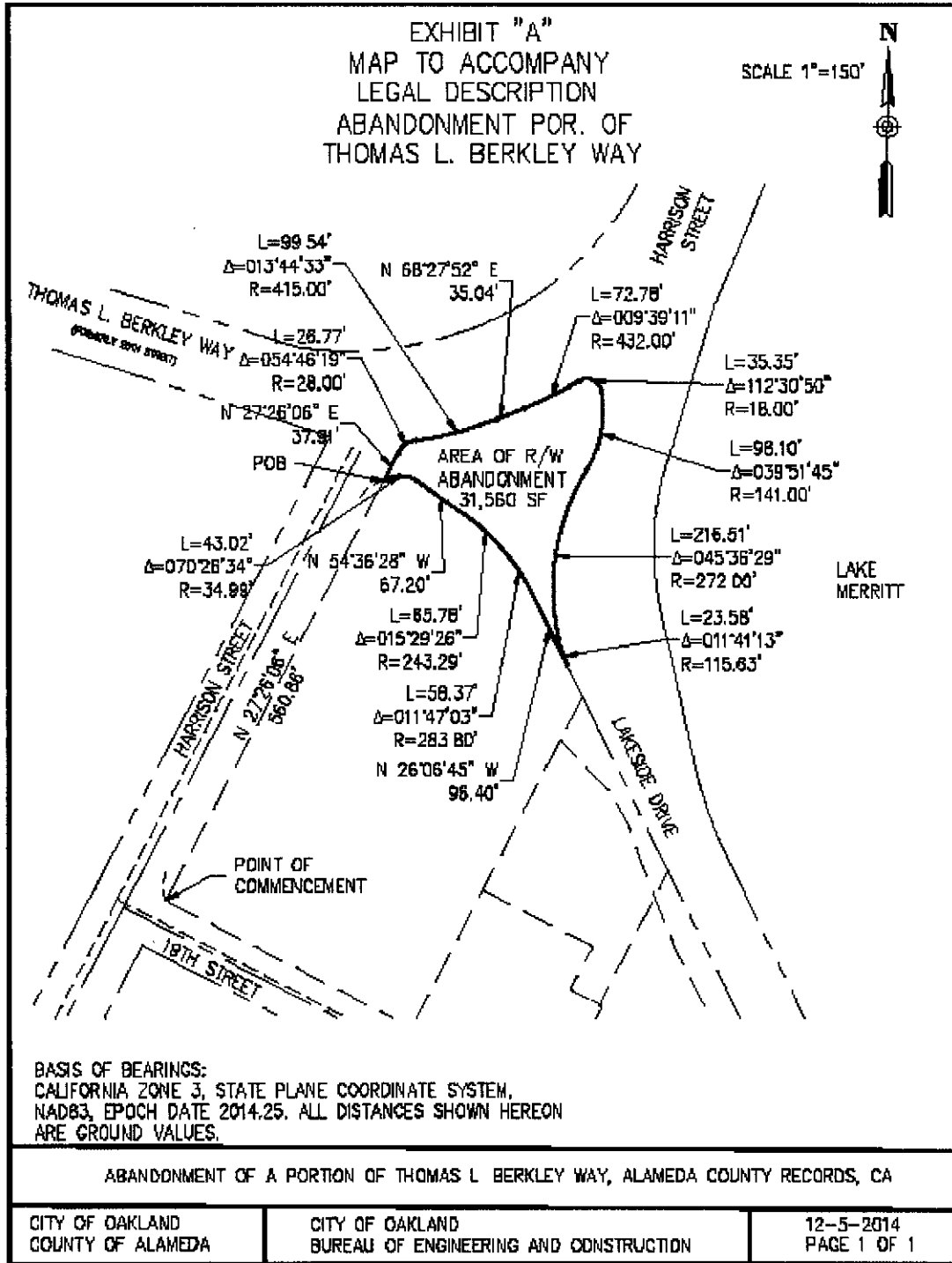


EXHIBIT B

Metes and Bounds of Thomas Berkley Way Vacation

All that certain real property situate within the "Map of Oakland and Vicinity, showing Plan of Streets as Established and Proposed Compiled from Official Surveys and Records of the County, as per W.F. Boardman City and County Surveyor", filed in Book 17 at Page 14, in the Office of the County Recorder of Alameda County, California on April 23rd, 1883, more particularly described as follows:

Commencing at the intersection of the northerly line of 19th Street with the easterly line of Harrison Street;

Thence along the easterly line of Harrison Street N 27°26'06" E, 560.86 feet, more or less to the southerly line of Lakeside Drive and the POINT OF BEGINNING;

Thence northerly along a projection of said easterly line of Harrison Street, N 27°26'06" E, 37.91 feet;

Thence departing said projection along a curve to the right, having a radius of 28.00 feet, through a central angle of 54°46'19" and an arc length of 26.77 feet;

Thence along a reverse curve to the left, having a radius of 415.00 feet, through a central angle of 13°44'33" and an arc length of 99.54;

Thence N 68°27'52" E, 35.04 feet;

Thence along a curve to the left, having a radius of 432.00 feet, through a central angle of 9°39'11" and an arc length of 72.78 feet;

Thence along a reverse curve to the right, having a radius of 18.00 feet, through a central angle of 112°30'50" and an arc length of 35.35 feet;

Thence along a compound curve to the right, having a radius of 141.00 feet, through a central angle of 39°51'45" and an arc length 98.10 feet;

Thence along a reverse curve to the left, having a radius of 272.00 feet, through a central angle of 45°36'29" and an arc length of 216.51 feet;

Thence along a compound curve to the left, having a radius of 115.63 feet, through a central angle of 11°41'13" and an arc length of 23.58 feet to a point of cusp with the southerly line of 20th Street;

Thence the following five (5) courses along the southerly line of 20th Street:

- 1) N 26°06'45" W, 96.40 feet;
- 2) Thence along a curve to the left, having a radius of 283.80 feet, through a central angle of 11°47'03" and an arc length of 58.37 feet;
- 3) Thence along a compound curve to the left, having a radius of 243.29 feet, through a central angle of 15°29'26" and an arc length of 65.78 feet;
- 4) Thence N 54°36'28" W, 67.20 feet;
- 5) Thence along a curve to the left, having a radius of 34.99 feet, through a central angle of 70°26'34" and an arc length of 43.02 feet to the Point of Beginning.

Containing an area of 31,560 Square Feet of land, more or less.

Basis of Bearings: California Zone 3, State Plane Coordinate System, NAD83 (NA2011)
Epoch Date 2014.25, based off of Leica Smartnet North America, using RTCM-Ref 3224. All distances shown hereon are ground values.

NOTICE AND DIGEST

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This ordinance would vacate the public right of way of a portion of Thomas Berkley Way between its intersection at Harrison Street to its intersection at Lakeside Drive and reserve public easements for existing and future utilities (natural gas, water, telecommunications, etc.). The vacation will allow the City Engineer to advertise for bids for the construction of the Lakeside Green Streets Project, thereby continuing implementation of Measure DD improvements at Lake Merritt.

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Notice of Publication

This Ordinance was introduced at the City Council meeting, Tuesday evening **February 3, 2015**, and passed to print **8 Ayes**. Final adoption has been scheduled for the City Council meeting Tuesday evening **February 17, 2015, 5:30 p.m.**, at One Frank H. Ogawa Plaza, Council Chambers, 3rd floor, Oakland, California.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st floor, Oakland, California.

LATONDA SIMMONS, City Clerk
OT #5412254; Feb. 14, 2015

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