

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
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 An Ordinance Conditionally Vacating A One (1) Block Section Of Jefferson Street West Of Its Intersection With Embarcadero West Without Cost To Duke Energy Oakland LLC For A Future Expansion And "Green" Modernization Of An Existing Electrical Power Generating Facility**

SUMMARY

An ordinance has been prepared conditionally vacating 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 to the abutting parcel owner, Duke Energy Oakland LLC (DEO). 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 abutting 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 17 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 in 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**

In the companion agenda report, staff recommended that the City Council adopt the proposed resolution of findings required by the California Streets and Highways Code and Public Resources Code for the following determinations:

- ✓ the vacation conforms with the City’s adopted General Plan; and
- ✓ the vacation requires dedication of a public easement for existing or future utility lines; and
- ✓ the public was notified by site postings and newspaper publications of two sequential public meetings, one adopting specific findings and the second receiving public comments for the proposed vacation; and
- ✓ the vacation does not impact current or future access for non-motorized transportation; and
- ✓ the vacation does not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety; and
- ✓ the vacation is categorically exempted from the California Environmental Quality Act (CEQA).

▪ **Conditions Of Vacation**

Staff recommends 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 the 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; and

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.

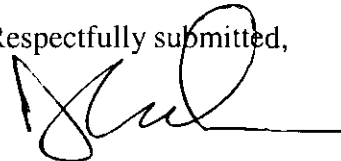
RECOMMENDATIONS

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 ordinance conditionally vacating 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

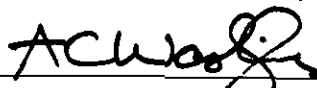
Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



Office Of The City Administrator

Introduced by

Councilmember

OFFICE OF THE CLERK
2008 MAY 29 PM 3:03

Approved for Form and Legality

Kiran Jain
City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE CONDITIONALLY VACATING 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 7:02 p.m. local time to receive supporting evidence and public comments 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 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, pursuant to the California Streets and Highways Code, California Government Code, and California Public Resources Code, the Council of the City of Oakland has previously made the following statutory determinations by Resolution:

- the Council of the City of Oakland may adopt terms of performance by the adjoining property owner that condition the vacation; 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 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

WHEREAS, the Port of Oakland, who is the owner of the property at the westerly terminus of Jefferson Street, has installed permanent barricades 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 section of Jefferson Street will not adversely impact current or future access to Port property and its terminal operations; and

WHEREAS, Duke Energy Oakland LLC has agreed, at its sole expense and to the satisfaction of the City Engineer of the City of Oakland, that it shall remove existing public infrastructure improvements within said vacated portion of Jefferson Street and install new and replacement public infrastructure improvements, including, but not limited to, sidewalk, curb, gutter, street lighting, storm water catchments, and roadway paving, across the full width of said vacated portion of Jefferson Street at its intersection with Embarcadero for the convenience of pedestrians and the conveyance of storm water to an adequate downstream facility; and

WHEREAS, Duke Energy Oakland LLC has further agreed, at its sole expense and to the satisfaction of the City Engineer, that it shall relocate, repair, replace, or remove existing publicly maintained utilities within said vacated portion of Jefferson Street, including, but not limited to, potable water piping, natural gas piping, sanitary sewer and storm water piping, and electrical and communications cabling; and

WHEREAS, a map delineating the metes and bounds of the extent and location of the proposed vacation of said section of Jefferson Street is attached hereto as *Exhibit A*; now, therefore,

The City Council Of The City Of Oakland Does Ordain As Follows:

1. The conditional vacation of a one (1) block section of Jefferson Street between its intersection with Embarcadero West and its westerly terminus with property owned by

Port of Oakland property, as delineated in the attached *Exhibit A*, without cost to Duke Energy Oakland LLC is hereby ordered.

2. This order of vacation shall except and exempt a ten (10) foot wide public service easement for the benefit of companies regulated by the California Public Utilities Commission and the City of Oakland and the East Bay Municipal Utility District to access, maintain, operate, replace, remove, or renew subsurface utilities and necessary appurtenances, which include, but are not limited to, potable water piping, natural gas piping, fuel oil piping, sanitary sewer and storm water piping, and electrical and communications cabling. Pursuant to California Government Code section 7050, the City Engineer of the City of Oakland is hereby authorized to accept a dedication of said utility easement on behalf of the City of Oakland and file said instrument for recordation with the Alameda County Clerk-Recorder; and
3. This order of vacation shall expire by limitation and become void should Duke Energy Oakland LLC, and its representatives, heirs, successors, and assigns, fail complete all of the following required actions within each of the time limitations set forth below:
 - a. within one (1) year following adoption of this ordinance, complete a Quiet Title action, pursuant to California Code of Civil Procedure section 760 et seq., for the acquisition of the underlying fee simple interest in the vacated section of the Jefferson Street public right-of-way; and
 - b. within one (1) year following adoption of this ordinance, file a complete application, pursuant to California Government Code section 7050, with the City Engineer and pay applicable fees for an irrevocable offer of a dedication of said public utility easement; and
 - c. within one (1) year following adoption of this ordinance, file a complete application with the Community and Economic Development Agency of the City of Oakland and pay applicable fees for a Parcel Map Waiver describing and delineating the relocation (or merger) of the property boundaries of the parcels adjoining the vacated section of Jefferson Street; and
 - d. within one (1) year following adoption of this ordinance, file a complete application with the Community and Economic Development Agency and pay applicable fees for required land use approvals for said modernization of the existing power generating facility; and
 - e. within two (2) years following adoption of this ordinance, file complete applications with the City Engineer and pay applicable fees and provide required security deposits for replacement and new public infrastructure improvements, which include, but are not limited to, potable water piping, natural gas piping, fuel oil piping, sanitary sewer and storm water piping, electrical and communications cabling, sidewalk, curb, gutter, storm water catchments, roadway paving, and street lighting, at the sole expense of Duke Energy Oakland LLC; and
 - f. within two (2) years following adoption of this ordinance, file complete applications with the Building Official and pay applicable fees and provide required security deposits for required building for said modernization of the existing power generating facility; and

- g. within four (4) years following adoption of this ordinance, obtain final approvals from the Building Official and the City Engineer for said required building and infrastructure permits for said modernization of the existing power generating facility.
4. By the acceptance of the vacated section of the Jefferson Street public right-of-way, Duke Energy Oakland LLC acknowledges each of and agrees to all of the following:
- a. that Duke Energy Oakland LLC shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out said vacation and regardless of responsibility for negligence; and
 - b. that the City of Oakland makes no representations or warranties as to the conditions beneath said vacated section of the public right-of-way; and that by accepting this vacation, Duke Energy Oakland LLC agrees that it will use the vacated area in the future at its own risk; and
 - c. that the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and Duke Energy Oakland LLC hereby waives and fully releases and forever discharges the City of Oakland and its officers, officials, representatives, 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
 - d. that Duke Energy Oakland LLC 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

- e. that Duke Energy Oakland LLC recognizes 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 accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
 - f. that Duke Energy Oakland LLC shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements located within the vacated public right-of-way, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary sewer piping, and storm water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission.
5. The hereinabove conditions shall be binding upon said property owner and its representatives, heirs, successors, and assigns and the successive owners of said vacated right-of-way and assigns thereof of said vacated section of the public right-of-way.
6. Pursuant to California Streets and Highways Code Section 8336, this order of vacation shall not be complete unless and until this Ordinance has been filed with and recorded by the Alameda County Clerk-Recorder.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

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

NOES -

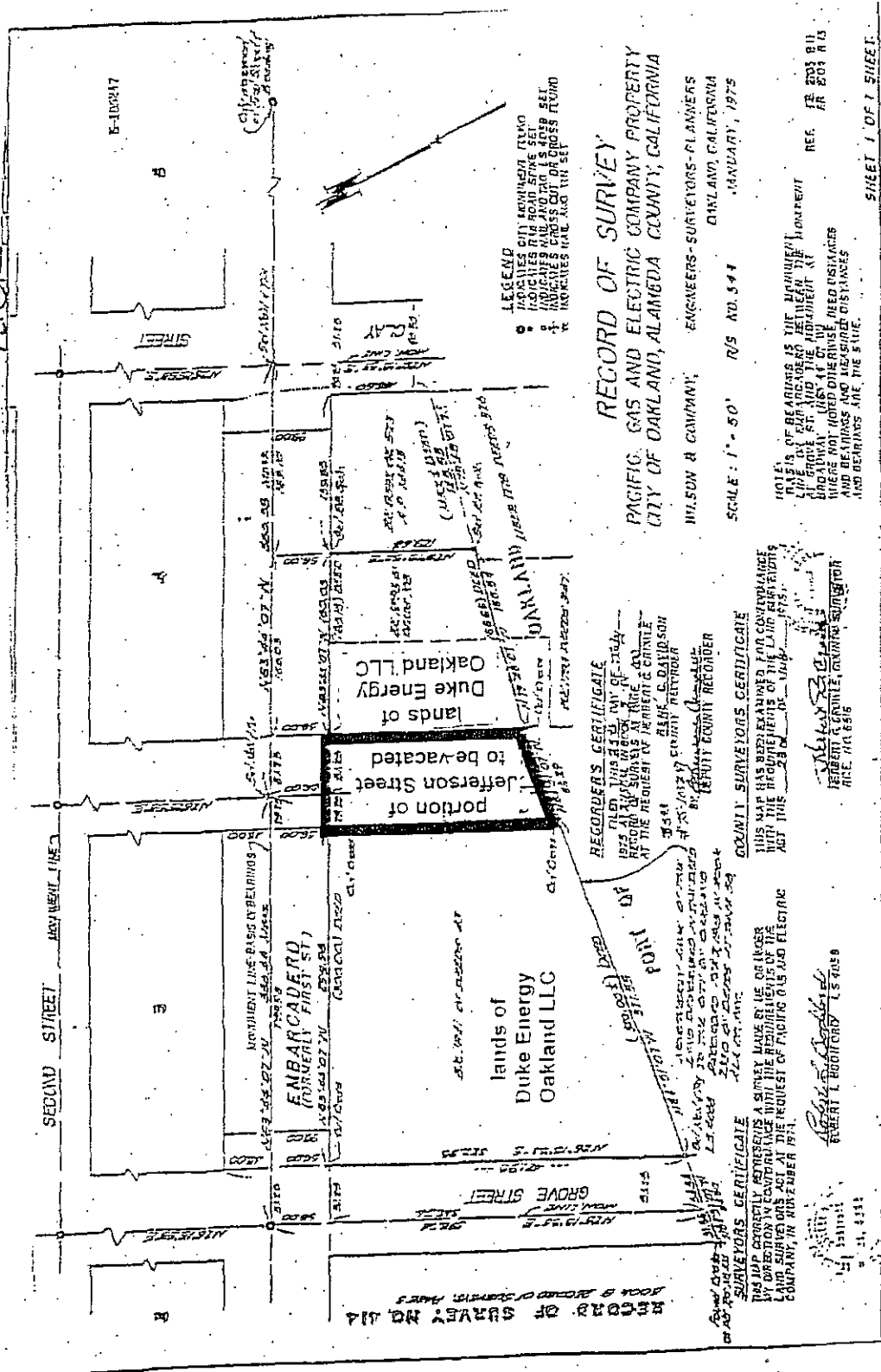
ABSENT -

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



LEGEND
 ○ MONUMENTS
 — MONUMENTS IN ROAD LINE SET
 — MONUMENTS IN ADJACENT ROAD LINE SET
 — MONUMENTS IN ADJACENT ROAD LINE SET
 — MONUMENTS IN ADJACENT ROAD LINE SET

RECORD OF SURVEY
 PACIFIC GAS AND ELECTRIC COMPANY PROPERTY
 CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA
 WILSON & COMPANY, ENGINEERS-SURVEYORS-PLANNERS
 OAKLAND, CALIFORNIA
 JANUARY, 1979
 SCALE: 1" = 50' R/S NO. 544

NOTES: OF BEARINGS IS THE MONUMENT
 LINE BY CHANGING THE MONUMENT
 AT GROVE ST. AND THE MONUMENT AT
 JEFFERSON ST. (SEE CITY RECORDS)
 WHERE NOT INDICATED THE BEARINGS
 AND DISTANCES ARE THE SAME.

SHEET 1 OF 1 SHEET.

RECORDERS CERTIFICATE
 I HEREBY CERTIFY THAT THIS SURVEY WAS MADE AND THE RECORDS THEREOF FILED AT THE REQUEST OF WILSON & COMPANY, ENGINEERS-SURVEYORS-PLANNERS, OAKLAND, CALIFORNIA, ON JANUARY 19, 1979.

ALBERT L. BOGARDY, COUNTY RECORDER

COUNTY SURVEYORS CERTIFICATE

THIS MAP HAS BEEN EXAMINED FOR CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYORS ACT AND THE REGULATIONS THEREUNDER AND IS CORRECT AND ACCURATE.

ROBERT L. BOGARDY, COUNTY SURVEYOR

ALBERT L. BOGARDY, COUNTY SURVEYOR

NO. 21, 4311

NOTICE AND DIGEST

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

This ordinance would conditionally vacate the full width and length of the public right-of-way without cost to the adjoining property owner, Duke Energy Oakland LLC, of a one (1) block section of Jefferson Street between its intersection with Embarcadero West in the Jack London Square district and its westerly terminus at the Port of Oakland property boundary for a future expansion and “green” modernization of the existing electrical power generating station.