

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 16 AM 8:49

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: April 28, 2009

RE: **A Report And**

- **A Resolution Relinquishing City Ownership Of An Unimproved Portion of Peralta Street, And**
- **An Ordinance Authorizing The City Administrator To Acquire Ownership Without Returning To Council Of An Improved Portion Of Mandela Parkway Through An Equivalent Exchange Of Land Located Near The Intersections Of West Grand Avenue And 20th Street Between The City Of Oakland and Brian Collins and Hemmat and Dokhanchy Associates Without Compensation**

SUMMARY

Brian Collins and Hemmat and Dokhanchy Associates own a triangular shaped parcel that is bounded by Peralta Street, 20th Street, and Mandela Parkway. They purchased the eastern adjoining portion of Mandela Parkway from the City in an auction of surplus property in 2006. The owners have proposed relinquishing their ownership of this land (approximately 14,000 square feet) without cost to the City in exchange for obtaining ownership without cost to them of the western adjoining portion of Peralta Street (approximately 11,000 square feet) in order to legalize the long-standing private use of this fenced portion of right-of-way. The vacation of Peralta Street will add a quarter (0.25) of an acre to the Alameda County tax roll, and the re-acquisition of Mandela Parkway will not increase the City's cost of maintaining the roadway.

FISCAL IMPACT

Staff costs for processing the proposed vacation and dedication 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 acquisition of Mandela Parkway will not increase the cost of street maintenance, and the vacation of Peralta Street will increase the property tax base of the City.

BACKGROUND

The triangular shaped parcel (28,000 square feet - APN 005-0421-003-00) is located between Peralta Street and Mandela Parkway near the intersections of West Grand Avenue and 20th

Item No. _____
Public Works Committee
April 28, 2009

Street. In 2006, the property owners purchased 14,000 square feet of City surplus property along Mandela Parkway that adjoins the eastern side of their parcel. Caltrans previously relinquished ownership of portions of Mandela Parkway and Peralta Street without cost to the City.

When the surplus property was auctioned, the Caltrans documentation available to the City incorrectly located the relinquished land outside of the Mandela Parkway right-of-way. A subsequent survey by the owners identified that they had actually purchased a paved section of the street, which makes the auctioned land unusable. The survey further identified that an 11,000 square feet portion of the western side of their parcel, which has been fenced for many decades and used by prior owners, was actually within the Peralta Street right-of-way. Overall, the owners' survey had the effect of reducing the anticipated usable land area from 53,000 square feet (parcel plus Mandela Parkway plus Peralta Street) to 28,000 square feet (parcel only).

KEY ISSUES AND IMPACTS

Land Exchange

The fenced land along Peralta Street has been impassible to the public and unmaintained by the City for more than twenty (20) years. To assure that their use of Peralta Street could be continued, the owners have proposed an "even swap" (no compensation to them or the City) of the Mandela Parkway right-of-way (14,000 square feet) for the Peralta Street right-of-way (11,000 square feet). California Government Code section 7050 allows the City to acquire ownership of the Mandela Parkway right-of-way from the abutting property owner. California Streets and Highways Code section 8330 et seq. similarly allows the City to relinquish the Peralta Street right-of-way to the abutting property owner. Oakland Municipal Code Chapter 12.16 requires that sidewalk, curb, and gutter be installed and street pavement be repaired when a future permit for on-site improvements exceeds \$45,000 valuation.

Prior Reports

An agenda report was originally presented to the Public Works Committee on April 8, 2008. At that meeting, staff was directed to provide additional information regarding discussion and negotiations for future development of the triangular shaped parcel. At the May 13, 2008, meeting of the Public Works Committee, staff presented a supplemental report summarizing the following:

- the site remains unoccupied and the property owners stated that they have no intention of leasing the property to any tenant that will negatively impact the site or community;
- the fence surrounding the property has been repaired to reduce illegal dumping and the property owners have made continued efforts to keep the site clean;

- the property owners have several developments in Oakland where they have acquired blighted buildings, remodeled and renovated and returned the property to the market place.
- the unresolved issue of the total land area of the property in question has been a limiting factor in any proposed development of the site and will remain so until resolved;
- the property owners are willing to present any future development plans before concerned community groups and stakeholders for discussion once the land exchange is finalized.

Prior Protest

At the May 13, 2008, meeting of the Public Works Committee, staff requested that the agenda report be rescheduled to provide time to evaluate a protest from the owner of the parcel which adjoins the southern boundary of the Collins parcel. The protest has since been withdrawn, and Mr. Collins recently requested that the proposed land exchange be presented again to the Public Works Committee for its consideration.

SUSTAINABLE OPPORTUNITIES

Economic

The proposed vacation of the Peralta Street right-of-way will increase the tax base for the City and will enhance the opportunity for the City to increase its collection of business license fees should the parcel be developed in the future.

Environmental

Construction permits for future public right-of-way improvements require that the permittee 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 proposed vacation of the Peralta Street right-of-way will not have an adverse impact on the economic revitalization of the surrounding district.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for future public right-of-way improvements will conform with State and City requirements for handicapped accessibility.

RECOMMENDATIONS

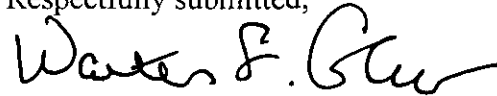
Staff recommends that the Committee accept this report and forward it to the City Council for adoption of the proposed resolutions approving an acquisition and a vacation of rights-of-way.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed

- resolution relinquishing, without compensation to the City, the underlying fee simple interest to Brian Collins and Hemmat and Dokhanchy Associates of an 11,000 square feet portion of the Peralta Street right-of-way which adjoins the western boundary of parcel no. 005-0421-003-00, and the proposed
- ordinance authorizing the City Administrator to acquire, without returning to Council and without compensation to Brian Collins and Hemmat and Dokhanchy Associates, the underlying fee simple interest of a 14,000 square feet portion of the Mandela Parkway right-of-way which adjoins the eastern boundary of parcel no. 005-0421-003-00.

Respectfully submitted,

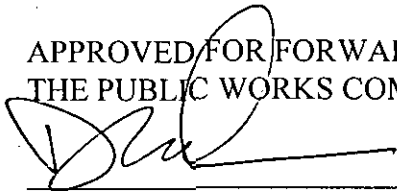


Walter S. Cohen, Director
Community and Economic Development Agency

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

DRAFT

FILED
OFFICE OF THE CITY CLERK
Approved For Form And Legality

2009 APR 16 AM 8:50

Councilmember

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION SUMMARILY VACATING A PORTION OF THE PERALTA STREET RIGHT-OF-WAY BETWEEN THE INTERSECTIONS OF WEST GRAND AVENUE AND 20th STREET TO BRIAN COLLINS AND HEMMAT AND DOKHANCHY ASSOCIATES

WHEREAS, Brian Collins and Hemmat and Dokhanchy Associates are the owners of the fee simple interest of a triangular shaped lot which is bounded by the intersections of Mandela Parkway, Peralta Street, 20th Street, and West Grand Avenue, and which is described in a Grant Deed, recorded March 14, 2006, series no. 2006-094365, by the Alameda County Clerk-Recorder, and which is more particularly described in *Exhibit A* attached hereto, and which is further identified by the Alameda County Assessor as parcel number 005-0421-003-00; and

WHEREAS, said owners have filed an application (PPE 08054) with the City of Oakland, as required by the California Streets and Highways Code, and paid all fees for administrative processing, as required by the City of Oakland Master Fee Schedule, requesting that the Council of the City of Oakland vacate an unimproved portion of the Peralta Street right-of-way adjoining said parcel, without valuable consideration to the City; and

WHEREAS, said owners have filed a companion application with the City Engineer requesting that the City accept a quit claim, without valuable consideration to said owners, of the underlying fee simple interest in a portion of the Mandela Parkway right-of-way adjoining said parcel; and

WHEREAS, said vacation and quit claim have been proposed by said owners as an exchange of lands between said owners and the City which are equivalent in fair market value and in current and future rights to the record title; and

WHEREAS, the City Engineer has determined that said proposed quit claim of said portion of the Mandela Parkway right-of-way will not expand nor diminish the useful and usable surface area of said parcel for said owners and their representatives, heirs, successors, and assigns; and

WHEREAS, the City Engineer has further determined that said proposed vacation of the Peralta Street right-of-way will continue the exclusive occupancy of said land area by said owners, which has been the practice for many years of prior owners; and

WHEREAS, the City of Oakland previously acquired said property rights to said portion of the Peralta Street rights-of-way from a relinquishment by the California Department of Transportation of remnant portions of real properties, the air rights of which were previously occupied by the demolished section of Interstate Highway 880 (Nimitz Freeway) damage by the Loma Prieta

earthquake in 1989, which are described in a deed, recorded November 2, 1961, reel 444, image 880, by the Alameda County Recorder; and

WHEREAS, said proposed vacation of Peralta Street would continue the exclusive use by the owners of said parcel of the unimproved portion of public right-of-way, which has been enclosed by metal fencing for more than twenty (20) years; and

WHEREAS, pursuant to California Streets and Highways Code section 1805, the proposed remaining fifty-two (52) feet width of Peralta Street adjacent to said proposed vacated public right-of-way will exceed the minimum required width of forty (40) feet; and

WHEREAS, a recent and thorough research of record title documentation and a subsequent land survey by a qualified licensed surveyor re-establish the metes and bounds of said parcel, with permanent markers of said property corners and public right-of-way monuments installed in the field, and the metes and bounds of said Peralta Street right-of-way previously relinquished by Caltrans and said fenced and unimproved portion of Peralta Street; and

WHEREAS, said land survey further established that said proposed vacation of Peralta Street consists of approximately 10,985 square feet (orthogonal planer projection) of land area; and

WHEREAS, said land survey is delineated on Parcel Map No. 9698, attached hereto as *Exhibit B*, and the limits of said proposed vacation and proposed quit claim are delineated on *Exhibit C* attached hereto; and

WHEREAS, the City Engineer has further determined that said portion of Peralta Street proposed for vacation has been unimproved for pedestrian and public traffic and has been fully enclosed by an erected metal fence and has been wholly unmaintained by the City of Oakland for not less than five (5) years preceding the receipt of said petition for said vacation; and

WHEREAS, pursuant to California Streets and Highways Code section 8330 et seq., the City Engineer has further determined that the said portion of Peralta Street may be summarily vacated by Resolution of the Council of the City of Oakland, at the option of its elected members; and

WHEREAS, said vacation of Peralta Street will add said real property to the equalized roll of the general levy of property taxes and forever relieve the City of Oakland of the responsibility and potential liability for its maintenance; and

WHEREAS, pursuant to the California Streets and Highways Code, sections 8333, the legislative body of a local agency may summarily vacate public right-of-way when the right-of-way has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utility facilities within the right-of-way proposed for vacation; and

WHEREAS, pursuant to California Streets and Highways Code Section 892, a vacation of public right-of-way may not limit public use of or impede public access for non-motorized transportation; and

WHEREAS, the City Engineer has determined that no subsurface, surface, or above surface publicly maintained utilities are located within the portion of Peralta Street proposed for vacation or the portion of Mandela Parkway proposed for acquisition; and

WHEREAS, pursuant to said sections of the California Streets and Highways Code, the City Engineer has further determined the following:

- the proposed vacation will 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
- the proposed vacation does not require a dedication of a public service easement for existing and future publicly maintained utilities; and that
- the proposed vacation does not require a dedication of a public service easement for access by emergency vehicles and personnel; and
- the unimproved right-of-way proposed for vacation has been impassable for vehicular and pedestrian traffic for more than five (5) of the preceding years, and no public money has been expended for maintenance during this period of time; and, therefore,
- said portion of the Peralta Street right-of-way may be vacated summarily by Resolution of the Council of the City of Oakland; and

WHEREAS, pursuant to California Government Code Section 65402, the Secretary of the Planning Commission of the City of Oakland has determined the proposed vacation conforms with the adopted General Plan of the City of Oakland; 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 Guidelines Section 15301 (existing facilities) this project is categorically exempted; now, therefore, be it

RESOLVED: That the Council of the City of Oakland hereby finds that said portion of the Peralta Street right-of-way proposed for vacation is surplus to the needs of the City of Oakland and not required for any current or future public purpose; and be it

FURTHER RESOLVED: That the summary vacation, without valuable consideration to the City of Oakland, of said portion of the Peralta Street right-of-way, as described and delineated in the attached *Exhibits B and C*, is hereby ordered; and be it

FURTHER RESOLVED: That said vacation is hereby conditioned on the acquisition by the City of Oakland, without valuable consideration, from the owners of parcel no. 005-0421-003-00 of said portion of the Mandela Parkway right-of-way, through an instrument acceptable to the City Attorney of the City of Oakland; and be it

FURTHER RESOLVED: That said vacation is hereby further conditioned by the following special requirements:

1. the Permittee, by the acceptance of this vacation, promises to 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 of or caused by the said vacation of the public right-of-way of Peralta Street and that the hereinabove condition shall be binding upon said owners and their beneficiaries, heirs, assigns, and successors in interest and also on the successive owners of said vacated right-of-way; and
2. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the public right-of-way area; and that by accepting this vacation, the Permittee agrees that it will use the area in the future at its own risk; and
3. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the public right-of-way area 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 public right-of-way 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
4. 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
5. 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 accept this vacation, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and be it

FURTHER RESOLVED: That, pursuant to California Streets and Highways Code Section 8336, said vacation shall not be complete unless and until this Resolution has been filed with and recorded by the Alameda County Recorder within three-hundred and sixty-five (365) consecutive days following approval of this Resolution by the Council of the City of Oakland; and be it

FURTHER RESOLVED: That the conditions of this Resolution shall equally bind the representatives of the owner and its heirs, successors, assigns, beneficiaries, and successors in interest.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

EXHIBIT A

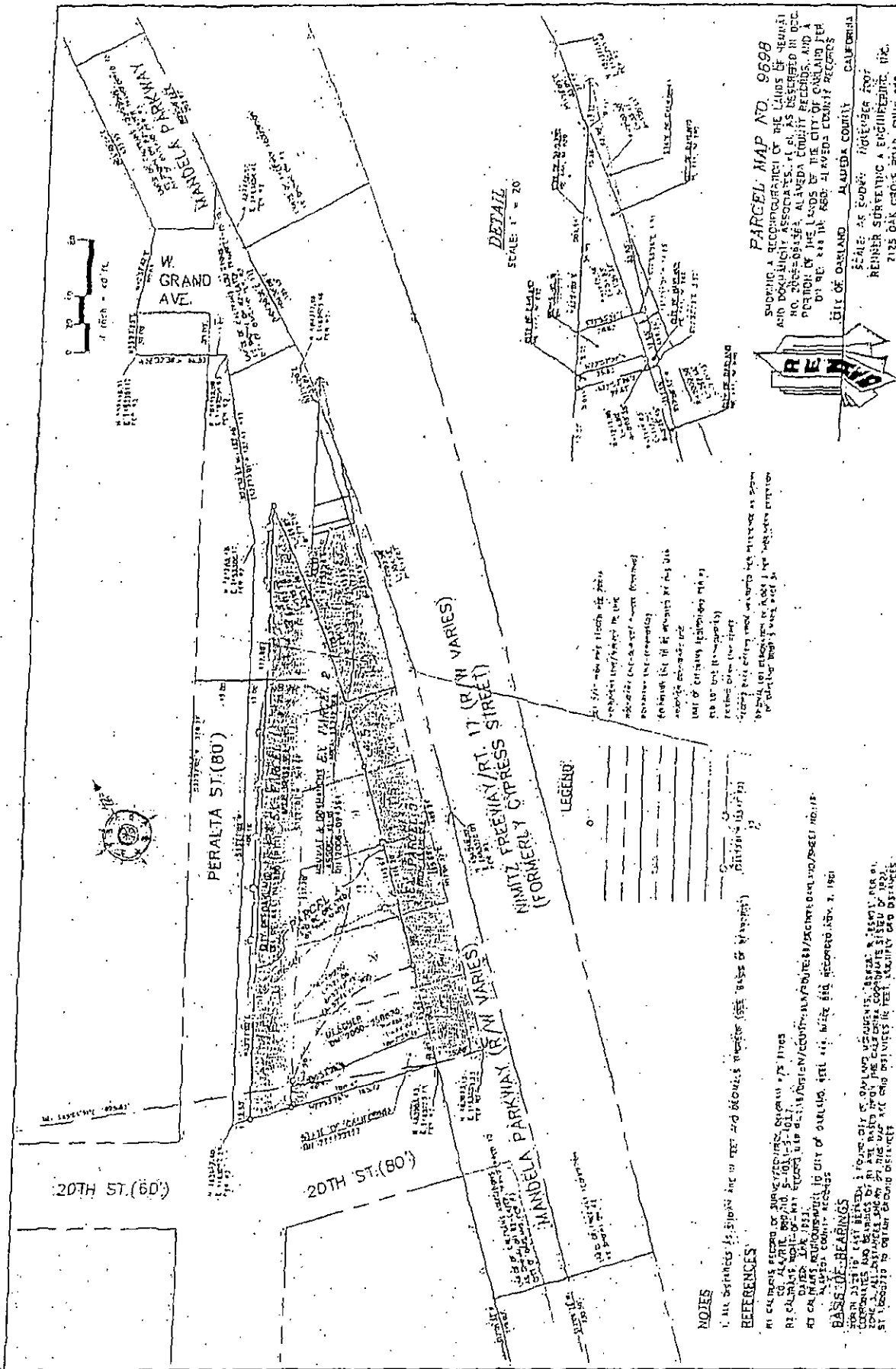
property boundary of parcel no. 005-0421-003-00, as described in a Grant Deed, recorded March 14, 2006, series no. 2006094365, by the Alameda County Clerk-Recorder

All those portions of lots 1, 2, 3, 4, 5, and 6 in Block 3, as said Lots and Block are shown on that certain Map entitled "Map Of Survey Of Northern Extension Of Oakland", filed November 6, 1867 in Book 5 of Maps, page 34, Alameda County records, described in the Grant Deed from Learner Investment Company to the State of California, recorded June 25, 1952, in Book 6762 of Official Records, page 503.

Excepting there from: all that portion thereof described in the Director's Deed from the State of California to Joseph D. Ballinger, a single man, recorded May 3, 1957, in Book 8355 of Official Records, page 597.

Also excepting there from: all that portion thereof as describe in the Director's Easement Deed from the State of California to Pacific Pipe Company, a California corporation, recorded June 30, 1958, in Book 8710 of Official Records, page 43.

EXHIBIT B



PARCEL MAP NO 9598
 SHOWING A RECONSTRUCTION OF THE LANDS OF HEARNET
 AND DOCUMENTARY ASSOCIATES, ET AL AS DESCRIBED IN DEC.
 NO. 2065-09-562, ALAMEDA COUNTY RECORDS, AND A
 PORTION OF THE LANDS OF THE CITY OF OAKLAND PER
 DT NO. 244 IN 1860; ALAMEDA COUNTY RECORDS
 CITY OF OAKLAND ALAMEDA COUNTY CALIFORNIA

SCALE: AS SHOWN: NOVEMBER 1907
 REMNER SURVEYING & ENGINEERING, INC.
 7125 OAK GROVE ROAD, SUITE 205
 PALM BEACH, FLA. 33411
 PHONE: (954) 855-5100 FAX: (954) 855-0555
 WWW.REMNER.COM
 SHEET 1 OF 1



DETAIL
 SCALE: 1" = 20'

LEGEND

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NOTES

1. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.

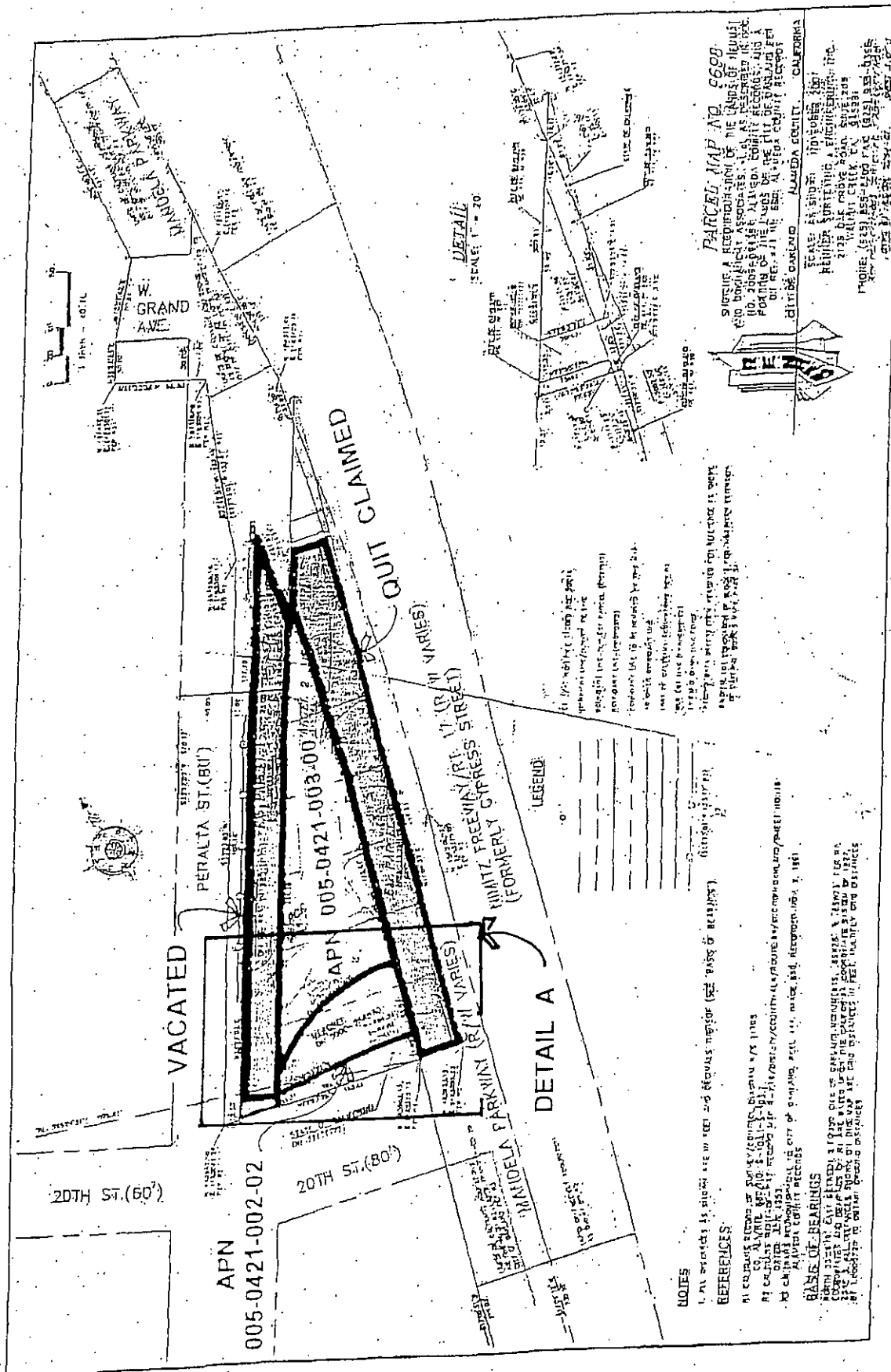
REFERENCES

- 1. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
- 2. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
- 3. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
- 4. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
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- 7. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
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- 9. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.
- 10. ALL DISTANCES IN THIS MAP ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.

BASELINE BEARINGS

ALL BEARINGS ARE GIVEN AS TRUE UNLESS OTHERWISE NOTED. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF. ALL DISTANCES ARE MEASURED TO THE CENTER OF THE CURVE UNLESS OTHERWISE NOTED.

EXHIBIT C



PARCEL MAP NO. 6609

SUBJECT: A REPRODUCTION OF THE MAPS OF NEVADA AND THE ASSOCIATES, L.P., AS DESCRIBED IN THE RECORDS OF THE COUNTY CLERK, CLAYTON COUNTY, NEVADA, AND THE RECORDS OF THE CITY OF PASADENA, CALIFORNIA.

SCALE: AS SHOWN

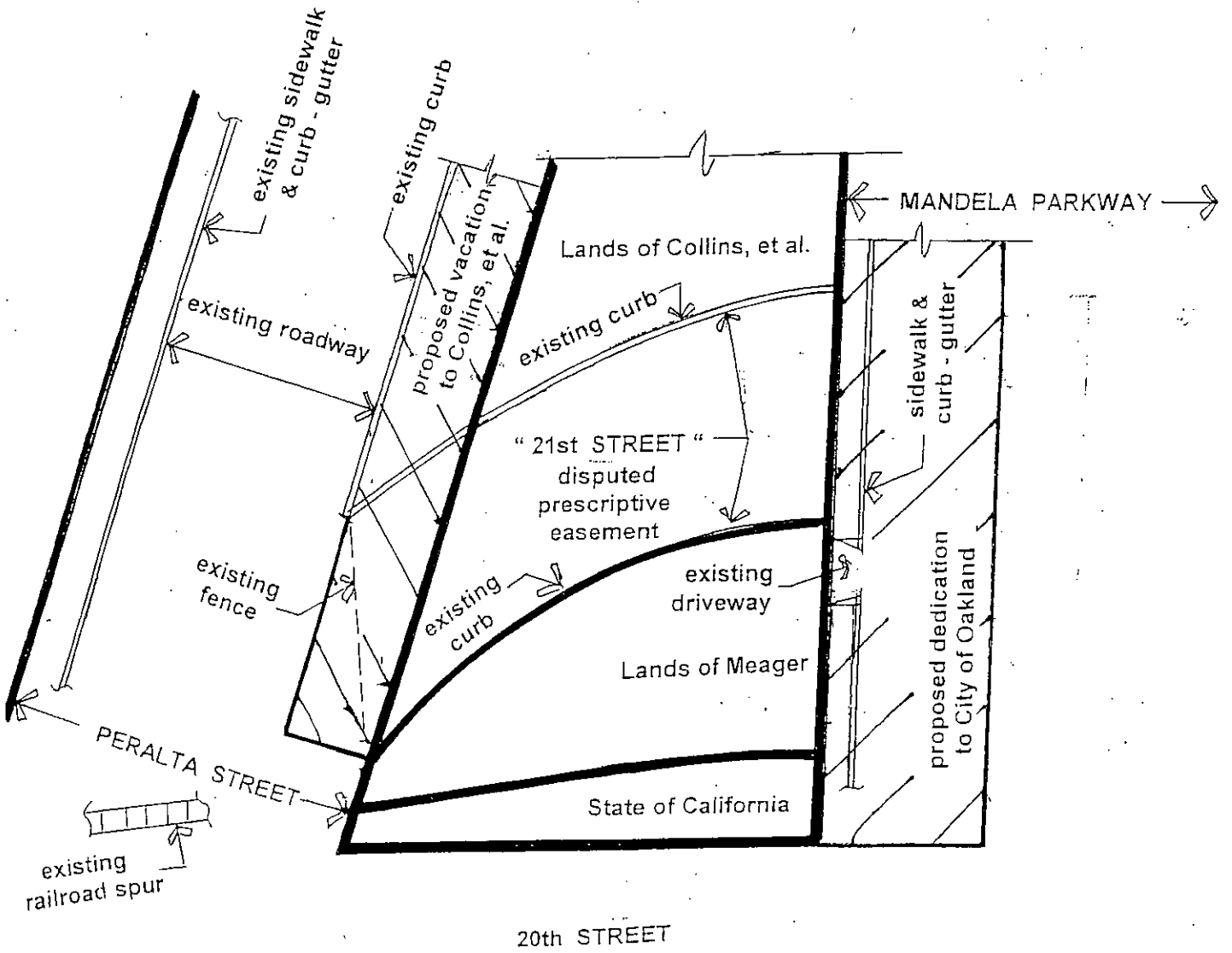
DIVISION OF LAND MANAGEMENT, CALIFORNIA



FOR MORE INFORMATION, CONTACT THE DIVISION OF LAND MANAGEMENT, 1515 NORTH COLLE AVENUE, PASADENA, CALIFORNIA 92369. PHONE: (626) 798-2300. FAX: (626) 798-2301.

EXHIBIT C

Detail A



DRAFT

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
Approved For Form App, Legal PA
2009 APR 16 AM 8:50
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR WITHOUT RETURNING TO COUNCIL TO ACQUIRE THE UNDERLYING FEE SIMPLE INTEREST OF A PORTION OF THE MANDELA PARKWAY RIGHT-OF-WAY BY AN EQUIVALENT EXCHANGE WITHOUT COMPENSATION OF A PORTION OF THE PERALTA STREET RIGHT-OF-WAY NEAR THE INTERSECTIONS OF WEST GRAND AVENUE AND 20th STREET BETWEEN THE CITY AND BRIAN COLLINS AND HEMMAT AND DOKHANCHY ASSOCIATES

WHEREAS, Brian Collins and Hemmat and Dokhanchy Associates are the owners of the fee simple interest of a triangular shaped lot which is bounded by the intersections of Mandela Parkway, Peralta Street, 20th Street, and West Grand Avenue, and which is described in a Grant Deed, recorded March 14, 2006, series no. 2006-094365, by the Alameda County Clerk-Recorder, and which is more particularly described in *Exhibit A* attached hereto, and which is further identified by the Alameda County Assessor as parcel number 005-0421-003-00; and

WHEREAS, said owners have filed an application (PPE 08054) with the City Engineer of the City of Oakland, as required by the California Streets and Highways Code, and paid all fees for administrative processing, as required by the City of Oakland Master Fee Schedule, requesting that the Council of the City of Oakland vacate an unimproved portion of the Peralta Street right-of-way adjoining said parcel, without valuable consideration to the City; and

WHEREAS, said owners have filed a companion application with the City Engineer requesting that the City accept a quit claim, without valuable consideration to said owners, of the underlying fee simple interest in a portion of the Mandela Parkway right-of-way adjoining said parcel; and

WHEREAS, said vacation and quit claim have been proposed by said owners as an exchange of lands between said owners and the City which are equivalent in fair market value and in current and future rights to the record title; and

WHEREAS, the City Engineer has determined that said proposed quit claim of said portion of the Mandela Parkway right-of-way will not expand nor diminish the useful and usable surface area of said parcel for said owners and their representatives, heirs, successors, and assigns; and

WHEREAS, the City Engineer has further determined that said proposed vacation of the Peralta Street right-of-way will continue the exclusive occupancy of said land area by said owners, which has been the practice for many years of prior owners; and

WHEREAS, the City Engineer has determined that said proposed vacation and acquisition will not expand or diminish the surface areas of the roadways of Peralta Street and Mandela Parkway; and

WHEREAS, pursuant to Ordinance No. 12722 C.M.S, said owners acquired the underlying fee simple interest to said portion of the Mandela Parkway right-of-way from an auction for valuable consideration of surplus City property, as identified in a Grant Deed, recorded March 14, 2006, series no. 2006-094364, by the Alameda County Clerk-Recorder; and

WHEREAS, the City of Oakland previously acquired said property rights to said portions of the Mandela Parkway and Peralta Street rights-of-way from a relinquishment by the California Department of Transportation (Caltrans) of remnant portions of real properties, the air rights of which were previously occupied by the demolished section of Interstate Highway 880 (Nimitz Freeway) damaged by the Loma Prieta earthquake in 1989, which are described in a deed, recorded November 2, 1961, reel 444, image 880, by the Alameda County Recorder; and

WHEREAS, said proposed vacation of Peralta Street would continue the exclusive use by the owners of said parcel of the unimproved portion of public right-of-way, which has been enclosed by metal fencing for more than twenty (20) years; and

WHEREAS, pursuant to California Streets and Highways Code section 1805, the proposed remaining fifty-two (52) feet width of Peralta Street adjacent to said proposed vacated public right-of-way will exceed the minimum required width of forty (40) feet; and

WHEREAS, a recent and thorough research of record title documentation and a subsequent land survey by a *qualified and licensed land surveyor re-establish the metes and bounds of said parcel*, with permanent markers of said property corners and public right-of-way monuments installed in the field, and the metes and bounds of said Mandela Parkway and Peralta Street properties previously relinquished by Caltrans and said fenced and unimproved portions of Peralta Street; and

WHEREAS, said land survey further established that said proposed vacation of Peralta Street consists of approximately 10,985 square feet (orthogonal planer projection) of land area and said proposed quit claim of Mandela Parkway right-of-way consists of approximately 13,781 square feet of land area (orthogonal planer projection); and

WHEREAS, said boundary survey is delineated on Parcel Map No. 9698, attached hereto as *Exhibit B*, and the limits of said proposed vacation and proposed quit claim are delineated on *Exhibit C* attached hereto; and

WHEREAS, the City Engineer has determined that no subsurface, surface, or above surface publicly maintained utilities are located within the portion of Peralta Street proposed for vacation or the portion of Mandela Parkway proposed for acquisition; and

WHEREAS, the City Engineer has further determined that said portion of Peralta Street proposed for vacation has been unimproved for pedestrian and public traffic and has been enclosed by an erected metal fence and has been wholly unmaintained by the City of Oakland for not less than five (5) years preceding the receipt of said application for said vacation; and

WHEREAS, pursuant to California Streets and Highways Code section 8330 et seq., the City Engineer has further determined that the said portion of Peralta Street may be summarily vacated by Resolution of the Council of the City of Oakland, at the option of its elected members; and

WHEREAS, said vacation of Peralta Street will add said real property to the equalized roll of the general levy of property taxes and forever relieve the City of Oakland of the responsibility and potential liability for its maintenance; and

WHEREAS, acquisition of the underlying fee simple interests in said portion of the Mandela Parkway right-of-way will be without valuable consideration to said owners and will not increase the City of Oakland's costs of or liability for maintaining the existing street improvements; and

WHEREAS, pursuant to section 15061(b)(3) of the Guidelines prescribed by the California Secretary of Resources for the requirements of the California Environmental Quality Act of 1970 (CEQA) and to the provisions of the Environmental Review Regulations of the City of Oakland, said vacation and said acquisition are categorically exempted; now, therefore,

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

Section 1: That the Council of the City of Oakland hereby finds that said portion of the public right-of-way of Peralta Street proposed for vacation is surplus to the needs of the City of Oakland and not required for any current or future public purpose and may be vacated to said owners as set forth in the California Streets and Highways Code.

Section 2: That the Council of the City of Oakland hereby finds that said vacation to said owners of said portion of the Peralta Street right-of-way, without valuable consideration to the City of Oakland, and the acquisition by the City of Oakland of the underlying fee simple interest of said portion of the Mandela Parkway right-of-way, without valuable consideration to said owners, is in the best interest of the City of Oakland and is an equivalent exchange of real property in all purposes and fair market values and record title rights and interests.

Section 3: That said owners promise to 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 of or caused by the said vacation of the public right-of-way of Peralta Street and that the hereinabove condition shall be binding upon said owners and their beneficiaries, heirs, assigns, and successors in interest and also on the successive owners of said vacated right-of-way; and be it

Section 4: That the City Administrator, or his or her designee, is hereby authorized, without returning to Council, to acquire, without valuable consideration to the owners of parcel no. 005-0421-003-00, said portion of the Mandela Parkway right-of-way, through an instrument acceptable to the City Attorney of the City of Oakland.

Section 5: The Equivalent Exchange Agreement for this property swap shall be approved as to form and legality by the Office of the City Attorney and a copy shall be filed with the Office of the City Clerk .

Section 6: Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

Section 7: This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

Section 8: Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNER

NOES -

ABSENT -

ABSTENTION -

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

DATE OF ATTESTATION _____

EXHIBIT A

property boundary of parcel no. 005-0421-003-00, as described in a Grant Deed, recorded March 14, 2006, series no. 2006094365, by the Alameda County Clerk-Recorder

All those portions of lots 1, 2, 3, 4, 5, and 6 in Block 3, as said Lots and Block are shown on that certain Map entitled "Map Of Survey Of Northern Extension Of Oakland", filed November 6, 1867 in Book 5 of Maps, page 34, Alameda County records, described in the Grant Deed from Learner Investment Company to the State of California, recorded June 25, 1952, in Book 6762 of Official Records, page 503.

Excepting there from: all that portion thereof described in the Director's Deed from the State of California to Joseph D. Ballinger, a single man, recorded May 3, 1957, in Book 8355 of Official Records, page 597.

Also excepting there from: all that portion thereof as describe in the Director's Easement Deed from the State of California to Pacific Pipe Company, a California corporation, recorded June 30, 1958, in Book 8710 of Official Records, page 43.

EXHIBIT B

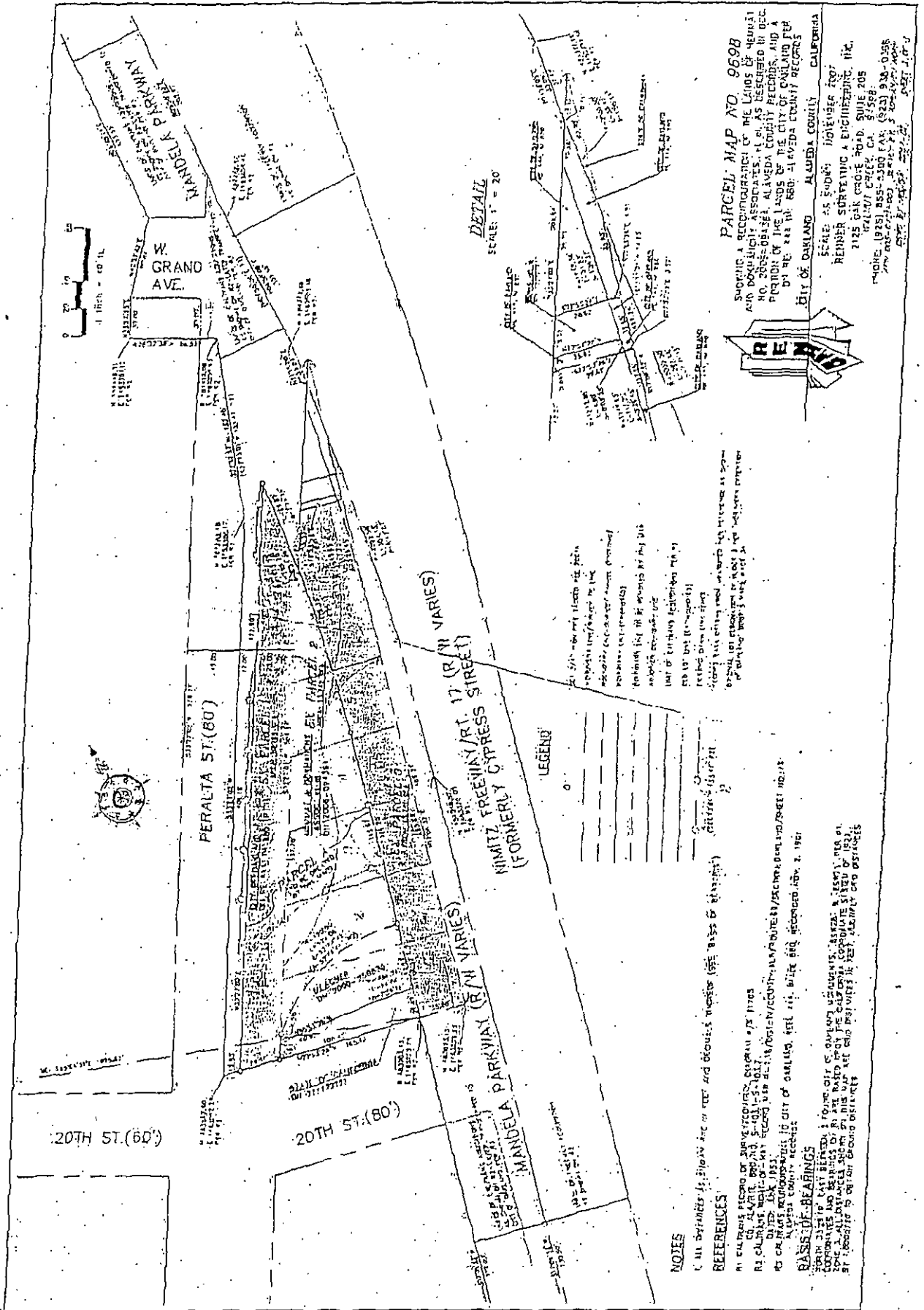
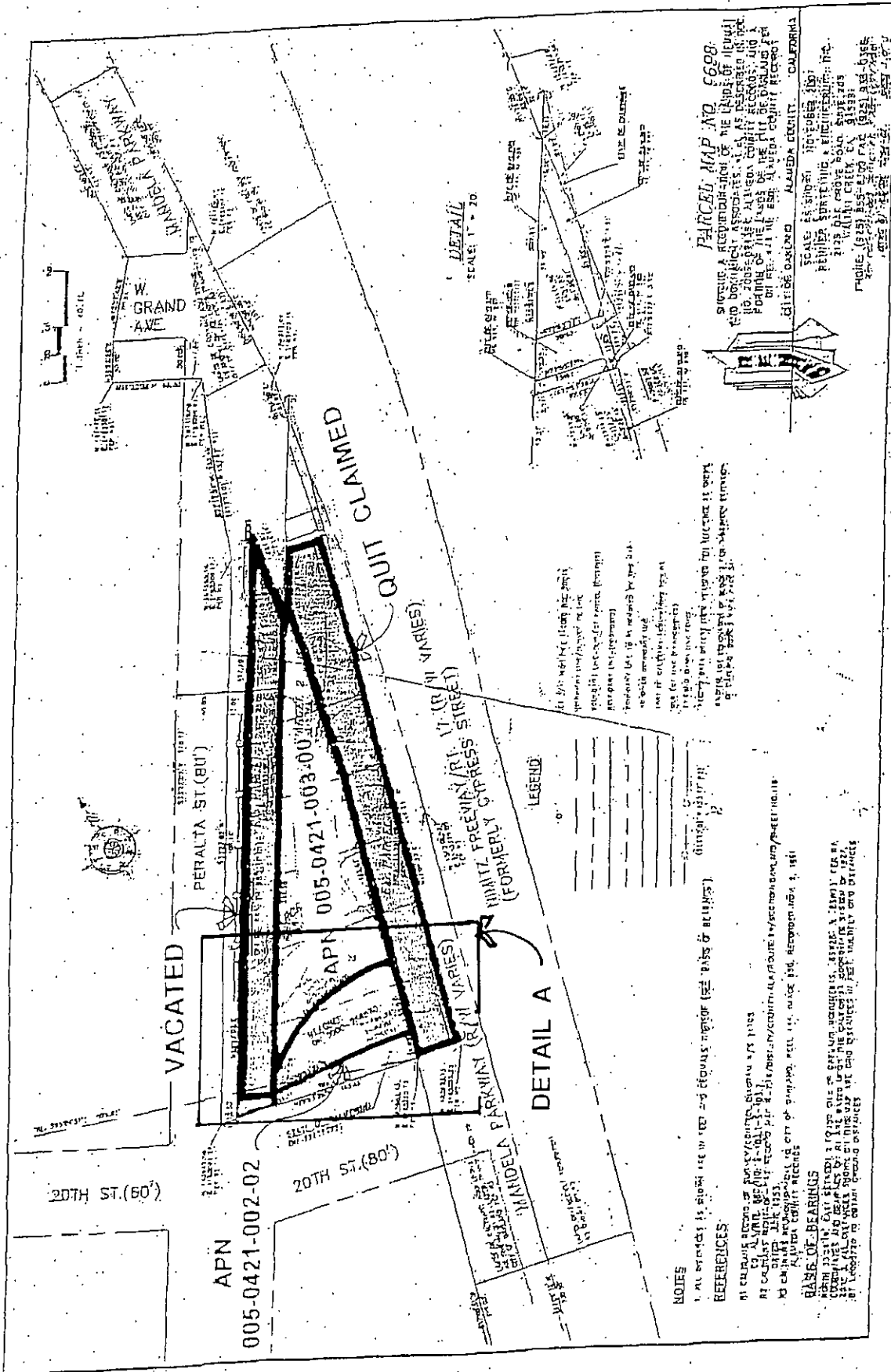


EXHIBIT C



PARCEL MAP NO. 6608

SUBJECT: A RECONSTRUCTION OF THE LOTS OF NEVILL AND BOWKITCH ASSOCIATES, INC. AS DESCRIBED IN THE 1962 ZONING MAPS, ALLIANCE SOUTH COUNTY, AND A PORTION OF THE LOTS OF NEVILL AND BOWKITCH AS DESCRIBED IN THE 1962 ZONING MAPS, ALLIANCE SOUTH COUNTY, RECEIVED BY THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, CALIFORNIA.

SCALE: AS SHOWN (APPROX. 1" = 20')

PREPARED BY: THE ENGINEERING FIRM OF JAMES H. HARRIS & ASSOCIATES, INC., 1100 G STREET, SAN DIEGO, CALIFORNIA 92101

DATE: 10/15/71

1. 1/4" = 20' SCALE (SEE PAGE 2 OF BEARINGS)

2. 1/4" = 20' SCALE (SEE PAGE 3 OF BEARINGS)

3. 1/4" = 20' SCALE (SEE PAGE 4 OF BEARINGS)

4. 1/4" = 20' SCALE (SEE PAGE 5 OF BEARINGS)

5. 1/4" = 20' SCALE (SEE PAGE 6 OF BEARINGS)

6. 1/4" = 20' SCALE (SEE PAGE 7 OF BEARINGS)

7. 1/4" = 20' SCALE (SEE PAGE 8 OF BEARINGS)

8. 1/4" = 20' SCALE (SEE PAGE 9 OF BEARINGS)

9. 1/4" = 20' SCALE (SEE PAGE 10 OF BEARINGS)

10. 1/4" = 20' SCALE (SEE PAGE 11 OF BEARINGS)

LEGEND

NOTES

1. ALL BEARINGS ARE TO THE CENTER OF BEARINGS.

REFERENCES

1. 1/4" = 20' SCALE (SEE PAGE 2 OF BEARINGS)

2. 1/4" = 20' SCALE (SEE PAGE 3 OF BEARINGS)

3. 1/4" = 20' SCALE (SEE PAGE 4 OF BEARINGS)

4. 1/4" = 20' SCALE (SEE PAGE 5 OF BEARINGS)

5. 1/4" = 20' SCALE (SEE PAGE 6 OF BEARINGS)

6. 1/4" = 20' SCALE (SEE PAGE 7 OF BEARINGS)

7. 1/4" = 20' SCALE (SEE PAGE 8 OF BEARINGS)

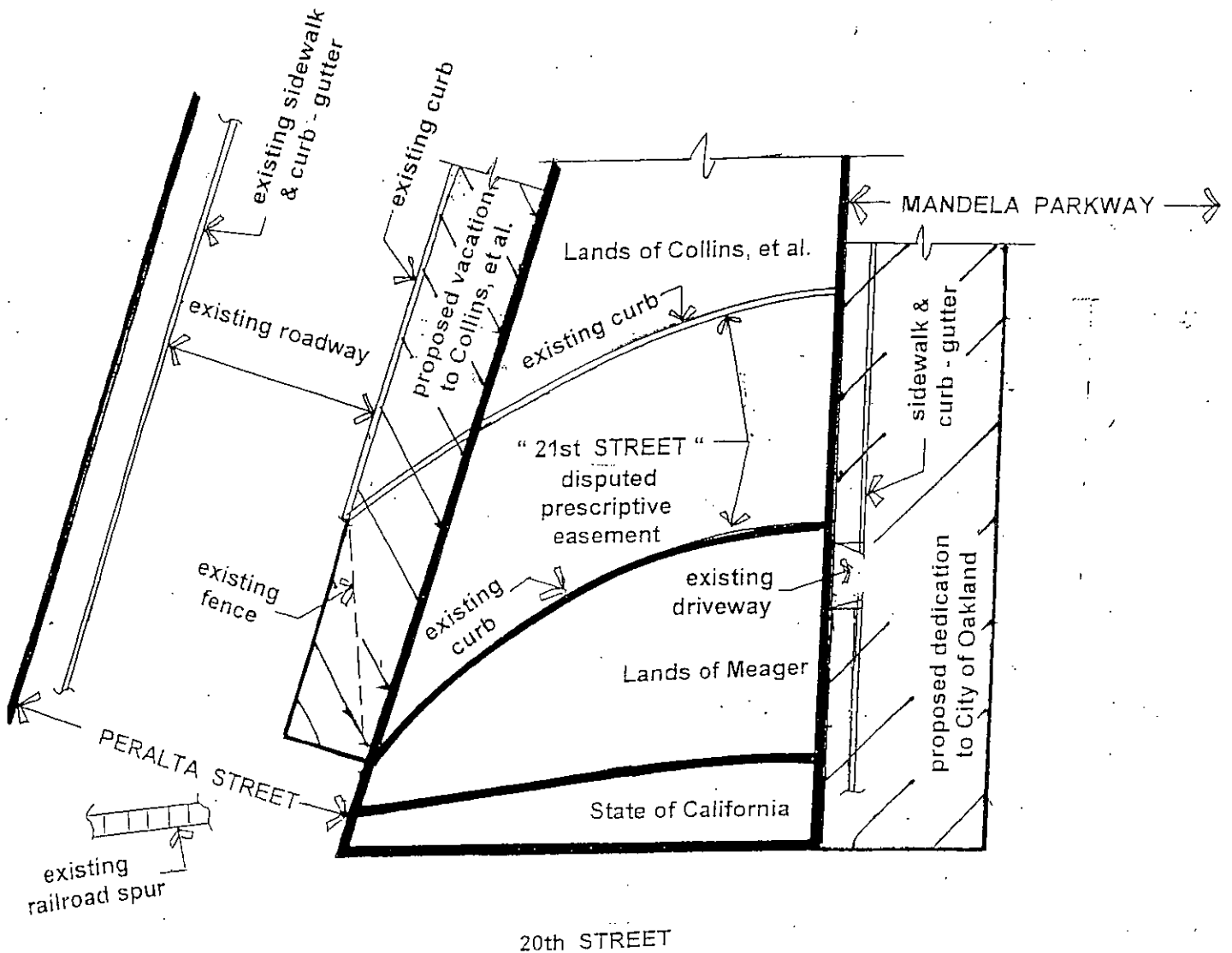
8. 1/4" = 20' SCALE (SEE PAGE 9 OF BEARINGS)

9. 1/4" = 20' SCALE (SEE PAGE 10 OF BEARINGS)

10. 1/4" = 20' SCALE (SEE PAGE 11 OF BEARINGS)

EXHIBIT C

Detail A.



NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR WITHOUT RETURNING TO COUNCIL TO ACQUIRE THE UNDERLYING FEE SIMPLE INTEREST OF A PORTION OF THE MANDELA PARKWAY RIGHT-OF-WAY BY AN EQUIVALENT EXCHANGE WITHOUT COMPENSATION OF A PORTION OF THE PERALTA STREET RIGHT-OF-WAY NEAR THE INTERSECTIONS OF WEST GRAND AVENUE AND 20th STREET BETWEEN THE CITY AND BRIAN COLLINS AND HEMMAT AND DOKHANCHY ASSOCIATES

This ordinance would relinquish the City's ownership of approximately 11,000 square feet of the Peralta Street right-of-way without compensation to the owners of the adjoining parcel in exchange for the City acquiring ownership without compensation of approximately 14,000 square feet of the adjoining Mandela Parkway right-of-way. The Peralta Street vacation will add a quarter (0.25) of an acre of land to the Alameda County tax roll (general levy), and the Mandela Parkway acquisition will not increase the cost to the City of maintaining the existing roadway.