

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 DEC -1 PM 6:45

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 13, 2005

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

SUMMARY

A resolution has been prepared adopting findings and setting the first of two required public hearings for the City Council to receive supporting evidence and public comments on a proposed vacation to the Port of Oakland of Ferro Street between its intersection with Middle Harbor Road and its westerly terminus for the purpose of expanding containerized marine cargo operations in the Inner Harbor area. The Port owns all abutting property and has terminated the leases of all former business tenants. The vacation of the right-of-way will not interfere with safe traffic flow and pedestrian access along Middle Harbor Road (refer to the attached Exhibit A). A public easement will be reserved for existing buried electrical cables that connect the Pacific Gas and Electric substation C near Jack London Square with the Port's Davis substation. As conditions of the vacation, the Port has agreed that it will remove an existing East Bay Municipal Utility District water line and an existing City sanitary sewer line and assume the maintenance of an existing City storm water line, which will eliminate the need for additional public utility easements.

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 and newspaper publication (refer to attached Exhibit C). Two public hearings by the City Council are now required to complete the vacation process. This first meeting of the Council will, by resolution, adopt findings required by the Streets and Highways Code, the Public Resources Code, and the Government Code and will set a following hearing to receive public testimony. The second meeting of the Council will receive public testimony and complete the first reading of the proposed vacation ordinance.

FISCAL IMPACT

Staff costs for processing the proposed street vacation will be covered by fees set by the Master Fee Schedule and paid by the Port and will be deposited in the General Purpose Fund (1010), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Approval (PS30). The underlying fee interest in the vacated right-of-way will revert to the Port.

BACKGROUND

Port Infrastructure Expansion Requirements

The expansion of the terminal operations will require major improvements to the contiguous real property landward of berths 60 through 63. The Port has terminated the leases of businesses abutting

Ferro Street unrelated to the American President Lines marine cargo operations and has prepared the site for construction by demolishing the previously occupied buildings. Ferro Street no longer serves any businesses in the Middle Harbor area. The Port is requesting that Ferro Street be vacated to facilitate the expansion of marine cargo business and to enhancement the efficiency of its marine cargo operations.

Several existing subsurface utility lines are located within the proposed vacated rights-of-way:

- sanitary sewer and potable water

The Public Works Agency and the East Bay Municipal Utility District have determined that sanitary sewer and potable water utility lines are no longer needed. The Port has agreed to remove these utilities at its expense within one year.

- storm water and electricity

The Public Works Agency and the Port have determined that the storm water and electrical utility lines are still needed. The Port has requested that a public easement be retained for Pacific Gas and Electric's power cables that supply the Port's substation. The Port has also agreed to assume the maintenance responsibility for the City's forty-eight inch diameter storm water line, thus eliminating the need for an additional public easement.

Transfer of Right-Of-Way Ownership

Staff's review of historical records indicates that Ferro Street does not pre-date the original subdivision of the Middle Harbor area. Consequently, the Port is presumed to own the underlying fee interest in the right-of-way. Upon vacation of the right-of-way, title to Ferro Street will revert to the Port without cost.

KEY ISSUES AND IMPACTS

The California Streets and Highways Code requires that a local jurisdiction make the following determinations for a proposed vacation of right-of-way:

- the vacation will conform with an adopted General Plan, as has been determined by the Board of Port Commissioners; and that
- public easements are retained as necessary for existing or future utility lines, as has been requested by the Port for electrical power cables; and that
- the public was notified by site postings and newspaper publications of two sequential public hearings, one setting the date to hear public comments and the second receiving public comments, as is certified in the attached Exhibit B and shown in Exhibit C; and that
- the vacation will not impact current or future access for non-motorized transportation, as evidenced by the Port's adopted General Plan; and
- the vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety, as evidenced by the Port's adopted General Plan;

The California Public Resources Code requires that a local jurisdiction determine that a project complies with the requirements of the California Environmental Quality Act (CEQA). A vacation of public right-of-way is categorically exempted.

The California Government Code requires that a City determine whether the City or the abutting property owner retain the underlying fee interest in the right-of-way. Port ownership has been confirmed by staff.

Staff has also determined that the vacation will not impact or eliminate any future traffic circulation or access modifications that may be considered as the former Oakland Army Base lands are transitioned to the City and Port for reuse.

SUSTAINABLE OPPORTUNITIES

Economic

The Port's terminal expansion project will provide opportunities for professional services and construction related jobs for the Oakland community. The Port is required to follow City policies for bidding and awarding contracts to Small and Local Business Enterprise firms.

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Environmental

Construction permits for real property 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 Port's terminal expansion project will assist the economic revitalization of the downtown redevelopment zone and will encourage the infusion and recurrence of diverse multi-cultural activities, businesses, and events.

DISABILITY AND SENIOR CITIZEN ACCESS

Construction permits for new buildings will conform with State and City requirements for accessibility.

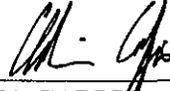
RECOMMENDATIONS

Staff recommends the Committee accept this report and forward it to the City Council for their scheduled meeting on December 20, 2005, to adopt the proposed resolution adopting findings for the proposed conditional vacation and setting a subsequent hearing for the City Council to receive supporting evidence and public comments on the proposed conditional vacation of Ferro Street.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolution adopting findings for the proposed conditional vacation of Ferro Street and setting a hearing for the January 17, 2006, agenda of the City Council to receive supporting evidence and public comments on and complete the first reading of an ordinance conditionally vacating Ferro Street to the Port of Oakland.

Respectfully submitted,

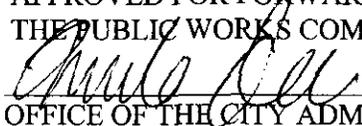


CLAUDIA CAPPIO
Development Director
Community and Economic Development Agency

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved for Form and Legality

Councilmember

2005 DEC -1 PH 6:45

F. Faiz

City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

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

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

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

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

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

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

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

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

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

Whereas, CEDA has determined with reasonable certainty from a thorough examination of the available historical public records that the State of California had not yet established a legislative mechanism, either by statute or prescriptive easement or otherwise, for cities and counties to own the underlying fee interest of public right-of-way at the time of the original division of the abutting real property; and

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

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

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

Whereas, in accordance with California Streets and Highways Code Section 8313 and Government Code Section 65402, the Board of Port Commissioners, acting in its official capacity, has determined that there is no map or diagram nor any expressed policies or provisions preventing the vacation of these portions of public rights-of-way and that the location, purpose, and extent of the vacation therefore conforms with the Port's adopted General Plan; and

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

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

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

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

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

Whereas, pursuant to California Streets and Highways Code Section 892, CEDA has further determined that vacation of portions of the public rights-of-way will not limit public use of or impede public access for non-motorized transportation; and

Whereas, pursuant to California Streets and Highways Code Section 8320, a map delineating or text describing metes and bounds may be used to establish the extent and location of the public right-of-way to be vacated; and

Whereas, pursuant to California Streets and Highways Code Section 8324, the Council of the City of Oakland may apply conditions for the vacation of public right-of-way and may instruct the City Clerk not to record a vacation until the conditions have been satisfied; now, therefore, be it

Resolved, that the Port of Oakland owns the underlying fee interest in Ferro Street; and be it

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

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

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

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

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

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

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

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES -

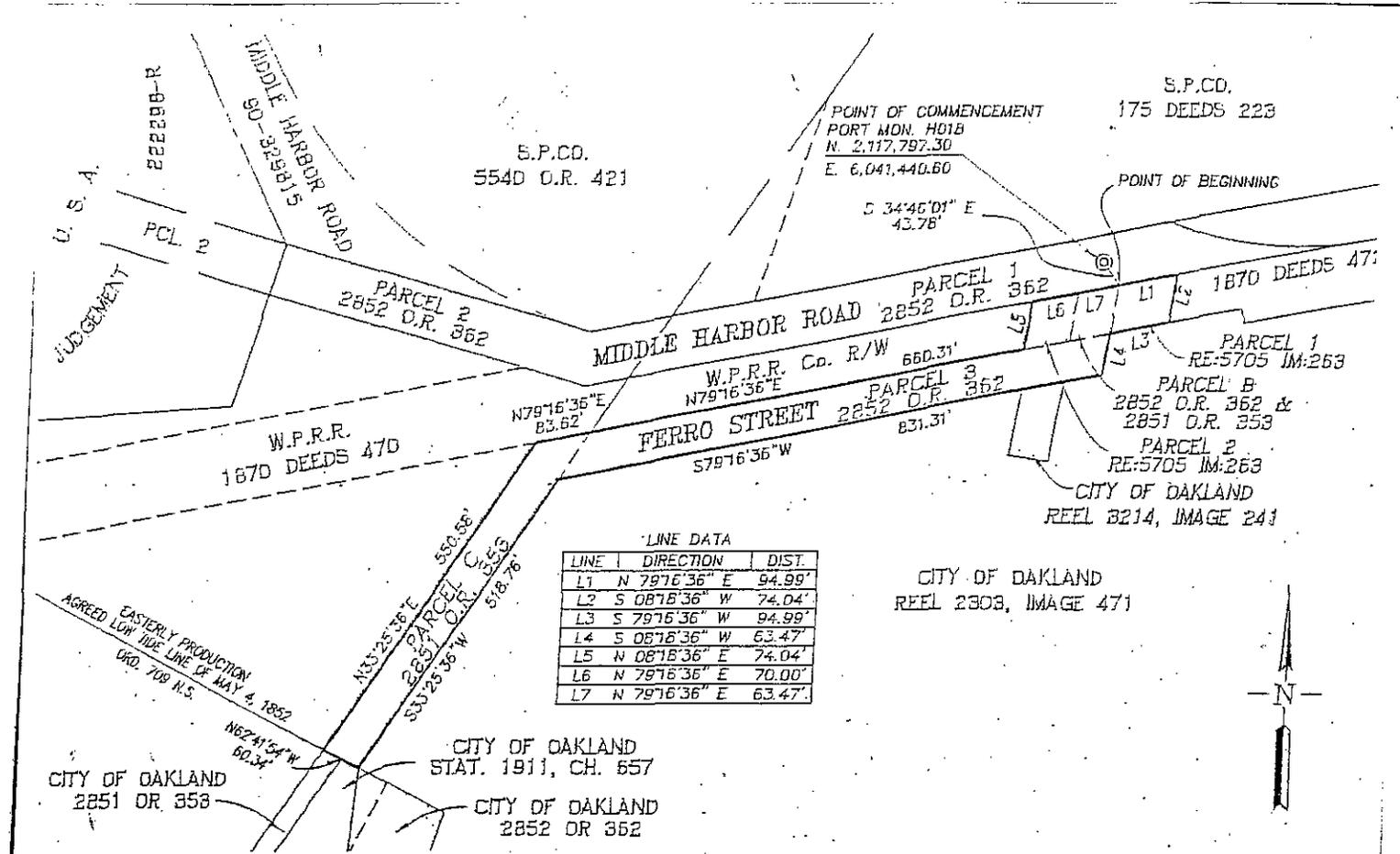
ABSENT -

ABSTENTION -

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

Exhibit A

Location And Limits Of The Proposed Vacation Of Ferro Street



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

PORT OF OAKLAND LAND SURVEYS AND MAPPING 530 Water Street Oakland, California	PLAT TO ACCOMPANY LEGAL DESCRIPTION	DRAWN BY: JRM	Field Bk.	
	STREET VACATION	CHECKED BY: i	Wrk. Ord: 019713	
	FERRO STREET	SCALE: 1" = 200'	Date File:	
		DATE: 10/25/96	Revision: 3	
		SHEET 1 OF 1	Rev. date: 8/3/99	
		DRAWING FILE: FERROVAC.DWG		
	FILE LOC.: \\TRANSBAY\019713.JRM\			

Exhibit B

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

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

Site Posting

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

Newspaper Publication

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

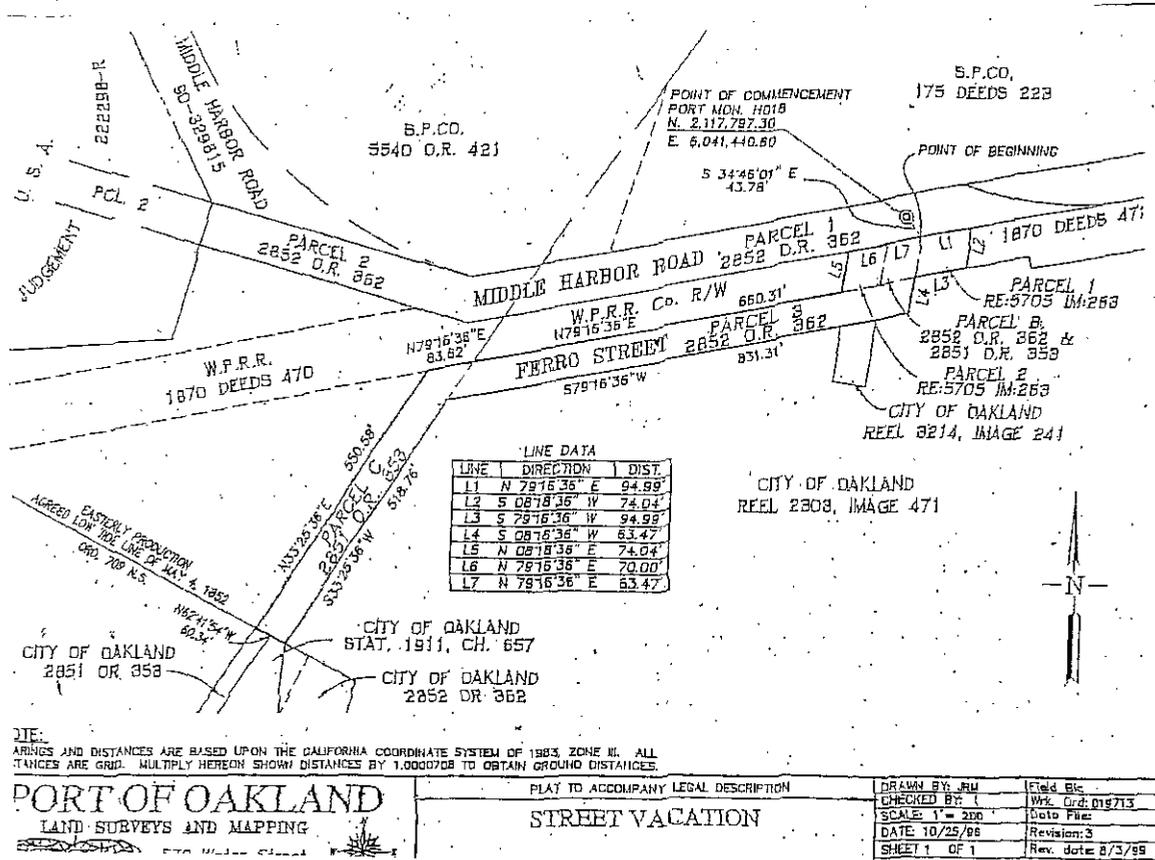
by RM Derania

RAYMOND M. DERANIA

Interim City Engineer

Community and Economic Development Agency

PUBLIC NOTICE



Pursuant to California Streets and Highways Code Section 8320 et seq., notice is given to the public that the Council of the City of Oakland intends to vacate to the Port of Oakland the public right-of-way for Ferro Street between its intersection with Middle Harbor Road and its westerly terminus for the purpose of expanding containerized marine cargo operations.

Notice is also given to the public that the Council of the City of Oakland will hold a hearing to receive evidence supporting and public comments for the proposed conditional vacation in the Chamber of the City Council, on the Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on January 17, 2006, at 7:01 p.m. local time.

It is a misdemeanor to deface or to remove this posting. Violators are subject to a fine of \$1,000 and a jail sentence of 6 months.

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

Exhibit C

Exhibit C

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

PUBLIC NOTICE

PUBLIC HEARING FOR VACATION OF A PUBLIC STREET

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

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