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OFFICE OF THE CITY CLERK  
OAKLAND

2014 DEC 30 PM 1:44

## ***AGENDA REPORT***

**TO: HENRY L. GARDNER**  
INTERIM CITY ADMINISTRATOR

**FROM: Rachel Flynn**

**SUBJECT: Partial Abandonment**  
Of Thomas Berkley Way

**DATE: December 23, 2014**

City Administrator  
Approval

Date

12-30-14

**COUNCIL DISTRICT: 1**

### **RECOMMENDATION**

Staff recommends that the City Council adopt the following:

**A RESOLUTION OF FINDINGS SUPPORTING THE VACATION TO THE CITY OF OAKLAND OF A PORTION OF THE PUBLIC RIGHT-OF-WAY OF THOMAS BERKLEY WAY (FORMERLY KNOWN AS 20<sup>TH</sup> STREET) FROM ITS INTERSECTION AT HARRISON STREET TO ITS INTERSECTION WITH LAKESIDE DRIVE; and**

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

### **OUTCOME**

Vacating (abandoning) Thomas Berkley Way between Harrison Street and Lakeside Drive 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.

### **BACKGROUND/ LEGISLATIVE HISTORY**

In June 2002, the City approved the \$198,250,000 Oakland Trust for Clean Water, Safe Parks bond measure (Measure DD) that authorized funding for physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation

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of creek and waterway protection and restoration activities. In February 2008, the City Planning Commission certified an Environmental Impact Report (EIR), which studied the potential environmental impacts that could result from implementation of Measure DD activities (Measure DD EIR). That decision was appealed, and in April 2008, the City Council denied the appeal and upheld the Planning Commission's certification of the Measure DD EIR. The partial vacation of Thomas Berkley Way between Harrison Street and Lakeside Drive was one of the Measure DD activities studied in the Measure DD EIR.

This legislation has been requested by the City of Oakland Public Works Department, the developer of the Lakeside Green Streets Project located adjacent to Lake Merritt and Snow Park, to facilitate continuing construction of the Measure DD improvements at Lake Merritt including new, safer access routes to Lake Merritt and will increase the current size of Snow Park

### ANALYSIS

Vacation (relinquishment of public right-of-way to the abutter) of a public street is subject to Streets & Highways Code sections 8300 et seq. The City Council may, on its own initiative, initiate a proceeding to vacate all or part of a public street. Vacating a public street requires a public hearing and specific notices, including newspaper publication for two successive weeks prior to the hearing and posting of notices to vacate along the proposed street to be vacated. Proof of publication of a notice must be made by affidavit.

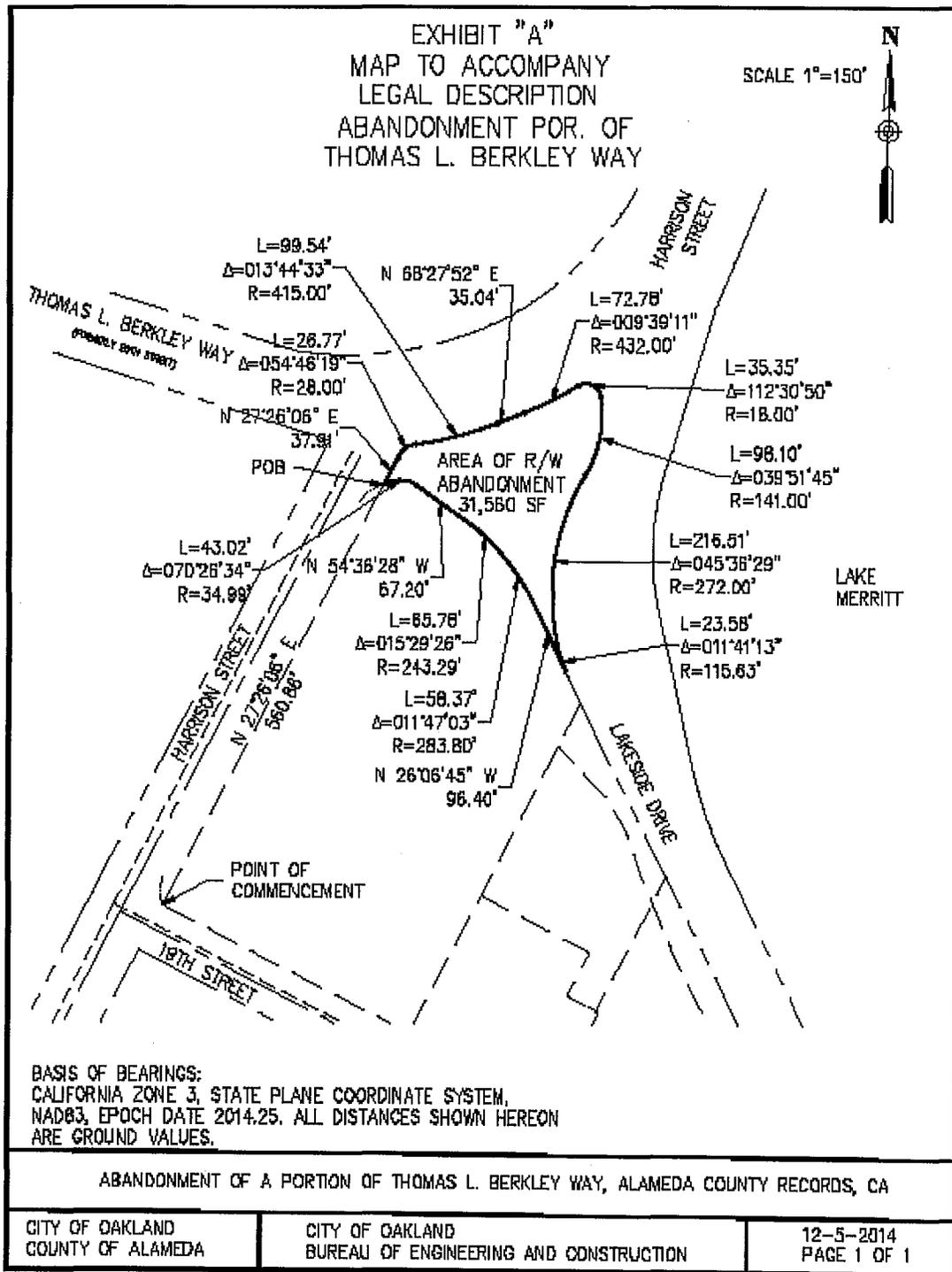
If the proposed street vacation is within an area for which a general plan is adopted, the legislative body must consider the general plan prior to vacating the street. In addition, the vacation must be considered by the Planning Commission for conformity with the general plan if Government Code section 65402 applies to the proposed vacation.

At the public hearing, the City Council must hear evidence offered by interested members of the public, and if the City Council finds, from all the evidence submitted, that the street is unnecessary for present or prospective public use, the City Council may adopt a resolution vacating the street. The resolution of vacation may provide that the vacation occurs only after conditions required by the City Council have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied. The vacation is complete upon recordation of the resolution of vacation by the City Clerk.

Staff has determined that the City Council must make the following findings for vacating the Thomas Berkley Way right-of-way from Harrison to Lakeside Drive:

- The vacation conforms with the City's adopted General Plan.
- The vacation will not increase traffic and pedestrian inconvenience nor decrease traffic and pedestrian safety
- The vacation will not impact future access for non-motorized transportation.
- A public service easement will be reserved on the partial vacation.

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### **PUBLIC OUTREACH/ INTEREST**

Pursuant to statutory noticing requirements, vacation of Thomas Berkley Way includes newspaper publication for two successive weeks prior to the public hearing and posting of notices to vacate along Thomas Berkley Way. An affidavit of proof of publication of the notice is attached in *Exhibit D3* to the legislation.

### **COORDINATION**

The Office of the City Attorney has reviewed the resolution for form and legality.

### **COST SUMMARY/ IMPLICATIONS**

Funding for the project is provided by Measure DD and Federal sources. Staff costs for processing the proposed street abandonment (PPE 1400052) are covered by fees set by the Master Fee Schedule and have been paid by the project developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** This construction project will provide opportunities for construction related jobs for the Oakland community.

***Environmental:*** Construction permits for infrastructure 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 construction of this roadway and parks project will support the economic revitalization of Oakland and provide new parkland and amenities at Snow Park and Lake Merritt .

### **CEQA**

The City previously certified the Measure DD EIR (Resolution No. 81180 C.M.S., adopted April 1, 2008). No legal actions were filed challenging the Measure DD EIR, and thus it is presumed valid. The proposed action will not result in significant environmental impacts considered under CEQA, and no further/additional CEQA review is required. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA

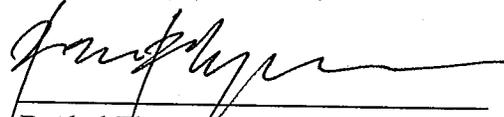
Guidelines, including without limitation Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163 are present, in that:

1. There are no substantial changes to the project 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;
2. There are no substantial changes in circumstances 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
3. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Measure DD EIR was certified, which is expected to result in: (a) new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the Measure DD EIR; or (b) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the Measure DD EIR and which would substantially reduce significant effects of the project, but the City declines to adopt them.

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.

For questions regarding this report, please contact David Mog, Civil Engineer at (510)238-3892.

Respectfully submitted,



Rachel Flynn, Director  
Department of Planning and Building

Reviewed by: David Harlan, Engineering Manager

Prepared by: David Mog, Civil Engineer

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January 13, 2015

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## OAKLAND CITY COUNCIL

### Resolution No. \_\_\_\_\_ C.M.S.

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**A RESOLUTION OF FINDINGS SUPPORTING THE VACATION TO THE CITY OF OAKLAND OF A PORTION OF THE PUBLIC RIGHT-OF-WAY OF THOMAS BERKLEY WAY (FORMERLY KNOWN AS 20<sup>TH</sup> 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, as shown in the schematic attached hereto as *Exhibit A*, and as delineated in the metes and bounds attached hereto as *Exhibit B*, to facilitate construction of the Lakeside Green Streets Project; and

**WHEREAS**, the intersection of Thomas Berkley Way, Harrison Street, and Lakeside Drive will be reconfigured, and said vacation will terminate the public right-of-way of Thomas Berkley Way at the easterly end of Harrison Street to the westerly edge of Lakeside Drive and the portion of right-of-way adjacent to Snow Park. The Harrison Street and Lakeside Drive rights-of-way shall remain as shown in the attached *Exhibit A*; and

**WHEREAS**, both the City Planning Commission and the City Council have considered the partial vacation for conformity with the City's General Plan, and have determined that the location, purpose, and extent of the proposed vacation conform with the General Plan; and

**WHEREAS**, the City of Oakland, which is the owner of real property abutting said portion of Thomas Berkley Way proposed for vacation (commonly known as 274 19<sup>th</sup> Street), has voluntarily agreed to exercise its presumed right and accept without cost its proportional segment of the portion of Thomas Berkley Way proposed for vacation; and

**WHEREAS**, pursuant to California Streets & Highways Code section 8348, the City Engineer has informed public utilities serving the property abutting Thomas Berkley Way of the City's intention to vacate said portion of Thomas Berkley Way; and

**WHEREAS**, pursuant to California Streets & Highways Code section 160, California Vehicle Code sections 110 and 530, and Oakland Municipal Code section 16.16.090, the reconfigured roadways and intersections of the public right-of-way and roadway for Harrison Street, Thomas Berkley Way, and Lakeside Drive Lane comply with said statutory requirements; and

**WHEREAS**, said land area proposed for vacation will be removed from the inventory of public streets maintained by the City of Oakland; and

**WHEREAS**, the City Engineer has determined that adequate street and sidewalk access for the public to the abutting property addressed as 274 19<sup>th</sup> Street is provided from 19<sup>th</sup> Street and Harrison Street; and

**WHEREAS**, the City Engineer has further determined that the proposed vacation will not diminish existing or future access to the abutting property addressed as 274 19<sup>th</sup> Street; and

**WHEREAS**, pursuant to California Streets & Highways Code sections 8317, 8322, and 8323, facsimiles of the public posting and newspaper publication, attached hereto as *Exhibit C1* and *Exhibit C2*, and an affidavit, attached hereto as *Exhibit C3*, confirm the completion of the statutory requirements for notifying the public of the City's intention to vacate a portion of Thomas Berkley Way and of the location, date, and time of public hearing to receive supporting evidence and public comments for the proposed vacation; and

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

- the owner, the City of Oakland, of the property abutting the portion Thomas Berkley Way to be vacated, owns the underlying fee simple interest in the public right-of-way; and
- pursuant to California Streets & Highways Code Section 892, 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 shall reserve a public service easement for existing and future utility facilities; and
- reconstruction of the reconfigured intersection including Thomas Berkley Way will be completed by the City of Oakland using Measure DD and Federal funding; and
- said portion of Thomas Berkley Way may be vacated by adoption of a companion Ordinance by the Council of the City of Oakland, at the option of its elected members; and

- 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**, 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**, the City conducted a duly noticed public hearing on January 20, 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, be it

**RESOLVED:** That the vacation to the City of Oakland of a portion of Thomas Berkley Way between its intersection at Harrison Street and Lakeshore Drive complies with CEQA; and be it

**FURTHER RESOLVED:** That the map attached hereto as *Exhibit B* does fully delineate the metes and bounds of the section of public right-of-way proposed for vacation; and be it

**FURTHER RESOLVED:** That the Council of the City of Oakland will condition the vacation of said portion of Thomas Berkley Way to the City of Oakland by terms set forth in the companion Ordinance of vacation; and be it

**FURTHER RESOLVED:** That based on all the evidence submitted, the Council of the City of Oakland hereby adopts the City Engineer's findings set forth above as its own, supporting the vacation of the public right-of-way of Thomas Berkley Way from its intersection at Harrison Street to its intersection with Lakeside Drive.

**IN COUNCIL, OAKLAND, CALIFORNIA,** \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

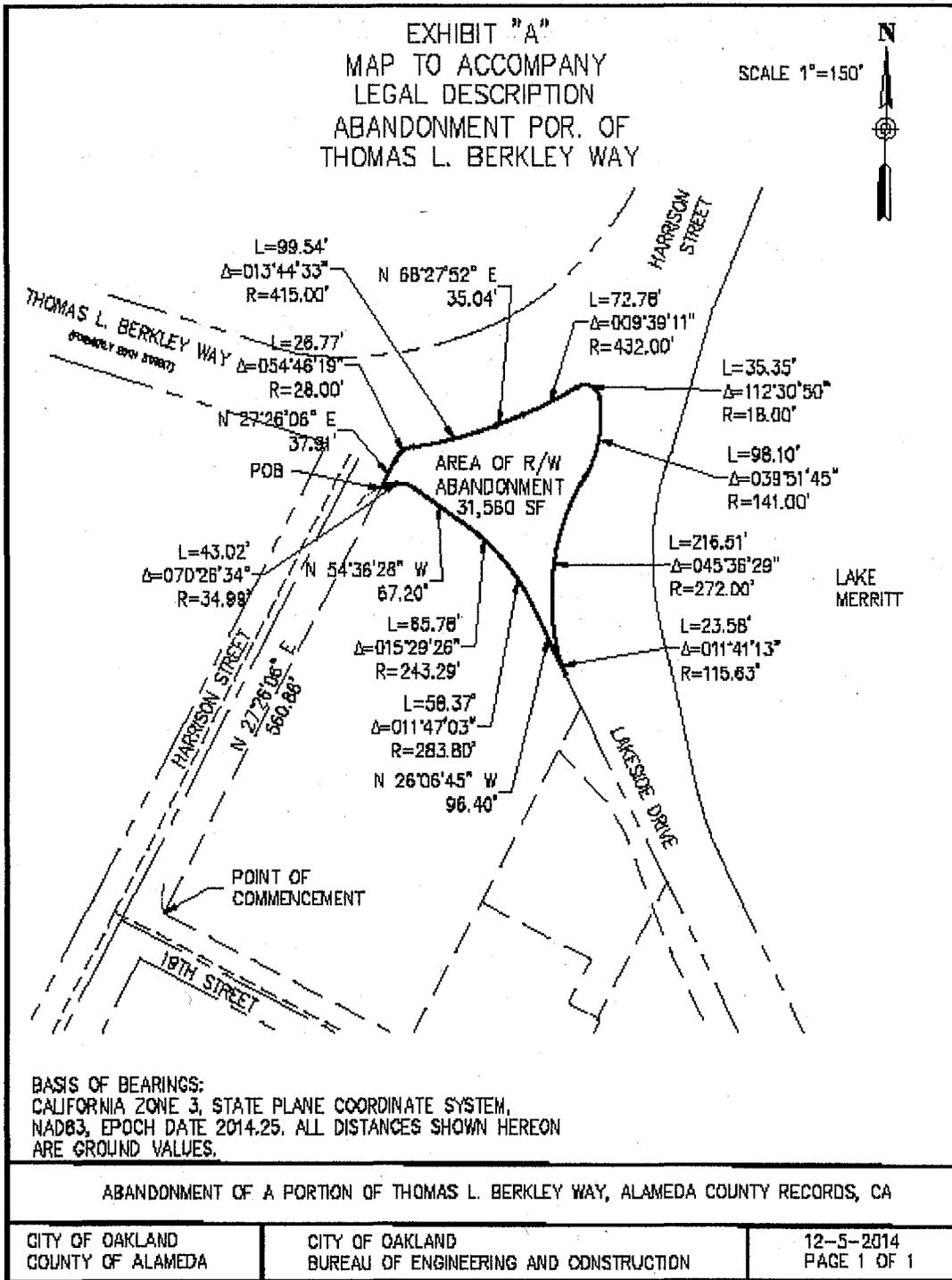
ABSTENTION -

ATTEST: \_\_\_\_\_

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

# 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 23<sup>rd</sup>, 1883, more particularly described as follows:

Commencing at the intersection of the northerly line of 19<sup>th</sup> 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, though 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 20<sup>th</sup> Street;

Thence the following five (5) courses along the southerly line of 20<sup>th</sup> 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.

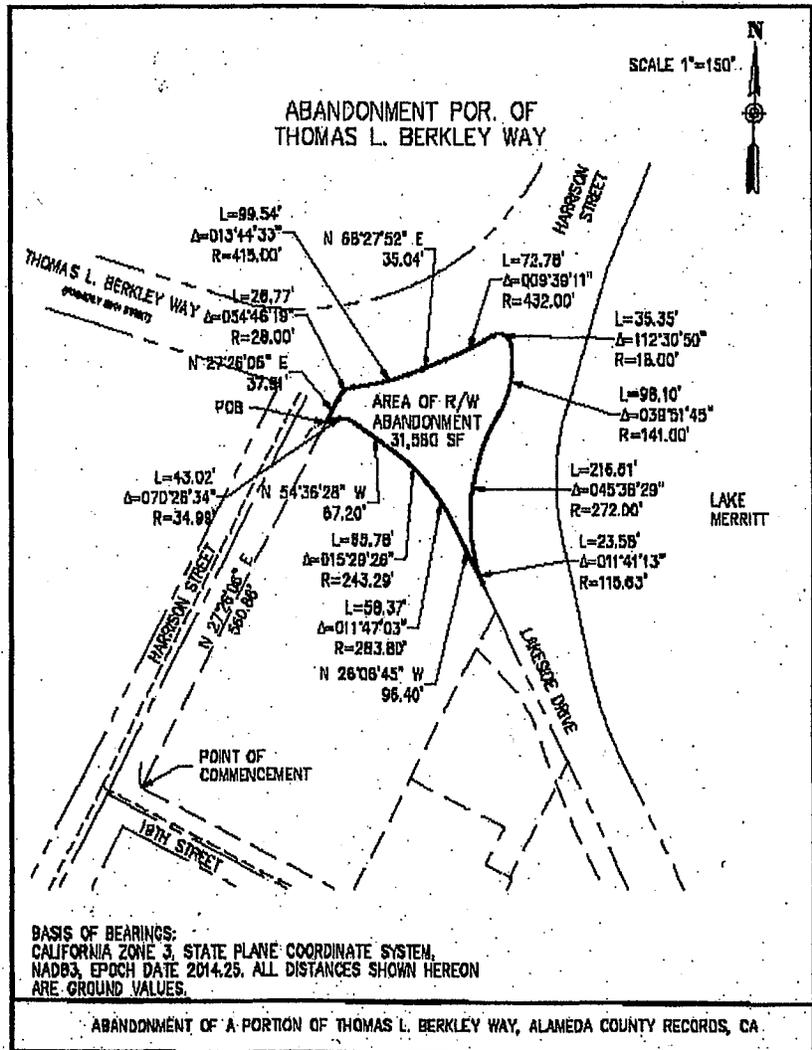
Containing an area of 31,560 Square Feet of land, more or less.

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.

EXHIBIT C1

Placard Noticing Of The Public Hearing For The Proposed  
Vacation Of A Portion Of The Public Right-Of-Way Of Thomas Berkley Way

**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 a portion of Thomas Berkley Way between its intersection at Harrison Street and its intersection at Lakeside Drive without cost to the City of Oakland.

Notice is also given to the public that the Council of the City of Oakland will hold a hearing to receive evidence and public comments for the proposed 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 20, 2015, beginning at 6:30 p.m..

*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.*

## **EXHIBIT C2**

### **Newspaper Noticing**

#### **PUBLIC NOTICE**

##### **Public Meeting For Abandoning A Public Street**

Pursuant to California Streets and Highways Code section 8320 et seq., the Council of the City of Oakland will hold a meeting in the Chamber of the City Council, Third Floor of City Hall, at One Frank H. Ogawa Plaza, in Oakland, California, on January 20, 2014, beginning at 6:30 p.m., to receive supporting evidence and public testimony for an ordinance which will abandon (vacate) a portion of the public right-of-way of Thomas Berkley Way between its intersection at Harrison Street and Lakeside Drive. A detailed map is available at the Office of the City Engineer, 250 Frank Ogawa Plaza, 2nd Floor, Oakland, CA 94612.

**published in the Oakland *Tribune*  
on January 2, 2015, and January 9, 2015**

## EXHIBIT C3

### Affidavit Proof of Publication

Pursuant to California Streets & Highways Code section 8317, and in accordance with Streets & Highways Code sections 8320(b), 8322, and 8323, I hereby certify that the following public notifications did occur on the dates and times and at the locations and for the durations indicated below:

#### Site Posting

At least three copies of the attached placard were affixed before January 5, 2015, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along Thomas Berkley Way, Harrison Street, and Lakeside Drive, and have remained in place since then to provide notice of a public hearing on January 20, 2015, at 6:30 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 receive supporting evidence and public testimony for the proposed vacation of a portion of the 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, City of Oakland.

#### Newspaper Publication

The attached notice was published in the Oakland *Tribune* twice on consecutive weeks on January 2, 2015, and January 9, 2015, to provide notice of a public hearing on January 20, 2015, at 6:30 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 receive supporting evidence and public testimony for the proposed vacation of a portion of the public right-of-way of Thomas Berkley Way between its intersections at Harrison Street and its intersection at Lakeside Drive to the abutting property owner, the City of Oakland and advising the public that a map delineating the limits of the portion of the public right-of-way proposed for vacation is available at the Office of the City Engineer, Dalziel Administration Building, 2nd Floor, 250 Frank H. Ogawa Plaza, Oakland, CA 94612.

by   
DEBORAH SANDERCOCK  
City Engineer  
Bureau of Building

Introduced by

2014 DEC 30 PM 1:44

Approved for Form and Legality

  
City Attorney

\_\_\_\_\_  
Councilmember

## OAKLAND CITY COUNCIL

**Ordinance No. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE VACATING TO THE CITY OF OAKLAND A PORTION OF THE PUBLIC RIGHT-OF-WAY OF THOMAS BERKLEY WAY (FORMERLY KNOWN AS 20<sup>TH</sup> 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 19<sup>th</sup> 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 January 20, 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,** \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

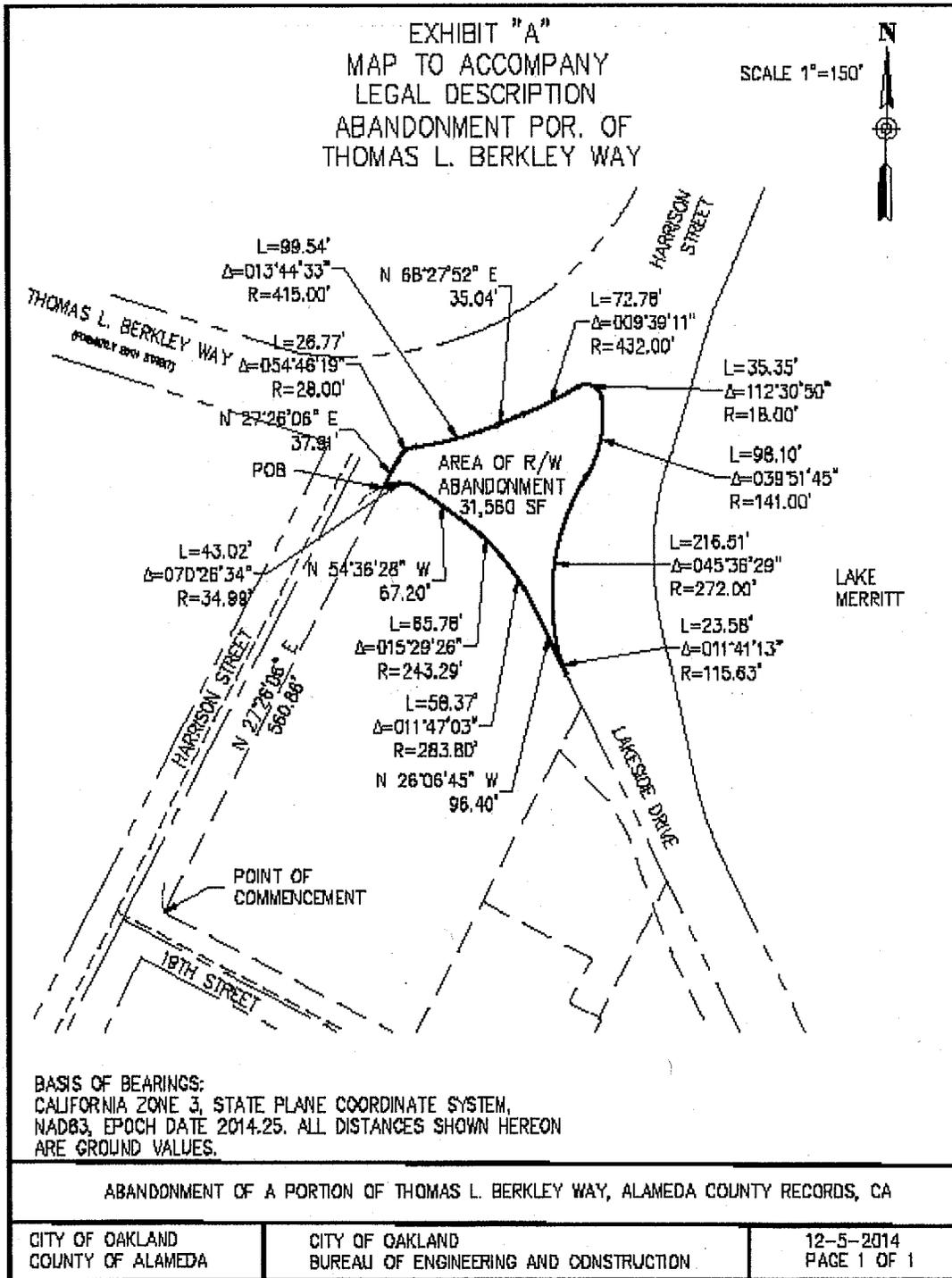
ABSTENTION -

ATTEST: \_\_\_\_\_

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

DATE OF ATTESTATION \_\_\_\_\_

**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 23<sup>rd</sup>, 1883, more particularly described as follows:

Commencing at the intersection of the northerly line of 19<sup>th</sup> 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, though 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 20<sup>th</sup> Street;

Thence the following five (5) courses along the southerly line of 20<sup>th</sup> 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**

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

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.