

Introduced by

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

Councilmember

2013 JUL -2 PM 2: 25

Ellen Chen
Office of the City Attorney

OAKLAND CITY COUNCIL

Resolution No. 84535 C.M.S.

RESOLUTION OF FINDINGS SUPPORTING THE VACATION WITHOUT COST TO THE ABUTTING PROPERTY OWNER HORIZON SERVICES OF A PORTION OF THE PUBLIC RIGHT-OF-WAY OF APGAR STREET FROM ITS INTERSECTION AT TELEGRAPH AVENUE TO ITS TERMINATION AT THE MACARTHUR TRANSIT VILLAGE PROJECT BOUNDARY

WHEREAS, pursuant to California Streets and Highways Code Section 8330 et seq., the San Francisco Bay Area Rapid Transit District (BART), established pursuant to California Public Utilities Code section 28500 et seq., which is one of the three (3) owners of real property abutting Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern boundary of the MacArthur Transit Village project, has made an application (PPE 1300069) to the City Engineer of the City of Oakland for the vacation of a portion of the public right-of-way of said segment of Apgar Street, as shown in the attached *Exhibit D*; and

WHEREAS, said vacation is supported by BART to facilitate construction of the MacArthur Transit Village project by the developer, MacArthur Transit Community Partners LLC (MTCP), a California limited liability company (200419810042); and

WHEREAS, pursuant to California Streets and Highways Code Section 8320, the metes and bounds establishing the extent of the portion of Apgar Street proposed for vacation is delineated in the attached *Exhibit A*; and

WHEREAS, said vacation will reduce the width of the public right-of-way of Apgar Street, which will be renamed Apgar Lane, from sixty (60) feet to thirty-three (33) feet and the width of the roadway drive aisle from thirty-six (36) feet to twenty (20) feet, as shown in the attached *Exhibit B*; and

WHEREAS, pursuant to Resolution No. 83516 C.M.S., adopted July 26, 2011, which conditionally approved the Final Map for Tract No. 8047 for the MacArthur Transit Village project, MTCP will reconstruct without cost to the City of Oakland the narrowed portion of Apgar Lane, including sidewalks, curbs, gutters, roadway, signs, supporting poles, landscaping, pavement, striping, and buried utilities; and

WHEREAS, pursuant to the 2010 edition of the California Fire Code, Appendix D, section D103.1, and to Oakland Municipal Code section 15.12.010, said narrowed roadway width is the

minimum dimension necessary to provide adequate access for fire apparatus to support fire suppression and rescue operations; and

WHEREAS, MTCP has filed an application with the City Engineer of the City of Oakland for a permit (PX 1300069) to reconstruct Apgar Lane, as shown in the attached *Exhibit C*; and

WHEREAS, pursuant to California Streets and Highways Code Section 8313 and California Government Code Section 65402, the Planning Commission of the City of Oakland determined at its meeting on April 5, 2011, with its approval of the Phase I Final Development Plan (PUDF10097) and the Final Map for Tract No. 8047 for the MacArthur Transit Village Project (Council Resolution 83292 C.M.S.), that the location, purpose, and extent of the proposed vacations conform with the City's adopted General Plan; and

WHEREAS, the owners of the two (2) parcels which abut said portion of Apgar Street acquired title individually for valuable consideration through the following instruments:

PROPERTY ADDRESS	ASSESSOR PARCEL No.	PROPERTY OWNER	GRANT DEED
3845 Telegraph Avenue	012-0967-002-00	Horizon Services	recorded 09-28-1992 series no. 1992-313728
516 Apgar Street	012-0968-055-03	Bay Area Rapid Transit District	Subdivision Map 8047

as recorded by the Alameda County Clerk-Recorder, and shown in *Exhibit A* attached hereto; and

WHEREAS, pursuant to California Civil Code section 831, an owner of land bounded by a road or street is presumed to own to the center of the way; and

WHEREAS, BART, which is one of the two owners of real property abutting said portion of Apgar Street proposed for vacation, voluntarily supports the vacated right-of-way as a Horizon Services, Inc. parcel; and

WHEREAS, Horizon Services, a California corporation (C0776783), which is one of the two owners of real property abutting said portion of Apgar Street proposed for vacation, has voluntarily agreed to exercise its presumed right and accept without cost its proportional segment of the portion of Apgar Street proposed for vacation and also accept without cost said proportional segment of the portion of Apgar Street which BART has declined to accept; and

WHEREAS, pursuant to California Streets and Highways Code section 8348, the City Engineer has informed public utilities serving the three (3) properties abutting Apgar Street of the City's intention to vacate said portion of Apgar Street; and

WHEREAS, pursuant to California Streets and Highways Code section 160, and California Vehicle Code sections 110 and 530, and Oakland Municipal Code section 16.16.090, the residual width of the narrower public right-of-way and roadway for Apgar Lane complies with said statutory requirements; and

WHEREAS, said land area proposed for vacation will be added by the Alameda County Assessor to the general levy of property taxes, a portion of which will accrue to the City of Oakland; 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 properties addressed as 3845 Telegraph Avenue and 3875 Telegraph Avenue is provided from Telegraph Avenue; and

WHEREAS, the City Engineer has further determined that the proposed vacation will not diminish existing or future access to the abutting properties addressed as 3845 Telegraph Avenue and 3875 Telegraph Avenue; and

WHEREAS, pursuant to California Streets and Highways Code Sections 8317, 8322, and 8323, facsimiles of the newspaper publication and public posting, attached hereto as *Exhibit E1* and *Exhibit E2*, and an affidavit, attached hereto as *Exhibit E3*, confirm that the City Engineer completed the statutory requirements for notifying the public of the City's intention to vacate a portion of Apgar Street and of the locate, 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 and Highways Code, the City Engineer has determined the following:

- the owners, Horizon Services and BART, of the two properties abutting the portion Apgar Street to be vacated, own the underlying fee simple interest in the public right-of-way; and
- pursuant to California Streets and 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 Apgar Lane will be completed by MTCP without cost to the City of Oakland; and

- said portion of Apgar Street 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 add 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 infrastructure maintenance; and
- said vacation will benefit the public and the citizens of Oakland fiscally by decreasing the cost of public works maintenance services of the public street and increasing the revenue derived from the general levy of property taxes and environmentally by decreasing emissions of the products and components of combustion; and

WHEREAS, pursuant to California Streets and 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 City Planning Commission certified the MacArthur Transit Village EIR (ER 06004) on June 4, 2008, and on July 15, 2008, pursuant to Ordinance No. 12883 C.M.S., the City Council independently confirmed and adopted as its own findings and determinations (i) the certification of the FEIR and adoption of the CEQA-related Findings made and adopted by the Planning Commission on June 4, 2008, and (ii) the Conditions of Approval and Mitigation Monitoring and Reporting Program adopted by the Planning Commission on June 4, 2008, as modified in the July 1, 2008 City Council Supplemental Agenda Report; and

WHEREAS, the City Planning Commission adopted an addendum to said EIR determining that no further environmental review was required on March 16, 2011, and on May 17, 2011, pursuant to Resolution No. 83292 C.M.S., the City Council affirmed the Planning Commission's CEQA determination that no further environmental review was required; and

WHEREAS, the City of Oakland has reviewed and considered documentation relevant to the proposed subdivision and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental EIR, as specified in CEQA and the CEQA Guidelines, including without limitation, Public Resources Code Section 2116 and CEQA Guidelines Sections 15162 and 15163; and the requirements of CEQA and the CEQA Guidelines have been satisfied; now, therefore, be it

RESOLVED, that the vacation to Horizon Services of a portion of Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern boundary of the MacArthur Transit Village project complies with CEQA; and be it

FURTHER RESOLVED, that the map attached hereto as *Exhibit D* 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 Apgar Street to Horizon Services by terms set forth in the companion Ordinance of vacation; and be it

FURTHER RESOLVED, that a hearing to receive supporting evidence and public comments for a proposed ordinance that will conditionally vacate a portion of Apgar Street to Horizon Services will occur in the Chamber of the City Council, Third Floor of City Hall, at One Frank Ogawa Plaza, in Oakland, California, on July 16, 2013, at 6:30 p.m. local time.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 16 2013, 2013

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF,
AND PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

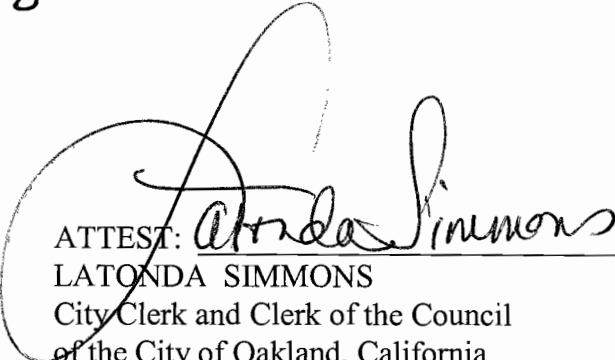
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Grant Deed for 3845 Telegraph Avenue, recorded 09-28-1992, series no. 1992-313728

RECORDING REQUESTED BY FIRST AMERICAN TITLE GUARANTY COMPANY

Order No. 164887
Escrow No. 164887
Loan No.

92313728

WHEN RECORDED MAIL TO:
Horizon Services
2595 Depot Road
Hayward, CA 94545



RECORDED IN OFFICIAL RECORDS
ALAMEDA COUNTY, CALIF.
PATRICK O'CONNELL, CO. RECORDER

SEP 28 1992
AM 7:18 PM 10:10

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

CITY TRANSFER TAX \$ 5,000.00
DOCUMENTARY TRANSFER TAX \$ 650.00
SURVEY MONUMENT FEE \$ 10.00

SAME AS ABOVE



Computed on the consideration or value of property conveyed OR
Computed on the consideration or value less items or encumbrances
remaining at time of sale

As declared by the undersigned Grantor
Signature of Declarant or Agent determining tax - Firm Name

A.P.N. # 12-067-1 & 12-067-2

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Phillip M. Spielman, a married man as his sole and separate property

hereby GRANT(S) to

Horizon Services, a California nonprofit corporation

the real property in the City of Oakland
County of Alameda, State of California, described as

FOR LEGAL DESCRIPTION, SEE EXHIBIT 'A' ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

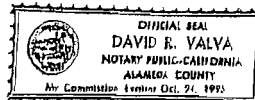
Dated September 17, 1992

STATE OF CALIFORNIA)
COUNTY OF Alameda)

Phillip M. Spielman
Phillip M. Spielman

On September 22, 1992
before me, David R. Valva, personally
appeared Phillip M. Spielman

personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) here subscribed to the
within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the
instrument.



WITNESS my hand and official seal
Signature *David R. Valva*

MAIL TAX STATEMENTS AS DIRECTED ABOVE

1002-BM (6/82)

D

EXHIBIT B

Schematic of the Apgar Street Vacation

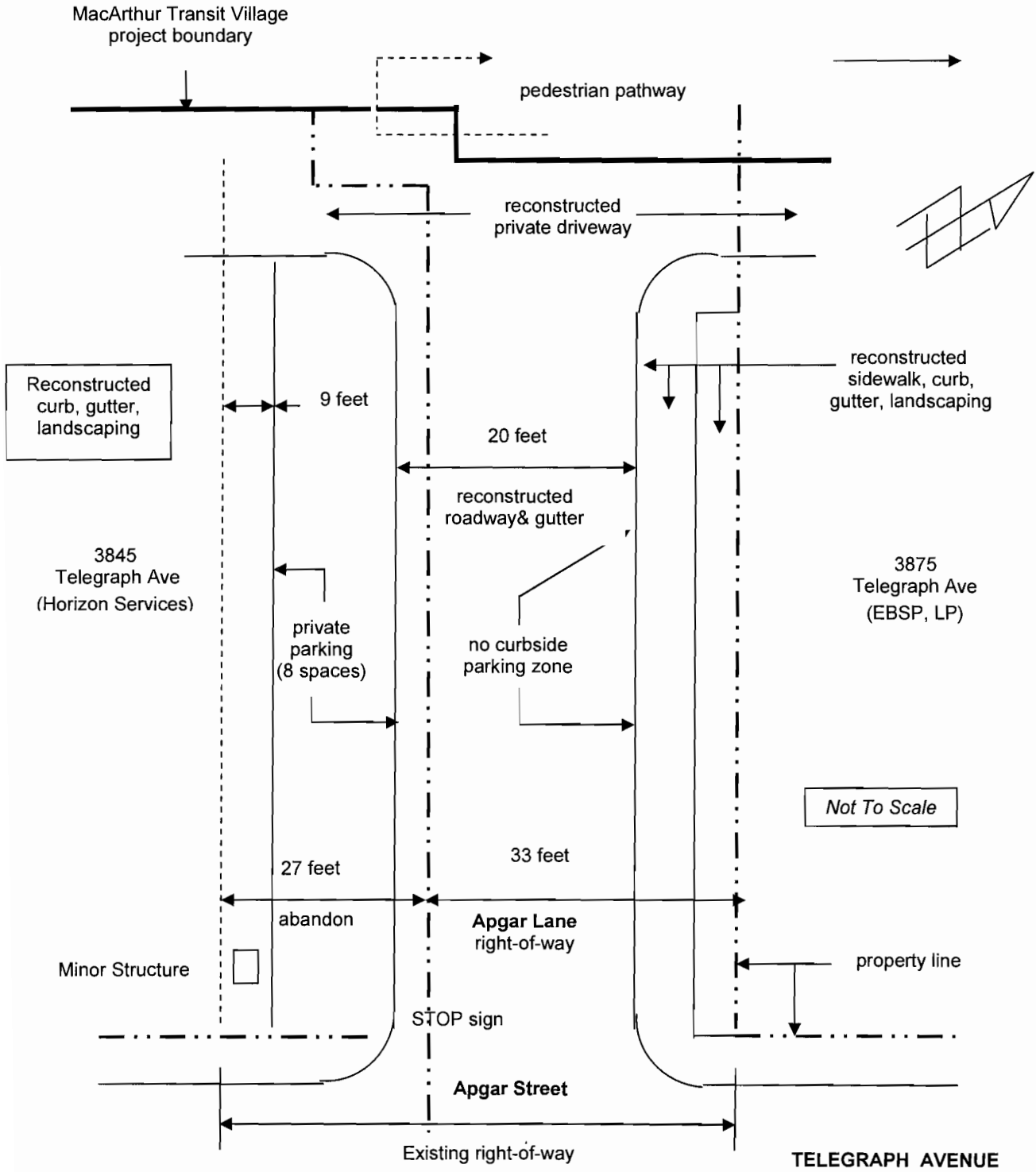
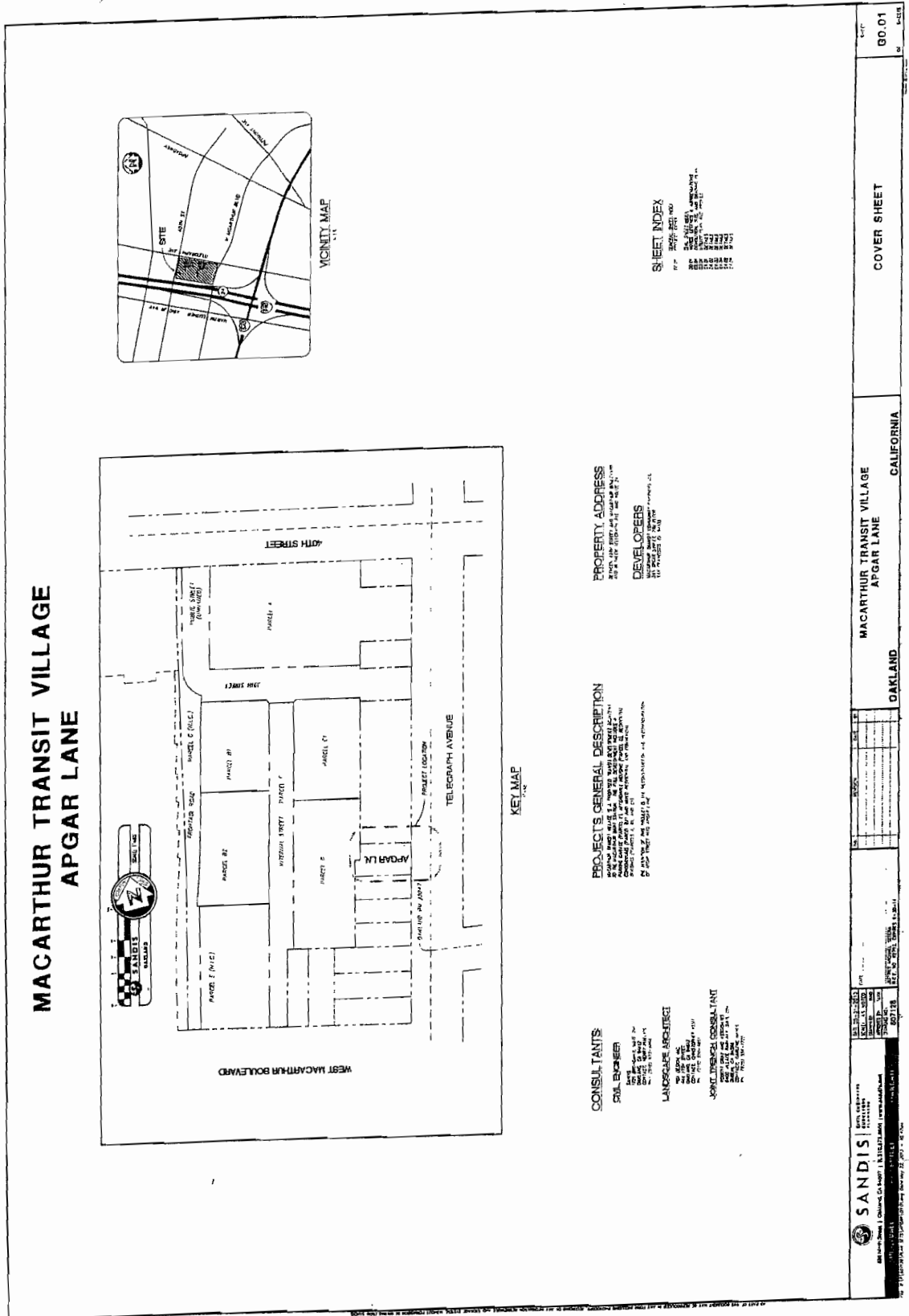


EXHIBIT C

Construction Plans for Infrastructure Permit PX 1300069 To Reconstruct Apgar Lane



SHEET INDEX

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61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100

PROPERTY ADDRESS
2000 WEST MACARTHUR BOULEVARD, SUITE 200
DUBLIN, CA 94568

DEVELOPERS
SANDIS
11000 BAYVIEW AVENUE, SUITE 200
DUBLIN, CA 94568

PROJECT'S GENERAL DESCRIPTION
RECONSTRUCTION OF APGAR LANE FROM 13TH STREET TO 14TH STREET, INCLUDING SIDEWALKS, CURBS, AND UTILITIES. THE PROJECT ALSO INCLUDES THE RECONSTRUCTION OF THE EXISTING SIDEWALKS AND CURBS ALONG APGAR LANE FROM 13TH STREET TO 14TH STREET.

CONSULTANTS

CIVIL ENGINEER
SANDIS
11000 BAYVIEW AVENUE, SUITE 200
DUBLIN, CA 94568
PHONE: (916) 231-1100
FAX: (916) 231-1101

LANDSCAPE ARCHITECT
SANDIS
11000 BAYVIEW AVENUE, SUITE 200
DUBLIN, CA 94568
PHONE: (916) 231-1100
FAX: (916) 231-1101

SOIL TESTING CONSULTANT
SANDIS
11000 BAYVIEW AVENUE, SUITE 200
DUBLIN, CA 94568
PHONE: (916) 231-1100
FAX: (916) 231-1101

<p>SANDIS 11000 BAYVIEW AVENUE, SUITE 200 DUBLIN, CA 94568 PHONE: (916) 231-1100 FAX: (916) 231-1101</p>	<p>DATE: 08/11/11 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]</p>	<p>PROJECT NO.: PX 1300069 SHEET NO.: 01 OF 100</p>	<p>SCALE: AS SHOWN</p>
	<p>PROJECT: MACARTHUR TRANSIT VILLAGE APGAR LANE</p>	<p>CITY: DUBLIN COUNTY: ALAMEDA STATE: CALIFORNIA</p>	<p>DATE: 08/11/11</p>

EXHIBIT D

Metes and Bounds of Apgar Street Vacation

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA AND STATE OF CALIFORNIA, BEING A PORTION OF APGAR STREET, AS SHOWN AND CREATED ON THE "MAP OF THE LUNING TRACT", AS FILED AS FILED OCTOBER 10, 1905 IN BOOK 20 OF MAPS, AT PAGE 76, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 3, AS SHOWN ON SAID MAP, AT THE INTERSECTION OF THE SOUTHERLY LINE OF APGAR STREET AND THE WESTERLY LINE OF TELEGRAPH AVENUE;

THENCE NORTH 77°07'14" WEST ALONG THE NORTHERLY LINE OF SAID LOT 3 AND THE SOUTHERLY LINE OF APGAR STREET, A DISTANCE OF 109.99 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 3, AT AN INTERSECTION WITH THE EASTERLY LINE OF PARCEL "D", AS SHOWN ON "TRACT NO. 8047" AS FILED MARCH 23, 2012 IN BOOK 321 OF MAPS, AT PAGES 41-46, ALAMEDA COUNTY RECORDS;

THENCE NORTH 12°52'46" EAST ALONG THE EASTERLY LINE OF SAID PARCEL "D", A DISTANCE OF 15.00 FEET;

THENCE SOUTH 77°07'14" EAST A DISTANCE OF 10.07 FEET;

THENCE NORTH 12°52'46" EAST A DISTANCE OF 12.00 FEET;

THENCE SOUTH 77°07'14" EAST A DISTANCE OF 100.04 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF TELEGRAPH AVENUE;

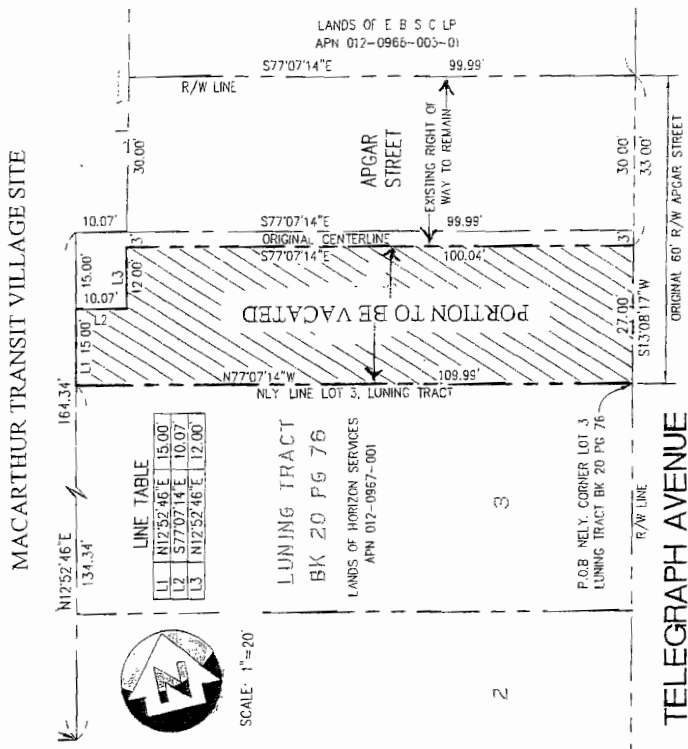
THENCE SOUTH 13°08'17" WEST ALONG THE WESTERLY LINE OF TELEGRAPH AVENUE, A DISTANCE OF 27.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,851 SQUARE FEET, MORE OR LESS.

EXHIBIT E1

Placard Noticing Of The Public Hearing For The Proposed
Vacation Of A Portion Of The Public Right-Of-Way Of Apgar Street

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 Apgar Street between its intersection with Telegraph Avenue its termination at the southeastern property boundary with the MacArthur Transit Village project 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 July 16, 2013, beginning at 6:30 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.

EXHIBIT E2

Newspaper Noticing Of The Public Hearing For The Proposed Vacation Of A Portion Of The Public Right-Of-Way Of Apgar Street

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 Ogawa Plaza, In Oakland, California, on July 16, 2013, beginning at 6:30 p.m., local time, to receive supporting evidence and Public testimony for an ordinance which will abandon (vacate) a portion of the public right-of-way of Apgar Street between its intersection at Telegraph Ave and the MacArthur Transit Village project. 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 July 2, 2013, and July 9, 2013

EXHIBIT E3

Affidavit Certifying Notifications Of A Public Meeting To Receive Supporting Evidence And Public Testimony For A Proposed Vacation Of A Portion Of The Public Right-Of-Way Of Apgar Street Between Its Intersection At Telegraph Avenue And The Of The MacArthur Transit Village Project Without Cost To The Abutting Property Owner Horizon Services

Pursuant to California Streets and Highways Code Section 8322, 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

Facsimiles of the attached placard were affixed before June 22, 2013, to City street light poles in the public sidewalk at intervals not exceeding three hundred (300) feet along Apgar Street and Telegraph Avenue, and have remained in place since then advising the public of a meeting on July 16, 2013, at 6:30 p.m. local time, 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 Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern property boundary of the MacArthur Transit Village project without cost to the abutting property owner, Horizon Services.

Newspaper Publication

The attached notice was published in the Oakland *Tribune* twice on consecutive weeks on July 2, 2013, and July 9, 2013, advising the public of a hearing on July 16, 2013, at 6:30 p.m. local time 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 Apgar Street between its intersection at Telegraph Avenue and its termination at the southeastern property boundary of the MacArthur Transit Village project without cost to the abutting property owner, Horizon Services, 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 _____
RAYMOND M. DERANIA
Deputy Director - City Engineer
Department of Planning and Building