

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2011 JUL 21 PM 5:59

TO: Office of the City Administrator
ATTN: Sabrina Landreth, Acting City Administrator
FROM: Community and Economic Development Agency
DATE: July 26, 2011

RE: **A Supplemental Report and Accompanying Resolution Revising the Final Map (Phase 1) For Tract No. 8047 By Removing The Abandonment (Vacation) Of A Portion Of Apgar Street Between Telegraph Avenue And The Boundary Of The MacArthur Transit Village Project**

SUMMARY

At the July 19, 2011 meeting of the City Council, the City Engineer requested that the resolution approving the Final Map and the Subdivision Improvement Agreement for Phase 1 construction of the MacArthur Transit Village project be continued until the July 26 meeting of the Council.

The developer, MacArthur Transit Community Partners LLC (MTCP), along with the property owner and the business operator of the Surgery Center of Alta Bates Summit Medical Center requested in separate communications that the portion of Apgar Street between Telegraph Avenue and the boundary of the MacArthur Transit Village Project be abandoned (vacated) pursuant to an alternate process provided in the Streets and Highways Code, rather than in the Final Map pursuant to the Subdivision Map Act as originally proposed. This procedural change requires technical corrections to the Final Map and the resolution.

Specifically, the street vacation in the revised resolution now includes a portion of the 39th Street public right of way and only that portion of Apgar Street that abuts real property owned by BART within the MacArthur Transit Village project site, and excludes the eastern portion of Apgar Street (about 6,149 square feet) adjacent to and between the Surgery Center of Alta Bates Summit Medical Center site (south boundary of Assessor parcel no. 012-0968-003-01, 3875 Telegraph Avenue) and Horizon Services site (north boundary of Assessor parcel no. 012-0697-001-00, 3847 Telegraph Avenue).

The City's consideration and approval of the vacation of the eastern portion of Apgar Street located adjacent to and between the Surgery Center of Alta Bates Summit Medical Center site and the Horizon Services site will be subsequently addressed by means of a separate street vacation proceeding sometime this Fall pursuant to applicable provisions of the Streets and Highways Code. In the interim, the City and MTCP will continue to work in good faith with the property owners adjacent to the eastern portion of Apgar Street on the various issues of concern, including, without limitation, ultimate ownership of this portion of Apgar St. (upon its vacation)

Item No. _____
City Council
July 26, 2011

and the terms of a recordable easement and maintenance agreement addressing access, improvements, and maintenance of this portion of Apgar St. (following vacation).

Also, the original staff report did not accurately characterize number of residential units. The Project will have ninety (90) units with eighty-nine (89) below market rate units and one manager's unit.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council adopt the revised resolution approving the revised Final Map and the Subdivision Improvement Agreement

Respectfully submitted,




Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
City Engineer
Building Services Division

APPROVED AND FORWARDED
TO THE CITY COUNCIL



Office of the City Administrator

Item No. _____
City Council
July 26, 2011

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

2011 JUL 26
OFFICE OF THE CITY CLERK
OAKLAND
FILED

RESOLUTION CONDITIONALLY APPROVING A FINAL MAP (PHASE 1) FOR TRACT No. 8047, THE VACATION (ABANDONMENT) OF A PORTION OF APGAR STREET WITHIN THE MACARTHUR TRANSIT VILLAGE PROJECT SITE, THE DEDICATIONS OF PUBLIC EASEMENTS AND RIGHT OF WAY, AND A SUBDIVISION IMPROVEMENT AGREEMENT WITH MACARTHUR TRANSIT COMMUNITY PARTNERS FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS, ALL ASSOCIATED WITH CONSTRUCTION OF A PARKING GARAGE FOR THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART) AND AN AFFORDABLE HOUSING MULTIPLE FAMILY BUILDING

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART), a regional transit district established pursuant to California Public Utilities Code section 28500 et seq., is the owner and subdivider of five (5) contiguous parcels identified by the Alameda County Clerk-Recorder as Tract No. 8047, and by the Alameda County Assessor and the City of Oakland as follows:

- | | |
|---|------------------------------------|
| 012-0967-009-00 - 526 West MacArthur Blvd | 012-0968-055-01 - 516 Apgar Street |
| 012-0967-010-01 - 544 West MacArthur Blvd | 012-0967-049-01 - 515 Apgar Street |
| 012-0969-053-03 - 532 39th Street | |

which comprise, with additional adjoining parcels, the MacArthur Transit Village residential housing project and site; and

WHEREAS, BART has previously entered into an agreement with MacArthur Transit Community Partners, LLC (MTCP), a California limited liability company (no. 200419810042), to develop said parcels for a new BART parking garage, multiple family housing, and associated publicly and privately maintained infrastructure; and

WHEREAS, BART and MTCP have previously applied to the City of Oakland for a vesting tentative map (TTM 8047) to voluntarily merge said parcels and subdivide the platted land into two (2) developable lots and two (2) additional lots for access roads maintained by BART and by MTCP and a future MacArthur Transit Village Homeowners Association and the owners of future development phases within the boundaries of the MacArthur Transit Village project site as illustrated on Tract Map No. 8047 ("Owners of Future Development Phases"); and

WHEREAS, the Council of the City of Oakland adopted the "Development Agreement By And Between City of Oakland And MacArthur Transit Community Partners, LLC Regarding The Property And Project Known As "MacArthur Transit Village" on July 21, 2009; and

WHEREAS, the City Planning Commission previously certified the MacArthur Transit Village EIR (ER 06004), adopted an addendum to said EIR determining that no further environmental review was required and also approved said vesting tentative map, upon which the Phase 1 Final Map for Tract No. 8047 is based and the Stage I Final Development Plan (PUDF 10097), which includes construction of the BART parking garage on March 16, 2011; and

WHEREAS, the City Planning Commission adopted an addendum and also approved the Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, on April 6, 2011; and

WHEREAS, pursuant to Resolution No. 83292 C.M.S., the City Council approved the Stage I Final Development Plan (PUDF 10097) and the Phase 1 Final Map for Tract No. 8047, which includes construction of the BART parking garage, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on April 5, 2011; and

WHEREAS, pursuant to Resolution No. 83365 C.M.S., the City Council approved the Stage II Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on May 17, 2011; and

WHEREAS, said Final Map proposes:

- the establishment of
 - one (1) lot, designated thereon as Lot D, for construction of an affordable housing multiple family building;
 - one (1) lot, designated thereon as Lot E, for construction of a parking garage for BART patrons and transit village residents;
 - one (1) lot, designated thereon as Lot F, for construction of an internal access road which will be maintained by MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases;
 - one (1) lot, designated thereon as Lot G, for an existing BART access road;
- the irrevocable dedication to the City without valuable consideration of
 - public utility, public access, and emergency vehicle easements which will be maintained by owner of Lot G as to the easements located on Lot G, and otherwise by MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases;
 - real property owned by BART to extend 39th Street to its intersection with 40th Street;
- the vacation without valuable consideration of portions of the Apgar Street and 39th Street public rights-of-way abutting real property owned by BART within the MacArthur Transit Village project site; and

WHEREAS, pursuant to California Civil Code section 831, the owner of real property bounded by public right-of-way is presumed to own the underlying fee simple interest to the middle of the roadway, but the contrary may be shown; and

WHEREAS, said portions of Apgar Street to be vacated excludes the eastern portion of Apgar Street (about 6,149 square feet) adjacent to and between the southerly boundary of the Surgery Center of Alta Bates Summit Medical Center (Assessor parcel no. 012-0968-003-01), which is addressed as 3875 Telegraph Avenue, and the northerly boundary of the Horizon Services site (Assessor parcel no. 012-0697-001-00), which is addressed as 3847 Telegraph Avenue, collectively known as the “Excluded Portion of Apgar Street”; and

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Phase 1 Final Map for Tract No. 8047, attached hereto as *Exhibit A*, is substantially the same as said vesting tentative map approved by the Planning Commission, upon which said Final Map is based; and
- the Phase 1 Final Map for Tract No. 8047 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland’s local ordinance (Municipal Code Title 16 - Subdivisions); and

WHEREAS, the City Engineer has further determined that the Phase I Final Map for Tract No. 8047 is technically correct and accurately delineates the proposed metes and bounds of the property boundaries separating said four (4) subdivided lots and the on-site public service easements and public right-of-way, the limits of which have been established by field survey and can be re-established from the monuments, property comers, radii, bearings, and distances shown on said Final Map; and

WHEREAS, MTCP has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the on-site public right-of-way and easements and the adjoining rights-of-way along West MacArthur Boulevard, Telegraph Avenue, 39th Street and 40th Street; and

WHEREAS, the City Engineer has approved infrastructure permit no. PX1100070 and the associated plans and specifications for construction of said required public infrastructure improvements, included by reference with *Exhibit B*, attached hereto; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, as a condition precedent to approval of the Phase 1 Final Map for Tract No. 8047, MTCP has executed a Subdivision Improvement Agreement (SIA), attached hereto as *Exhibit C*, assuring the timely construction, unconditional warranty, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, MTCP has deposited surety bonds, included by reference with *Exhibit C*, and in

sufficient amounts, as estimated by the City Engineer, to secure its performance under *Exhibit B*; 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 State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and the requirements of the CEQA and the CEQA Guidelines have been satisfied; now, therefore, be it

RESOLVED: That this Resolution complies with CEQA; and be it

FURTHER RESOLVED: That the Phase I Final Map for Tract No. 8047 is hereby conditionally approved; and be it

FURTHER RESOLVED: That the vacation without valuable consideration of a portion of Apgar Street (not including the Excluded Portion of Apgar Street) and 39th Street public rights-of-way, all located within the MacArthur Transit Village project site, as delineated on said Final Map, are hereby conditionally approved; and be it

FURTHER RESOLVED: That the dedication of public service easements to the City of Oakland on said Lots D, E, F, and G, as delineated on said Final Map, is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the dedication without valuable consideration to the City of Oakland of real property owned by BART for use as public right-of-way to extend 39th Street to its intersection with 40th Street, as delineated on said Final Map, is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the approval of the vacations of said rights-of-way (not including the Excluded Portion of Apgar Street) and the acceptance of the dedications of said right-of way and easements, and the reservations of said easements are conditioned upon completion to the satisfaction of the City Engineer of said public infrastructure improvements, as set forth in said SIA; and be it

FURTHER RESOLVED: That failure by MTCP to comply in all aspects with said SIA shall void the approval of the Phase I Final Map of Tract No. 8047 and void the approval of said vacations and void the acceptance of said dedications and void the set-aside of said reservations and shall revert said five (5) originally platted parcels comprising Tract No. 8047 to acreage; and be it

FURTHER RESOLVED: That MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements within said

public service easements as delineated on the Phase 1 Final Map for Tract No. 8047, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary sewer piping, storm water piping, and potable water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission or customarily maintained by the City of Oakland; except with respect to Parcel G, which shall be maintained by BART as delineated on Phase 1 Final Map for Tract No. 8047 and be it

FURTHER RESOLVED: That by the acceptance of said vacated sections of the public right-of-way of portions of Apgar Street (not including the Excluded Portion of Apgar Street) and 39th Street, MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases (which does not include any owners of the Excluded Portion of Apgar Street), collectively referred to as the Parties, acknowledge each of and agree to all of the following:

- a. the Parties, jointly and severally, shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any claim, demand, lawsuit and judgment for damages of any kind and nature arising out of said vacation and regardless of responsibility for negligence;
- b. the City of Oakland makes no representations or warranties as to the conditions beneath said vacated sections of the public right-of-way; and that by accepting these vacations, the Parties agree that they will use the vacated area at their own risk;
- c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Parties hereby waive and fully release and forever discharge the City of Oakland and its officers, officials, representatives, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.);
- d. the Parties understand and agree 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";

- e. the Parties recognize by waiving the provisions of Civil Code Section 1542 they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decisions to accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and be it

FURTHER RESOLVED: That the hereinabove conditions shall be binding upon MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases and their representatives, heirs, successors, and assigns, and the successive owners of said lots as delineated on the Phase 1 Final Map for Tract 8047; and be it

FURTHER RESOLVED: That prior to the issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy for the multiple family building to be constructed on Lot D or the completion of the parking garage to be constructed on Lot E; whichever occurs first: (a) the Excluded Portion of Apgar Street must be vacated pursuant to the California Streets and Highways Code section 8320, et. seq., and said vacation must be approved by the Oakland City Council, and (b) the City Engineer must issue an unconditional Certificate of Completion for construction of public infrastructure improvements required pursuant to the Subdivision Improvement Agreement within the Excluded Portion of Apgar Street (which shall not bind the property owners adjacent to the Excluded Portion of Apgar Street to agree to any improvements which the City could not otherwise impose by law); and be it

FURTHER RESOLVED: That the City Engineer and the City Clerk of the City of Oakland are hereby authorized to endorse the Phase I Final Map for Tract No. 8047; and be it

FURTHER RESOLVED: That upon said executions by the City Engineer and the City Clerk, the City Engineer is directed to file the fully endorsed Final Map and the Subdivision Improvement Agreement concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of the Phase I Final Map for Tract No. 8047 by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That the Subdivision Improvement Agreement with MTCP for said Phase 1 Final Map for Tract No. 8047 is hereby approved; and be it

FURTHER RESOLVED: That the City Attorney's approval of said Agreement and the instruments securing the MTCP's performance under said Agreement shall be obtained prior to execution of said Agreement by the City Engineer on behalf of the City of Oakland; and be it

FURTHER RESOLVED: That the City Engineer is hereby directed to file said executed Subdivision Improvement Agreement concurrently with said fully endorsed Final Map for Tract No. 8047 for simultaneous recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That the City Engineer is further authorized, without returning to the City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause, as determined by the City Engineer.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

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

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY AND, WE HEREBY CONSENT TO THE MAKING AND RECORDING OF SAID MAP AND THE PHASED APPROVED SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND, THOSE PORTIONS OF 39TH STREET AND THE UNNAMED STREET DESIGNATED AS "PUBLIC RIGHT OF WAY" ON THE HEREIN EMBODIED MAP FOR THE PURPOSES OF PUBLIC RIGHT OF WAY.

PUBLIC ACCESS EASEMENT (P.A.E.) OVER PARCELS F & G: THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND FOREVER, PUBLIC ACCESS EASEMENTS WITH THE PUBLIC RIGHT OF INGRESS AND EGRESS UPON AND OVER ANY AREA OR STRIP OF LAND, AS COLLOCATED AND DESIGNATED ON THIS MAP; AND THAT SAID AREAS OR STRIPS OF LAND ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT APPLICABLE UTILITY STRUCTURES AND APPURTENANCES, LANDSCAPING AND TREES, IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWFUL FENCES. THE MAINTENANCE OF SAID PUBLIC ACCESS EASEMENT ON PARCEL F SHALL BE THE RESPONSIBILITY OF THE OWNER OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP, THE MAINTENANCE OF PARCEL C SHALL BE THE RESPONSIBILITY OF THE OWNER OF PARCEL C.

PUBLIC PEDESTRIAN ACCESS EASEMENT (P.P.A.E.): THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND FOREVER, THE PUBLIC PEDESTRIAN ACCESS EASEMENT WITH THE PUBLIC RIGHT OF PEDESTRIAN INGRESS AND EGRESS UPON AND OVER THAT PORTION OF PARCEL D, AND THAT PORTION OF APOAR STREET TO BE VACATED, LOCATED WITHIN THE BOUNDARY OF LANDS OWNED OR CONTROLLED BY S.F.B.A.R.T.D. ON TRACT MAP 8047, AS DELINEATED AND DESIGNATED ON THIS MAP; AND THAT SAID AREA OR STRIPS OF LAND ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT APPLICABLE UTILITY STRUCTURES AND APPURTENANCES, LANDSCAPING AND TREES, IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWFUL FENCES. THE MAINTENANCE OF SAID PUBLIC PEDESTRIAN ACCESS EASEMENT SHALL BE THE RESPONSIBILITY OF THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

PRIVATE ROAD ACCESS EASEMENT (P.R.A.): THE AREA DESIGNATED AS PRIVATE ROAD ACCESS EASEMENT OVER PARCEL D IS AN INGRESS AND EGRESS EASEMENT RESERVED FOR THE BENEFIT OF FUTURE PARCEL C1 OF TENTATIVE MAP 8047, AND IS NOT DEDICATED FOR THE USE BY THE GENERAL PUBLIC. THE PRIVATE ACCESS EASEMENT SHALL BE KEPT OPEN AND FREE FROM ABOVE GROUND BUILDINGS AND STRUCTURES ON ANY KIND EXCEPT FOR PERMITTED UTILITY STRUCTURES, FENCES, WALLS AND LANDSCAPING.

PUBLIC UTILITY EASEMENT (P.U.E.): THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION PUBLIC UTILITY EASEMENTS FOR ANY AND ALL PUBLIC UTILITY FACILITIES INCLUDING BUT NOT LIMITED TO POLES, WIRES, CONDUITS, GAS, POTABLE AND RECLAIMED WATER, STORM AND SEWAGE PIPING, AND ALL STRUCTURES AND APPURTENANCES TO THE ABOVE UTILITIES, UNDER, UPON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS "P.U.E." (PUBLIC UTILITY EASEMENT). THE ABOVE MENTIONED PUBLIC UTILITY EASEMENT SHALL BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC UTILITY STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES THERE TO, LAWFUL FENCES AND ALL LAWFUL UNSUPPORTED ROOF OVERHANGS. THE UNDERSIGNED RESERVES THE RIGHT TO CONSTRUCT AND MAINTAIN PRIVATE UTILITY FACILITIES UNDER, UPON, OR OVER THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENT. IT IS UNDERSTOOD THAT THE CITY OF OAKLAND AND ITS SUCCESSORS OR ASSONS AND UTILITIES REGULATED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION SHALL NOT ASSUME ANY RESPONSIBILITY FOR THE EASEMENT OR ANY IMPROVEMENTS THEREON OR THEREIN EXCEPTING CITY OWNED UTILITIES AND REGULATED UTILITIES.

EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E.): THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND FOREVER, EMERGENCY VEHICLE ACCESS EASEMENTS WITH THE PUBLIC RIGHT OF INGRESS AND EGRESS UPON AND OVER ANY AREA OR STRIP OF LAND, AS DELINEATED AND DESIGNATED ON THIS MAP; AND THAT SAID AREAS OR STRIPS OF LAND SHALL BE KEPT OPEN AND FREE FROM ABOVE GROUND BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT APPLICABLE UTILITY STRUCTURES AND APPURTENANCES, LANDSCAPING AND TREES, IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWFUL FENCES.

AS OWNERS:
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART)

BY: _____ DATE: _____

PRINTED NAME: _____

TITLE: _____

BY: _____ DATE: _____

PRINTED NAME: _____

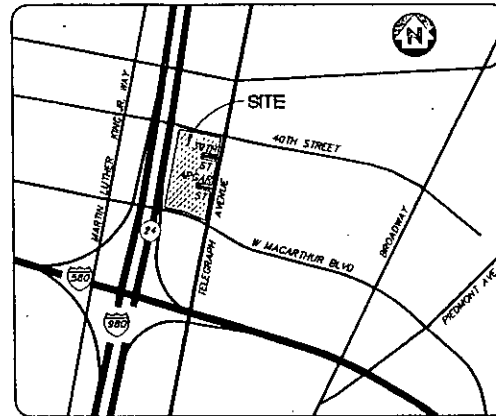
TITLE: _____

AS OWNERS:
MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: _____ DATE: _____

PRINTED NAME: _____

TITLE: _____



VICINITY MAP

N.T.S.

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA SS.
COUNTY OF ALAMEDA
ON _____, 2011, BEFORE ME, _____

A NOTARY PUBLIC, PERSONALLY APPEARED _____ AND WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME BY THEIR AUTHORIZED CAPACITIES AND THAT BY THEIR SIGNATURES ON THE INSTRUMENT THE PERSONS OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND
SIGNATURE _____
PRINTED NAME _____
PRINCIPLE PLACE OF BUSINESS (COUNTY) _____
EXPIRATION OF COMMISSION _____
COMMISSION NO. _____

RECORDER'S STATEMENT

FILE NO. _____ FEE: _____ PAD: _____
FILED THIS _____ DAY OF _____, 2011, AT _____ M
IN BOOK _____ OF MAPS AT PAGES _____
ALAMEDA COUNTY RECORDS, AT THE REQUEST OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
PATRICK J. O'CONNELL
COUNTY CLERK-RECORDER

BY: _____ DEPUTY

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA SS.
COUNTY OF _____
ON _____, 2011, BEFORE ME, _____

A NOTARY PUBLIC, PERSONALLY APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HE/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 PERSONS ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND
SIGNATURE _____
PRINTED NAME _____
PRINCIPLE PLACE OF BUSINESS (COUNTY) _____
EXPIRATION OF COMMISSION _____
COMMISSION NO. _____

OWNERS / SUBDIVIDERS

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 LAKESIDE DRIVE
OAKLAND, CALIFORNIA 94612

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
C/O BRIDGE HOUSING CORPORATION
345 SPEAR STREET, SUITE 700
SAN FRANCISCO, CALIFORNIA 94105

SHEET INDEX

- SHEET 1 - FINAL MAP CERTIFICATES
- SHEET 2 - FINAL MAP CERTIFICATES
- SHEET 3 - EXISTING PROPERTY BOUNDARY
- SHEET 4 - PARCEL RECONFIGURATION
- SHEET 5 - PUBLIC RIGHT OF WAY DEDICATION & ABANDONMENT

TRACT NO. 8047

PHASE 1 OF VESTING TENTATIVE MAP 8047
LANDS OF THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA
CITY OF OAKLAND COUNTY OF ALAMEDA

JUNE, 2011
SANDIS CIVIL ENGINEERS
CONSULTANTS
PLANNERS

538 E. Duane Avenue | Sunnyvale, CA 94085 | P. 408.838.0800 | F. 408.838.0899 | www.sandis.net

SUNNYVALE ROSEVILLE OAKLAND

Revised 7/26/2011

EXHIBIT A

CITY CLERK'S STATEMENT

I HEREBY STATE THAT THIS MAP, DESIGNATED AS TRACT NO. 8047, CONSISTING OF FIVE (5) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____ 2011 AND THAT SAID COUNCIL ACCEPTED, SUBJECT TO IMPROVEMENT, ON BEHALF OF THE PUBLIC, ALL RIGHT-OF-WAY AND EASEMENTS DEDICATED TO PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION.

THAT PORTION OF 39TH STREET AND THE UNNAMED STREET DESIGNATED AS "PUBLIC RIGHT-OF-WAY" ON SHEET 5 OF THIS MAP, IS HEREBY ACCEPTED, SUBJECT TO COMPLETION OF IMPROVEMENTS, ON BEHALF OF THE PUBLIC. THOSE PORTIONS OF 39TH STREET, SHOWN ON THE MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36, FILED IN MAP BOOK 11, PAGE 28, ALAMEDA COUNTY RECORDS, AND ALSO SHOWN ON THE MAP OF MONTGOMERY TRACT NO. 1, FILED IN MAP BOOK 1, PAGE 77, ALAMEDA COUNTY RECORDS, DEPICTED ON SHEETS 4 AND 5 HEREIN AS "TO BE VACATED", ARE HEREBY ABANDONED WITHOUT RESERVATION OF PUBLIC EASEMENT PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT, UPON THE FILING OF THIS MAP.

THOSE PORTIONS OF APCAR STREET, SHOWN WITHIN THE BOUNDARIES OF LANDS OWNED OR CONTROLLED BY S.F.B.A.R.T.D. ON TRACT MAP NO. 8047, AND ON THE MAP OF THE LUNING TRACT, FILED IN MAP BOOK 20, PAGE 76, ALAMEDA COUNTY RECORDS, DEPICTED ON SHEETS 4 AND 5 HEREIN AS "TO BE VACATED", ARE HEREBY ABANDONED WITHOUT RESERVATION OF PUBLIC EASEMENT PURSUANT TO SECTION 66434(g) OF THE SUBDIVISION MAP ACT, UPON THE FILING OF THIS MAP.

COUNCIL RESOLUTION NO _____ C.M.S.

LA TONDA SIMMONS _____ DATE _____
CITY CLERK OF THE CITY OF OAKLAND

CITY PLANNING COMMISSION'S STATEMENT

I HEREBY STATE THAT THE PLANNING COMMISSION OF THE CITY OF OAKLAND APPROVED ON _____ 2011, THE VESTING TENTATIVE TRACT MAP 8047, UPON WHICH THIS FINAL MAP IS BASED.

SCOTT MILLER _____ DATE _____
SECRETARY TO OAKLAND PLANNING COMMISSION

OWNERS / SUBDIVIDERS

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART)
300 LAKESIDE DRIVE
OAKLAND, CALIFORNIA 94612

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
C/O BRIDGE HOUSING CORPORATION
145 SPEAR STREET, SUITE 700
SAN FRANCISCO, CALIFORNIA 94105

CLERK OF THE BOARD OF SUPERVISORS STATEMENT

L. CRYSTAL K. HISHIDA GRAFF, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATE: _____
CRYSTAL K. HISHIDA GRAFF, CLERK OF THE BOARD OF SUPERVISORS,
COUNTY OF ALAMEDA, STATE OF CALIFORNIA.
BY: _____ FEE: _____
DEPUTY CLERK

SEISMIC HAZARD NOTE

THIS REAL PROPERTY COMPRISING THIS PHASED FINAL MAP LIES WITHIN THE FOLLOWING HAZARDOUS AREA: A SEISMIC HAZARD ZONE - Liquefaction Zone pursuant to SECTION 2696 OF THE PUBLIC RESOURCES CODE. THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

PUBLIC ADVISORY

THIS MAP IS BASED ON PRIVATE SURVEYS PERFORMED BY LICENSED PROFESSIONALS AND WILL NOT BE UPDATED OR CORRECTED BY THE CITY OF OAKLAND AFTER ITS FILING. NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS MADE BY THE CITY OF OAKLAND THAT THIS MAP AND THE SURVEY INFORMATION ON WHICH IT IS BASED IS CORRECT, ACCURATE, AND CURRENT, NOR THAT THE CITY WILL RETAIN FOR PUBLIC INSPECTION ANY RELATED INFORMATION WHICH MAY BE SUBSEQUENTLY SUBMITTED TO THE CITY, INCLUDING ALLEGED OR ACTUAL DISCREPANCIES, INACCURACIES, DEFICIENCIES, AND ERRORS.

MAP REFERENCES

- 1. CITY OF OAKLAND MONUMENT MAPS AND RECORDS
- 2. RECORD MAPS OF RIGHT OF WAY, BAY AREA RAPID TRANSIT DISTRICT, ALAMEDA COUNTY, BOOK 68 OF MAPS, PAGES 173-230
- 3. PARCEL MAP - JOINT USE & EASEMENT PARCELS TO BARTD, FILED OCTOBER 14, 1987, IN THE OFFICE OF THE ALAMEDA COUNTY RECORDER, STATE HIGHWAY MAP BOOK, SERIAL NO. 87-280663
- 4. ESTATE OF JOHN EVOY, BOOK 11 OF MAPS, PAGE 28
- 5. MONTGOMERY TRACT NO. 1, BOOK 1, PAGE 17
- 6. MAP OF THE PERRIN TRACT, BOOK 3, PAGE 14
- 7. MAP OF THE LUNING TRACT, BOOK 20, PAGE 76
- 8. MAP OF THE LUNING TRACT NO. 7, BOOK 77, PAGE 37
- 9. MAP OF THE RANCHOS OF VINCENIE & DOMINGO PERALTA, BOOK 17, PAGE 12

CITY ENGINEER'S STATEMENT

I, RAYMOND M. DERANIA, CITY ENGINEER, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS PHASE 1 FINAL MAP FOR TRACT NO. 8047 AS SHOWN HEREIN, AND THAT IT IS SUBSTANTIALLY THE SAME AS IT APPEARS ON THE VESTING TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL THE PROVISIONS OF DIVISION 7, CHAPTER 2 OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF SAID VESTING TENTATIVE MAP, HAVE BEEN COMPLIED WITH, AND THAT SAID TRACT MAP IS TECHNICALLY CORRECT.


RAYMOND M. DERANIA, R.C.E. NO. 27815 _____ DATE _____
CITY ENGINEER
CITY OF OAKLAND, ALAMEDA COUNTY
STATE OF CALIFORNIA
REGISTRATION EXPIRES 03-31-2012

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT IN SEPTEMBER OF 2007. I HEREBY STATE THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED VESTING TENTATIVE MAP.

DAVID W. BETHAM _____ DATE _____
P.L.S. NO. 7047, EXPIRES 12-31-12

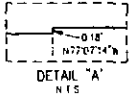
TRACT NO. 8047
PHASE 1 OF VESTING TENTATIVE MAP 8047
LANDS OF THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA
CITY OF OAKLAND COUNTY OF ALAMEDA
JUNE, 2011



828 E. Duane Avenue | Sunnyvale, CA 94085 | P. 408.838.0800 | F. 408.838.0888 | www.sandis.net
BUNNYVALE ROBEVILLE OAKLAND

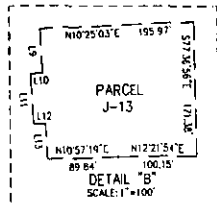


SCALE: 1"=50'



LINE TABLE

L1	N77°05'05\"	21.03'
L2	N74°15'59\"	41.79'
L3	N73°00'13\"	4.95'
L4	N74°07'15\"	4.10'
L5	N83°49'18\"	4.06'
L6	N1°20'57\"	17.61'
L7	S89°41'02\"	7.41'
L8	S105°19'19\"	10.34'
L9	S29°39'13\"	52.20'
L10	N101°16'55\"	18.84'
L11	S79°43'06\"	63.72'
L12	N12°12'08\"	15.54'
L13	S79°41'02\"	43.53'



OWNERS / SUBDIVIDERS

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART)
300 LAKESIDE DRIVE
OAKLAND, CALIFORNIA 94612

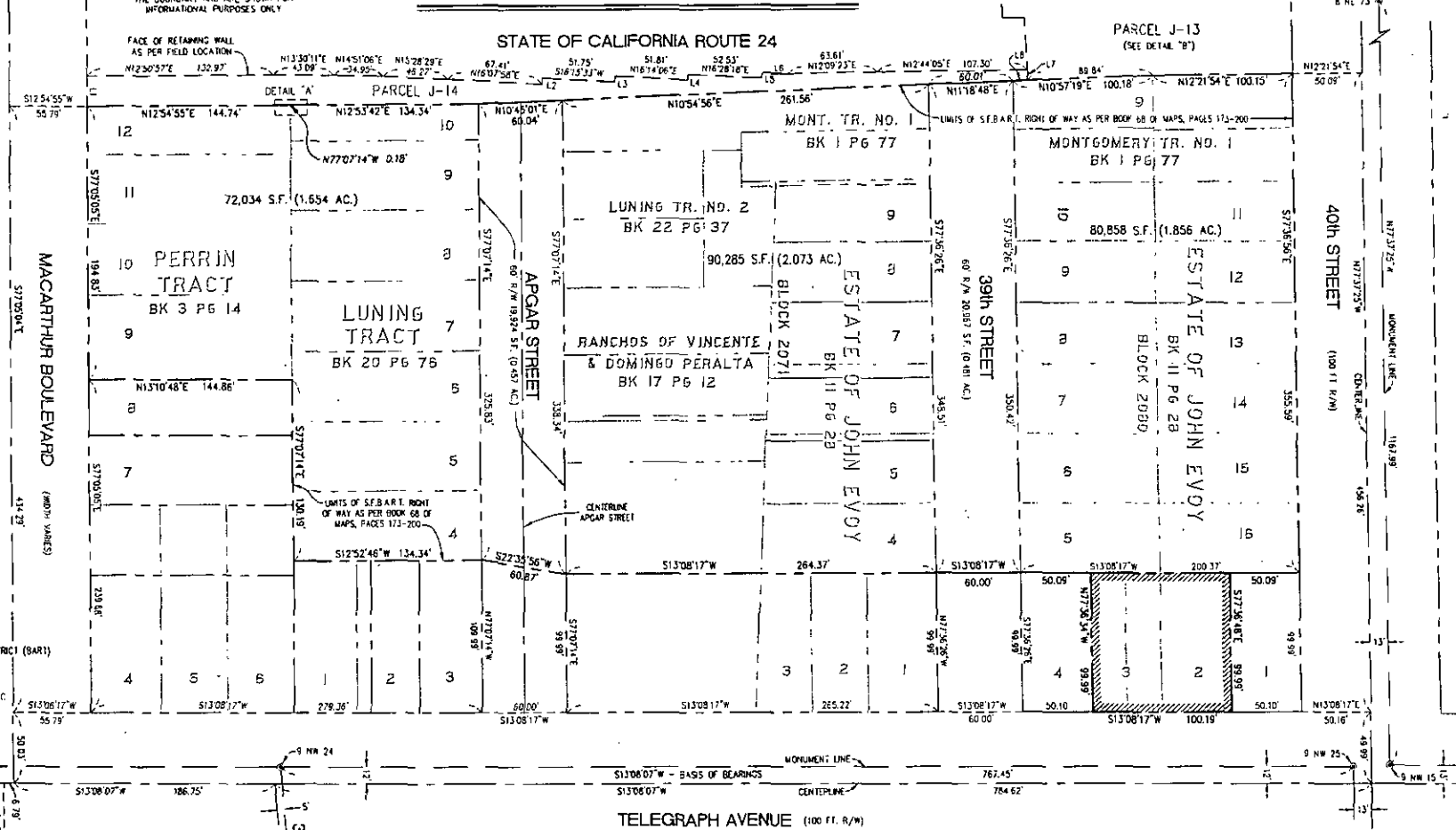
MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
C/O BRIDGE HOUSING CORPORATION
345 SPEAR STREET, SUITE 700
SAN FRANCISCO, CALIFORNIA 94105

LEGEND/ABBREVIATION

- INDICATES SURVEY THE LINE
- INDICATES BOUNDARY OF LANDS OWNED OR CONTROLLED BY S.F.E.A.R.T.D.
- INDICATES BOUNDARY OF LANDS OWNED BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
- INDICATES EXISTING PROPERTY LINE
- INDICATES INTERIAL LOT LINE
- INDICATES JOINT USE PARCEL
- INDICATES ROAD CENTERLINE
- INDICATES MONUMENT LINE
- FOUND CITY OF OAKLAND PIN MONUMENT WITH NUMBER, UNLESS NOTED OTHERWISE
- RECORD DATA PER REFERENCE MAP
- PUBLIC RIGHT-OF-WAY

NOTE: PARCELS J-13 AND J-14 ARE NOT WITHIN THE BOUNDARY AND ARE SHOWN FOR INFORMATIONAL PURPOSES ONLY.

EXISTING PROPERTY BOUNDARY



BASIS OF BEARINGS

THE BEARING OF S13°08'07\"

SCALE FACTOR

BEARINGS AND DISTANCES ARE RELATED TO THE CALIFORNIA COORDINATE SYSTEM ZONE 3, N.A.D. 1927, AS ESTABLISHED BY CITY OF OAKLAND MONUMENTS AND RECORD DATA SHOWN ON RIGHT-OF-WAY MAPS FOR HIGHWAY 24 AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT. FOR GROUND DISTANCES, MULTIPLY DISTANCES SHOWN BY 1.000748.

NOTES

- ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- ALL DISTANCES SHOWN ARE BASED ON FIELD MEASUREMENTS OR CALCULATED, UNLESS OTHERWISE DENOTED BY RECORD REFERENCE.
- AREA OF LANDS OWNED OR CONTROLLED BY S.F.E.A.R.T.D. AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC IS 284,068 SQUARE FEET (6.521 ACRES).
- PARCELS J-13 AND J-14 ARE JOINT USE EASEMENT PARCELS, AS DEFINED IN THE JOINT USE AGREEMENT BETWEEN S.F.E.A.R.T.D. AND THE STATE OF CALIFORNIA DEPT. OF TRANSPORTATION, RECORDED JULY 26, 1990 AS DOC. NO. 90203305.

TRACT NO. 8047

PHASE 1 OF VESTING TENTATIVE MAP 8047
LANDS OF THE SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA
CITY OF OAKLAND COUNTY OF ALAMEDA

JUNE, 2011



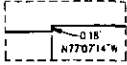
SANDIS

11011 SANDIS DRIVE
SUNNYVALE, CA 94089

930 E. Duane Avenue | Sunnyvale, CA 94089 | P. 408.838.0000 | F. 408.834.2888 | www.sandis.net
SUNNYVALE ROSEVILLE OAKLAND



SCALE: 1"=50'



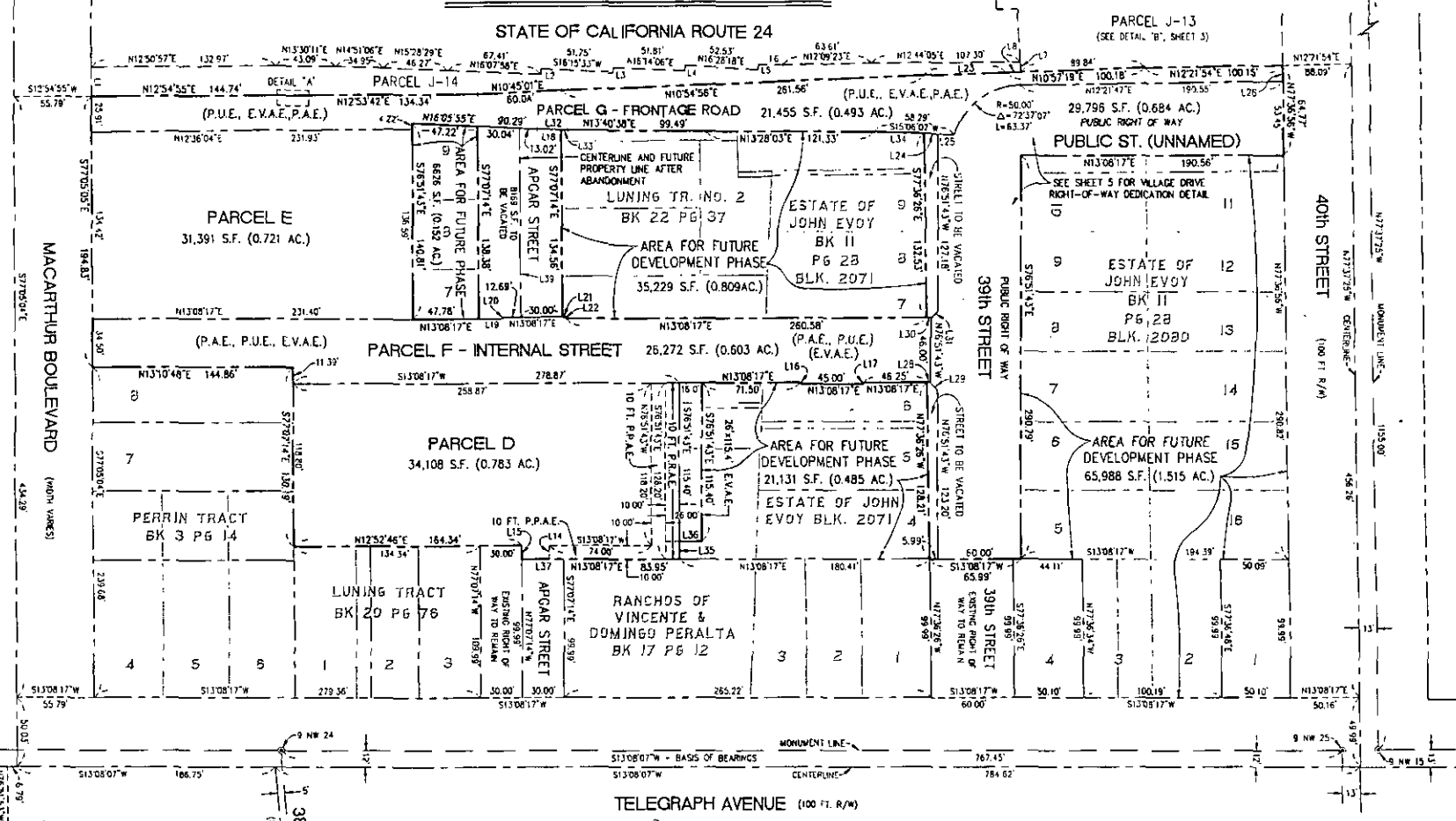
LINE TABLE

L1	N7255.05 W	21.03
L2	N7111.59 E	4.12
L3	N7300.13 W	3.53
L4	N7407.15 W	4.10
L5	N6348.19 W	4.00
L6	N4382.51 E	7.97
L7	S7541.02 E	7.41
L8	S1057.19 W	10.34
L9	S7539.13 E	57.20
L10	N10308.17 E	150.00
L11	S7543.04 E	63.78
L12	N1212.18 E	15.51
L13	S7541.02 E	45.53
L14	S7570.14 E	150.00
L15	S7706.55 E	10.07
L16	N7651.43 W	1.00
L17	N7651.43 W	1.00
L18	N1850.56 E	17.01
L19	N1370.48 E	14.86
L20	N4857.42 W	1.00
L21	S1308.17 W	2.31
L22	S7651.43 E	1.00
L23	N1118.43 E	60.00
L24	N1506.02 E	9.88
L25	N1506.02 E	12.10
L26	S7737.33 E	11.32
L27	DECL'D	85
L28	N1308.17 E	2.86
L29	S5804.17 E	7.07
L30	N1308.17 E	3.25
L31	N1314.42 E	12.80
L32	N1507.56 E	21.78
L33	N1507.56 E	4.77
L34	N1506.02 E	36.21
L35	N1514.42 E	12.80
L36	N1314.42 E	16.00
L37	N1308.17 W	30.00
L38	DECL'D	DL
L39	S7707.14 E	135.82
L40	S7707.14 E	58.90

OWNERS / SUBDIVIDERS
 SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
 300 LAKESIDE DRIVE
 OAKLAND, CALIFORNIA 94612

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
 C/O BRIDGE HOUSING CORPORATION
 345 SPEAR STREET, SUITE 700
 SAN FRANCISCO, CALIFORNIA 94105

PARCEL RECONFIGURATION



LEGEND

- INDICATES SURVEY TIE LINE
- INDICATES BOUNDARY OF TRACT MAP NO. 8047
- INDICATES INTERNAL PROPERTY LINE TO BE CREATED ON THIS MAP
- INDICATES EASEMENT LINE
- INDICATES EXISTING PROPERTY LINE
- INDICATES INTERNAL LOT LINE
- INDICATES JOINT USE PARCEL
- INDICATES ROAD CENTERLINE
- INDICATES MONUMENT LINE
- * FOUND CITY OF OAKLAND PIN MONUMENT WITH NUMBER, UNLESS NOTED OTHERWISE
- () RECORD DATA PER REFERENCE MAP

NOTES

1.) ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.

2.) ALL DISTANCES SHOWN ARE BASED ON FIELD MEASUREMENTS OR CALCULATED, UNLESS OTHERWISE DENOTED BY RECORD REFERENCE.

3.) JOINT USE PARCELS J-13 & J-14 ARE NOT INTENDED TO BE INCLUDED WITHIN THE BOUNDARY OF TRACT NO. 8047.

4.) ALL EXISTING LOT LINES WITHIN THE BOUNDARY ARE TO BE REMOVED UPON THE RECORDING OF THIS MAP.

SCALE FACTOR
 BEARINGS AND DISTANCES ARE RELATED TO THE CALIFORNIA COORDINATE SYSTEM ZONE 3, N.A.D. 1927, AS ESTABLISHED BY CITY OF OAKLAND MONUMENTS AND RECORD DATA SHOWN ON RIGHT-OF-WAY MAPS FOR HIGHWAY 24 AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT. FOR GROUND DISTANCES, MULTIPLY DISTANCES SHOWN BY 1.000748.

EASEMENT LEGEND

- P.A.E. PUBLIC ACCESS EASEMENT
- P.P.A.E. PUBLIC PEDESTRIAN ACCESS EASEMENT
- P.R.A.E. PRIVATE ROAD ACCESS EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT

TRACT NO. 8047
 PHASE 1 OF VESTING TENTATIVE MAP 8047
 LANDS OF THE SAN FRANCISCO BAY AREA
 RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA
 CITY OF OAKLAND COUNTY OF ALAMEDA

JUNE, 2011

SANDIS CIVIL ENGINEERS
 220 E. Duane Avenue | Sunnyvale, CA 94085 | P. 408.838.0800 | F. 408.838.0888 | www.sandis.net

SUNNYVALE ROSEVILLE OAKLAND

REVISED (7/26/11)

Introduced by

Approved For and Legally
DRAFT
City Attorney

Councilmember

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION CONDITIONALLY APPROVING A FINAL MAP (PHASE 1) FOR TRACT No. 8047, THE VACATION (ABANDONMENT) OF A PORTION OF APGAR STREET WITHIN THE MACARTHUR TRANSIT VILLAGE PROJECT SITE, THE DEDICATIONS OF PUBLIC EASEMENTS AND RIGHT OF WAY, AND A SUBDIVISION IMPROVEMENT AGREEMENT WITH MACARTHUR TRANSIT COMMUNITY PARTNERS FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS, ALL ASSOCIATED WITH CONSTRUCTION OF A PARKING GARAGE FOR THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART) AND AN AFFORDABLE HOUSING MULTIPLE FAMILY BUILDING

Deleted: DEVELOPMENT OF THE MACARTHUR TRANSIT VILLAGE PROJECT TO CONSTRUCT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2011 JUL 21 PM 6:01

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART), a regional transit district established pursuant to California Public Utilities Code section 28500 et seq., is the owner and subdivider of five (5) contiguous parcels identified by the Alameda County Clerk-Recorder as Tract No. 8047, and by the Alameda County Assessor and the City of Oakland as follows:

- 012-0967-009-00 - 526 West MacArthur Blvd
- 012-0967-010-01 - 544 West MacArthur Blvd
- 012-0969-053-03 - 532 39th Street
- 012-0968-055-01 - 516 Apgar Street
- 012-0967-049-01 - 515 Apgar Street

which comprise, with additional adjoining parcels, the MacArthur Transit Village residential housing project and site; and

WHEREAS, BART has previously entered into an agreement with MacArthur Transit Community Partners, LLC (MTCP), a California limited liability company (no. 200419810042), to develop said parcels for a new BART parking garage, multiple family housing, and associated publicly and privately maintained infrastructure; and

WHEREAS, BART and MTCP have previously applied to the City of Oakland for a vesting tentative map (TTM 8047) to voluntarily merge said parcels and subdivide the platted land into two (2) developable lots and two (2) additional lots for access roads maintained by BART and by MTCP and a future MacArthur Transit Village Homeowners Association and the owners of future development phases within the boundaries of the MacArthur Transit Village project site as illustrated on Tract Map No. 8047 ("Owners of Future Development Phases"); and

WHEREAS, the Council of the City of Oakland adopted the "Development Agreement By And Between City of Oakland And MacArthur Transit Community Partners, LLC Regarding The Property And Project Known As "MacArthur Transit Village" on July 21, 2009; and

WHEREAS, the City Planning Commission previously certified the MacArthur Transit Village EIR (ER 06004), adopted an addendum to said EIR determining that no further environmental review was required and also approved said vesting tentative map, upon which the Phase I Final Map for Tract No. 8047 is based and the Stage I Final Development Plan (PUDF 10097), which includes construction of the BART parking garage on March 16, 2011; and

WHEREAS, the City Planning Commission adopted an addendum and also approved the Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, on April 6, 2011; and

WHEREAS, pursuant to Resolution No. 83292 C.M.S., the City Council approved the Stage I Final Development Plan (PUDF 10097) and the Phase I Final Map for Tract No. 8047, which includes construction of the BART parking garage, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on April 5, 2011; and

WHEREAS, pursuant to Resolution No. 83365 C.M.S., the City Council approved the Stage II Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on May 17, 2011; and

WHEREAS, said Final Map proposes:

- the establishment of
 - one (1) lot, designated thereon as Lot D, for construction of an affordable housing multiple family building;
 - one (1) lot, designated thereon as Lot E, for construction of a parking garage for BART patrons and transit village residents;
 - one (1) lot, designated thereon as Lot F, for construction of an internal access road which will be maintained by MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases;
 - one (1) lot, designated thereon as Lot G, for an existing BART access road;
- the irrevocable dedication to the City without valuable consideration of
 - public utility, public access, and emergency vehicle easements which will be maintained by owner of Lot G as to the easements located on Lot G, and otherwise by MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases;
 - real property owned by BART to extend 39th Street to its intersection with 40th Street;
- the vacation without valuable consideration of portions of the Apgar Street and 39th Street public rights-of-way abutting real property owned by BART within the MacArthur Transit Village project site; and

Deleted: owners of future development phases

Deleted: owners of future development phases

WHEREAS, pursuant to California Civil Code section 831, the owner of real property bounded by public right-of-way is presumed to own the underlying fee simple interest to the middle of the roadway, but the contrary may be shown; and

Deleted: equal parts
Deleted: a portion of the Apgar Street
Deleted: abutting property owners of

WHEREAS, said portions of Apgar Street to be vacated excludes the eastern portion of Apgar Street (about 6,149 square feet) adjacent to and between the southerly boundary of the Surgery Center of Alta Bates Summit Medical Center (Assessor parcel no. 012-0968-003-01), which is addressed as 3875 Telegraph Avenue, and the northerly boundary of the Horizon Services site (Assessor parcel no. 012-0697-001-00), which is addressed as 3847 Telegraph Avenue, collectively known as the "Excluded Portion of Apgar Street"; and

Deleted: (3869)

WHEREAS, the City Engineer of the City of Oakland has determined that

- the Phase 1 Final Map for Tract No. 8047, attached hereto as *Exhibit A*, is substantially the same as said vesting tentative map approved by the Planning Commission, upon which said Final Map is based; and
- the Phase 1 Final Map for Tract No. 8047 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

Deleted: ¶
¶
<#>remaining remnant portions of the Apgar Street and 39th Street public rights-of-way within the MacArthur Transit Village project site to BART; and¶
¶

WHEREAS, the City Engineer has further determined that the Phase 1 Final Map for Tract No. 8047 is technically correct and accurately delineates the proposed metes and bounds of the property boundaries separating said four (4) subdivided lots and the on-site public service easements and public right-of-way, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on said Final Map; and

WHEREAS, MTCP has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the on-site public right-of-way and easements and the adjoining rights-of-way along West MacArthur Boulevard, Telegraph Avenue, 39th Street and 40th Street; and

Deleted: , 40th Street, and Apgar

WHEREAS, the City Engineer has approved infrastructure permit no. PX1100070 and the associated plans and specifications for construction of said required public infrastructure improvements, included by reference with *Exhibit B*, attached hereto; and

WHEREAS, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, as a condition precedent to approval of the Phase 1 Final Map for Tract No. 8047, MTCP has executed a Subdivision Improvement Agreement (SIA), attached hereto as *Exhibit C*, assuring the timely construction, unconditional warranty, and prescribed maintenance of all required public infrastructure improvements; and

WHEREAS, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, MTCP has deposited surety bonds, included by reference with *Exhibit C*, and in

sufficient amounts, as estimated by the City Engineer, to secure its performance under *Exhibit B*; 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 State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and the requirements of the CEQA and the CEQA Guidelines have been satisfied; now, therefore, be it

RESOLVED: That this Resolution complies with CEQA; and be it

FURTHER RESOLVED: That the Phase 1 Final Map for Tract No. 8047 is hereby conditionally approved; and be it

FURTHER RESOLVED: That the vacation without valuable consideration of a portion of Apgar Street (not including the Excluded Portion of Apgar Street) and 39th Street public rights-of-way, all located within the MacArthur Transit Village project site, as delineated on said Final Map, are hereby conditionally approved; and be it

- Deleted:** equal parts of
- Deleted:** to
- Deleted:** abutting property owners
- Deleted:** the reservation of
- Deleted:** service easements thereon
- Deleted:** is

FURTHER RESOLVED: That the dedication of public service easements to the City of Oakland on said Lots D, E, F, and G, as delineated on said Final Map, is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the dedication without valuable consideration to the City of Oakland of real property owned by BART for use as public right-of-way to extend 39th Street to its intersection with 40th Street, as delineated on said Final Map, is hereby conditionally accepted; and be it

FURTHER RESOLVED: That the approval of the vacations of said rights-of-way (not including the Excluded Portion of Apgar Street) and the acceptance of the dedications of said right-of way and easements, and the reservations of said easements are conditioned upon completion to the satisfaction of the City Engineer of said public infrastructure improvements, as set forth in said SIA; and be it

FURTHER RESOLVED: That failure by MTCP to comply in all aspects with said SIA shall void the approval of the Phase 1 Final Map of Tract No. 8047 and void the approval of said vacations and void the acceptance of said dedications and void the set-aside of said reservations and shall revert said five (5) originally platted parcels comprising Tract No. 8047 to acreage; and be it

FURTHER RESOLVED: That MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements within said public service easements as delineated on the Phase 1 Final Map for Tract No. 8047, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation,

- Deleted:** owners
- Deleted:** future development phases hall

electrical lighting, sanitary sewer piping, storm water piping, and potable water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission or customarily maintained by the City of Oakland; except with respect to Parcel G. which shall be maintained by BART as delineated on Phase 1 Final Map for Tract No. 8047 and be it

FURTHER RESOLVED: That by the acceptance of said vacated sections of the public rights-of-way of portions of Apgar Street (not including the Excluded Portion of Apgar Street) and 39th Street, MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases (which does not include any owners of the Excluded Portion of Apgar Street), collectively referred to as the Parties, acknowledge each of and agree to all of the following:

Deleted: the property
Deleted: Assessor parcel no. 012-0968-003-01 (3869 Telegraph Avenue) and Assessor parcel no. 012-0697-001-00 (3847 Telegraph Avenue)

- a. the Parties, jointly and severally, shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any claim, demand, lawsuit and judgment for damages of any kind and nature arising out of said vacation and regardless of responsibility for negligence;
- b. the City of Oakland makes no representations or warranties as to the conditions beneath said vacated sections of the public right-of-way; and that by accepting these vacations, the Parties agree that they will use the vacated area at their own risk;
- c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Parties hereby waive and fully release and forever discharge the City of Oakland and its officers, officials, representatives, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.);
- d. the Parties understand and agree 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";

- e. the Parties recognize by waiving the provisions of Civil Code Section 1542 they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decisions to accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and be it

FURTHER RESOLVED: That the hereinabove conditions shall be binding upon MTCP and a future MacArthur Transit Village homeowners association and the Owners of Future Development Phases and their representatives, heirs, successors, and assigns, and the successive owners of said lots as delineated on the Phase I Final Map for Tract 8047; and be it

Deleted: is

FURTHER RESOLVED: That prior to the issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy for the multiple family building to be constructed on Lot D or the completion of the parking garage to be constructed on Lot E, whichever occurs first: (a) the Excluded Portion of Apgar Street must be vacated pursuant to the California Streets and Highways Code section 8320, et. seq., and said vacation must be approved by the Oakland City Council, and (b) the City Engineer must issue an unconditional Certificate of Completion for construction of public infrastructure improvements required pursuant to the Subdivision Improvement Agreement within the Excluded Portion of Apgar Street (which shall not bind the property owners adjacent to the Excluded Portion of Apgar Street to agree to any improvements which the City could not otherwise impose by law); and be it

Deleted: on the Phase I Final Map for Tract 8047 and upon the property owners of Assessor parcel no. 012-0968-003-01 (3869 Telegraph Avenue) and Assessor parcel no. 012-0697-001-00 (3847 Telegraph Avenue) and their representatives, heirs, successors, and assigns and the successive owners of their properties identified herein above; and be it

FURTHER RESOLVED: That the City Engineer and the City Clerk of the City of Oakland are hereby authorized to endorse the Phase I Final Map for Tract No. 8047; and be it

FURTHER RESOLVED: That upon said executions by the City Engineer and the City Clerk, the City Engineer is directed to file the fully endorsed Final Map and the Subdivision Improvement Agreement concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

FURTHER RESOLVED: That this Resolution shall become effective upon the recordation of the Phase I Final Map for Tract No. 8047 by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That the Subdivision Improvement Agreement with MTCP for said Phase I Final Map for Tract No. 8047 is hereby approved; and be it

FURTHER RESOLVED: That the City Attorney's approval of said Agreement and the instruments securing the MTCP's performance under said Agreement shall be obtained prior to execution of said Agreement by the City Engineer on behalf of the City of Oakland; and be it

FURTHER RESOLVED: That the City Engineer is hereby directed to file said executed Subdivision Improvement Agreement concurrently with said fully endorsed Final Map for Tract No. 8047 for simultaneous recordation by the Alameda County Clerk-Recorder; and be it

FURTHER RESOLVED: That the City Engineer is further authorized, without returning to the City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause, as determined by the City Engineer.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

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