

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Jeff Tumlin  
Acting Director Department  
Transportation

**SUBJECT:** Partial Abandonment of Poplar Street

**DATE:** July 29, 2016

City Administrator Approval

Date:

8/31/16

## **RECOMMENDATION**

A Resolution To Summarily Vacate Poplar Street, A Public Right-Of-Way, Between 5th Street And 7th Street For Planned Transit Oriented Development Project Approved In Ordinance Number 13368 C.M.S. And Relying On The West Oakland Specific Plan Final Environmental Impact Report And The California Environmental Quality Act Exemptions

## **EXECUTIVE SUMMARY**

Approval of this Resolution will authorize the City Engineer to issue a Street Vacation Permit (Permit Number PPE1600052) vacating the Right-of-Way of Poplar between 5th and 7th Street for a planned Transit Oriented Development (TOD) project as approved by the Planning Commission on April 20, 2016 and by the Bureau of Planning (Permit Number PLN15211).

Pursuant to Ordinance Number 13368 C.M.S., The City and TL Partners V, L.P. (Developer) are finalizing negotiations and entering into a Disposition and Development Agreement (DDA) for the development known as "the 500 Kirkham Project" (Property). This development contains a portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Streets. The DDA stipulates that the City will purchase the adjacent Property from the State of California, Department of Transportation ("Caltrans") and immediately sell it to Developer, at no cost to the City. The Project will allocate 7.5% of the project's total residential units (31 units) as affordable to moderate-income households.

## **BACKGROUND / LEGISLATIVE HISTORY**

The Public Works Engineering Services Division received the Street Vacation Permit application (PPE1600052) from the City of Oakland Economic & Workforce Development Department with payment on June 7th, 2016.

The Oakland Municipal Code (OMC) Chapter 17.158.280 requires that a street vacation permit application be reviewed and a permit issued for street right-of-way to be abandoned or vacated.

Item: \_\_\_\_\_  
Public Works Committee  
September 13, 2016

The Streets and Highways Code, Division 9, Section 8331 allows the legislative body of a local agency summarily to vacate a street or highway if both of the following conditions exist: a) for a period of five consecutive years, the street or highway has been impassable for vehicular travel, b) no public money was expended for maintenance on the street or highway during such period. Caltrans is the sole property owner of all parcels abutting the said right of way of Poplar Street between 5th Street and 7<sup>th</sup> Street. The Right-of-way of Poplar Street between 5th Street and 7th Street meets the conditions stated in the Streets and Highways Code Section 8331. Said right of way is located under the former Cypress Freeway and has not been in use as a public street since the 1950's when Caltrans built the freeway. Currently, the right of way and the abutting parcels are paved with asphalt and were used as a truck driver training facility.

The project has been found consistent with the General Plan approved by the Planning Commission on April 20, 2016. The proposed vacation of Poplar is time sensitive because it is required to complete the land transaction needed for the development project by December 12, 2016.

The right of way to be summarily vacated is shown in the Exhibit attached to the Resolution.

#### **ANALYSIS AND POLICY ALTERNATIVES**

Staff has determined through notices sent to utilities and City departments that there are no buried public utilities within Poplar Street, other than a minor storm public drainage pipe, which will be relocated by the developer at no cost to the City. Pursuant to Streets and Highways Code, Division 9, Section 8331 the right of way may be summarily vacated.

#### **FISCAL IMPACT**

There is no fiscal impact to this action. All staff costs associated with this action has been covered by the project Developer.

#### **PUBLIC OUTREACH / INTEREST**

The vacation of Poplar Street between 5th Street and 7th Street for the Planned Transit Oriented Development Project is pursuant to City Ordinance Number 13368 C.M.S. approved by the City Council on MAY 17 2016.

West Oakland Specific Plan (WOSP) has identified the Property as an opportunity site for a transit oriented development project. The WOSP was adopted in June 2014 and was the result of extensive three-year collaboration with the community.

## **COORDINATION**

Public Works has coordinated the street vacation with public utilities, Bureau of Infrastructure & Operations, Caltrans, Planning and Building Department, Economic & Workforce Development Department, the Office of the City Attorney, and the Controller's Bureau.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The Street Vacation permit allows the Developer to move forward with the planned improvements approved by the Planning Commission on April 20, 2016. Development of the proposed TOD project will transform vacant and underutilized right of way into a TOD providing much-needed housing units and serving the neighborhood with retail economy.

***Environmental:*** The location of the Project and proximity to major public transportation nodes will likely encourage residents and retail customers to use BART and AC Transit, reducing automobile reliance and decreasing use of fossil fuels.

***Social Equity:*** The proposed TOD project will include residential units that will be regulated by the City as affordable housing. The Developer has offered a community benefits packaged valued at \$8 million and included payment into the City's Affordable Housing Trust Fund.

## **CEQA**

This proposed street vacation is consistent with both the General Plan and the West Oakland Specific Plan. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15301(existing facilities), 15183 (projects consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the environment).

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends City Council adopt a resolution to summarily vacate Poplar Street, a public right-of-way, between 5th Street and 7th Street for planned transit oriented development project approved in Ordinance Number 13368 C.M.S.

For questions regarding this report, please contact Gus Amirzehni, Engineering Design and Right-of-Way Manager at (510) 238-6601.

Respectfully submitted,



JEFF TUMLIN  
Acting Director Department of  
Transportation

Reviewed by:

Michael J. Neary, P.E., Assistant Director  
Bureau of Engineering and Construction

Gus Amirzehni, P.E., Engineering Design  
and R.O.W. Division Manager

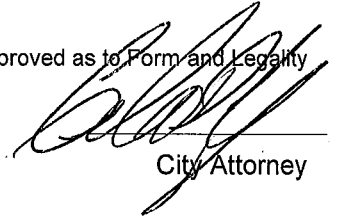
Prepared by:

Kevin Kashi, P.E., Supervising Civil Engineer  
Engineering Design and R.O.W. Mgmt. Division

2016 SEP -1 AM 10:35

# OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**A RESOLUTION TO SUMMARILY VACATE POPLAR STREET, A PUBLIC RIGHT-OF-WAY, BETWEEN 5TH STREET AND 7TH STREET FOR PLANNED TRANSIT ORIENTED DEVELOPMENT PROJECT APPROVED IN ORDINANCE NUMBER 13368 C.M.S. AND RELYING ON THE WEST OAKLAND SPECIFIC PLAN FINAL ENVIRONMENTAL IMPACT REPORT AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTIONS**

**WHEREAS**, the State of California, Department of Transportation ("Caltrans") is the sole property owner of all parcels abutting the portion of the Street or Right-of-Way to be vacated, as shown in Director's Deed DD-009579-01-01 ("Property") and hereto and incorporated herein as *Exhibit A*; and

**WHEREAS**, City of Oakland Economic & Workforce Development Department filed an application (PPE1600052) with the Oakland Public Works Department (OPW) for a proposed vacation of the portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Streets;

**WHEREAS**, the proposed development on Property ("500 Kirkham"), has already received Planning approval (PLN15211); and

**WHEREAS**, Caltrans and the City of Oakland (City) are parties to an "Option to Purchase Agreement" for the Property. Caltrans intends to sell the Property to the City who intends to buy it from Caltrans for the purposes of selling the Property to TL Partners V, L.P. (Developer) for development as a Transit Oriented Development (TOD) project; and

**WHEREAS**, the limits of the street vacation are delineated in Exhibit hereto and incorporated herein; and

**WHEREAS**, pursuant to the California Streets and Highways Code, sections 8331, the legislative body of a local agency may summarily vacate an easement, a street or highway that has been superseded by relocation and there are no public utility facilities within the existing street portion; and

**WHEREAS**, pursuant to the California Streets and Highways Code, sections 8320, the metes and bounds delineating the proposed vacation of the portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Streets is delineated in the attached Exhibit; and

**WHEREAS**, pursuant to the California Streets and Highways Code, sections 8348, OPW has notified public utilities and has received no indication showing public utility within the 0.36+ acre

area within the right of way to be abandoned other than a minor City storm drain pipe which will be relocated by the Developer at the time of construction; and

**WHEREAS**, said land area comprising the portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Streets proposed for vacation is necessary to accomplish the construction of a planned TOD project for the benefit of the citizens of the City of Oakland; and

**WHEREAS**, said portion of Poplar Street proposed for vacation, which comprises 0.36+ acre of land area 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 portion of Poplar Street proposed for vacation, will be removed from the inventory of public streets maintained by the City of Oakland; and

**WHEREAS**, the Director of Public Works, in her official capacity, has further determined that the proposed vacation of said portion of Poplar Street will not adversely impact current or future traffic or pedestrian access to the adjoining and surrounding real properties; and

**WHEREAS**, pursuant to California Streets & Highways Code, Division 9, Change Of Grade And Vacation (8000 – 8363), Part 3. Public Streets, Highways, And Service Easements Vacation Law public posting and in newspaper publications are deemed unnecessary; and

**WHEREAS**, a detailed CEQA analysis of the TOD project proposed on 500 Kirkham found that the potential environmental impacts associated with “500 Kirkham Project” has been adequately analyzed and covered in the West Oakland Specific Plan Final EIR (certified June 2014) and that no further environmental review is required for the purchase and sale of the Property and the development of the Project; and

**WHEREAS**, this proposed street vacation is consistent with both the General Plan and the West Oakland Specific Plan; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15301(existing facilities), 15183 (projects consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the environment); now, therefore, be it

**RESOLVED:** That the City Council has reviewed all relevant documents relating to its grant of the street vacation that is the subject of this resolution; and be it

**FURTHER RESOLVED:** That the City Council finds and determines that the decision made hereby is made in conformance with the requirements of CEQA; and be it

**FURTHER RESOLVED:** That the City Council hereby grants to the Permittee a street vacation permit to allow Caltrans and the City to vacate the portion of Poplar Street between 5<sup>th</sup> and 7<sup>th</sup> Streets according to the permit conditions set forth below; and be it

**FURTHER RESOLVED:** That said street vacation permit is hereby conditioned by the following special requirements:

1. the Permittee, by the acceptance of this vacation, agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out said vacation and regardless of responsibility for negligence; and
2. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the existing public right-of-way; and that by accepting this vacation, the Permittee agrees that it will use the vacated street portion in the future at its own risk; and
3. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the street portion area, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the 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.); and
4. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
5. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this street vacation agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and

6. Permittee acknowledges that it shall comply with the requirements of City, State, and the public utilities for removal, relocation, mitigation, and compliance with standards for public facilities which may be shown, not shown, or found in the field at later date; and
7. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

**FURTHER RESOLVED:** That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the Director of Public Works of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

**FURTHER RESOLVED:** That the Director of Public Works is hereby directed to file a certified copy of this Resolution for recordation with the Office of the Alameda County Clerk-Recorder as an encumbrance of the title of the property identified above.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

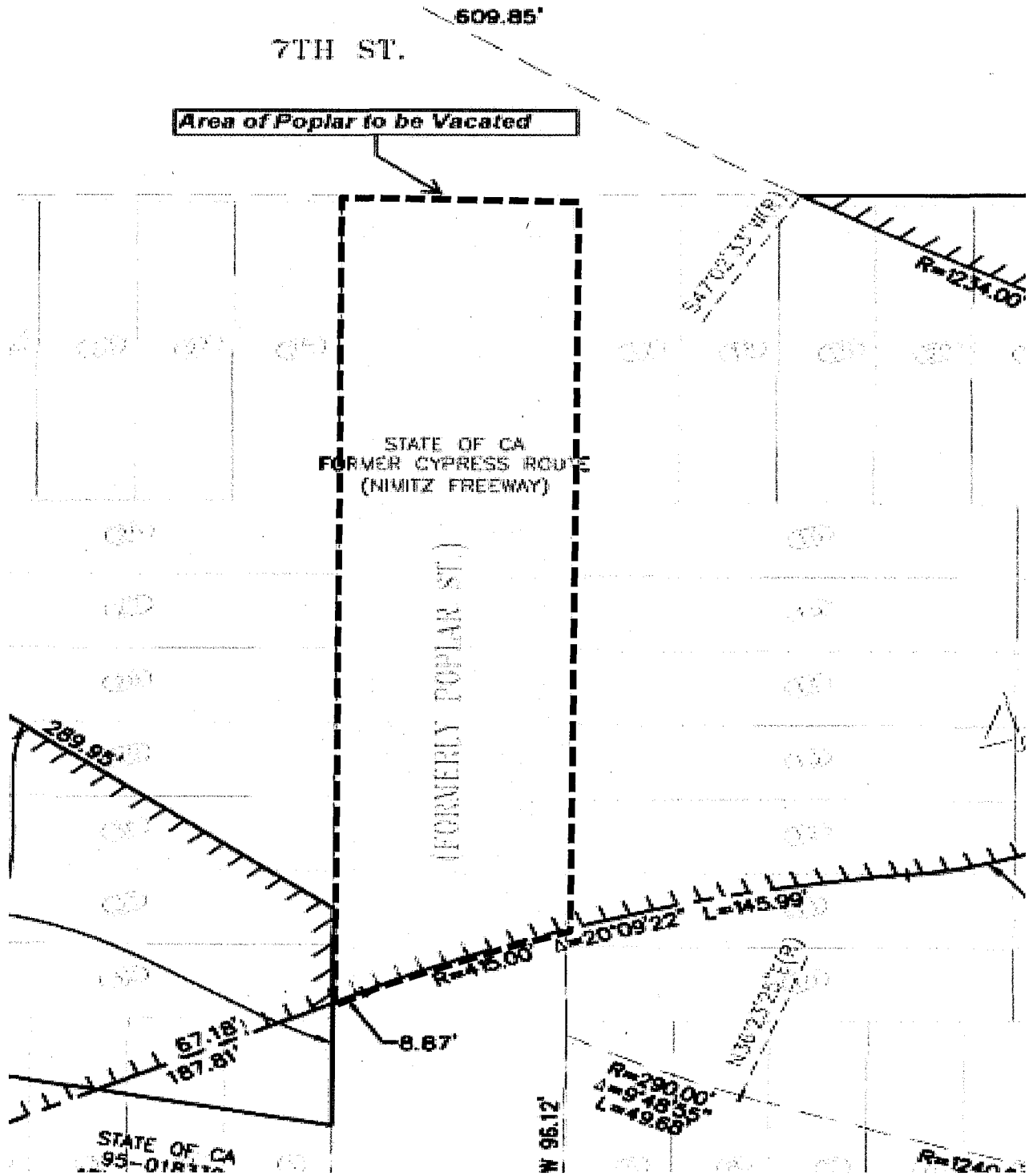
Attached Exhibit (4 pages)



# EXHIBIT

(limits of proposed vacation of portion of Poplar Street between 5th and 7th Streets)

(Page 1 of 4)



## **EXHIBIT (continued)**

*(Page 2 of 4)*

### **Metes and bounds delineating the proposed vacation of the portion of Poplar Street between 5<sup>th</sup> and 7th Streets**

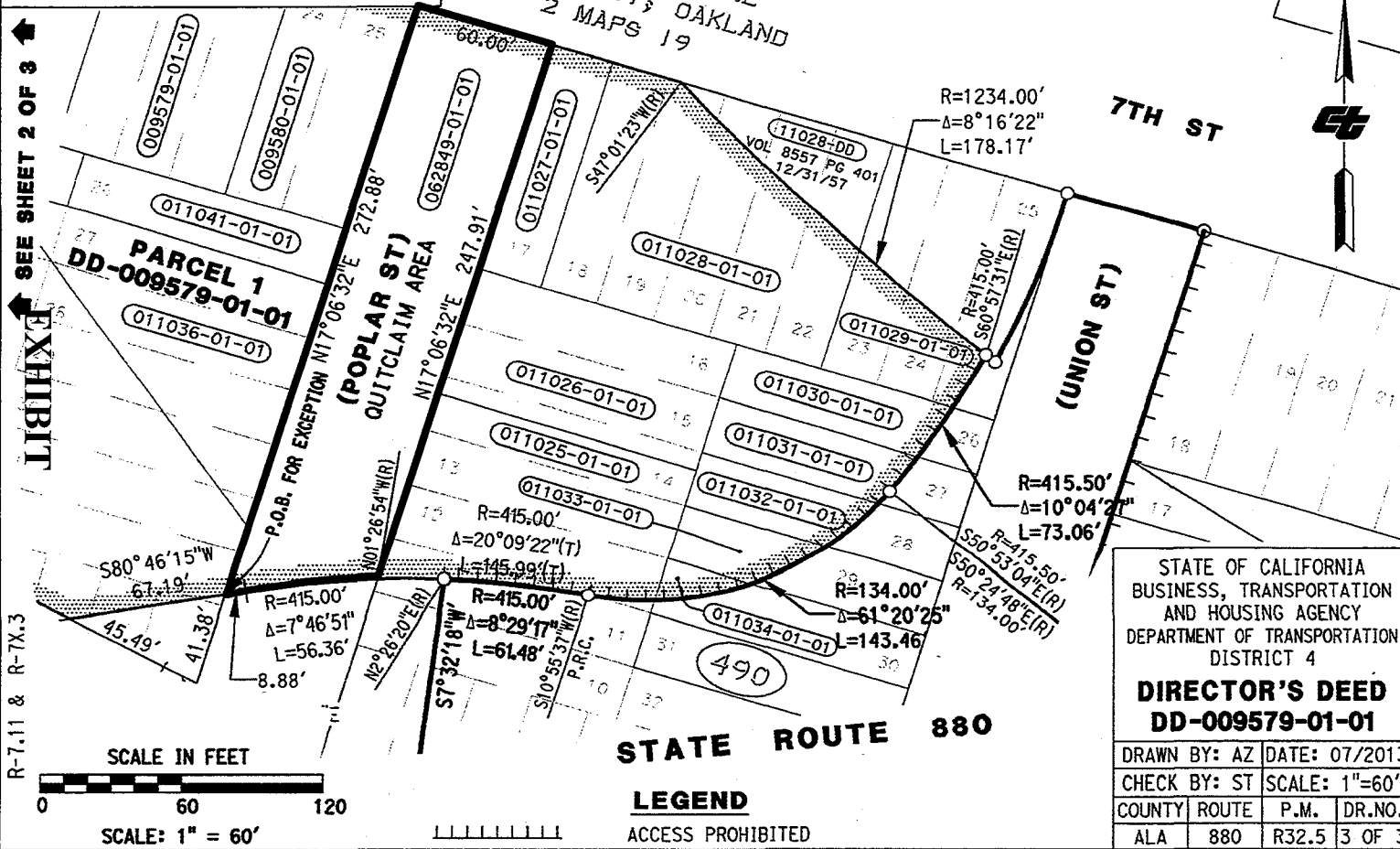
THAT PORTION OF SAID POPLAR STREET LYING WITHIN THE HEREINABOVE DESCRIBED PARCEL OF  
LAND, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF THE PARCEL OF LAND AS DESCRIBED AS "PARCEL 1A" IN THE QUITCLAIM DEED (STATE DEED NO. 51357-A) RECORDED MARCH 11, 1997 UNDER THE DOCUMENT NUMBER 97064288, OF OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG THE GENERAL SOUTHERLY LINE OF SAID 2.760- ACRE PARCEL, THE FOLLOWING TWO COURSES: N. 80°46'15" E., 8.88 FEET AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 415.00 FEET, THROUGH AN ANGLE 7°46'51", AN ARC LENGTH OF 56.36 FEET TO THE EASTERLY LINE OF SAID POPLAR STREET; THENCE ALONG SAID EASTERLY LINE OF SAID POPLAR STREET, N. 17°06'32" E. 247.91 FEET TO THE NORTHERLY LINE OF SAID 2.760-ACRE PARCEL; THENCE ALONG SAID NORTHERLY LINE, N. 73°20'06" W., ALONG 60.00 FEET TO THE WESTERLY LINE OF SAID POPLAR STREET; THENCE ALONG SAID WESTERLY LINE S. 17°06'32" W., 272.88 FEET TO THE POINT OF BEGINNING.

DISTANCES SHOWN ARE ON THE CALIFORNIA  
COORDINATE SYSTEM OF 1927, ZONE 3.  
MULTIPLY DISTANCES SHOWN BY 1.0000720  
TO OBTAIN GROUND LEVEL DISTANCES.

MAP NO. 2 OF THE  
BRIGGS TRACT, OAKLAND  
2 MAPS 19

# CITY OF OAKLAND



**EXHIBIT**  
Director's Deed DD-009579-01-01  
(Page 3 of 4)

DISTANCES SHOWN ARE ON THE CALIFORNIA  
COORDINATE SYSTEM OF 1927, ZONE 3.  
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