

Allen Ober
Office of the City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 SEP 29 PM 3:09

OAKLAND CITY COUNCIL

RESOLUTION No. 86483 C.M.S.

Introduced by Councilmember _____

RESOLUTION TO SUMMARILY VACATE A PORTION OF POPLAR STREET, A PUBLIC RIGHT-OF-WAY, FROM ITS INTERSECTION AT 5TH STREET TO ITS INTERSECTION WITH 7TH STREET, TO FACILITATE DEVELOPMENT OF A MIXED-USE TRANSIT ORIENTED DEVELOPMENT PROJECT AT 500 KIRKHAM STREET, AND ADOPT CEQA FINDINGS

WHEREAS, the California Department of Transportation (Caltrans/Permittee) owns an approximately 2.85 acre site on the block bounded by Kirkham Street to the west, 7th Street to the north, Union Street to the east, and 5th Street to the south, commonly known as 500 Kirkham Street and identified by Caltrans as Director’s Deed DD-009579-01-01 (Property), attached hereto and incorporated herein; and

WHEREAS, on April 20, 2016, the Planning Commission approved a proposal to construct a mixed use transit oriented development project on the Property (PLN15211) (Project); and

WHEREAS, on May 17, 2016, the City Council adopted Ordinance No. 13368 C.M.S., which authorized the City to purchase the Property from Caltrans and negotiate a Disposition and Development Agreement (DDA) that will allow the City to immediately transfer the Property to TL Partners V, L.P. for the same amount purchased by the City for development as a Transit Oriented Development project; and

WHEREAS, a key DDA term requires the City and Caltrans to take actions, as necessary, to help clear title for the Property, one of which involves the City vacating the portion of Poplar Street between 5th Street and 7th Street if further research or title indicates the City dedicated or otherwise created a public street; and

WHEREAS, Poplar Street was created by map in 1876, and historical maps indicate that the street was once improved and publicly maintained; various maps depict various buildings/ownerships on both sides of this portion of Poplar, as well as improved parcels that are only accessible from this portion of the right of way; and

WHEREAS, said land area comprising the portion of Poplar Street between 5th and 7th Streets proposed for vacation is necessary to develop the approved mixed-use transit oriented development project for the benefit of the citizens of the City of Oakland; and

WHEREAS, the City seeks to vacate a portion of Poplar Street, a public right-of-way, from its intersection at 5th Street to its intersection with 7th Street to Caltrans, to facilitate development of the Property pursuant to California Streets and Highways Code section 8330 et seq.; 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 5th and 7th Streets; and

WHEREAS, California Streets and Highways Code section 8330 et seq. authorizes the City Council to summarily vacate a street or highway if, for a period of five consecutive years, the street or highway has been impassable for vehicular travel, and no public money was expended for maintenance on the street or highway during such period; and

WHEREAS, the metes and bounds delineating the proposed vacation and the limits of the street vacation are delineated in the Exhibits attached hereto and incorporated herein; and

WHEREAS, said portion of Poplar Street 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, and no public funds have been spent on maintenance of the street during the past five years; and

WHEREAS, Oakland Public Works Department has determined that there are no in-place public utility facilities that are in use and would be affected by the vacation within said street portion; and

WHEREAS, the City Council finds that the summary vacation of said portion of Poplar Street is in the public interest, and that said portion of Poplar Street constitutes an excess right-of-way of a street not required for street purposes, is no longer needed for vehicular traffic and is not useful as a nonmotorized transportation facility; and

WHEREAS, in accordance with Government Code section 65402, the Planning Commission considered the proposed vacation and found it to be consistent with the General Plan and the West Oakland Specific Plan; and

WHEREAS, in accordance with Streets and Highways Code section 8313, the City Council has considered the proposed vacation and finds that it conforms to both the General Plan and the West Oakland Specific Plan; and

WHEREAS, the City has determined with reasonable certainty from a thorough examination of the available historical public records that there are no other ownership interests in the area described; and

WHEREAS, the Director of Public Works, in her official capacity, has 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, 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, from and after the date this Resolution is recorded, said portion of Poplar Street no longer constitutes a street and will be removed from the inventory of public streets maintained by the City of Oakland; and

WHEREAS, a detailed CEQA analysis prepared for the Project concluded that the Project satisfies CEQA and CEQA Guidelines, and that the potential environmental impacts of the Project have 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 summary vacation of the portion of Poplar Street between 5th Street and 7th Street; and

WHEREAS, as a separate and independent basis, this action is exempt from 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 finds and determines the foregoing recitals to be true and correct and hereby makes them a part 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, pursuant to Streets and Highways Code section 8335, the City Council hereby authorizes a street vacation permit be issued to allow the City to vacate the portion of Poplar Street between 5th and 7th Streets to Caltrans 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.

OCT 18 2016

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

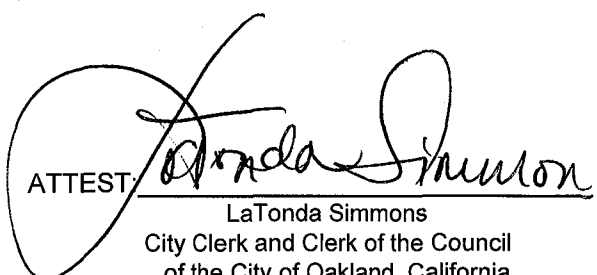
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, ~~and~~
~~PRESIDENT GIBSON MCELHANEY~~ - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

EXCUSED - GIBSON
MCELHANEY - 1

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)

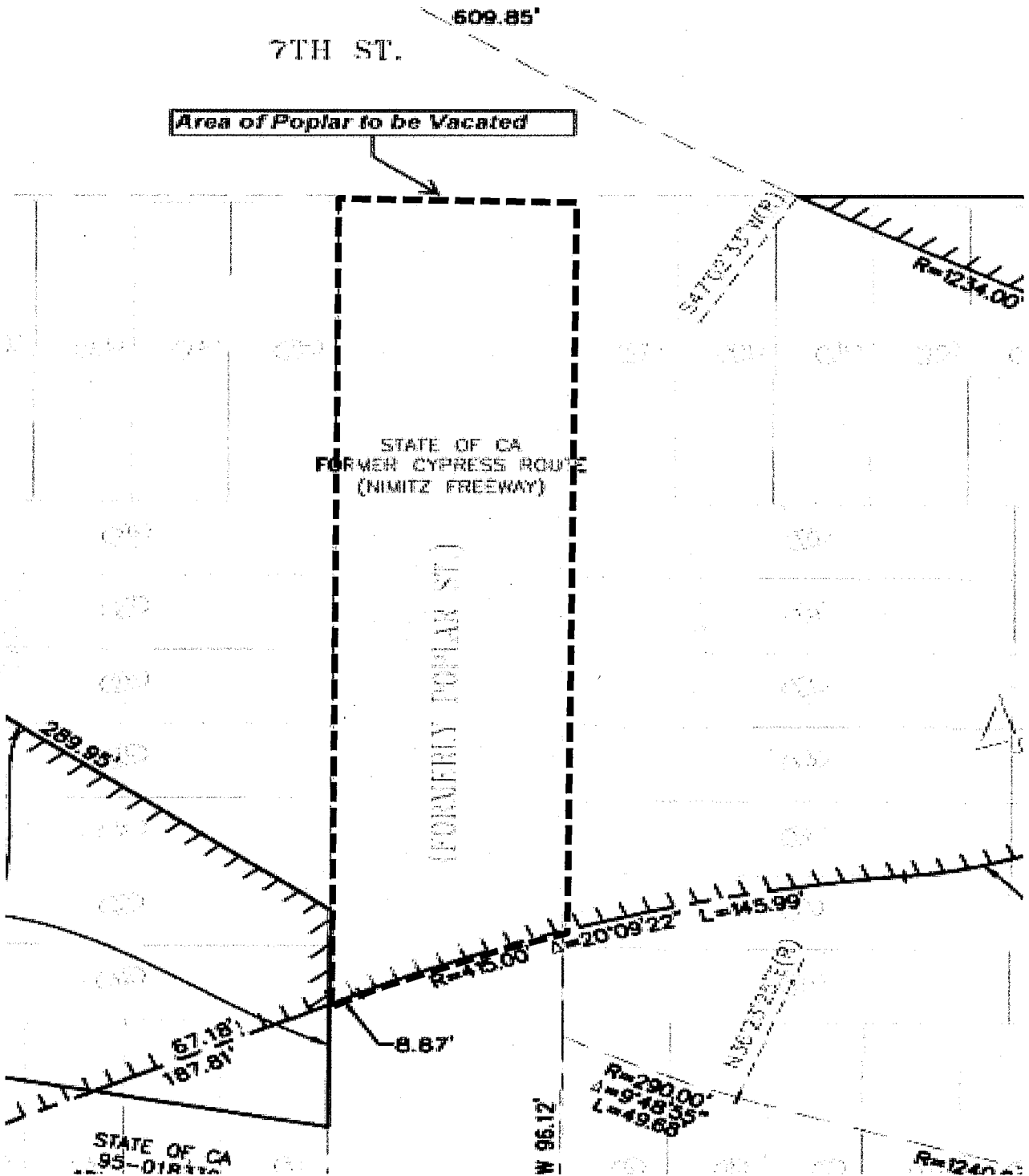


EXHIBIT (continued)

(Page 2 of 4)

**Metes and bounds delineating the proposed vacation of the portion of Poplar Street between
5th and 7th Streets**

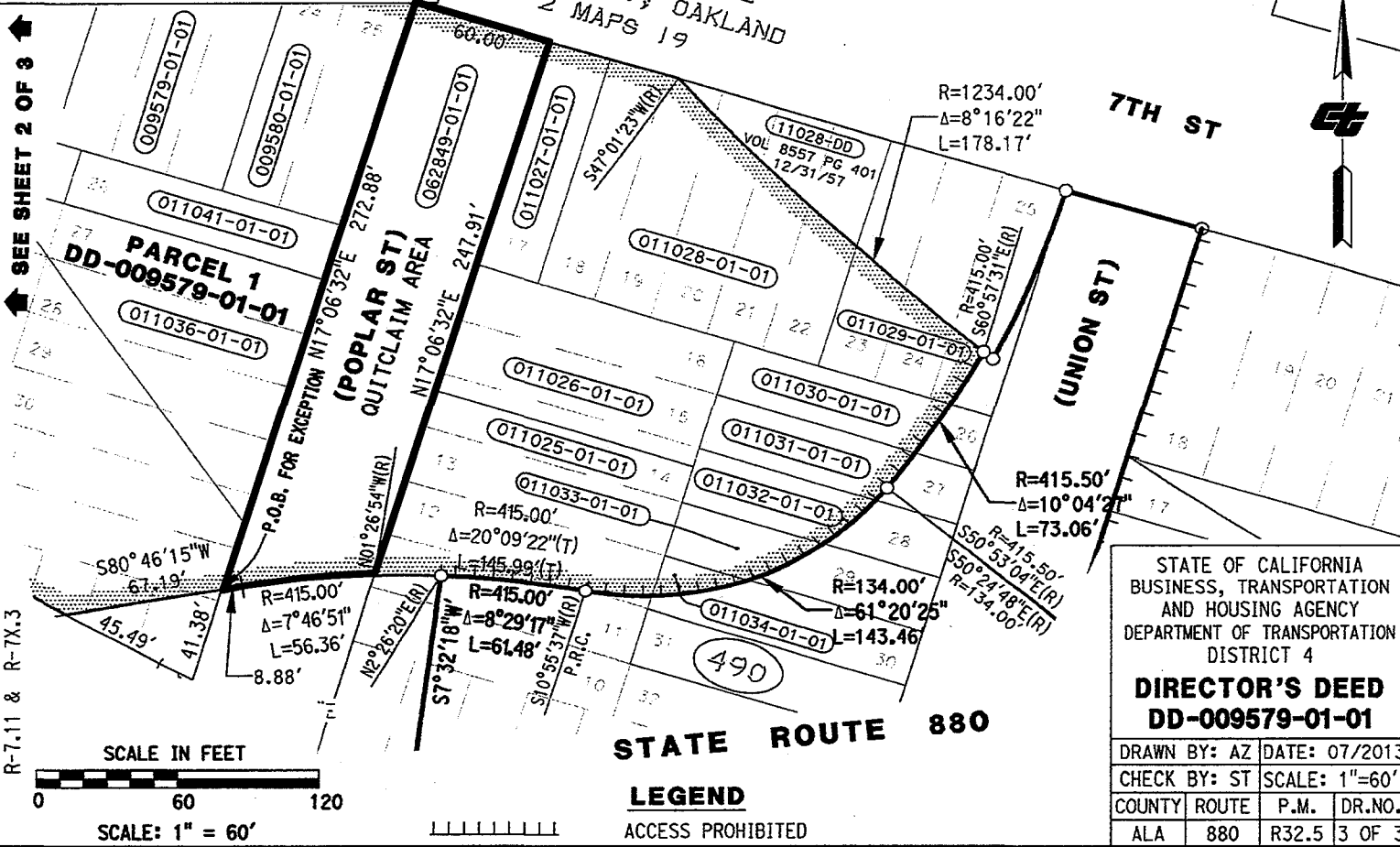
THAT PORTION OF SAID POPLAR STREET LYING WITHIN THE HEREINABOVE DESCRIBED PARCEL OF
LAND, DESCRIBED AS FOLLOWS:

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.

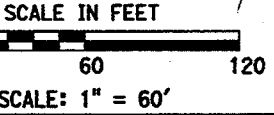
MAP NO. 2 OF THE BRIGGS TRACT, OAKLAND 2 MAPS 19

CITY OF OAKLAND

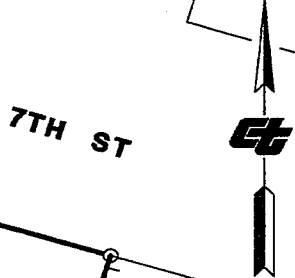


SEE SHEET 2 OF 3

R-7.11 & R-7X.3



LEGEND
ACCESS PROHIBITED



STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION
AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
DISTRICT 4

**DIRECTOR'S DEED
DD-009579-01-01**

DRAWN BY: AZ	DATE: 07/2013		
CHECK BY: ST	SCALE: 1"=60'		
COUNTY	ROUTE	P.M.	DR.NO.
ALA	880	R32.5	3 OF 3

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

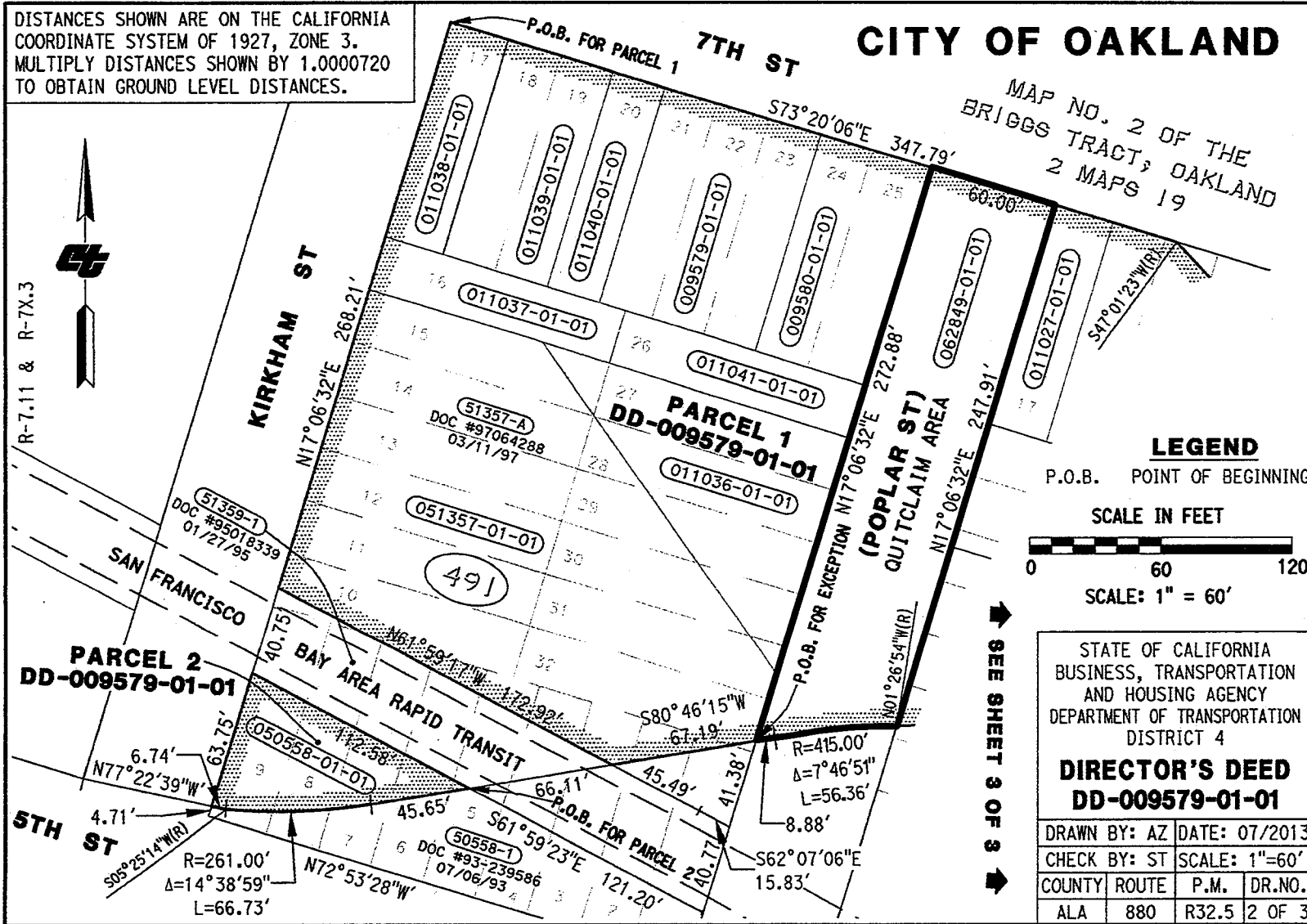
DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1927, ZONE 3. MULTIPLY DISTANCES SHOWN BY 1.0000720 TO OBTAIN GROUND LEVEL DISTANCES.

CITY OF OAKLAND

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



R-7.11 & R-7X.3



LEGEND

P.O.B. POINT OF BEGINNING

SCALE IN FEET



SCALE: 1" = 60'

SEE SHEET 3 OF 3

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION
AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
DISTRICT 4

DIRECTOR'S DEED DD-009579-01-01

DRAWN BY: AZ	DATE: 07/2013		
CHECK BY: ST	SCALE: 1"=60'		
COUNTY	ROUTE	P.M.	DR.NO.
ALA	880	R32.5	2 OF 3

EXHIBIT
(Page 4 of 4)