AGENDA

REGULAR JOINT MEETING OF THE OAKLEY CITY COUNCIL/OAKLEY CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY AND SPECIAL MEETING OF THE OAKLEY PUBLIC FINANCING AUTHORITY

Tuesday, May 25, 2021
6:30 PM

Oakley City Council Chambers, 3231 Main Street, Oakley, California 94561 BE ADVISED that this meeting will be live-streamed on the City's website at www.oakleyinfo.com. Due to the order of the County Health Officer, no one will be allowed to attend the meeting in person.

How to Participate:

Telephone: You may participate via telephone by calling (669)900-9128and using Meeting ID#: 858 0900 5401. Please call or text (619)861-8193 with any difficulties with the call-in number or ID. The meeting host will call on you when it is your turn to speak. Please mute your phone until then.

E-mail: Public comments can be submitted until 5 p.m. the day of the meeting by completing an online comment form through the City's website, https://www.ci.oakley.ca.us/agendas-minutes-videos-archive/. Comments will be distributed to the City Council via email and summarized in the meeting minutes. Please indicate on the comment form if you wish to speak during the meeting. Comments are public record.

MISSION STATEMENT: The City of Oakley exists to build and enhance a quality community and to serve the public in a friendly, efficient, responsive manner.

VISION STATEMENT: The City of Oakley will be recognized as a model of civic participation and a vibrant Delta community where families live, work, play, shop and visit.

Agendas are posted in Oakley at Oakley City Hall-3231 Main Street, outside the gym at Delta Vista Middle School-4901 Frank Hengel Way and outside the Library at Freedom High School-1050 Neroly Road; agendas are also posted on the City's Internet Website www.ci.oakley.ca.us.

A complete packet of information containing staff reports and exhibits related to each item is available for public review prior to an Oakley City Council and/or City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority meeting at Oakley City Hall, 3231 Main Street, Oakley, CA 94561. Any writings or documents provided to a majority of the Oakley City Council, Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency or Oakley

Public Financing Authority regarding any item on this agenda will be made available for public inspection, during regular business hours, at the front counter in the Main Lobby of the Oakley City Hall located at 3231 Main Street, Oakley, CA 94561.

Agendas may be picked up at the Oakley City Hall located at 3231 Main Street, Oakley, CA 94561 for no charge. To request information regarding placement on the City's agenda e-mail distribution list, please contact us at (925) 625-7000.

We provide social media options to stay connected to City Hall through Facebook, Twitter, Next Door and Instagram. Other opportunities to connect with City Hall include Engage In Oakley, Oakley OnDemand on the city's website; and by emailing info@ci.oakley.ca.us. Constant Contacts. Please contact us at (925) 625-7000 for additional information or at www.oakleyinfo.com.

If you have a physically challenging condition and require special accommodations, please call the City Clerk's office at (925) 625-7013.

Please keep cell phones/electronic devices turned off during the meeting. Please be advised that City Council meetings are video recorded and attendees may appear on video.

Members of the public may address the Council on items of interest that are within the City's jurisdiction. Public comment on items not listed on the agenda will be heard under the Public Comments section of the agenda. In compliance with State law, the Council may not take action on an item that is not specifically listed on the agenda. If you would like to speak on any agenda item, please fill out a blue speaker card available in the lobby and submit it to the City Clerk prior to the agenda item being called. The Mayor will call you by name to the podium to hear your comments and you have up to 3 minutes to speak.

1.OPENING MATTERS

1.1 Call to Order and Roll Call of the Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority

1.2 Pledge of Allegiance to the Flag (Mayor Higgins)

1.3 Proclamation Declaring May 16-22, 2021 as Special Districts Week (Chad Davisson, Chief Helmick and Dan Muelrath)
Proclamation

2.PUBLIC COMMENTS

At this time, the public is permitted to address the Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority on non-agendized items. PUBLIC COMMENTS ARE LIMITED TO THREE (3) MINUTES. In accordance with

State Law, however, no action or discussion may take place on any item not appearing on the posted agenda.

3.PUBLIC HEARINGS

3.1 Continued from April 27th. McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20) – Request for approval to construct and operate a 4,365 square foot quick serve restaurant with dine-in and drive-through service; APN 035-510-006. (Ken Strelo, Principal Planner)

Suggested Action: Staff Recommendation: 1) Open the Continued Public Hearing, 2) Receive the Staff Report, 3) Receive Questions from the City Council, 4) Receive Comments from the Applicant, 5) Receive Public Testimony, 6) Close the Public Hearing, 7) Deliberate, 8) Summarize the Deliberation, and 9) Adopt the Resolution.

Staff Report

1. City Attorney Memo to City Council dated May 17, 2021.pdf
2. Vicinity Map
3. Public Hearing Notice for April 27, 2021 Meeting
4. Applicant's Plans
5. Project Staff Report from April 27, 2021 (without attachments)
6. City Council Minutes from April 27, 2021 for Item 5.1 (excerpt).pdf
7. Memo to City Council "Summary of Public Comments Received with Staff Response", dated April 27, 2021
8. Proposed Conditional Use Permit and Design Review Resolution
9. Staff Report Power Point Presentation

3.2 Public Hearing – Burroughs Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) - An application requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District and to subdivide the approximately 43.24-acre project site into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and Zoned A-3 (Heavy Agriculture). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025) (Joshua McMurray, Interim City Manager)

Suggested Action: Staff Recommendation: 1) Open the Public Hearing, 2) Receive the Staff Report, 3) Receive Questions from the City Council, 4) Receive Comments from the Applicant, 5) Receive Public Testimony, 6) Close the Public Hearing, 7) Deliberate, 8) Summarize the Deliberation 9) Adopt the Resolution and 10) Waive the First Reading and Introduce the Ordinance.

Staff Report

1. Vicinity Map
2. Public Hearing Notice

3. Project Plans
4. Initial Study with Mitigated Negative Declaration
5. Initial Study with Mitigated Negative Declaration Response to Comments and Errata
6. Proposed Rezone Ordinance
Exhibit A to Ordinance
7. Proposed Tentative Map Resolution
Exhibit A to Resolution
8. Contra Costa Water District Abstract of Memorandum of Agreement
9. Contra Costa Water District Supplement to the North Dutch Slough Properties Memorandum of Agreement
10. North Dutch Slough Memorandum of Agreement dated April 10, 2006
11. Draft Resolution Authorizing Signature of the two CCWD Agreements
12. PowerPoint Presentation

4.CONSENT CALENDAR

Consent Calendar items are typically non-controversial in nature and are considered for approval by the Oakley City Council/ Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority with one single action. Members of the audience, Staff or the Oakley City Council/ Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority who would like an item removed from the Consent Calendar for purposes of public input may request the Mayor remove the item. Members of the public should submit any Speaker Cards related to the Consent Calendar in advance of the Consent Calendar being considered.

4.1 Approve Minutes from the Regular Joint City Council/City Council Acting as the Successor Agency to the Redevelopment Agency/Public Financing Authority Meeting held May 11, 2021 (Libby Vreonis, City Clerk)
Minutes 051121

4.2 Accept Report Out of Closed Session Memo (Derek Cole, City Attorney)
Memo

4.3 Acceptance of work associated with the Laurel Road Widening Project (Mellowood Drive to Main Street) – Capital Improvement Project Number 208 (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Resolution
2. Notice of Completion

4.4 Consulting Services Agreement with American Rivers relating to the Creekside Park Restoration Grant Project (Joshua McMurray, Interim City Manager)
Staff Report
1. Grant Agreement for Prop 1-1814
2. American Rivers Agreement

3. Resolution

4.5 Award of Contract for Professional Services Agreement for On-Call Development Engineering Support Services with HMH Engineers, Inc. (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. HMH Proposal
2. Resolution

4.6 Resolution Approving an Agreement between Hinderliter de Llamas (HdL) and the City of Oakley for Consulting Services Related to the American Recovery Plan Act (ARPA) and Authorizing the Interim City Manager to Execute the Contract (Tim Przybyla, Finance Director)

Staff Report
1. Resolution
2. Agreement

4.7 Adopt a Resolution continuing the existing recycling surcharge at its current rate until a Base Year rate review is completed with Mt. Diablo Resource Recovery (Joshua McMurray, Interim City Manager)

Staff Report
1. May 14, 2019 Staff Report
2. May 11, 2021 MDRR PowerPoint Presentation
3. Resolution

5.REGULAR CALENDAR

6.REPORTS

6.1 INTERIM CITY MANAGER
(a) Interim City Manager

6.2 OAKLEY CITY COUNCIL/OAKLEY CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY

(a) Reports from Council Liaisons to Regional Committees, Commissions and Boards AND Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency

(b) Requests for Future Agendas

7.WORK SESSION

8.CLOSED SESSIONS

8.1 CONFERENCE WITH LABOR NEGOTIATORS-Labor Negotiations with the Oakley Police Officers Association
Pursuant to Government Code Section 54957.6(a)

City Designated Representatives: Joshua McMurray, Interim City Manager and Nancy Marquez-Suarez, Assistant to the City Manager/Human Resources Manager

Represented Employees: Employees Covered by the Police Officers Association

8.2 CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54957.6(a)

City Designated Representatives: Joshua McMurray, Interim City Manager and Nancy Marquez-Suarez, Assistant to the City Manager/Human Resources Manager

Unrepresented Employees: Accounting Assistant, Accounting Manager, Administrative Assistant (4), Building Inspector I, Building Inspector II, Chief of Police, Capital Projects Engineer, City Clerk/Paralegal, Code Enforcement Officer, Code Enforcement Technician (2), Technician, Economic Development Analyst, Events Coordinator, Economic & Community Development Director, Executive Associate, Facilities Maintenance Aide, Facilities Maintenance Laborer, Finance Director, Junior Recreation Leader (9), Human Resources Director/Assistant to the City Manager, Human Resources Management Analyst/Program Coordinator, Park Ranger, Parks and Landscape Maintenance Foreman, Parks and Landscape Maintenance Tree Worker, Parks and Landscape Maintenance Worker, Parks and Landscape Manager, Permit Center Technician I, Permit Technician II Planning Technician, Police Lieutenant, Police Records Assistant (3), Police Services Assistant (6), Principal Engineer, Principal Planner, Public Works Administrative Specialist, Public Works Director/City Engineer, Public Works Inspector II, Public Works Maintenance Worker, Receptionist (2), Deputy City Clerk, Recreation Aide (7), Recreation Director/Website Coordinator, Seasonal Parks and Maintenance Laborer, Senior Accounting Technician, Senior Recreation Leader, Streets Maintenance Foreman

8.3 Report Out of Closed Session (Derek Cole, City Attorney)

9.ADJOURN

Proclamation

Special Districts Week

May 16 – 22, 2021

WHEREAS, Special districts are local governmental entities created by a community's residents, funded by those residents, and overseen by those residents, to provide specialized services and infrastructure; and

WHEREAS, Local residents own special districts and govern them through locally elected or appointed boards. A series of sunshine laws ensure special districts remain transparent and accountable to the communities they serve, as these laws require open and public meetings, public access to records, regular audits, online posting of finances and compensation, and more; and

WHEREAS, Today, just over 2,000 independent special districts provide millions of Californians with essential services, including services related to water, sanitation and water recycling, fire protection, electricity, parks and recreation, health care, open space, ports and harbors, flood protection, mosquito abatement, cemeteries, resource conservation, airports, transit, road maintenance, veterans' facilities, and more; and

WHEREAS, On Aug. 21, 1945 residents of Oakley approved a ballot measure calling for the formation of the Oakley Sanitary District, by a unanimous 112-0 vote; and

WHEREAS, In February of 1992 Oakley Sanitary District annexed Bethel Island sewer services and changed its name to Ironhouse Sanitary District; and

WHEREAS, For more than 75 years, Ironhouse Sanitary District is committed to the public health, safety, and the environment through responsible wastewater collection, treatment, and water reuse; and

WHEREAS, Diablo Water District is committed to provide a safe, dependable, and adequate supply of high-quality potable water to meet the requirements of the residents and businesses in our service area; and

WHEREAS, Diablo Water District is responsible for the proactive sustainable management of the local groundwater aquifer; and

WHEREAS, Families have relied on fire protection response from the East Contra Costa Fire Protection District while coping with structure fires and other disasters. The East Contra Costa Fire Protection District, serving the Cities of Brentwood and Oakley, and the communities of Bethel Island, Byron, Discovery Bay, Knightsen, Marsh Creek and Morgan Territory support the need for fire services.

WHEREAS, This noble work of Ironhouse Sanitary District, Diablo Water District and East Contra Costa Fire Protection District, is vital to strengthening our community's resilience.

WHEREAS, The Ironhouse Sanitary District, Diablo Water District and East Contra Costa Fire Protection District further seek to promote and educate the public about their local public service providers, including awareness and understanding of special districts; now, therefore be it

NOW, THEREFORE, BE IT RESOLVED that I Sue Higgins, Mayor of the City of Oakley, do hereby join my fellow City Councilmembers and the California State Legislature in proclaiming the week of May 16, 2021, to May 22, 2021, as Special Districts Week and encourages all residents to be involved in their community and be civically engaged with their local government.

_____

Sue Higgins, Mayor

STAFF REPORT

DATE: May 25, 2021

TO: Joshua McMurray, Interim City Manager *Approved and Forwarded to the City Council*

FROM: Kenneth W. Strelo, Principal Planner

SUBJECT: **Continued Public Hearing for McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20) – Request for approval to construct and operate a 4,365 square foot quick serve restaurant with dine-in and drive-through service; APN 035-510-006**

Summary

This is a continued public hearing on an application by Core States Group ("Applicant") requesting Design Review (DR 09-20) approval to develop an approximately 1.7-acre parcel within the Laurel Plaza shopping center with a new 4,365 square foot quick serve restaurant with dine-in and drive-through service. Applicant also requests approval of a Conditional Use Permit (CUP 03-20) to operate the drive-through service use ("Project"). The project site consists of an existing parcel fronting on Laurel Road and within the Laurel Plaza Shopping Center, which is located on the northwest corner of Laurel Road and O'Hara Avenue. The site is zoned RB (Retail Business) District. APN 035-510-006.

Staff Recommendation

Staff recommends the City Council approve the project titled, "McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," as conditioned.

Fiscal Impact

None. This is a developer funded account. All Staff time and City of Oakley generated materials are charged to the account.

Background

This item was original scheduled to be heard by the City Council on April 27, 2021. The April 27, 2021 Staff Report is attached and should be referred to for the following information:

- Background, including General Plan Land Use Designation, Zoning District, Entitlement History of the Laurel Plaza Shopping Center, and Existing Conditions and Surrounding Uses;
- Project Description, including the Proposed Conditional Use Permit, and Proposed Design Review;
- Environmental Review; and
- Analysis, including the Conditional Use Permit and Design Review.

Items from April 27, 2021 Staff Report that are included in this continued Staff Report include the Summary, Staff's Recommendation, attachments, and list of items in the City Clerk's Reading File. In order to avoid redundancy, attachments listed in the April 27, 2021 Staff Report are now attached to this Staff Report only.

April 27, 2021 Public Hearing

This item was scheduled to be heard by the Oakley City Council as Item 5.1 on the April 27, 2021 Regular Oakley City Council Agenda. Per the recommendation by Derek Cole, City Attorney, the City Council continued the item to a date certain (May 25, 2021). The main reason for this recommendation was the unavailability of a key member of the applicant's technical team related to the traffic study. An oral presentation was not provided by Staff, and the City Council did not deliberate on the project, but the public hearing was opened to allow public comments via the call-in line.

The City Council also acknowledged receipt of several public comments received via the online submittal portal both prior to and on the day of the meeting. In addition to the comments received via the online portal, the City Council received a letter from Jessica L. Blome of Greenfire Law, PC on April 26, 2021. Since many of these comments were received after completion of the agenda and project packet, Staff drafted a memo to summarize and respond to the comments received up until 2:30 P.M. on the day of the public hearing. That memo was made available prior to the public hearing and is attached to this Staff Report. The minutes for item 5.1 from the April 27, 2021 City Council Meeting are also attached for additional reference.

Analysis

The technical analysis for the project is included in the April 27, 2021 Staff Report. That analysis is based on factual information and technical studies and compare those to the adopted design standards and applicable land use regulations. As a reminder, the Conditional Use Permit is for the drive-through and not the food service itself. Regardless of the type of drive-through use, the analysis would objectively focus on site design, traffic and circulation impacts, and other items related to the drive-through, but not on the type of food being served, or the nutritional value of the menu. While those are important personal decisions for people to make, they are not required findings for approving a drive-through.

There may be a general misconception that the traffic study only compares current traffic generated by the center versus what the use would create. The entire Laurel Plaza Shopping Center was previously studied for traffic impacts assuming build out of the center, which included drive-throughs. Mitigation measures were adopted and still apply to any project moving forward. In addition, the updated traffic study has found the proposed drive-through would generate less daily and peak-hour trips than what was originally anticipated.

Citizen Planning Advisor's Comments

Emails were received by two of the Citizen Planning Advisors as quoted or summarized below:

- "It seems the design criteria meet city requirements. Obviously, many Oakley citizens are unhappy with the anticipated businesses but that has nothing to do with our responsibilities as CPA."
- A second CPA stated they did not have any comments.

Findings

Draft findings for the Conditional Use Permit and Design Review can be found in the proposed resolution.

Staff Recommendation

Staff recommends the City Council approve the project titled, "McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," as conditioned.

Attachments

1. City Attorney Memo to City Council dated May 17, 2021
2. Vicinity Map
3. Public Hearing Notice for April 27, 2021 Meeting
4. Applicant's Plans
5. Project Staff Report from April 27, 2021 (without attachments)
6. City Council Minutes from April 27, 2021 for Item 5.1 (excerpt)
7. Memo to City Council "Summary of Public Comments Received with Staff Response", dated April 27, 2021
8. Proposed Conditional Use Permit and Design Review Resolution
9. Staff Report Power Point Presentation

In City Clerk's Reading File

1. Oakley McDonald's and Quick Quack Traffic Analysis, dated March 15, 2021

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 17, 2021

TO: Joshua McMurray, Interim City Manager *Approved and Forwarded to the City Council*

FROM: Derek P. Cole, City Attorney

SUBJECT: **Memorandum Supplementing Agenda Item for McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)**

This memorandum is intended to supplement the Staff Report for this agenda item. In this memorandum, I write to describe some basic legal concepts related to the City Council's discretion and decision-making in this matter.

Quasi-Judicial versus Quasi-Legislative Actions

At the outset, I note that the Council will be acting in its "quasi-judicial" capacity. Essentially, the Council will be acting like a judge in considering evidence in the light of applicable law. Specifically, the Council must determine whether the project applicant has submitted sufficient evidence to allow the Council to make the findings for issuance of a conditional use permit ("CUP").

This type of decision is different than a decision made in the Council's "quasi-legislative" capacity, in which the Council establishes (rather than applies) land-use policies and regulations. In "quasi-legislative" matters, because the Council is acting like a legislature, the scope of its decision-making is broad and minimally limited.

The same is not true of a "quasi-judicial" matter. In matters such as this, the Council is not creating or amending policies; it is instead applying those policies that it (and its predecessor councils) has established in documents such as the City General Plan and Zoning Ordinance.

The Specific Decision to be Made

With this background, it is next necessary to characterize the specific action before the Council. Importantly, that action is *not* the approval of a McDonald's restaurant. As explained in the previous and current staff report for this matter, a restaurant has already been entitled as part of the overall Laura Plaza project.

As staff has explained, the specific action before the Council is the approval of a drive-through for the *already* permitted restaurant. What this means is that the evidence the

Council may consider must relate to the proposed drive-through, not the McDonald's restaurant generally. Comments concerning the propriety of a McDonald's restaurant at Laurel Plaza, the number of fast-food restaurants within the City, or the desirability of fast-food restaurants are not appropriate considerations for the Council's decision. Although members of the public have the right to express opinions concerning these subjects, these opinions do not present grounds under the City Municipal Code for approval or denial of the proposed CUP.

Relatedly, concerns about specific impacts of the proposed project must pertain to the drive-through, not the restaurant itself. To date, a number of comments have been made about traffic, safety, and aesthetic concerns associated with a fast-food restaurant at the Laurel Plaza site. To the extent these comments are directed to the impacts of a restaurant generally, they are not appropriate considerations for a decision regarding the proposed CUP. To be relevant, the comments must relate to the impacts of the proposed drive-through on the subject raised (e.g., traffic, safety, or aesthetic impacts).

Substantial Evidence versus Speculation

As to comments concerning the drive-through, the Council must also be careful to distinguish between evidence and speculation. In land use matters, applications are usually subjected to a "substantial evidence" standard. California courts have described "substantial evidence" as that which is "reasonable, credible, and of solid value." Courts have stated that personal observations may equate to substantial evidence in *non*-technical matters. But when technical matters are involved, courts generally uphold decisions backed by expert and professional opinions.

Courts have also made clear that speculation is not substantial evidence. This is true of speculation given by laypersons as well as experts. Courts have described speculation as including "conjecture," "unsupported opinion," and argumentative statements.

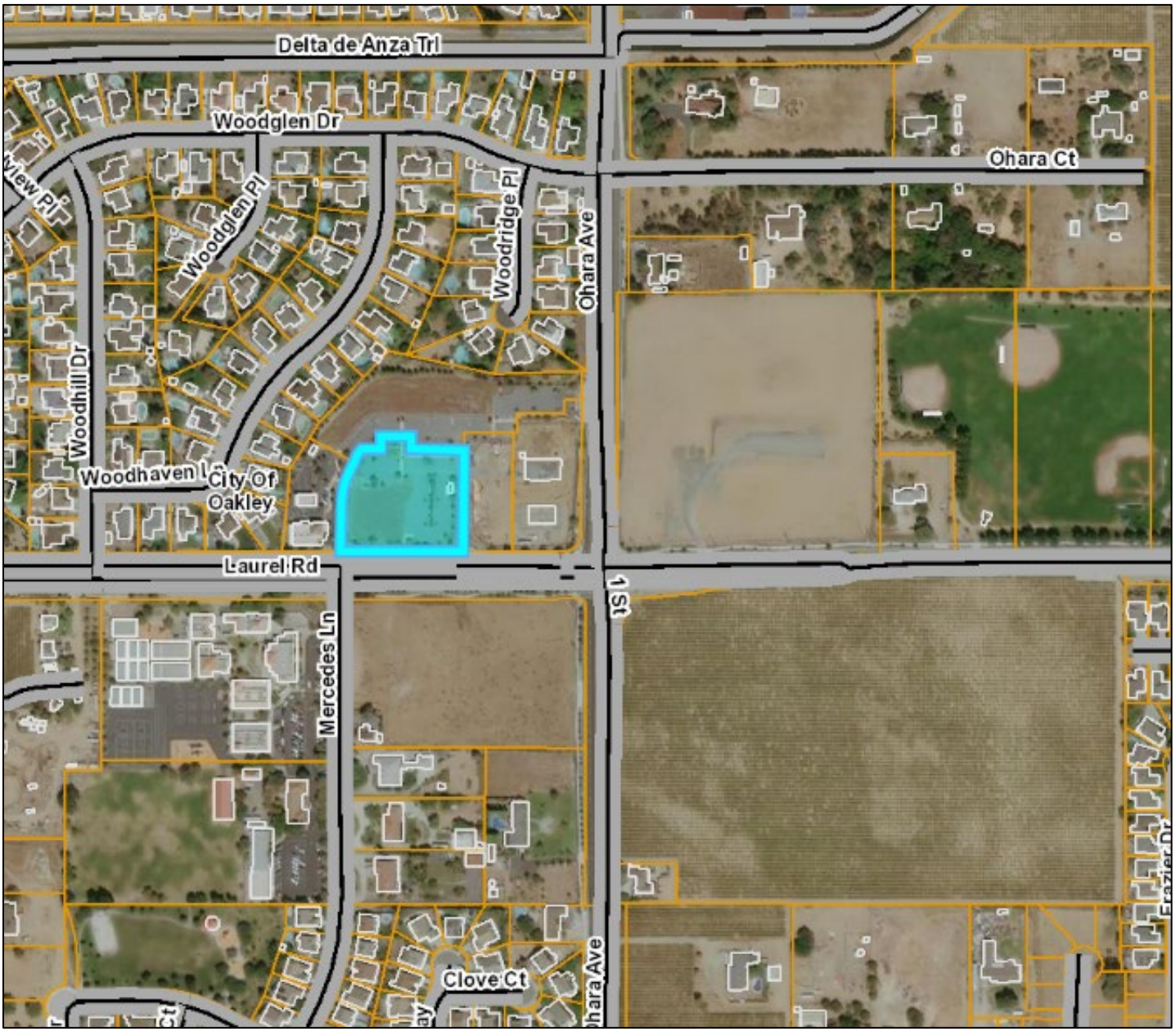
In sum, while the Council has a duty to receive all comments provided during a public hearing, it cannot rely on speculative comments to support a decision for or against a project.

Conclusion

The present application presents a limited decision for the Council to make in its "quasi-judicial" capacity: Has the applicant presented substantial evidence to allow the Council to make the findings required for issuance of a CUP? The CUP, moreover, is for a drive-through, not a fast-food restaurant generally. Thus, the evidence the Council may rely on must be confined to competent evidence concerning the impacts of a drive-through addition to an *already permitted* restaurant.

Vicinity Map

McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)
APN: 035-510-006



City of Oakley
3231 Main Street
Oakley, CA 94561
www.oakleyinfo.com

Due to safety precautions related to Covid-19, this meeting will be phone-in only. Changes in "How to Review" are found below.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **April 27, 2021** at 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council of the City of Oakley will hold a phone-in Public Hearing ~~at the Council Chambers located at 3231 Main Street, Oakley, CA 94561~~ for the purposes of considering the item as described below:

Project Name: McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20).

Project Location: North of Laurel Rd. within the Laurel Plaza Shopping Center. APN 035-510-006. Oakley, CA 94561.

Applicant: Core States Group (Zach Michels), 6500 Chippewa St., Ste. 200, St. Louis, MO 63109. zmichels@core-states.com.

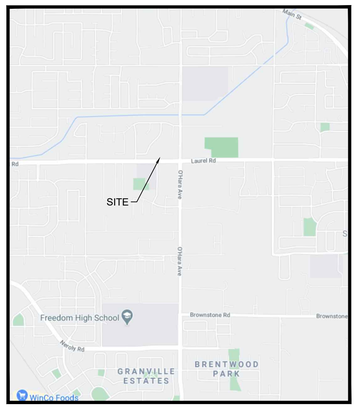
Request: This is an application by Core States Group ("Applicant") requesting Design Review (DR 09-20) approval to develop an approximately 1.7-acre parcel within the Laurel Plaza shopping center with a new 4,365 sf. quick serve restaurant with dine-in and drive-through service. Applicant also requests approval of a Conditional Use Permit (CUP 03-20) to operate the drive-through service use ("Project"). The project site consists of an existing parcel fronting on Laurel Road and within the Laurel Plaza Shopping Center, which is located on the northwest corner of Laurel Road and O'Hara Avenue. The site is zoned RB (Retail Business) District. APN 035-510-006.

How to Review: The Staff Report and its attachments will be available for public review, on or before April 23, 2021, online at www.ci.oakley.ca.us/agendas-minutes-videos-archive/ by navigating to the April 27, 2021 agenda and clicking the project title link. Interested persons are invited to submit written comments prior to 5:00 P.M. the day of the hearing to Ken Strelo, Principal Planner strelo@ci.oakley.ca.us. Those wishing to listen in and/or participate in the meeting may do so by calling: (925) 809-9201 and using ID# 921207. Callers are asked to mute phones unless speaking.

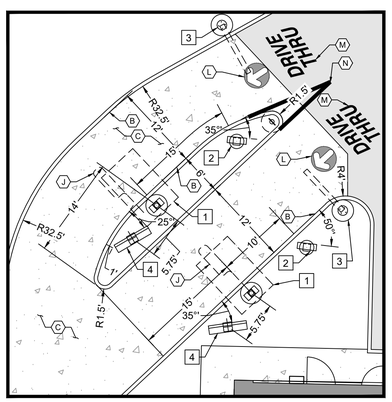
NOTICE IS ALSO GIVEN pursuant to Government Code Section 65009(b) that, if this matter is subsequently challenged in Court by you or others, you may be limited to raising only those issues you or someone else has raised at a Public Hearing described in this notice or in written correspondence delivered to the City of Oakley City Clerk at, or prior to, the Public Hearing.

GENERAL DEVELOPMENT NOTES:

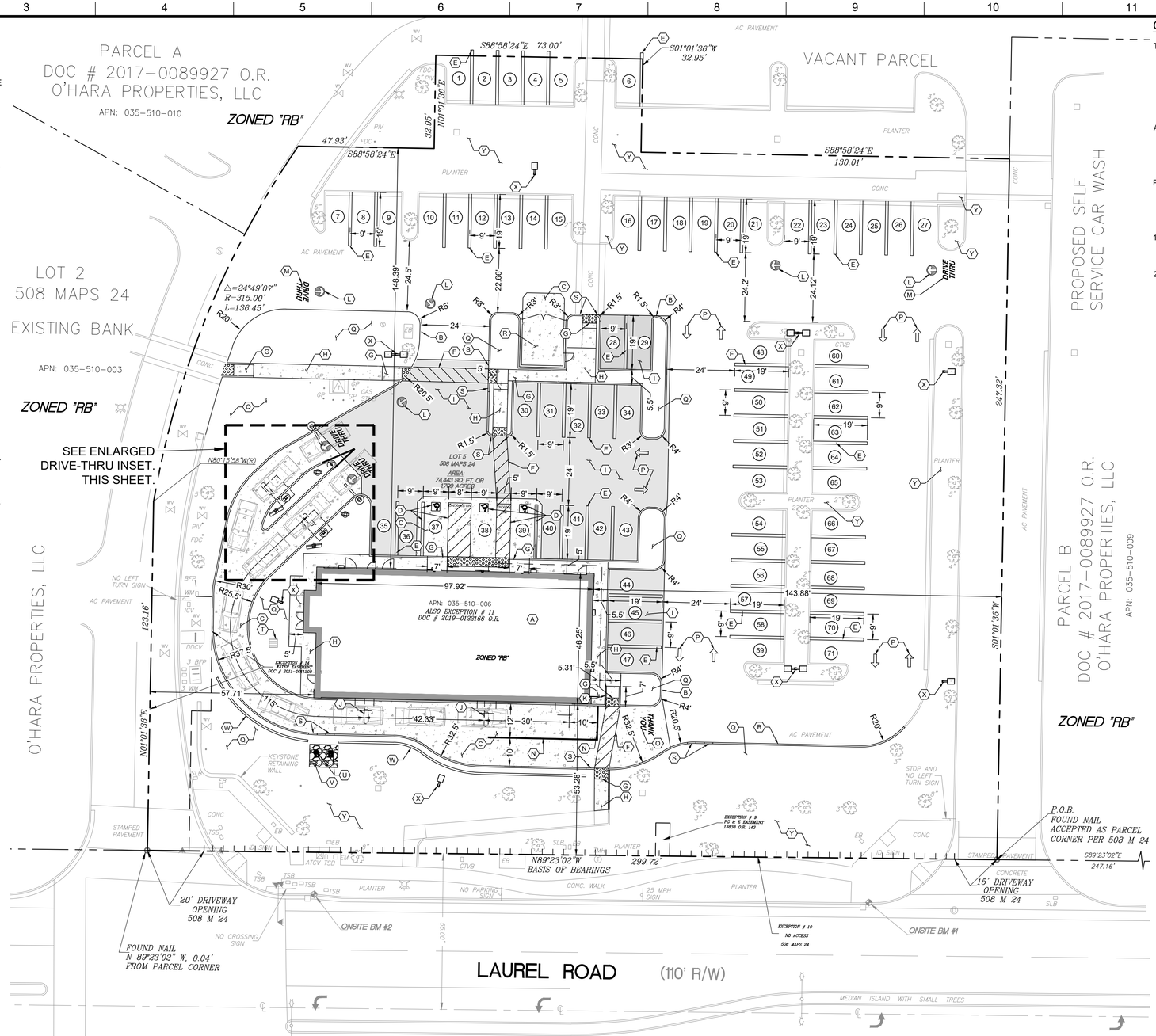
1. McDONALD'S ROAD SIGN AND BASE ARE BY THE SIGN CONTRACTOR. CONDUIT AND WIRING ARE BY THE GENERAL CONTRACTOR. THE FOUNDATION DESIGN ARE BY OTHERS.
2. BASES, ANCHOR BOLTS, CONDUIT AND WIRING FOR ALL OTHER SIGNS ARE BY THE GENERAL CONTRACTOR.
3. PROPOSED UTILITIES ARE ONLY SHOWN IN SCHEMATIC LAYOUT. EXACT LOCATIONS SHALL BE DETERMINED PRIOR TO CONSTRUCTION. SHOULD THERE BE ANY DISCREPANCIES, THE CONTRACTOR SHALL HALT WORK AND NOTIFY THE ENGINEER OF RECORD.
4. THE CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES TO DETERMINE EXACT POINT OF SERVICE CONNECTION AT EXISTING UTILITY. REFER TO THE BUILDING ELECTRICAL AND PLUMBING DRAWINGS FOR UTILITY SERVICE ENTRANCE LOCATIONS, SIZES, AND CIRCUITING.
5. FINISH WALK AND CURB ELEVATIONS SHALL BE 6" ABOVE FINISH PAVEMENT UNLESS OTHERWISE NOTED ON THESE PLANS.
6. ALL DIMENSIONS SHOWN ARE TAKEN FROM FACE OF CURB UNLESS OTHERWISE INDICATED.
7. ALL FEATURES SHOWN ARE EXISTING UNLESS OTHERWISE INDICATED.
8. ALL DIMENSIONS FROM PROPERTY LINES ARE PERPENDICULAR UNLESS OTHERWISE NOTED.
9. THE CONTRACTOR WILL BE RESPONSIBLE FOR MAINTAINING THE SITE UNTIL WORK IS ACCEPTED BY THE OWNER.
10. ANY DAMAGE TO THE EXISTING CURB AS A RESULT OF THIS DEVELOPMENT MUST BE REPLACED AS NECESSARY.
11. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REMOVE ANY DEBRIS AND FLUSH OUT ALL EXISTING AND NEW STORM DRAINAGE FACILITIES WITHIN THE PROJECT LIMITS AT THE COMPLETION OF THE CONSTRUCTION.
12. ALL NEW BUILDING SIGNAGE WILL COMPLY WITH ZONING REGULATIONS.
13. PROVIDE ADEQUATE OFF-STREET PARKING FOR CONSTRUCTION EMPLOYEES. PARKING ON NON-SURFACED AREAS SHALL BE PROHIBITED IN ORDER TO ELIMINATE THE CONDITION WHEREBY MUD FROM CONSTRUCTION AND EMPLOYEE VEHICLES IS TRACKED ONTO THE PAVEMENT CAUSING HAZARDOUS ROADWAY AND DRIVEWAY CONDITIONS.
14. ALL QUANTITIES SHOWN ON PLANS ARE APPROXIMATE AND FOR REFERENCE ONLY.
15. CONTRACTOR TO VERIFY ALL MINIMUMS CALLED OUT ON THE CIVIL PLANS AND SHALL NOTIFY ENGINEER AND ACM IF MINIMUMS CANNOT BE MET.



VICINITY MAP
SCALE: 1"=10'



ENLARGED DRIVE-THRU
SCALE: 1"=10'



SIGN LEGEND:

1. PROPOSED SPRINGBOARD CANOPY.
2. PROPOSED DIGITAL PRE-BROWSE MENU BOARD.
3. PROPOSED WELCOME POINT GATEWAY.
4. PROPOSED OUTDOOR DIGITAL MENU BOARD (ODMB).

*VERIFY SIGNAGE WITH SIGN ORDER REQUEST FORM.
*VERIFY LOCATIONS WITH McDONALD'S REPRESENTATIVE.

SITE KEY NOTES:

A. PROPOSED MCDONALDS 4,597 BUILDING. REFER TO ARCHITECTURAL PLANS FOR DETAILS.
B. PROPOSED CONCRETE CURB. REFER TO CONSTRUCTION DETAIL SHEETS.
C. PROPOSED CONCRETE PAD. REFER TO CONSTRUCTION DETAIL SHEETS.
D. PROPOSED ACCESSIBLE PARKING STRIPING. MUST BE LONG LIFE EPOXY. REFER TO CONSTRUCTION DETAIL SHEETS.
E. PROPOSED PARKING STRIPING (TYP.). MUST BE LONG LIFE EPOXY. REFER TO CONSTRUCTION DETAIL SHEETS.
F. PROPOSED CROSSWALK STRIPING. REFER TO CONSTRUCTION DETAIL SHEETS.
G. PROPOSED ACCESSIBLE CURB RAMP WITH 3' DEEP DETECTABLE WARNING. REFER TO CONSTRUCTION DETAIL SHEETS.
H. PROPOSED CONCRETE SIDEWALK. REFER TO CONSTRUCTION DETAIL SHEETS.
I. PROPOSED ASPHALT PAVEMENT. REFER TO CONSTRUCTION DETAIL SHEETS.
J. DETECTOR LOOP(S) TO BE INSTALLED / REPLACED AT EXISTING DRIVE THRU WINDOWS AS DIRECTED BY MCDONALD'S CONSTRUCTION MANAGER. REFER TO CONSTRUCTION DETAIL SHEETS.
K. PROPOSED GUARDRAIL. REFER TO CONSTRUCTION DETAIL SHEETS.
L. PROPOSED YELLOW DRIVE-THRU DIRECTION PAVEMENT MARKINGS. REFER TO CONSTRUCTION DETAIL SHEETS.
M. PROPOSED YELLOW PAINTED "DRIVE THRU" PAVEMENT MARKINGS. REFER TO CONSTRUCTION DETAIL SHEETS.
N. PROPOSED 6" WIDE YELLOW PAINTED STRIPE. REFER TO CONSTRUCTION DETAIL SHEETS.
O. PROPOSED YELLOW PAINTED "THANK YOU" PAVEMENT PARKING. REFER TO CONSTRUCTION DETAIL SHEETS.
P. PROPOSED DIRECTIONAL SITE ARROWS. REFER TO CONSTRUCTION DETAIL SHEETS.
Q. PROPOSED LANDSCAPE AREA.
R. PROPOSED TRASH ENCLOSURE.
S. PROPOSED CURB TRANSITION. REFER TO CONSTRUCTION DETAIL SHEETS.
T. PROPOSED YARD INLET. REFER TO CONSTRUCTION DETAIL SHEETS.
U. PROPOSED MITERED END SECTION PIPE CUT GROUTED WITH RIP RAP.
V. PROPOSED RIP RAP.
W. PROPOSED SCREENING WALL.
X. PROPOSED SITE LIGHT POLE. REFER TO PHOTOMETRIC PLAN FOR DETAILS.
Y. EXISTING LANDSCAPE PLANTER TO REMAIN.

GENERAL NOTES:

THIS DRAWING REFERENCES: BOUNDARY & TOPOGRAPHIC SURVEY
APN: 035-510-006, LOT 5
OAKLEY
CONTRA COSTA COUNTY, STATE OF CALIFORNIA
PREPARED BY: ZIEBATECH LAND SURVEYING
DATED: 02/27/2020

APPLICANT: McDONALD'S CORPORATION
110 N CARPENTER ST.
CHICAGO, IL 60607
CONTACT: KEVIN MCAULEY
PHONE: (858) 342-3536

PROPERTY OWNER: OHARA PROPERTIES LLC
3820 BLACKHAWK ROAD
DANVILLE, CA 94506
CONTACT: ARIEL FOX
PHONE: (916) 473-8805

1) SITE ADDRESS: TBD LAUREL RD
OAKLEY, CA 94561
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

2) PROJECT NAME: MCDONALD'S DRIVE-THROUGH QUICK SERVE RESTAURANT AT LAUREL PLAZA
(CUP 03-20, DR 09-10)

ZONING DATA
ZONED C2 - GENERAL COMMERCIAL

ITEM	EXISTING / REQUIRED	PROPOSED
PARCEL ID	035-510-006	035-510-006
LAND USE	COMMERCIAL	COMMEERCIAL
BUILDING USE	VACANT PARCEL	RESTAURANT
BUILDING HEIGHT (FT)	35' MAX	18'-10"
FLAG POLE (FT)	(2) FLAG POLE 25' MAX HEIGHT	-
BUILDING AREA (SF)	N/A	4,516 SF
FLOOR AREA RATIO (FAR)	N/A	0.061
FRONT SETBACK (FT)	10'	53.28' (S)
SIDE SETBACK (FT)	10'	143.88' (E) 57.71' (W)
REAR SETBACK (FT)	0'	148.39' (N)
PARKING SPACES	(1) SPACE PER 150 SF GFA (29) PARKING SPACES REQUIRED	71 SPACES
ADA PARKING SPACES	3 SPACES REQUIRED	3 SPACES
TOTAL PARCEL AREA	74,443 SF (1.709 AC)	74,443 SF (1.709 AC)
TOTAL LIMITS OF DISTURBANCE	N/A	28,117 SF (0.645 AC)
TOTAL OFF-SITE WORK	N/A	273 SF (0.006 AC)
IMPERVIOUS SURFACES AREA (ACRES) (MAXIMUM %)	36,390 SF (0.835 AC) 48.88%	53,299 SF (1.224 AC) 71.60%
PERVIOUS SURFACES AREA (ACRES) (MINIMUM %)	38,053 SF (0.874 AC) 51.12%	21,144 SF (0.485 AC) 28.40%

SITE LEGEND

- EXISTING PROPERTY BOUNDARY LINE
- EXISTING ADJOINING PROPERTY LINE
- EXISTING ROAD CENTERLINE
- PROPOSED ROAD CENTERLINE
- PROPOSED DITCH CENTERLINE
- PROPOSED LIMITS OF BMP / DETENTION
- PROPOSED SAWCUT LINE
- EXISTING CURB
- PROPOSED CURB
- PROPOSED MOUNTABLE CURB
- PROPOSED BUILDING
- PROPOSED ASPHALT
- PROPOSED CONCRETE
- EXISTING SANITARY STRUCTURES
- EXISTING WATER STRUCTURES
- PROPOSED PARKING COUNT

City of Oakley
Planning Division

FEB 17, 2021

RECEIVED

GRAPHIC SCALE
20 10 5 0 20
1" = 20'

CORE STATES GROUP
4240 Jurupa Street Suite 402
Ontario, CA 91761
Phone (909) 467-8907
Fax (909) 467-8908
BHumann@core-eng.com

DOCUMENTS PREPARED BY CORESTATES, INC., INCLUDING THIS DOCUMENT, ARE TO BE USED ONLY FOR THE SPECIFIC PROJECT AND SPECIFIC USE FOR WHICH THEY WERE INTENDED. ANY EXTENSION OF USE TO ANY OTHER PROJECTS, BY OWNER OR BY ANY OTHER PARTY, WITHOUT THE EXPRESSED WRITTEN CONSENT OF CORESTATES, INC. IS DONE UNLAWFULLY AND AT THE USERS OWN RISK. IF USED IN A WAY OTHER THAN THAT SPECIFICALLY INTENDED, USER WILL HOLD CORESTATES, INC. HARMLESS FROM ALL CLAIMS AND LOSSES.

CLIENT
McDonald's USA, LLC

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811 Know what's below. Call before you dig.

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON DESIGN PLANS AND/OR FIELD SURVEY INFORMATION AND THAT ACTUAL LOCATIONS AND MEASUREMENTS TAKEN IN THE FIELD. CORE STATES, INC. DOES NOT GUARANTEE THAT LOCATIONS SHOWN ARE EXACT. THE CONTRACTOR MUST CONTACT THE APPROPRIATE UTILITY COMPANIES AT LEAST 48 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATIONS OF UTILITIES.

REVISIONS

REV	DATE	COMMENT	BY

DOCUMENT
CIVIL CONSTRUCTION PLANS FOR MCDONALDS AT OAKLEY, CA

SITE LOCATION
LAUREL RD,
OAKLEY, CA 94561

(004-5010)

ENGINEER SEAL
REGISTERED PROFESSIONAL ENGINEER
TRAVIS VINCENT MOORE
C 37356
CIVIL
STATE OF CALIFORNIA

SHEET TITLE
SITE PLAN

JOB #:	MCD.26879
DATE:	11/23/2020
SCALE:	1" = 20'
DRAWN BY:	KC
CHECKED BY:	ZM

SHEET NO.
C4

McDONALD'S DRIVE-THROUGH QUICK SERVE RESTAURANT AT LAUREL PLAZA (CUP 03-20, DR 09-20)

Front Elevation (East)

Rear Elevation (West)

Non-Drive-Thru Side Elevation (North)

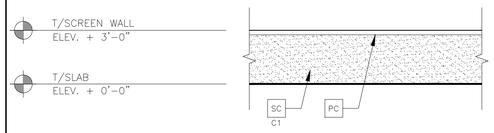
Drive-Thru Side Elevation (South)

Materials Legend

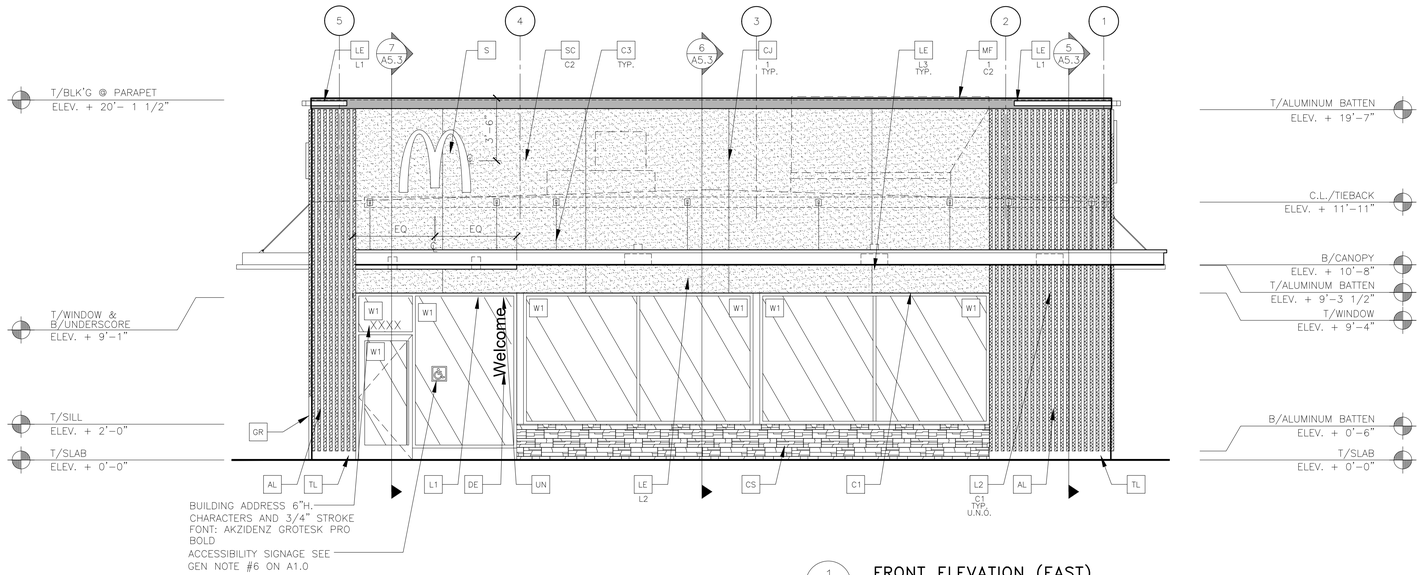
- Stucco (Main Building)
  "Fairview Taupe" by Bemjamin Moore
- Stucco (Wall Accent)
  "Iron Ore" by Sherwin Williams
- Cultured Stone
  "Foundation" by Hewn Stone
- Aluminum Canopy (Prefinished Metal)
  White
- Glazing (Windows & Storefront)
  1" Insulated Clear Glass
- Metal (Coping) & Aluminum Trellis
  "RAL 7022" by Metal-Era
- Paint
  "Fairview Taupe" by Benjamin Moore
- Aluminum Underscore (Prefinished)
  "Pantone 123"
- Battens (Aluminum)
  B+N Industries
  Color: Wood Grain

CORE STATES GROUP

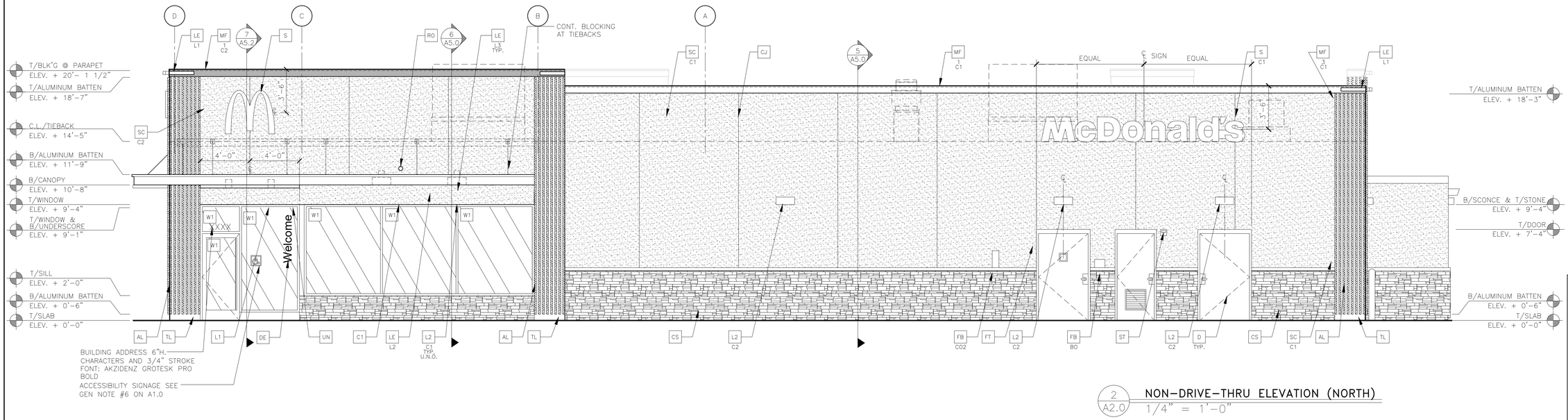
Proposed McDonald's Restaurant #004-5010
1070 Laurel Road
Oakley, CA
08 February 2021



3 A2.0 SCREEN WALL ELEVATION
1/4" = 1'-0"



1 A2.0 FRONT ELEVATION (EAST)
1/4" = 1'-0"



2 A2.0 NON-DRIVE-THRU ELEVATION (NORTH)
1/4" = 1'-0"

KEY NOTES:

- AL — ALUMINUM BATTEN SYSTEM
  SIZE: 2"X2" PROFILE
  COLOR: WOOD GRAIN, BACKRAIL UNFINISHED, ENDCAP PAINTED TO MATCH
  SUBSTRATE: 1/2" EXTERIOR HIGH DENSITY OVERLAY (HDO) PLYWOOD, BB, GROUP 1, HDO BOTH FACES, APA TRADEMARKED.
  COURSE GRIT SAND SURFACES PRIOR TO PRIMING. PRIME AND PAINT BOTH SIDES AND ALL EDGES PRIOR TO INSTALLATION.
  SUBSTRATE COLOR: "IRON ORE" SW 7069 BY SHERWIN WILLIAMS
- AP — ALPOLIC METAL PANEL (COLOR: RAL 7022)
- C1 — ALUMINUM CANOPY SYSTEM W/FASCIA
  COLOR: WHITE
- C2 — ALUMINUM CANOPY SYSTEM
  COLOR: RAL 7022
- C3 — ALUMINUM CANOPY TIEBACK
  COLOR: RAL 7022
  GC TO PROVIDE CONTINUOUS BLOCKING ON WALL BEHIND TIEBACKS, WHEN TIEBACKS ARE INSTALLED ON METAL PANELING.
  SEE DETAIL 3/A5.0
- CJ — CONTROL JOINT
  1 — TYPE: 1 = STUCCO
- CM — 7" REVEAL METAL WALL PANEL SYSTEM BY METAL ERA
  C1 — COLOR:
  C1 = WEATHERED ZINC
- CS — CULTURED STONE BY BORAL – HEWN STONE
  COLOR: FOUNDATION
- D — HOLLOW METAL DOOR
  "FAIRVIEW TAUPE" HC-85 BY BENJAMIN MOORE
- DE — DECAL BY GRAPHICS SUPPLIER
  SURFACE APPLIED, FIELD INSTALLED, PRE CUT, PRE SPACED.
  SUPPLIERS:
  VOMELA (865) 330-7337, ann.bowen@vomela.com
  GFX INTERNATIONAL (847) 543-4600, mcdonaldsdecor@gfxi.com
- FB — C02 — C02 = BULK C02 FILL BOX (EQPM SCHEDULE ITEM 49.00)
  BO = BULK OIL FILL BOX (EQPM SCHEDULE ITEM 700.18)
- GR — GUARD RAIL –SEE SITE PLAN FOR EXACT LOCATION AND LENGTH
  PAINT: "FAIRVIEW TAUPE" HC-85 BY BENJAMIN MOORE
- L1 — RECESSED DOWN LIGHT FIXTURE – SEE ELECTRICAL
  COLOR: GOLD
- L2 — RADIAL SCONCE LIGHT FIXTURE – SEE ELECTRICAL
  C1 — COLOR:
  C1= WHITE
  C2= PLATINUM SILVER
- LE — ACCENT LIGHTING – SEE ELECTRICAL
  L1 — LED LIGHT:
  L1 = SLIM LED (DOWN ONLY)
  L2 = INTEGRAL CANOPY FIXTURE
  L3 = UP ONLY FLOOD FIXTURE
- MF — METAL FASCIA
  1 — TYPE:
  1 = PRE-FAB ANCHOR-TITE FASCIA
  2 = BOTTOM TRIM AT METAL REVEAL PANEL
  3 = VERTICAL TRIM AT METAL REVEAL PANEL CORNERS, CLOSURES
  C1 — COLOR:
  C1= WEATHERED ZINC
  C2= RAL 7022
- PB — PIPE BOLLARD – PAINTED YELLOW
- PC — PRECAST CONCRETE SLOPED CAP
  COLOR: FOUNDATION
- PT — (RMHC) COIN COLLECTOR
  MODEL: #WPT STD
  CALL 1-888-743-7435 TO ORDER
- RO — ROOF DRAIN OVERFLOW PIPE PAINT TO MATCH SURROUNDING MATERIAL
- S — McDONALD'S SIGNAGE BY OTHERS – UNDER SEPARATE PERMIT.
  C1 — COLOR:
  C1= WEATHERED ZINC RACEWAY
  C2= RAL 7022 RACEWAY
- SC — STUCCO
  C1 — COLOR:
  C1 = "FAIRVIEW TAUPE" HC-85 BY BENJAMIN MOORE
  C2 = "IRON ORE" SW 7069 BY SHERWIN WILLIAMS
- ST — C02 STROBE/ALARM. SEE MECHANICAL DRAWINGS FOR SPECIFICATION.
- TL — TILE (@ BASE OF BATTEN SYSTEM)
  EUROWEST: E-WOOD
  COLOR: R-9 BLACK, SIZE: 6"X24"
  WATERPROOFING SETTING MATERIAL AND GROUT: BY MAPEI
  GROUT COLOR: ULTRA COLOR PLUS – 47 CHARCOAL
  GROUT WIDTH: 1/8" TO 3/16"
  CONTACT: JAN DETER, (714) 937-7500
- UN — METAL UNDERSCORE
  COLOR: GOLD
- W1 — EXTERIOR WINDOW ASSEMBLY – TEMPERED GLASS
  COLOR: DARK BRONZE
- W2 — DRIVE-THRU WINDOW BY READY ACCESS
  XX — MODEL: 600 SERIES, 36" SERVICE HEIGHT WITH TRANSOM, MANUAL OPEN; ELECTRONIC RELEASE
  COLOR: DEEP BRONZE
  SLIDE DIRECTION: RL = RIGHT TO LEFT
  LR = LEFT TO RIGHT

REV	
DATE	
DESCRIPTION	
BY	

PREPARED BY:
CORE STATES GROUP
4240 East Jurupa Street, Suite 402, Ontario, CA 91761
www.corestates.com

PREPARED FOR:
McDonald's USA, LLC

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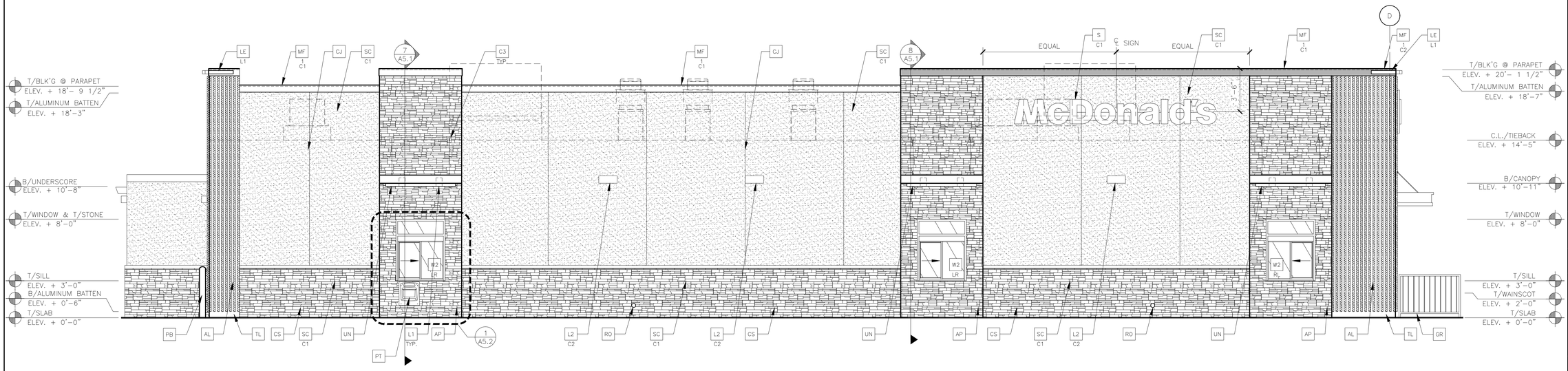
DRAWN BY:	B.ABDALLA
STD ISSUE DATE	2018_10
REVIEWED BY	M.PELINI
DATE ISSUED	08/31/2020
C.S.G. PROJECT #	MCD.26879

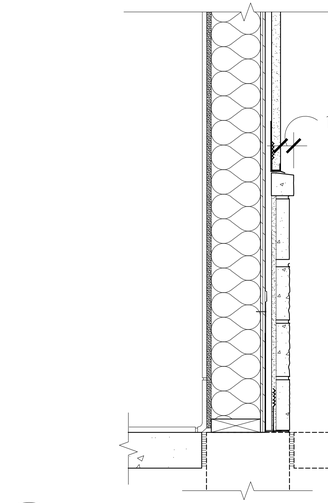
TITLE: 2017 STANDARD BUILDING 4597 – WOOD/WOOD
DESCRIPTION: WOOD BEARING WALLS W/HARDIE EXTERIOR FINISH
WOOD ROOF TRUSS FRAMING
HARDIE PLANK/BATTEN/STUCCO ACCENT EXTERIOR
SITE ID: 004-5010
SITE ADDRESS: 1070 LAUREL ROAD OAKLEY, CA

McDONALD'S DRIVE-THROUGH SERVE RESTAURANT AT LAUREL PLAZA (CUP 03-20, DR 09-20)

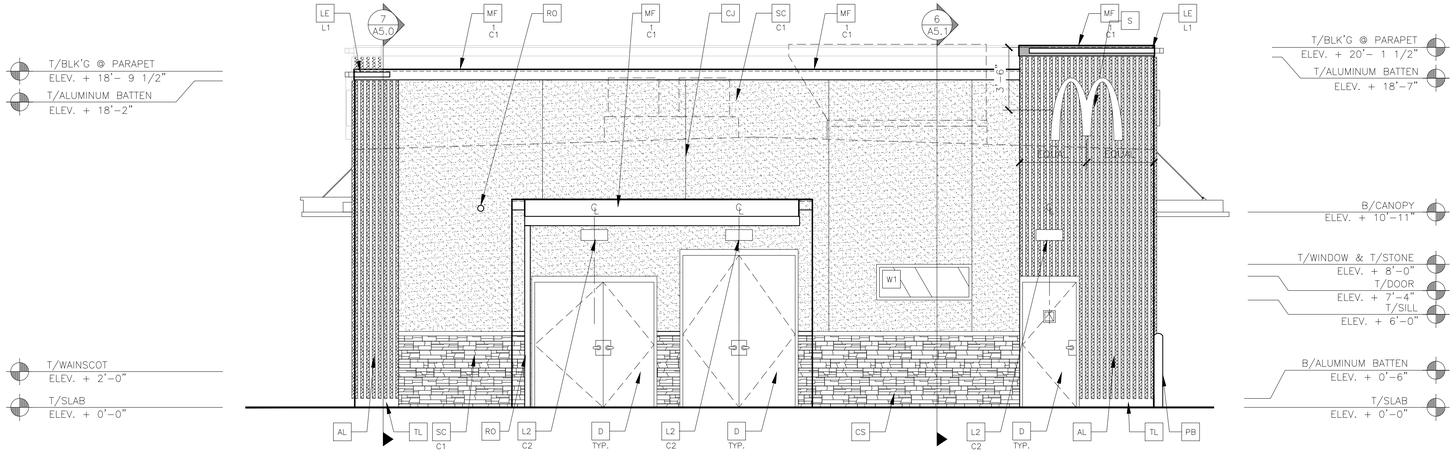
SHEET NO.
004-5010.00
A2.0
ELEVATIONS



1 A2.1 DRIVE THRU ELEVATION (SOUTH)
1/4" = 1'-0"



3 A2.1 SECTION DETAIL
1-1/2" = 1'-0"



2 A2.1 REAR ELEVATION (WEST)
1/4" = 1'-0"

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  SUBSTRATE: 1/2" EXTERIOR HIGH DENSITY OVERLAY (HDO) PLYWOOD, BB, GROUP 1, HDO BOTH FACES, APA TRADEMARKED.
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  COLOR: GOLD
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  C2= PLATINUM SILVER
- LE — ACCENT LIGHTING – SEE ELECTRICAL
  L1 — LED LIGHT:
  L1 = SLIM LED (DOWN ONLY)
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  L3 = UP ONLY FLOOD FIXTURE
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  2 = BOTTOM TRIM AT METAL REVEAL PANEL
  3 = VERTICAL TRIM AT METAL REVEAL PANEL CORNERS, CLOSURES
  COLOR:
  C1= WEATHERED ZINC
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- PC — PRECAST CONCRETE SLOPED CAP
  COLOR: FOUNDATION
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  C1 — COLOR:
  C1 = "FAIRVIEW TAUPE" HC-85 BY BENJAMIN MOORE
  C2 = "IRON ORE" SW 7069 BY SHERWIN WILLIAMS
- ST — CO2 STROBE/ALARM. SEE MECHANICAL DRAWINGS FOR SPECIFICATION.
- TL — TILE (@ BASE OF BATTEN SYSTEM)
  EUROWEST: E-WOOD
  COLOR: R-9 BLACK, SIZE: 6"X24"
  WATERPROOFING SETTING MATERIAL AND GROUT: BY MAPEI
  GROUT COLOR: ULTRA COLOR PLUS – 47 CHARCOAL
  GROUT WIDTH: 1/8" TO 3/16"
  CONTACT: JAN DETER, (714) 937-7500
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  COLOR: GOLD
- W1 — EXTERIOR WINDOW ASSEMBLY – TEMPERED GLASS
  COLOR: DARK BRONZE
- W2 — DRIVE-THRU WINDOW BY READY ACCESS
  XX — MODEL: 600 SERIES, 36" SERVICE HEIGHT WITH TRANSOM, MANUAL OPEN; ELECTRONIC RELEASE
  COLOR: DEEP BRONZE
  SLIDE DIRECTION: RL = RIGHT TO LEFT
  LR = LEFT TO RIGHT

BY	DESCRIPTION	DATE	REV

PREPARED BY:
CORE STATES GROUP
4240 East Jurupa Street.
Suite 402
Ontario, CA 91761
www.corestates.com

PREPARED FOR:
McDonald's USA, LLC

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DRAWN BY	REVIEWED BY	C.S.S. PROJECT #
B.ABDALLA	M.PELINI	MCD.26879
STD ISSUE DATE 2018_10	DATE ISSUED 08/31/2020	

TITLE: 2017 STANDARD BUILDING 4597 – WOOD/WOOD
DESCRIPTION: WOOD BEARING WALLS W/HARDIE EXTERIOR FINISH WOOD ROOF TRUSS FRAMING
HARDIE PLANK/BATTEN/STUCCO ACCENT EXTERIOR
SITE ID: 004-5010
SITE ADDRESS: 1070 LAUREL ROAD OAKLEY, CA

McDONALD'S DRIVE-THROUGH SERVE RESTAURANT AT LAUREL PLAZA (CUP 03-20, DR 09-20)

SHEET NO.
004-5010.00
A2.1
ELEVATIONS

PARCEL A
DOC # 2017-0089927 O.R.
O'HARA PROPERTIES, LLC
APN: 035-510-010

ZONED "RB"

LOT 2
508 MAPS 24
EXISTING BANK
APN: 035-510-003

ZONED "RB"

VACANT PARCEL

PROPOSED SELF SERVICE CAR WASH

PARCEL B
DOC # 2017-0089927 O.R.
O'HARA PROPERTIES, LLC
APN: 035-510-009

ZONED "RB"

APN: 035-510-006
ALSO EXCEPTION # 11
DOC # 2019-0122166 O.R.

LOT 5
508 MAPS 24
AREA:
74,443 SQ. FT. OR
1.709 ACRES

SEE ENLARGED ADA CONNECTION INSET. THIS SHEET.

S86°58'24"E 73.00'
S01°01'36"W 32.95'
S86°58'24"E 47.93'
S01°01'36"W 120.16'
S86°58'24"E 190.01'
S01°01'36"W 247.02'
N01°01'36"E 122.16'
N89°23'02"W 299.72'
BASIS OF BEARINGS

△=24°49'07"
R=315.00'
L=136.45'

20' DRIVEWAY OPENING 508 M 24

15' DRIVEWAY OPENING 508 M 24

P.O.B. FOUND NAIL ACCEPTED AS PARCEL CORNER PER 508 M 24

S89°23'02"E 247.16'

FOUND NAIL N 89°23'02" W 0.04' FROM PARCEL CORNER

ONSITE BM #2

ONSITE BM #1

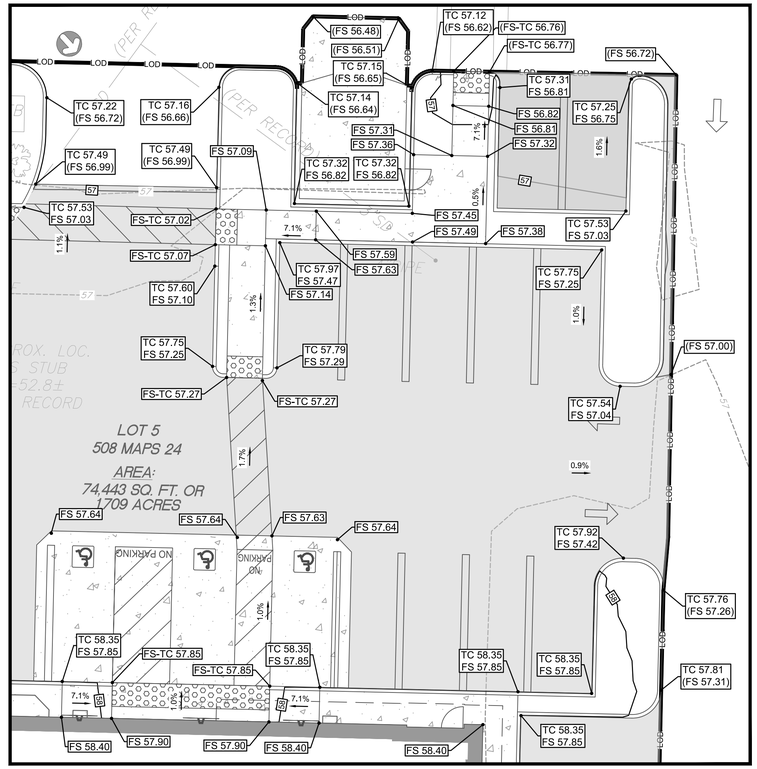
EXCEPTION # 10
NO ACCESS
508 MAPS 24

EXCEPTION # 9
PG & E EASEMENT
13868 O.R. 148

EXCEPTION # 11
DOC # 2017-0089927 O.R.

LAUREL ROAD (110' R/W)

MEDIAN ISLAND WITH SMALL TREES



ENLARGED ADA CONNECTION
SCALE: 1"=10'

N

GRAPHIC SCALE
20 10 5 0 20
1" = 20'

CUT/FILL VOLUMES

CUT	8.3 CY
FILL	835.1 CY
NET	826.81 CY

GRADING LEGEND

- EXISTING PROPERTY BOUNDARY LINE
- EXISTING ADJOINING PROPERTY LINE
- EXISTING ROAD CENTERLINE
- PROPOSED ROAD CENTERLINE
- PROPOSED DITCH CENTERLINE
- PROPOSED LIMITS OF BMP / DETENTION
- EXISTING 5' INTERVAL CONTOUR LINE
- EXISTING 1' INTERVAL CONTOUR LINE
- PROPOSED 5' INTERVAL CONTOUR LINE
- PROPOSED 1' INTERVAL CONTOUR LINE
- PROPOSED SPOT SHOTS (FS XX.XX / RIM XX.XX / TC XX.XX)
- EXISTING CURB
- PROPOSED CURB
- PROPOSED MOUNTABLE CURB
- PROPOSED BUILDING
- EXISTING SANITARY STRUCTURES
- EXISTING WATER STRUCTURES
- EXISTING GAS MAIN
- EXISTING WATER MAIN
- EXISTING UNDERGROUND ELECTRIC
- EXISTING TELEPHONE
- EXISTING OVERHEAD WIRES
- EXISTING SANITARY
- EXISTING STORM

CORE STATES GROUP
4240 Jurupa Street Suite 402
Ontario, CA 91761
Phone (909) 467-8807
Fax (909) 484-3853
BHumann@core-eng.com

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CLIENT
McDonald's USA, LLC

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811 Know what's below. Call before you dig.

THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON DESIGN DRAWINGS ONLY AND THAT THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION AND MEASUREMENTS TAKEN IN THE FIELD. CORE STATES, INC. DOES NOT GUARANTEE THAT LOCATIONS SHOWN ARE EXACT. THE CONTRACTOR MUST CONTACT THE APPROPRIATE UTILITY COMPANIES AT LEAST TWO WORKING DAYS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATIONS OF UTILITIES.

REVISIONS

REV	DATE	COMMENT	BY

DOCUMENT
CIVIL CONSTRUCTION PLANS FOR MCDONALDS AT OAKLEY, CA

SITE LOCATION
LAUREL RD,
OAKLEY, CA 94561

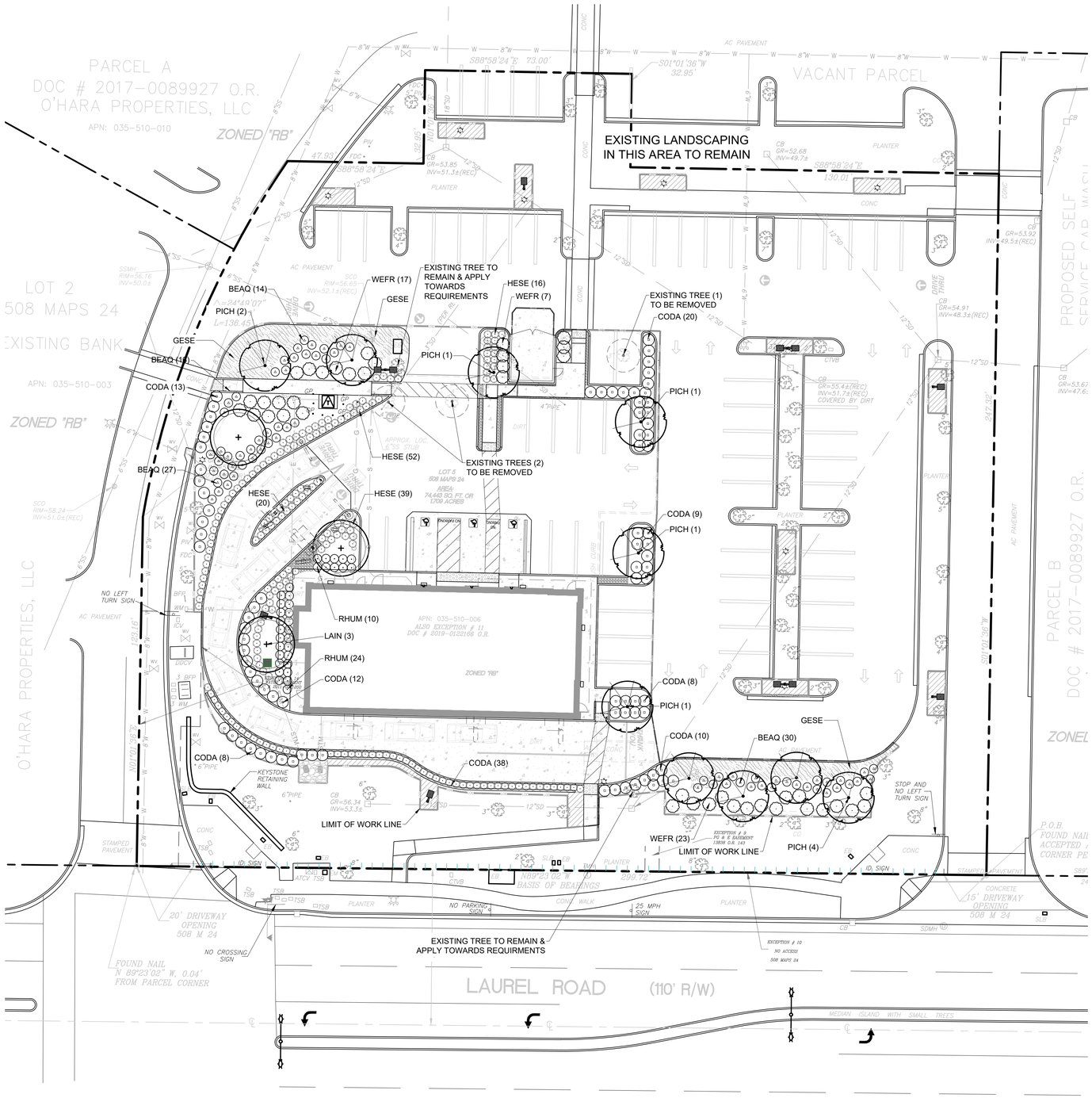
(004-5010)

ENGINEER SEAL
REGISTERED PROFESSIONAL ENGINEER
TRAVIS VINCENT
C 37356
CIVIL
STATE OF CALIFORNIA

SHEET TITLE
GRADING PLAN

JOB #:	MCD.26879
DATE:	11/23/2020
SCALE:	1" = 20'
DRAWN BY:	KC
CHECKED BY:	ZM

SHEET NO.
C5



PLANTING LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME	MIN. SIZE	SPACING	WUCOLS	QUANTITY	REMARKS
TREES							
LAIN	Lagerstroemia indica 'Natchez'	White Crepe Myrtle	24" Box	Per Plan	Low	3	1 ½" caliper, 10'-12' high
PICH	Pistachia chinensis	Chinese Pistache	24" Box	Per Plan	Low	10	1 ½" caliper, 10'-12' high
NOTE: ALL TREES SHALL BE CONTAINER-GROWN. SEE SPECIFICATIONS FOR PROPER ROOT QUALITY.							
SHRUBS & ORNAMENTAL GRASSES							
BEAQ	Berberis aquifolium 'Compacta'	Compact Oregon Grape	5 Gallon	4' o.c.	Low	67	
CODA	Cotoneaster dammeri 'Lowfast'	Lowfast Cotoneaster	5 Gallon	4' o.c.	Low	83	
HESE	Helictotrichon sempervirens	Blue Oat Grass	1 Gallon	2.5' o.c.	Low	188	
RHUM	Rhaphiolepis umbellatat 'Minor'	Dwarf Yeddo Hawthorn	5 Gallon	3' o.c.	Low	34	
WEFR	Westringia fruticosa	Coast Rosemary	5 Gallon	5' o.c.	Low	41	Allow to grow naturally, shall not be sheared
GROUND COVERS							
GESE	Gelsemium sempervirens	Carolina Jessamine	1 Gallon	3' o.c.	Low	- - -	
	Decomposed Granite, Tan Color, 3" Deep over Weed Barrier Fabric			- - -	- - -	- - -	
	Shredded Wood Mulch, All Planting Areas, 3" Deep			- - -	- - -	- - -	
	Replace disturbed landscape areas with like kind plants (ground cover, shrubs)						

LANDSCAPE CALCULATIONS

TOTAL SITE AREA: 74,443 SF
SITE AREA FOR THIS PROJECT: 26,747 SF
LANDSCAPE AREA REQUIRED (15%): 4,012 SF
LANDSCAPE AREA PROVIDED: 7,457 SF (27.8% OF SITE AREA)

STREET TREES
STREETS TREES EXISTING, NOT A PART OF THIS PROJECT

INTERIOR TREES
TREES REQUIRED IN REQUIRED LANDSCAPE: 12 TREES (1 TREE PER 600 SF)
TREES PROVIDED: 12 TREES (2 EXISTING TREES TO REMAIN)
(10 NEW PISTACHE TREES)

TREES REQUIRED IN PARKING AREAS: 3 TREES (1 PER 6 SPACES, 20 SPACES TOTAL)
TREES PROVIDED IN PARKING AREAS: 3 TREES

SHADE CALCULATION FOR PARKING AREAS
TOTAL PARKING AREA ASPHALT: 3,369 SF
REQUIRED SHADE AREA 50%: 1,685 SF

PROVIDED MATURE TREE SHADE AREA: 2,234 SF
PERCENTAGE: 66%

SPECIES	QTY	MATURE SHADE AREA*	TOTAL SHADE AREA
LAGERSTROEMIA	1	113 SF	113 SF
PISTACHE	3	707 SF	2,121 SF
TOTAL PARKING AREA SHADE CALCULATION			2,234 SF

*BASED ON SUNSET GARDEN BOOK

IRRIGATION CONCEPT

1. AN AUTOMATIC IRRIGATION SYSTEM SHALL BE INSTALLED AND OPERATIONAL BY THE TIME OF FINAL INSPECTION. THE ENTIRE IRRIGATION SYSTEM SHALL BE INSTALLED BY A LICENSED AND QUALIFIED IRRIGATION CONTRACTOR.
2. THE IRRIGATION SYSTEM WILL OPERATE ON POTABLE WATER, AND THE SYSTEM WILL HAVE APPROPRIATE BACKFLOW PREVENTION DEVICES INSTALLED TO PREVENT CONTAMINATION OF THE POTABLE SOURCE.
3. ALL NON-TURF PLANTED AREAS SHALL BE DRIP IRRIGATED. SODDED AND SEEDED AREAS SHALL BE IRRIGATED WITH SPRAY OR ROTOR HEADS AT 100% HEAD-TO-HEAD COVERAGE.
4. ALL PLANTS SHARING SIMILAR HYDROZONE CHARACTERISTICS SHALL BE PLACED ON A VALVE DEDICATED TO PROVIDE THE NECESSARY WATER REQUIREMENTS SPECIFIC TO THAT HYDROZONE.
5. THE IRRIGATION SYSTEM SHALL BE DESIGNED AND INSTALLED, TO THE MAXIMUM EXTENT POSSIBLE, TO CONSERVE WATER BY USING THE FOLLOWING DEVICES AND SYSTEMS: MATCHED PRECIPITATION RATE TECHNOLOGY ON ROTOR AND SPRAY HEADS (WHEREVER POSSIBLE), RAIN SENSORS, AND MULTI-PROGRAM COMPUTERIZED IRRIGATION CONTROLLERS FEATURING SENSORY INPUT CAPABILITIES.

SEE WATER EFFICIENT LANDSCAPE WORKSHEET FOR MWELO WATER USE CALCULATIONS.

ROOT BARRIERS

THE CONTRACTOR SHALL INSTALL ROOT BARRIERS NEAR ALL NEWLY-PLANTED TREES THAT ARE LOCATED WITHIN FIVE (5) FEET OF PAVING OR CURBS. ROOT BARRIERS SHALL BE "CENTURY" OR "DEEP-ROOT" 24" DEEP PANELS (OR EQUAL). BARRIERS SHALL BE LOCATED IMMEDIATELY ADJACENT TO HARDSCAPE. INSTALL PANELS PER MANUFACTURER'S RECOMMENDATIONS. UNDER NO CIRCUMSTANCES SHALL THE CONTRACTOR USE ROOT BARRIERS OF A TYPE THAT COMPLETELY ENCIRCLE THE ROOTBALL.

MULCHES

AFTER ALL PLANTING IS COMPLETE, CONTRACTOR SHALL INSTALL 3" THICK LAYER OF 1-1/2" SHREDDED WOOD MULCH, NATURAL (UNDYED), OVER LANDSCAPE FABRIC IN ALL PLANTING AREAS (EXCEPT FOR TURF AND SEEDED AREAS). CONTRACTOR SHALL SUBMIT SAMPLES OF ALL MULCHES TO LANDSCAPE ARCHITECT AND OWNER FOR APPROVAL PRIOR TO CONSTRUCTION. ABSOLUTELY NO EXPOSED GROUND SHALL BE LEFT SHOWING ANYWHERE ON THE PROJECT AFTER MULCH HAS BEEN INSTALLED (SUBJECT TO THE CONDITIONS AND REQUIREMENTS OF THE "GENERAL GRADING AND PLANTING NOTES" AND SPECIFICATIONS).

EVERGREEN DESIGN GROUP
(800) 680-6630
11801 Pierce Street, Suite 200
Riverside, CA 92505
www.EvergreenDesignGroup.com

LICENSED LANDSCAPE ARCHITECT
DANIEL R. BRANDON
Signature
Renew Date 11/30/21
Date 02/09/2021
STATE OF CALIFORNIA

Owner
CORESTATES GROUP
1234 Street
Oakley, CA

Project Name
McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza
Laurel Road & Mercedes Lane
Oakley, CA
(CUP 03-20, DR 09-20)

Conceptual Landscape Planting Plan

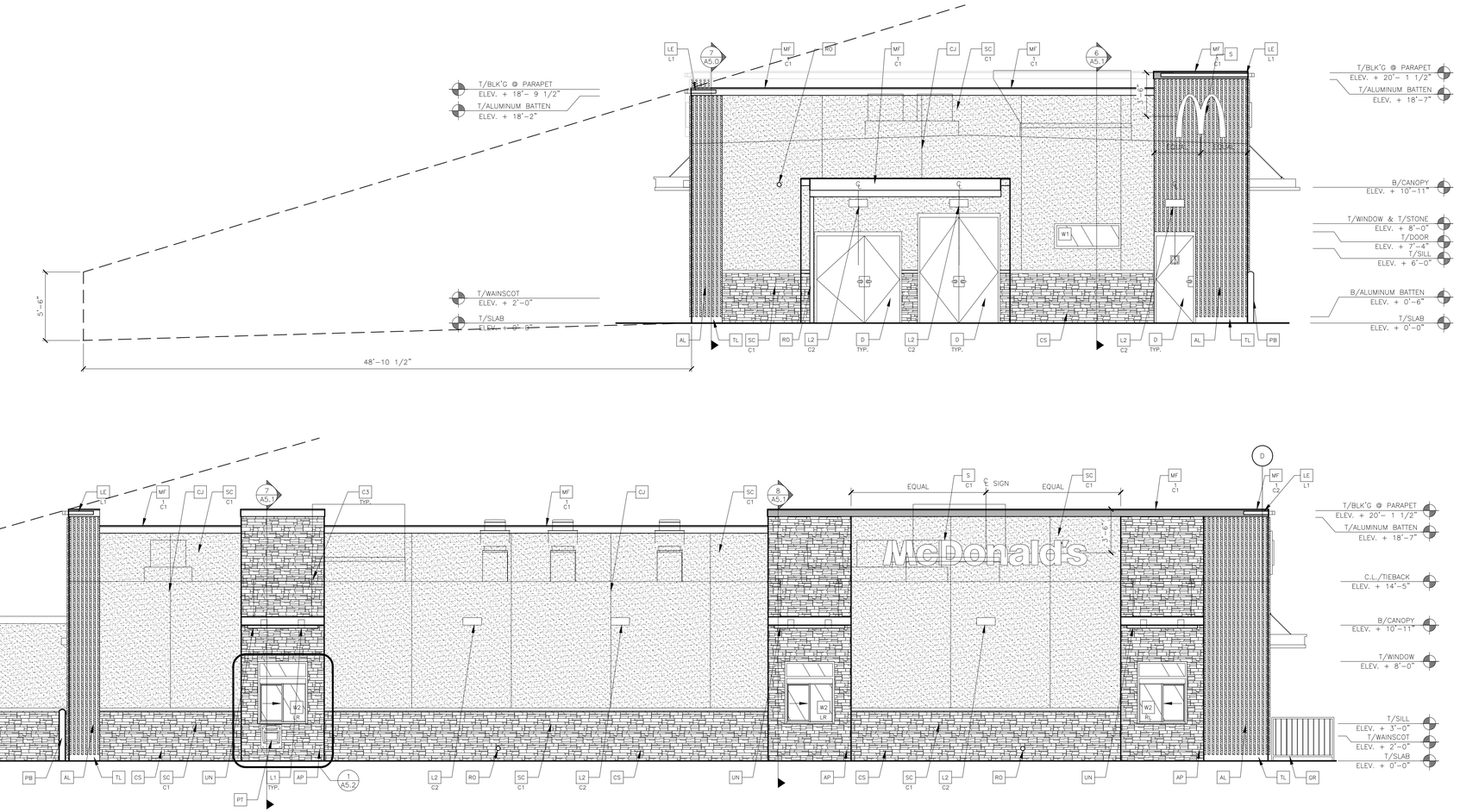
Date	Comment

Project Number	
Date	02/09/2021
Drawn By	DB
Checked By	DB/RM

LP-1

T/BLK'G @ PARAPET
ELEV. + 20'-1 1/2"
T/WINDOW & B/UNDERSCORE
ELEV. + 9'-1"
T/SILL
ELEV. + 2'-0"
T/SLAB
ELEV. + 0'-0"
5'-6"
37'-7 1/2"
BUILDING ADDRESS 6"H CHARACTERS AND 3/4" STROKE FONT: AKZIDENZ GROTESK PRO BOLD
ACCESSIBILITY SIGNAGE SEE GEN. NOTE #6 ON A1.0
T/ALUMINUM BATTEN
ELEV. + 19'-7"
C.L./TIEBACK
ELEV. + 11'-11"
B/CANOPY
ELEV. + 10'-8"
T/ALUMINUM BATTEN
ELEV. + 9'-3 1/2"
T/WINDOW
ELEV. + 9'-4"
B/ALUMINUM BATTEN
ELEV. + 0'-6"
T/SLAB
ELEV. + 0'-0"
Welcome
McDonald's

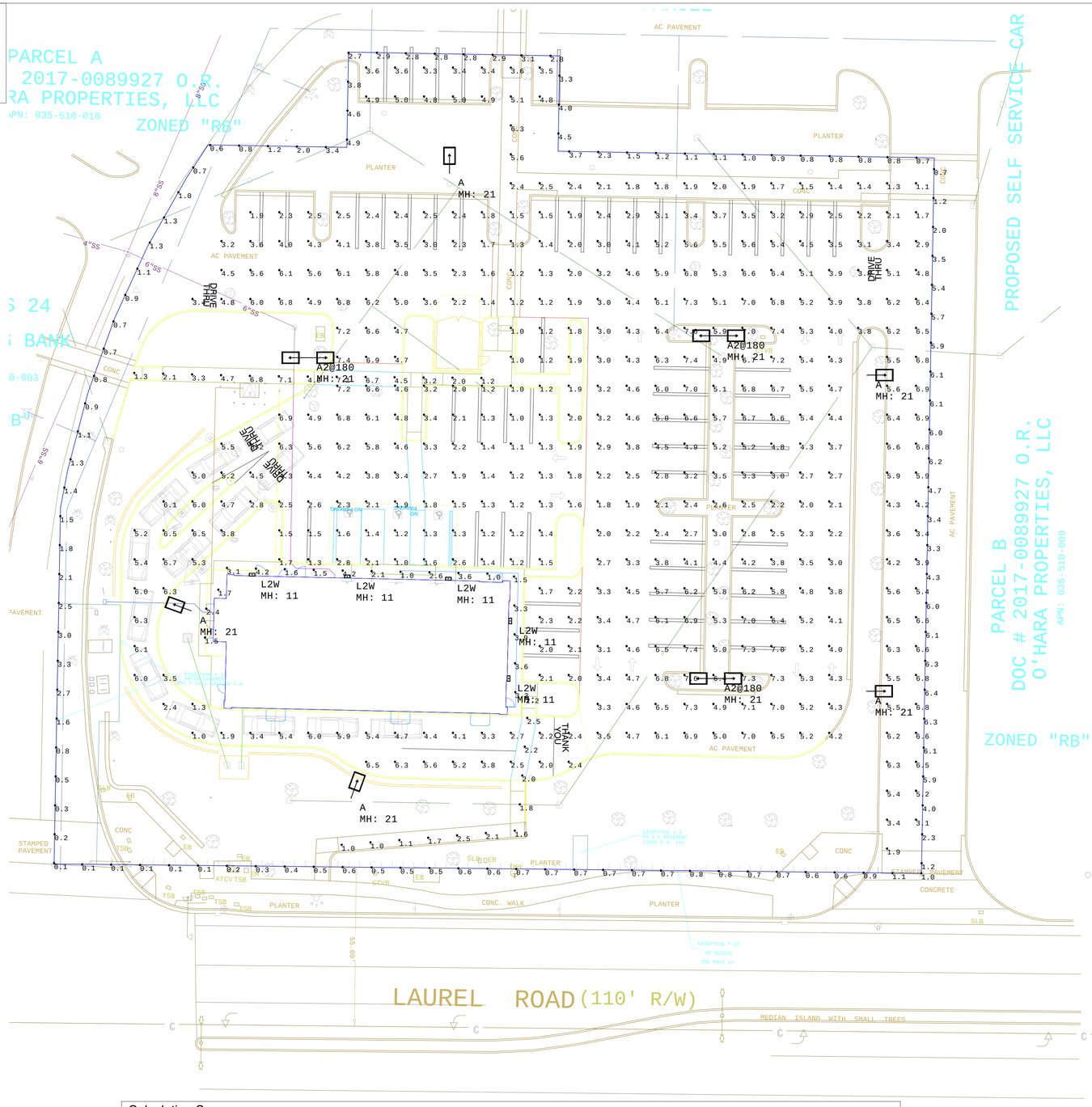
T/BLK'G @ PARAPET
ELEV. + 20'-1 1/2"
T/ALUMINUM BATTEN
ELEV. + 18'-7"
C.L./TIEBACK
ELEV. + 14'-5"
B/ALUMINUM BATTEN
ELEV. + 11'-9"
B/CANOPY
ELEV. + 10'-8"
T/WINDOW
ELEV. + 9'-4"
T/WINDOW & B/UNDERSCORE
ELEV. + 9'-1"
T/SILL
ELEV. + 2'-0"
B/ALUMINUM BATTEN
ELEV. + 0'-6"
T/SLAB
ELEV. + 0'-0"
5'-6"
128'-6"
BUILDING ADDRESS 6"H CHARACTERS AND 3/4" STROKE FONT: AKZIDENZ GROTESK PRO BOLD
ACCESSIBILITY SIGNAGE SEE GEN. NOTE #6 ON A1.0
CONT. BLOCKING AT TIEBACKS
EQUAL
EQUAL
T/ALUMINUM BATTEN
ELEV. + 18'-3"
B/SCONCE & T/STONE
ELEV. + 9'-4"
T/DOOR
ELEV. + 7'-4"
B/ALUMINUM BATTEN
ELEV. + 0'-6"
T/SLAB
ELEV. + 0'-0"
Welcome
McDonald's

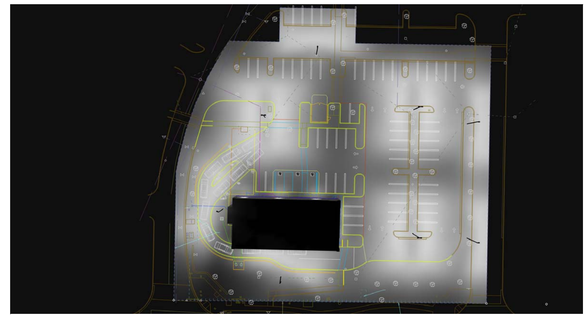

T/BLK'G @ PARAPET
ELEV. + 18'- 9 1/2"
T/ALUMINUM BATTEN
ELEV. + 18'-2"
T/WAINSCOT
ELEV. + 2'-0"
T/SLAB
ELEV. + 0'-0"
5'-6"
48'-10 1/2"
T/BLK'G @ PARAPET
ELEV. + 20'- 1 1/2"
T/ALUMINUM BATTEN
ELEV. + 18'-7"
B/CANOPY
ELEV. + 10'-11"
T/WINDOW & T/STONE
ELEV. + 8'-0"
T/DOOR
ELEV. + 7'-4"
T/SILL
ELEV. + 6'-0"
B/ALUMINUM BATTEN
ELEV. + 0'-6"
T/SLAB
ELEV. + 0'-0"
T/BLK'G @ PARAPET
ELEV. + 18'- 9 1/2"
T/ALUMINUM BATTEN
ELEV. + 18'-3"
B/UNDERSCORE
ELEV. + 10'-8"
T/WINDOW & T/STONE
ELEV. + 8'-0"
T/SILL
ELEV. + 3'-0"
B/ALUMINUM BATTEN
ELEV. + 0'-6"
T/SLAB
ELEV. + 0'-0"
5'-6"
50'-0"
EQUAL
EQUAL
℄ SIGN
McDonald's
T/BLK'G @ PARAPET
ELEV. + 20'- 1 1/2"
T/ALUMINUM BATTEN
ELEV. + 18'-7"
C.L./TIEBACK
ELEV. + 14'-5"
B/CANOPY
ELEV. + 10'-11"
T/WINDOW
ELEV. + 8'-0"
T/SILL
ELEV. + 3'-0"
T/WAINSCOT
ELEV. + 2'-0"
T/SLAB
ELEV. + 0'-0"

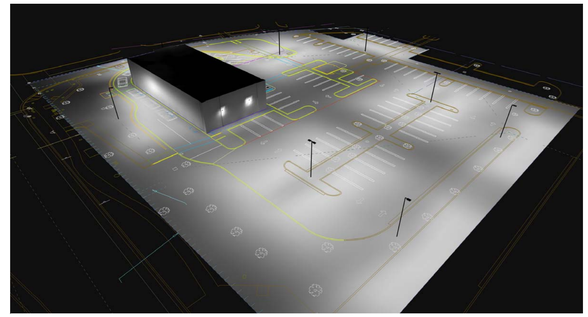
NOTES:

1. THE FOOTCANDLE LEVELS AS SHOWN ARE BASED ON THE FOLLOWING CRITERIA. ANY SUBSTITUTIONS IN SPECIFIED FIXTURES OR CHANGES TO LAYOUT WILL AFFECT LIGHTING LEVELS SHOWN AND WILL NOT BE THE RESPONSIBILITY OF SECURITY LIGHTING.

2. DISTANCE BETWEEN READINGS 10'







Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
PAVED SURFACE READINGS	Illuminance	Fc	4.04	7.6	1.0	4.04	7.60
PEDESTRIAN AREAS	Illuminance	Fc	2.85	7.1	1.0	2.85	7.10
PROPERTY LINE READINGS	Illuminance	Fc	2.11	6.4	0.1	21.10	64.00

** - SPECIFY COLOR

Luminaire Schedule									
Symbol	Qty	Label	Arrangement	LLF	Description	Lum. Watts	EPA	Mtg Height	Pole Type
	5	A	SINGLE	0.900	RAR2-480L-240-5K7-4W-SCP/40F	226.9	.55	21	SES-18-40-1-GL-TA-xx (4")
	3	A2@180	BACK-BACK	0.900	RAR2-480L-240-5K7-4W-SCP/40F	226.9	1.1	21	SES-18-40-1-GL-TA-xx (4")
	5	L2W	SINGLE	0.900	RWSC-36L-5K-DO-U-WH-SCP/40F	14.4		11	

* PROJECT WIND LOAD CRITERIA BASED ON:
ASCE 7-10 WIND SPEEDS (3-SEC PEAK GUST MPH)
50 YEAR MEAN RECURRENCE INTERVAL

Allowed EPA 13.6 @
Wind Load 90MPH

THIS DRAWING MEETS OR EXCEEDS McDONALDS CURRENT ILLUMINATION SPECIFICATIONS OF A 3-4 FOOTCANDLE AVERAGE, UNLESS SUPERSEDED BY OTHER REQUIREMENTS.

Regional Drawing
004-5010

1. THIS LIGHTING DESIGN IS BASED ON INFORMATION SUPPLIED BY OTHERS TO SECURITY LIGHTING SYSTEMS. SITE DETAILS PROVIDED HEREON ARE REPRODUCED ONLY AS A VISUALIZATION AID. FIELD DEVIATIONS MAY SIGNIFICANTLY AFFECT PREDICTED PERFORMANCE. PRIOR TO INSTALLATION, CRITICAL SITE INFORMATION (POLE LOCATIONS, ORIENTATION, MOUNTING HEIGHT, ETC.) SHOULD BE COORDINATED WITH THE CONTRACTOR AND/OR SPECIFIER RESPONSIBLE FOR THE PROJECT.

2. LUMINAIRE DATA IS TESTED TO INDUSTRY STANDARDS UNDER LABORATORY CONDITIONS. OPERATING VOLTAGE AND NORMAL MANUFACTURING TOLERANCES OF LAMP, BALLAST, AND LUMINAIRE MAY AFFECT FIELD RESULTS.

3. CONFORMANCE TO FACILITY CODE AND OTHER LOCAL REQUIREMENTS IS THE RESPONSIBILITY OF THE OWNER AND/OR THE OWNER'S REPRESENTATIVE.

4. THIS LAYOUT MAY NOT MEET TITLE 24 OR LOCAL ENERGY REQUIREMENTS. IF THIS LAYOUT NEEDS TO E COMPLIANT WITH TITLE 24 OR OTHER ENERGY REQUIREMENTS, PLEASE CONSULT FACTORY WITH SPECIFIC DETAILS REGARDING PROJECT REQUIREMENTS SO THAT REVISIONS MAY BE MADE TO THE DRAWING.

SECURITY LIGHTING™
2100 Golf Road, Suite 460, Rolling Meadows, IL 60008
1-800-544-4848

UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS ARE IN INCHES

SCALE 1"=20' 0"

DRAWN BY BV

POINT-BY-POINT FOOTCANDLE PLOT FOR
MCDONALDS
LAUREL ROAD
OAKLEY, CA

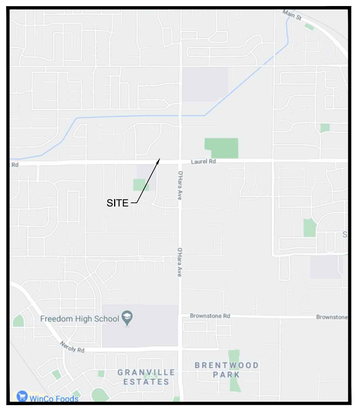
NATIONAL STORE NUMBER

DATE 1/6/2021

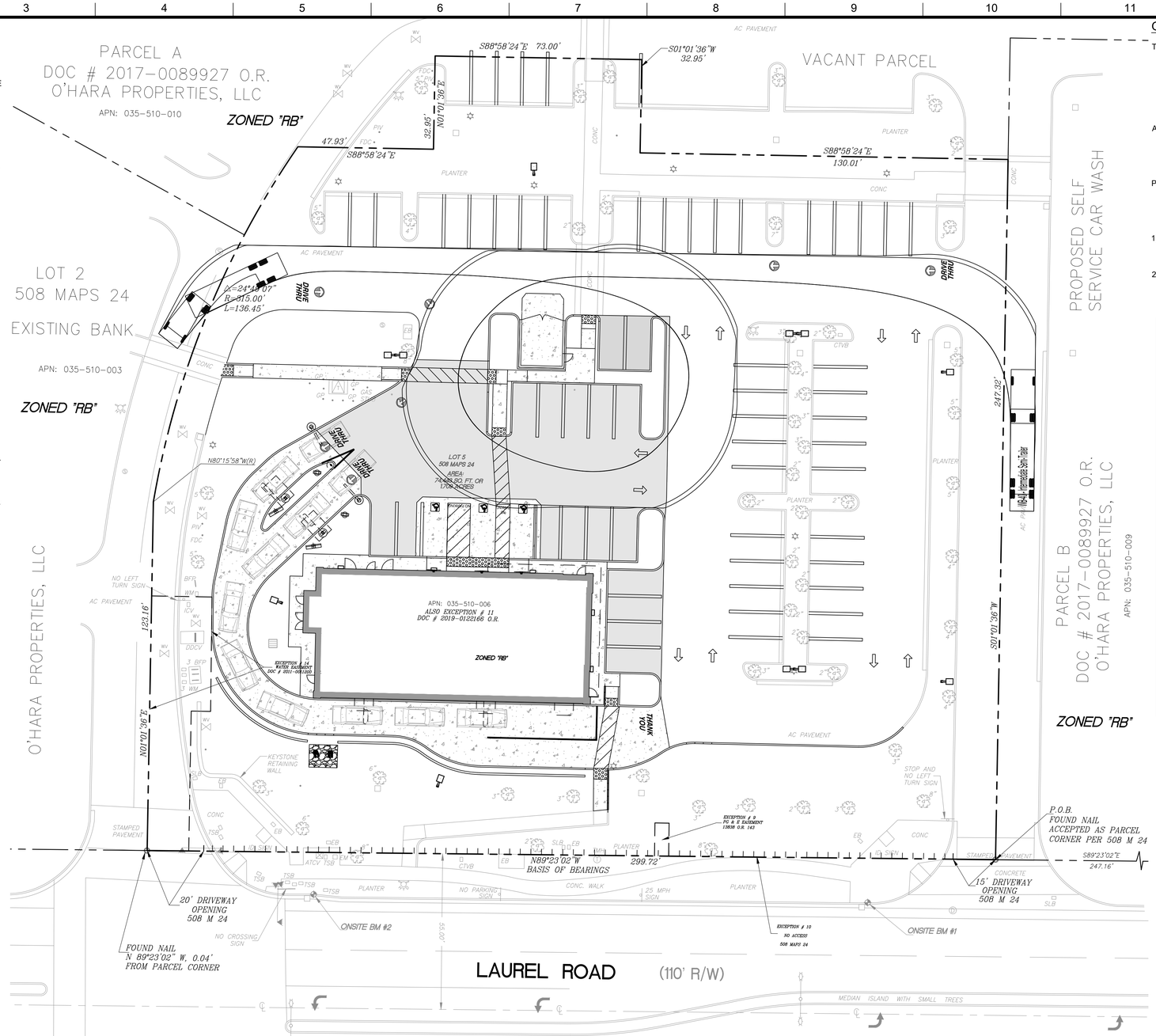
DRAWING NUMBER SL2101003.AGI

GENERAL DEVELOPMENT NOTES:

1. McDONALD'S ROAD SIGN AND BASE ARE BY THE SIGN CONTRACTOR. CONDUIT AND WIRING ARE BY THE GENERAL CONTRACTOR. THE FOUNDATION DESIGN ARE BY OTHERS.
2. BASES, ANCHOR BOLTS, CONDUIT AND WIRING FOR ALL OTHER SIGNS ARE BY THE GENERAL CONTRACTOR.
3. PROPOSED UTILITIES ARE ONLY SHOWN IN SCHEMATIC LAYOUT. EXACT LOCATIONS SHALL BE DETERMINED PRIOR TO CONSTRUCTION. SHOULD THERE BE ANY DISCREPANCIES, THE CONTRACTOR SHALL HALT WORK AND NOTIFY THE ENGINEER OF RECORD.
4. THE CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES TO DETERMINE EXACT POINT OF SERVICE CONNECTION AT EXISTING UTILITY. REFER TO THE BUILDING ELECTRICAL AND PLUMBING DRAWINGS FOR UTILITY SERVICE ENTRANCE LOCATIONS, SIZES, AND CIRCUITING.
5. FINISH WALK AND CURB ELEVATIONS SHALL BE 6" ABOVE FINISH PAVEMENT UNLESS OTHERWISE NOTED ON THESE PLANS.
6. ALL DIMENSIONS SHOWN ARE TAKEN FROM FACE OF CURB UNLESS OTHERWISE INDICATED.
7. ALL FEATURES SHOWN ARE EXISTING UNLESS OTHERWISE INDICATED.
8. ALL DIMENSIONS FROM PROPERTY LINES ARE PERPENDICULAR UNLESS OTHERWISE NOTED.
9. THE CONTRACTOR WILL BE RESPONSIBLE FOR MAINTAINING THE SITE UNTIL WORK IS ACCEPTED BY THE OWNER.
10. ANY DAMAGE TO THE EXISTING CURB AS A RESULT OF THIS DEVELOPMENT MUST BE REPLACED AS NECESSARY.
11. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO REMOVE ANY DEBRIS AND FLUSH OUT ALL EXISTING AND NEW STORM DRAINAGE FACILITIES WITHIN THE PROJECT LIMITS AT THE COMPLETION OF THE CONSTRUCTION.
12. ALL NEW BUILDING SIGNAGE WILL COMPLY WITH ZONING REGULATIONS.
13. PROVIDE ADEQUATE OFF-STREET PARKING FOR CONSTRUCTION EMPLOYEES. PARKING ON NON-SURFACED AREAS SHALL BE PROHIBITED IN ORDER TO ELIMINATE THE CONDITION WHEREBY MUD FROM CONSTRUCTION AND EMPLOYEE VEHICLES IS TRACKED ONTO THE PAVEMENT CAUSING HAZARDOUS ROADWAY AND DRIVEWAY CONDITIONS.
14. ALL QUANTITIES SHOWN ON PLANS ARE APPROXIMATE AND FOR REFERENCE ONLY.
15. CONTRACTOR TO VERIFY ALL MINIMUMS CALLED OUT ON THE CIVIL PLANS AND SHALL NOTIFY ENGINEER AND ACM IF MINIMUMS CANNOT BE MET.



VICINITY MAP
SCALE: 1"=10'



GENERAL NOTES:

THIS DRAWING REFERENCES: BOUNDARY & TOPOGRAPHIC SURVEY
APN: 035-510-006, LOT 5
OAKLEY
CONTRA COSTA COUNTY, STATE OF CALIFORNIA
PREPARED BY: ZIEBATECH LAND SURVEYING
DATED: 02/27/2020

APPLICANT: McDONALD'S CORPORATION
110 N CARPENTER ST.
CHICAGO, IL 60607
CONTACT: KEVIN MCAULEY
PHONE: (858) 342-3536

PROPERTY OWNER: OHARA PROPERTIES LLC
3820 BLACKHAWK ROAD
DANVILLE, CA 94506
CONTACT: ARIEL FOX
PHONE: (916) 473-8805

1) SITE ADDRESS: TBD LAUREL RD
OAKLEY, CA 94561
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

2) PROJECT NAME: MCDONALD'S DRIVE-THROUGH QUICK SERVE RESTAURANT AT LAUREL PLAZA
(CUP 03-20, DR 09-10)

ZONING DATA
ZONED C2 - GENERAL COMMERCIAL

ITEM	EXISTING / REQUIRED	PROPOSED
PARCEL ID	035-510-006	035-510-006
LAND USE	COMMERCIAL	COMMEERCIAL
BUILDING USE	VACANT PARCEL	RESTAURANT
BUILDING HEIGHT (FT)	35' MAX	18'-10"
BUILDING AREA (SF)	N/A	4,516 SF
FLOOR AREA RATIO (FAR)	N/A	0.061
FRONT SETBACK (FT)	10'	53.28' (S)
SIDE SETBACK (FT)	10'	143.88' (E) 57.71' (W)
REAR SETBACK (FT)	0'	148.39' (N)
PARKING SPACES	(1) SPACE PER 150 SF GFA (29) PARKING SPACES REQUIRED	71 SPACES
ADA PARKING SPACES	3 SPACES REQUIRED	3 SPACES
TOTAL PARCEL AREA	74,443 SF (1.709 AC)	74,443 SF (1.709 AC)
TOTAL LIMITS OF DISTURBANCE	N/A	28,117 SF (0.645 AC)
TOTAL OFF-SITE WORK	N/A	273 SF (0.006 AC)
IMPERVIOUS SURFACES AREA (ACRES) (MAXIMUM %)	36,390 SF (0.835 AC) 48.88%	53,299 SF (1.224 AC) 71.60%
PERVIOUS SURFACES AREA (ACRES) (MINIMUM %)	38,053 SF (0.874 AC) 51.12%	21,144 SF (0.485 AC) 28.40%

SITE LEGEND

- EXISTING PROPERTY BOUNDARY LINE
- EXISTING ADJOINING PROPERTY LINE
- EXISTING ROAD CENTERLINE
- PROPOSED ROAD CENTERLINE
- PROPOSED DITCH CENTERLINE
- PROPOSED LIMITS OF BMP / DETENTION
- PROPOSED SAWCUT LINE
- EXISTING CURB
- PROPOSED CURB
- PROPOSED MOUNTABLE CURB
- PROPOSED BUILDING
- PROPOSED ASPHALT
- PROPOSED CONCRETE
- EXISTING SANITARY STRUCTURES
- EXISTING WATER STRUCTURES
- PROPOSED PARKING COUNT

N

GRAPHIC SCALE
20 10 5 0 20
1" = 20'

CORE STATES GROUP
4240 Jurupa Street Suite 402
Ontario, CA 91761
Phone (909) 467-8907
Fax (909) 484-3819
BHumann@core-eng.com

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THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON DESIGN DRAWINGS, RECORDS OF THE VARIOUS UTILITY COMPANIES, AND WHERE POSSIBLE MEASUREMENTS TAKEN IN THE FIELD. CORE STATES, INC. DOES NOT GUARANTEE THAT LOCATIONS SHOWN ARE EXACT. THE CONTRACTOR MUST CONTACT THE APPROPRIATE UTILITY COMPANIES AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATIONS OF UTILITIES.

REVISIONS

REV	DATE	COMMENT	BY

DOCUMENT
CIVIL CONSTRUCTION PLANS FOR MCDONALDS AT OAKLEY, CA

SITE LOCATION
LAUREL RD,
OAKLEY, CA 94561

(004-5010)

ENGINEER SEAL
REGISTERED PROFESSIONAL ENGINEER
TRAVIS VINCENT
C 37356
CIVIL
STATE OF CALIFORNIA

SHEET TITLE
TRUCK PLAN

JOB #:	MCD.26879
DATE:	11/23/2020
SCALE:	1" = 20'
DRAWN BY:	KC
CHECKED BY:	ZM

SHEET NO.
C4A

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: April 27, 2021

TO: Bryan Montgomery, City Manager *Approved and Forwarded to the City Council*

FROM: Kenneth W. Strelo, Principal Planner

SUBJECT: **McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20) – Request for approval to construct and operate a 4,365 square foot quick serve restaurant with dine-in and drive-through service; APN 035-510-006**

Summary

This is an application by Core States Group ("Applicant") requesting Design Review (DR 09-20) approval to develop an approximately 1.7-acre parcel within the Laurel Plaza shopping center with a new 4,365 square foot quick serve restaurant with dine-in and drive-through service. Applicant also requests approval of a Conditional Use Permit (CUP 03-20) to operate the drive-through service use ("Project"). The project site consists of an existing parcel fronting on Laurel Road and within the Laurel Plaza Shopping Center, which is located on the northwest corner of Laurel Road and O'Hara Avenue. The site is zoned RB (Retail Business) District. APN 035-510-006.

Staff Recommendation

Staff recommends the City Council approve the project titled, "McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," as conditioned.

Fiscal Impact

None. This is a developer funded account. All Staff time and City of Oakley generated materials are charged to the account.

Background

General Plan

Commercial ("CO") - This designation allows for a broad range of commercial uses typically found adjacent to residential neighborhoods, downtowns, and freeways. The particular form of commercial zoning for different areas of the City will depend, among other factors, on the characteristics of surrounding land uses. General types of

commercial uses include retail and service facilities, and limited office uses. Through sensitive design, commercial uses can be located near single-family residences with minimal disruption or impact. Typical uses will vary widely in size and purpose and include large-scale retail, regional-serving retail, grocery and convenience stores, salons, professional offices, restaurants, drug stores, dry cleaners, post office facilities, banks, and other uses of similar character and impacts. (City of Oakley 2020 General Plan).

Zoning

Retail Business District (RB) – The purpose of the RB District is to retain small-scale businesses and facilities that will provide a wide range of services to adjacent neighborhoods and to the community as a whole. Properties in the RB District are intended for small-scale developments that are adjacent to, or within the vicinity of, residential districts. The RB District is found to be compatible with the CO General Plan Designation per Table 2-6 of the General Plan (General Plan/Zoning Compatibility Matrix). The RB District use allowances and development regulations are found in Oakley Municipal Code (OMC) Section 9.1.504.

Entitlement History

The Laurel Plaza shopping center was first approved by the City Council on March 11, 2008 through the adoption of Resolution No. 24-08. The approval included the following: 1) Rezoning the property from Neighborhood Business (remnant County zone) to Retail Business (valid City zone), 2) a Tentative Map to subdivide the 7.01-acre site into 5 commercial lots, 3) a Conditional Use Permit for a Rite Aid with a drive-through, and 4) a Development Plan for the Rite Aid with a drive-through.

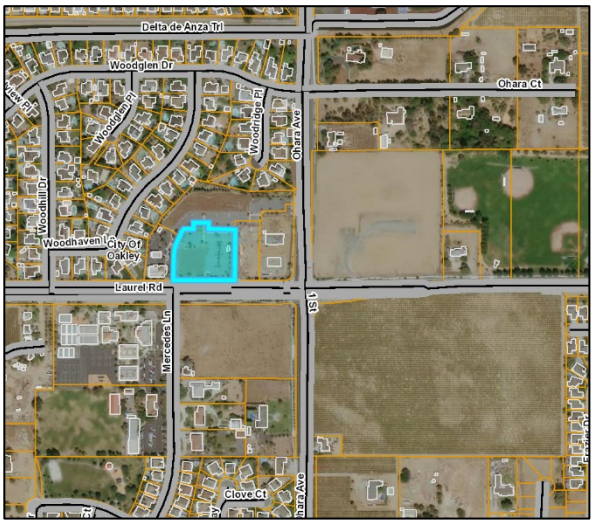
Subsequent entitlements approved by the Planning Commission on April 21, 2008 (PC Resolution No. 05-08) covered development of the remaining parcels within the center, including: a bank (existing), grocery store (Fresh and Easy, since withdrawn), drive-through (tenant not known at the time), and retail pad buildings. The drive-through building approved with this plan was designed as a multi-tenant building with included drive-through component. Since the above approvals, the Rite Aid on the corner never came to fruition, and the Fresh and Easy withdrew their application; however, the site was developed with all off and on site infrastructure when the first building housing the BAC Community Bank was constructed on the most western parcel of the site.

On May 9, 2017, nearly 9 years after the last entitlements and with nothing but the bank moving forward with development, the City Council approved a Conditional Use Permit and Design Review for the Laurel Plaza Mini-Mart and Gas Station. This approval included a 25 foot by 80 foot car wash tunnel to be located in a north/south orientation and on the west side of the store. Free-use outdoor vacuums were also approved. Today, the gas station is existing, but decided to forego the car wash and vacuums.

Existing Conditions and Surrounding Land Uses

The approximately 1.7-acre project site is located on the north side of Laurel road, approximately 320 feet west of the Laurel Road and O'Hara Avenue intersection. The site is part of a larger 7.01-acre Laurel Plaza commercial shopping center. The current site is improved with a bank, gas station and mini-mart, parking lot and drive aisles, on-site landscaping, frontage improvements along Laurel Road and O'Hara Avenue, and several graded pad areas for future commercial development.

Figure 1. Aerial of Project Site



The site is located on a main City arterial, Laurel Road, and is adjacent to a residential neighborhood to the north and west. The corner site properties to the south, across Laurel Road, and to the east across O'Hara Avenue are of the same General Plan Land Use Designation and Zoning, and currently vacant. The large vineyard located kitty-corner and on the southeast corner of the intersection is of the same General Plan Land Use Designation, but zoned General Commercial District (C). The active vineyard encompasses the entire parcel. Figure 1 (left) shows an aerial view of the site from the Contra Costa County GIS website (https://ccmap.cccounty.us).

Project Description

Proposed Conditional Use Permit

Approval of a Conditional Use Permit (CUP) is required in order to establish a "Drive-thru Restaurant and Services" use in the RB District (OMC Section 9.1.504(c)(9)). The CUP only applies to the "drive-through" component of the use. The restaurant component is permitted by right and not subject to any discretion.

CUPs are required in order to establish a land use within a zoning district that does not allow establishment by right, but does allow the granting of a land use permit after a public hearing (OMC Section 9.1.1602(f)). When approving or conditionally approving a CUP, the decision making body must make specific findings. Those findings relate to whether the site is adequate for the operation, whether the location can be accessed and the streets leading to it can handle the generated traffic, whether the use fits in with the intended character of the area as set forth in the zoning ordinance and General Plan, whether the use allows for continued growth and orderly development of the area and is consistent with various elements of the General Plan, and whether the proposed use and any conditions attached thereto are in compliance with the California

Environmental Quality Act (CEQA). The Analysis section of this Staff Report looks at the project in relation to these required findings in more detail.

Proposed Design Review

The Design Review Ordinance (OMC section 9.1.1604) sets forth duties to review, as well as procedures for review and approval of a Design Review application. OMC section 9.1.1604(d) requires Design Review approval for any structure that is above ground or alters the grade in any commercial district, and that the design review shall be undertaken by the Planning Commission[1] and be heard as a public hearing. The proposed new development fits the criteria above and requires Design Review. The proposed design review covers all of the physical development of the project, such as the site development, architecture and elevations, landscaping and design of the storm water treatment.

Proposed Site Plan

The project proposed on the approximately 1.7-acre site includes one restaurant (4,365 square feet (sf.)) with drive-through, a parking lot with drive aisles and parking spaces, landscaping and lighting, and pedestrian walkways and pavement striping. About half of the parcel is already improved with parking and drive aisles, as this was done when the shopping center main drive aisles and parking were installed with the bank. There are driveways on each side of the site that enter from Laurel Road. These are shared driveways with each respective parcel to the east and west, and are also shared ingress/egress for the entire shopping center. Once in the shopping center, there are drive entrances into the McDonald's parking lot, which also leads to the drive-through. Table 1 provides a summary of the site plan information.

Table 1. Summary of Site Plan Information

	Existing	Proposed	Total
Site	1.7 acres (apx. 74,443 sf.	No change	1.7 acres (apx. 74,443 sf.
Building	0 sf.	4,365 sf.	4,365 sf.
Parking Spaces	51	20	71
Trees	48	13	58 (3 existing to be removed)

Another aspect of the site plan is the pedestrian access and circulation. The project plans were analyzed in the "Oakley McDonald's and Quick Quack Traffic Analysis" conducted by Kimley-Horn and Associates, Inc., dated March 15, 2021. That analysis found that there are many existing and proposed pedestrian facilities provided on- and off-site to assist with pedestrian access to the McDonald's project site. Existing

[1] City Council acts as the Planning Commission per Ordinance No. 06-09

pedestrian facilities include crosswalks, sidewalks, ADA ramps, and crossing guards for the Laurel Elementary School. Proposed pedestrian facilities include pedestrian pathways and ADA ramps that connect to the restaurant from both the sidewalk on Laurel Road and from the internal shopping center. The traffic analysis included a couple of recommendations related to lighting and signage, which are covered in more detail in the "Analysis" section of this Staff Report.

Proposed Architecture

The 4,365 sf, one-story restaurant building is rectangular in shape with a flat roof that includes a parapet to screen rooftop equipment. The main body uses stucco in two colors, which are "Fairview Taupe" by Benjamin Moore for the main building, and "Iron Ore" by Sherwin Williams for the wall accents. A beige colored cultured stone called "Foundation" by Hewn Stone is proposed along most of the building base with extension to the top of parapet in line with the three drive–through windows. Corner elements of the building are enhanced with wood-grain, aluminum vertical batten siding that reaches from the ground to the top of parapet. Aluminum canopies are proposed above windows and at entrances. Figure 2 shows a color rendering of the north (faces interior parking lot) and south (alongside main drive-through aisle and facing Laurel Road) elevations.

Figure 2. Color Rendering of North and South Elevations

Environmental Review

The Laurel Plaza Shopping Center was analyzed pursuant to CEQA in an Initial Study resulting in a Mitigated Negative Declaration (IS/MND). The Notice of Determination (NOD) for the IS/MND (SCH #2008012068) was filed with the Contra Costa County Clerk and Governor's Office of Planning and Research (OPR) on March 31, 2008. Mitigation Measures were adopted for the following impact categories: Aesthetics; Air Quality; Biological Resources; Cultural Resources; Hydrology and Water Quality; Noise; Transportation/Circulation; and Utilities and Service Systems.

Since the original CEQA analysis included development of the whole shopping center, changes from the original plan are only required to be re-analyzed where they may differ from the original project. In this case, the proposed project and the adjacent proposed project for a car wash were jointly analyzed for traffic-related impacts and compared to those originally analyzed. The potential traffic impacts were analyzed by Kimley-Horn and Associates, Inc. in a study titled, "Oakley McDonald's and Quick Quack Traffic Analysis," dated March 15, 2021. In addition to being conducted by Kimley-Horn, the study was peer reviewed by the City by TJKM Transportation Consultants.

Per the conclusion of the traffic study, the proposed project (includes the adjacent proposed car wash) would not result in any new traffic impacts compared to the previously approved project. The project would generate approximately 626 fewer trips daily, 28 fewer trips in the AM peak hour, and 22 fewer trips in the PM. The study also concluded the drive-through queue for the proposed project is sufficient and no site changes are recommended. The pedestrian analysis found adequate pedestrian circulation and recommended the addition of lighting and warning signage for drivers at the walkway that crosses the drive-through aisle. Also, it is recommended to keep landscaping near the northwest corner of the parcel cut back and low to allow for better visibility.

Since there is no new mitigation required for this project, the project has been deemed to be within the scope of the previously adopted Mitigated Negative Declaration (SCH # 2008012068). No additional environmental review is necessary.

Analysis

Conditional Use Permit

The proposed use is defined as "Drive-through Restaurant and Services", which is allowed in the Retail Business (RB) District with the approval of a Conditional Use Permit (CUP). The purpose of a CUP is to allow for uses that are not allowed by right, and to ensure that the proposed land use is compatible with the surrounding land uses in the neighborhood. In order to remain fair and objective, when analyzing a CUP application, Staff may not consider the type of food being offered for sale for drive-through restaurants (e.g. burgers, chicken, ice cream, coffee, etc.), specific brand or franchise behind the application, or whether the same business already exists in Oakley. In short, Staff allows the free market to play out, and focuses on analyzing the use, in this case a "drive-through", in relation to the General Plan, applicable zoning district, and required findings for a CUP.

Conditional Use Permit Findings

Staff's analysis finds that the proposed "Drive-through Restaurant and Services" use, as proposed and conditioned is found to be consistent with the required findings as found in

OMC Section 9.1.1602(f). Complete findings are found in the attached Proposed Resolution and summarized below:

- The site is adequate in size and shape to accommodate the use;
- The site relates to streets and highways adequate in width and pavement type to carry traffic generated by the use;
- The proposed use will be arranged, designed, constructed, operated, and maintained so as to be compatible with the intended character of the area as intended in the General Plan and applicable zoning;
- The proposed use allows for the continued growth and orderly development of the community and is consistent with the various elements of the General Plan; and
- The proposed use, including conditions of approval, will be established in compliance with CEQA.

Design Review

The proposed plans were analyzed for consistency with the applicable development regulations in the Oakley Municipal Code and adopted City of Oakley Commercial and Industrial Guidelines ("Guidelines").

Circulation/Parking

Vehicular access to the proposed McDonald's is possible from two driveways that enter the shopping center off of Laurel Road. Both vehicular and pedestrian circulation was analyzed in the traffic study, including queuing for the drive-through. The traffic analysis found no issues with the on-site circulation. Queuing for the drive-through was found to be adequate. The model ran 1,000 iterations of demand from a Saturday night and found that 95% of the iterations result in a maximum of 13 vehicles or less. This is one more vehicle than the drive-through lanes are designed to queue, but the parking lot is able to handle this additional vehicle without any impacts to circulation or parking, or create any spillover into the main shopping center drive aisle or onto Laurel Road.

Pedestrian circulation and access to nearby sites is found to be adequate, and there are recommendations to further enhance pedestrian safety. Some existing pedestrian connectivity includes: signalized crosswalks at Laurel Road and Mercedes Lane intersection with ADA ramps at each end of the crosswalk; a crossing guard on the west leg of that intersection during school hours; and eastbound right turn restriction on red from Mercedes Lane during student activity. Pedestrian access to McDonald's is possible from the existing sidewalk on the north side or Laurel Road, or from within Laurel Plaza. ADA ramps and marked crosswalks are both existing on the site, and proposed as part of the new development. Recommendations to further enhance pedestrian safety include additional lighting, visibility, and warning signage be provided where the pedestrian access crosses the drive-through aisle between Laurel Road and the building. In addition, it is recommended that the landscaping within the pedestrian

pathway, north of the drive-through entrance, allow for pedestrian visibility to oncoming vehicles traveling to and from the intersection of Laurel Road and Mercedes Lane.

On-site/off-street parking complies with the Oakley Municipal Code. The parking lot is proposed to accommodate 71 parking spaces, including 3 ADA spaces. OMC off-street parking requirements establish a minimum of 1 parking space per 150 sf. of net public area. The gross floor area (includes the net public area plus all other floor area) of the restaurant would require 29 spaces. 71 spaces is more than adequate and would provide additional shared parking for any future uses in the center.

Building Design

This section analyzes the proposed building's compliance with applicable development regulations and design guidelines. The proposed rectangular building is 21.5 feet tall at the highest point of the parapet. OMC allows buildings up to 35 feet tall in the RB District; therefore, the proposed height complies with the municipal code. Maximum site coverage and floor area ratio[2] (FAR) for the RB District are 40% and 1.0, respectively. The building occupies approximately 6% of the site and since it is a single-story building, results in a FAR of approximately .06. The proposed site coverage and FAR, even with the trash enclosure, are well below the maximum allowances, and comply with the municipal code.

Architecture on the building consists of quality materials and is of a color palette that complements both the existing mini-mart and bank. The architectural style is different from the mini-mart and bank in that it does not include hipped roofs or any roof pitch or peaked elements, rather corner elements with a flat parapet roof. The proposed architecture combines the corporate theme with Oakley's demand for secondary materials, such as the stone and wood-grain aluminum siding.

Design Review Findings

Staff's analysis finds that the proposed site development and building design, as proposed and conditioned, is found to be meet the standards of review as found in OMC Section 9.1.1604(f). Complete findings are found in the attached Proposed Resolution and summarized below:

- The overall site planning meets required setbacks, circulation and parking, landscape, and buffer requirements, and locates the trash enclosure in a manner where it has minimal interference with the proposed use and other nearby uses;

[2] Floor area ratio is the ratio of floor area (not just building coverage) of a building or buildings to the site they occupy.

- Architecture and massing of the building meets the criteria as found in the adopted Oakley Commercial and Industrial Design Guidelines. Roof top equipment is screened from public view.
- The site is adequately landscaped, including the addition of trees for aesthetic and parking lot shade, and a screen wall to soften the appearance of cars queued in the drive-through. Lighting is sufficient, and as conditioned, will provide additional pedestrian safety.
- The streetscape is existing and already in compliance with the standards for review.

Findings

Draft findings for the Conditional Use Permit and Design Review can be found in the proposed resolution.

Staff Recommendation

Staff recommends the City Council approve the project titled, "McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," as conditioned.

~~Attachments~~

~~1. Vicinity Map~~
~~2. Public Hearing Notice~~
~~3. Applicant's Plans~~
~~4. Proposed Conditional Use Permit and Design Review Resolution~~
~~5. Staff Report Power Point Presentation~~

~~In City Clerk's Reading File~~

~~1. Oakley McDonald's and Quick Quack Traffic Analysis, dated March 15, 2021~~

Minutes of the Regular Joint Meeting of the Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency and Special Meeting of the Oakley Public Financing Authority held April 27, 2021

Excerpt of Item 5.1

McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20) – Request for approval to construct and operate a 4,365 square foot quick serve restaurant with dine-in and drive-through service; APN 035-510-006. (Ken Strelo, Principal Planner)

Mayor Higgins called for public comments.

Online comments are summarized for the meeting record. Comments were submitted in opposition of approval of the conditional use permit by Melissa Emery, Andres Arenas, Erin Pina, Nicole Prins, Karyn Martin, Marco Batcha, Chrishan Ross, Mary Roney, Jessica Blome with Greenfire Law, PC, Renee Pearson, ShaiLynne Jensen, Karen Riach, Pamela Miller, Susan Menke, Jimmy Saliani, Lindsay Waters, Marissa Holder, Andrea Wacker, Diana Patterson, Priscilla Wiley, Lisa Sanchez, Veronica Mangante, Kerry Stewart, Susie Gillilan, Shelly Fitzgerald, Sean Ireland, Christine Dugan-Ihm, Laura Seeno, Eric Walters, Elsa Santiago, Japheth Hardy, Gregory Hetrick, Cary Hilt, Marci Lozoya, Eve Dooms, Ken and Lori Faulkenstrom, Valerie Ferreira, Stephanie Wessels and Tosha Gray. Online comments submitted by Diane Merritt and Ross Hillesheim did not indicate their position.

Mr. Greg Hetrick submitted a written comment via email. Mr. Greg Hetrick submitted a written comment via email. Mr. Hetrick identified himself as the Superintendent of the Oakley Union Elementary School District (OUESD). Mr. Hetrick wrote that the OUESD had reviewed the projects slated for construction on Laurel Plaza. The OUESD, and Mr. Hetrick, believed the projects would impact the district and the safety of the students.

Mr. Hetrick continued that there are over 1,000 students at both Laurel Elementary School and O'Hara Middle School. Transportation for those students continues throughout the day. Also, a large number of students

leave both schools periodically throughout the school day. The safety of those children would be in jeopardy from the vehicle traffic generated by the Laurel Plaza project.

Mr. Hetrick closed his transmittal, stating the number one priority is protecting the safety and well-being of the children of Oakley. Mr. Hetrick noted that the restaurant construction at Laurel Plaza would be a detriment to the safety and well-being of the children.

Diane Merritt requested the City Council consider the neighborhood, not just revenue. She indicated McDonald's portrays a squeaky clean image on the outside but reinforces eating bad foods through its marketing and there is no escaping it with placement of it directly across the street from an elementary school. She expressed it doesn't meet school standards for healthy eating, accompanying pollution is not good for the neighborhood, and crime rates are higher around fast food outlets. She requested the City Council consider safety of the school and neighborhood in the surrounding location.

Mary Roney expressed concern regarding the special permit for the drive-through and pedestrian crossing. She indicated increased traffic that would come with the establishment increases chances of an accident occurring. She requested the City Council consider the impact on the neighborhood as the drive-through may be open 21 hours a day. She expressed she does not believe the City Council should set precedence to allow fast food restaurants to locate within school zones.

Ross Hillesheim commented he is a neighboring property owner and has had his business in Oakley for the past 10 years. He expressed support for the use. He mentioned comments shared indicate that people are clearly distinguishing between restaurants and fast-food; however, the type of restaurant is not something people have ability to discriminate against. He added that Laurel Plaza has been a commercial property for over 15 years and during the time of this pandemic, with jobs lost, it is not good precedence to set to not allow businesses that have been deemed essential.

Tosha Gray urged the City Council to take into serious consideration the surrounding community near the quick serve, drive-through in Laurel Plaza.

She expressed concern regarding noise, blight, traffic, student and pedestrian safety, and the direct negative impact for the adjacent Woodglen neighborhood that has existed since 1985. She requested the City Council exercise its legal right to deny this conditional use permit.

Conan Moats reiterated it is within the City Council's legal right to deny the conditional use permit as the issue is the drive-through and the drive-through is not zoning protected. He implored the City Council to deny the conditional use permit for reasons including safety, negative dietary habits that would be promoted, traffic during school drop off times, precedence being set if the City Council is willing to grant a conditional use permit to any business wanting to change the zoning within the City, and homeowners adjacent to the drive-through that would encounter traffic at all hours. He expressed he would like to move forward positively and is not opposed to fast-food or other establishments as businesses are needed for revenue, but this process is wrong as it is not taking into issues into consideration. He mentioned the traffic report is 14 years old which provides an obsolete impact on the community. He expressed that he doesn't appreciate people having to wait an hour to provide public comment and the Council should have made this item a priority.

Mr. Montgomery commented that cities are required to establish a zoning code which sets forth rules and regulations that inform property owners what can or cannot be done with property. He explained that this is a scenario where the applicant has proposed a project that meets all requirements and the applicant has provided all required studies, therefore staff must provide an objective review, not an emotional review. He mentioned for future projects, the City Council may want to choose to change the rules; however, the existing rules were adopted in 2004 when none of current City Councilmembers were here and it would not be fair to change the rules in the middle of the game on the applicant.

Conan Moats commented he believes it is improper for the City Manager to rebut a public comment.

Mr. Cole commented that the Mayor is calling for public comments and if the City Manager or City Attorney want to respond, they have ability to do so as ultimately they have to advise the City Council and it is the City Council that takes action. He mentioned at this point, anyone who has not

already spoken may speak for 3 minutes and if anyone speaks that has already spoken, the line will be muted. He announced again that the item is being continued and will be heard in full on May 25. He asked that people whom have already spoken show courtesy to allow others to speak.

Chrishan Ross commented that she moved to Oakley because she thought that it had promise but is not finding a lot of trust building with this City Council. She expressed concern regarding interrupting a public meeting with a closed session item and having voices quieted and muted for the City Manager to speak on a topic when it was not his turn. She mentioned she is upset by the entire process as very concerned citizens expressing their positions should be good thing, but they are feeling stifled. She requested the City Council not shun people who want to speak on behalf of children and not put profit over children.

Eve Dooms commented that her children and others walk through Laurel Plaza en route to school and if children are going to use it, she wants it to be safe. She mentioned accidents in fast food drive-throughs happen a lot more than people know and with an elementary school 200 feet away, it is irresponsible for the City Council to think it is okay to allow this establishment with a drive-through as eating and driving is a distraction. She urged the City Council to deny the conditional use permit if it cares about the children and recommended the Council watch the movie Super Size Me.

Shelly Fitzgerald commented that Mr. Hillesheim is correct that the City Council cannot distinguish the type of restaurant for laurel Plaza; however she and others are asking the City Council to deny the conditional use permit for the drive-through as there is no need for it directly across from the school. In relation to the applicant not being fully prepared this evening, she inquired if she were unable to attend the meeting tonight because she didn’t have her stuff together, if the item would have been delayed.

Mr. Cole commented that the City Council has an obligation to be fair to everyone, a lot of opposition came in today and yesterday via public comments, and it is actually fair as the applicant did not have the benefit of key consultant this evening. He mentioned no privilege is being given, it was a concern by himself and staff in the interest of being fair to all parties, as at the end of the day, it will help the City Council to make a more

informed decision. He explained that staff suggested continuing the item in the interest of fairness. He shared that in land use decisions with some controversy, often they have continuance; he sees it in his practice and throughout the state. He added that courts often do the same to allow facts and issues in the interest of fairness. He shared he understands the frustration as people want to be heard and they are being heard now and will be heard again.

Kerry Stewart commented that many residents didn't realize plans were happening across the street from the school and have spent the last couple of days just figuring out how to speak on the item.

Rick Onolfo commented that the McDonald's shouldn't be put in that area as it will create more traffic, accidents and noise and there is already a location near Walnut Meadows and Big Break Road. He mentioned he can hear the Popeye's loud speaker beyond the railroad tracks. He expressed it is not fair to adjacent neighborhoods, nor to children who have to sleep and go school across the street to that school.

Roberto Estrada commented that the decision for the Chevron/7-Eleven was made during one night at the objection of residents. He mentioned the drive-through is inconsistent with the mission statement of the City and it is irresponsible to jeopardize the safety of the community. He shared he has been awakened 4 times this past month by drunks whom have purchased alcohol at the 7-Eleven and believes Laurel Plaza should be shut down at 10 p.m., the conditional use permit should allow dine-in only and close by 9 p.m., and the architecture should adhere to the same scheme of the bank.

Lindsay Waters commented she feels like their voices are being stifled as everyone has had to wait for over an hour to make comments when the City Council knows there are residents waiting to comment. She expressed she is not asking the City Council to reject business, but is requesting smart development. She mentioned drivers get distracted when coming out of the drive-through and elementary age children don't have awareness maturity to be cautious of drivers. She added that this project could be fatal to development and she feels residents' voices are not being heard. She commented that the City Attorney's job is to protect the City Council and the traffic study is 14 years old. She suggested the applicant provide a more recent report.

Paul Seger commented he is speaking again as a resident and in no other capacity. He thanked Mr. Montgomery for misrepresenting the facts of the project as the conditional use permit is not already approved for the drive-through. He mentioned Vice Mayor Pope commented during the recent Strategic Planning that Empire and Laurel is the most dangerous intersection in Oakley and Laurel will be the main thoroughfare to Sellers, therefore, he cannot wrap his head around why the City Council would allow this business to make it the most dangerous area. He suggested the City Council take a close look at land use in its General Plan considering safety in this location with a drive-through and a gas station selling alcohol.

A public comment was made (name inaudible) comparing the Brentwood Sand Creek Road intersection area which is home to a Quick Quack car wash, McDonald's, liquor store, and Dollar Tree, to Laurel Plaza. The person indicated it doesn't meet this City's vision and the City Council represents the people who voted for them so if there is consensus that the people don't agree with it, the City Council should reject the conditional use permit for the drive-through and the Quick Quack car wash as well.

--END

OAKLEY
CALIFORNIA

Agenda Date: April 27, 2021
Agenda Item: 5.1

MEMORANDUM

Date: April 27, 2021

To: City Council

From: Kenneth W. Strelo, Principal Planner

Subject: McDonalds Drive-Through Quick Serve Restaurant Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20) - Summary of Public Comments Received with Staff Response

The City Council has received several public comments in regards to the proposed McDonald's Drive-Through project. As of approximately 2:30 P.M. on April 27, 2021, Staff has reviewed all of the comments received up to that time, and prepared responses. This memo does not include all of the individual comments, rather summaries.

Letter from Jessica L. Blome of Greenfire Law, PC (April 26, 2021)

- Opposed to McDonald's drive-through
- States Council cannot make the required findings to approve CUP

1. States Laurel Plaza is not suitable for the drive-through because the restaurant does not adapt with the use with land and uses in the adjacent neighborhood
    a. Agrees site is appropriate size and shape
    b. Claims drive-through does not adapt to the educational uses of surrounding neighborhood and siting near crosswalk fails to protect students

    Staff Response: Laurel Plaza is anticipated to eventually be built out, resulting in an increase of vehicular traffic from what currently exists in a mostly vacant commercial site. This increase in traffic was assumed in the original traffic study and project design. Proposed project traffic study finds the McDonald's and concurrently proposed drive-through (Quick Quack) result in an overall reduction in both daily and peak hour trips compared to the originally approved Laurel Plaza, based on ITE Manual Trip Generations. In addition to resulting in less overall trips coming into and exiting the shopping center, the pedestrian circulation onsite was analyzed for safety and two recommendations were proposed to increase the level of safety beyond meeting the criteria.

2. States the projected trip generation was arbitrarily concluded since Oakley's population has increased since 2007.

   Staff Response: Generated trips are not arbitrarily concluded, rather based on the most up to date ITE Trip Generation Manual based on the type of use (explained further in the Traffic Study). Also, the Traffic Study updated the previously assumed generated trips by updating the previously assumed uses and currently known uses trip generation numbers with the most current ITE Trip Generation Manual.

3. Childhood Obesity

   Staff Response: Most parents can agree that child obesity, along with many other social issues, is a valid concern. Outside the scope of analyzing a drive-through for a CUP.

4. Target for Criminal Activity

   Staff Response: OPD responded that the building should have security cameras installed around the exterior and to consider holly as plant type near the building and around the property to deter people standing, sleeping, and sitting in those areas. Holly is not being proposed. Although the physical nature may deter loitering/sleeping, is can also be somewhat dangerous unaware pedestrians, etc. McDonald's is proposing to installed security cameras at all four corners of the building providing essentially a view of the entire site.

5. States proposed use inconsistent with pollution-reduction elements and objectives in the GP.

   Staff Response: The General Plan assumes a variety of commercial uses, such as restaurants or all types. This is outside of the scope of the CUP drive-through analysis.

6. Air Pollution

   Staff Response: Project as a whole was analyzed under CEQA and Air Quality is one of the main impact categories.

   Mitigation, which this project is subject to, includes:

   - Measures for construction activities to reduce dust.
   - Requiring delivery trucks to idle for no more than 5 minutes per trip each day, and install signs to state such.

Several other comments were received from the public via the online comment submittal form. Comments vary in their message to some degree, with a couple of

common themes becoming apparent. Those common themes are summarized below, and include a Staff Response.

1. Pedestrian Safety

   Staff Response: Addressed in #1 in response to the Greenfire Law, PC letter.

2. Result in an increase in traffic

   Staff Response: True compared to the current state of traffic, but not accurate when addressed in the manner projects are analyzed for traffic impacts. This site will eventually be built out and result in increased traffic exiting onto Laurel Rd and turning west. This use results in a decrease in total daily and AM/PM peak hour trips than what would have resulted from the originally proposed shopping center. Also, see #2 in Greenfire Law, PC letter.

3. Better options than McDonald's/Not another McDonald's/No more fast food

   Staff Response: As stated in the Staff Report, when analyzing a drive-through, Staff is not rejecting applications due to the franchise submitting it. It should be noted there is an ongoing effort by Staff from all relative departments to attract the very same brands and types of business many residents also request to see. There is a myth the "the City" builds these projects. That is untrue. These are private developments on private property. The City maintains land use authority over the type of use and overall design elements, not the brand name of the business or type of food being offered for sale.

Staff Response Conclusion:

Many of the public comments are related to child/pedestrian safety or the disinterest in another fast food restaurant, and even specifically another McDonald's. Staff wants to make it clear that by responding to comments and recommending approval of the project, that there is not a lack of understanding of the issues or lack of empathy for the commenters' sentiment. Rather, Staff applies a fair and objective analysis to the proposed use of a drive-through. This proposal has been analyzed in the same manner as the adjacent bank, or a potential drive-through for a highly-sought after food-related use, if one was proposed. In other words, Staff has not analyzed this use for it specifically being a "McDonald's". Restaurants are allowed by right. The restaurant name, type of food, how the food smells, etc. are not subject to discretionary approval. Only the drive-through component. In reality, this CUP should be analyzed as if the name of the restaurant is unknown, and that is how Staff has approached this analysis.

RESOLUTION NO. XX-21

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING THE PROJECT KNOWN AS "MCDONALD'S DRIVE-THROUGH QUICK SERVE RESTAURANT AT LAUREL PLAZA CONDITIONAL USE PERMIT (CUP 03-20) AND DESIGN REVIEW (DR 09-20) LOCATED IN THE LAUREL PLAZA SHOPPING CENTER ON THE NORTHWEST CORNER OF LAUREL ROAD AND O'HARA AVENUE (APN: 035-510-006)

FINDINGS

WHEREAS, on November 23, 2020, Zach Michels of Core States Group ("Applicant") filed an application requesting Design Review (DR 09-20) approval to develop an approximately 1.7-acre parcel within the Laurel Plaza shopping center with a new 4,365 square foot quick serve restaurant with dine-in and drive-through service. Applicant also requests approval of a Conditional Use Permit (CUP 03-20) to operate the drive-through service use ("Project"). The project site consists of an existing parcel fronting on Laurel Road and within the Laurel Plaza Shopping Center, which is located on the northwest corner of Laurel Road and O'Hara Avenue. The site is zoned RB (Retail Business) District. APN 035-510-006; and

WHEREAS, the Applicant's Plans include site plan, grading plan, conceptual landscape plans, building elevations, storm water control plan, truck circulation plan, and water efficient landscape ordinance calculations; ("Plans"); and

WHEREAS, on January 13, 2021 the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project site is designated Commercial (CO) on the Oakley 2020 General Plan Land Use Map, and zoned RB (Retail Business) District; and

WHEREAS, the proposed project falls within the scope of the original Laurel Plaza Shopping Center Initial Study/Mitigated Negative Declaration (SCH #2008012068) California Environmental Quality Act (CEQA) analyses; and

WHEREAS, on or before April 16, 2021, the Notice of Public Hearing for the project was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also emailed/mailed out to all owners of property within a 500-foot radius of the project's boundaries, interested agencies, and to parties requesting such notice; and

WHEREAS, on April 27, 2021, per recommendation from the City Attorney, the City Council announced the item would be continued to a date certain (May 25, 2021). The Mayor then opened the public hearing and received written and oral testimony from the public. Upon conclusion of the public comments, the City Council continued the item to May 25, 2021; and

WHEREAS, on May 25, 2021, the City Council re-opened the public hearing and received a report from City Staff, oral and written testimony from the Applicant and public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as revised by the City Council during its deliberations; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based on the City's General Plan, the City's Zoning Ordinance, the Oakley Commercial and Industrial Design Guidelines, the project plans, and the information submitted to the City Council at its April 27, 2021 and May 25, 2021 meetings, both written and oral, including oral information provided by the Applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the Project (hereafter the "Record").

A. Regarding the application requesting approval of a Conditional Use Permit to operate a "Drive-through Restaurant and Services" (CUP 03-20), the City Council finds:

1. That the site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this title to adapt the use with land and uses in the neighborhood, in that all applicable development standards for the RB District are met and the drive-through aisle is able to queue up to 12 automobiles, which is the industry standard for similar uses;

2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use, in that the site is accessed from Laurel Road, the City's highest traveled arterial street, which will eventually serve this entire intersection of commercial development;

3. The proposed use will be arranged, designed, constructed, operated and maintained so as to be compatible with the intended character of the area and shall not change the essential character of the area from that intended by the General Plan and the applicable zoning ordinances, in that the General Plan intended the area for commercial uses, including restaurants, and the zoning ordinance allows drive-throughs with approval of a CUP;

4. That the proposed use provides for the continued growth and orderly development of the community and is consistent with the various elements

and objectives of the General Plan, in that it is consistent with the Land Use Element by creating a new commercial use in a commercial designation that is compatible with the applicable zoning district on the same site;

5. That the proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of the California Environmental Quality Act, in that the proposed use has been found, after additional analysis, to fall within the scope of the original Laurel Plaza Shopping Center Initial Study/Mitigated Negative Declaration (SCH #2008012068), and applicable mitigation measures from that MND will also apply to the proposed project.

B. Regarding the application requesting Design Review approval to develop an approximately 1.7-acre parcel within the Laurel Plaza shopping center with a new 4,365 square foot quick serve restaurant with dine-in and drive-through service (DR 09-20), the City Council finds:

1. Site planning, including building siting (location), setback and orientation; entries, circulation and parking; landscape setbacks and buffers; and location of trash, loading and service areas, and mechanical equipment: The overall site planning meets required setbacks, circulation and parking, landscape, and buffer requirements, and locates the trash enclosure in a manner where it has minimal interference with the proposed use and other nearby uses;

2. Architecture, including massing and grouping; facades, entries and roofs; materials and colors; and screening of trash, loading and service areas, and mechanical equipment: Architecture and massing of the building meets the criteria as found in the adopted Oakley Commercial and Industrial Design Guidelines. Roof top equipment is screened from public view;

3. Landscaping and site elements, including general landscape areas; entry and plaza enhancements; parking lot landscaping; walls and fences; and lighting: The site is adequately landscaped, including the addition of trees for aesthetic and parking lot shade, and a screen wall to soften the appearance of cars queued in the drive-through. Lighting is sufficient, and as conditioned, will provide additional pedestrian safety; and

4. Streetscapes, including major community entries; highlighted intersections; and district entries: The streetscape is existing and already in compliance with the standards for review.

C. The Project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves the Applicant's request for approval of the project titled,

"McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," subject to the following Conditions of Approval:

Conditions of Approval

Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the plans date stamped received by the Planning Division on February 17, 2021 and made a part of the City Council's meeting packet for April 27, 2021 and May 25, 2021, as well as additional information acquired since that time and made a part of the project file.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT UNLESS OTHERWISE NOTED (BOLD CONDITIONS ADDED OR AMENDED AT PUBLIC HEARING):

Planning Department Conditions

General:

1. This Design Review is approved, as shown on the plans, date stamped by the Planning Department on February 17, 2021, and as conditioned herein.

2. This approval shall be effectuated within a period of one (1) year from the effective date of this resolution by pulling a building or grading permit and if not effectuated shall expire on May 25, 2022. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.

3. All construction drawings and plot plans submitted for plan check shall be in substantial compliance with the plans presented to and approved by the City Council on May 25, 2021, and as conditioned herein.

4. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.

5. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday, and shall be prohibited on City, State and Federal Holidays. The restrictions on allowed working days and times may be modified on prior written approval by the Community Development Director.

6. Should archaeological materials be uncovered during grading, trenching or other on- site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society of

Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.

7. All mitigation measures addressed in the environmental document for the original Laurel Plaza Shopping Center (SCH #2008012068) shall be complied with and addressed as outlined in the Mitigation Monitoring Program approved for this project (incorporated as Exhibit A), per the review and approval of the Community Development Director.

8. The Applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court).

Site Plan:

9. All parking stall striping shall be double striped. Parking stalls shall be 9 feet wide by 19 feet deep and all drive aisles shall be a minimum 24 feet in width as reviewed and approved by the Community Development Director.

10. A lighting and photometric plan shall be submitted prior to the issuance of building permits. The minimum requirement shall be one foot of candle light within public parking areas and pedestrian pathways.

11. Light poles shall be a maximum height 21 feet and shall provide glare shields where adjacent to existing residences per the review and approval of the Community Development Director.

12. Trash enclosures shall match Oakley Disposal and City standards and shall provide adequate space to accommodate both trash and recycling. Also, trash enclosures shall be constructed with a roof to match the building design and materials, have metal gates, and when appropriate be surrounded by landscaping with climbing vines on three sides per the review and approval of the Community Development Director.

13. Storage shall be contained inside the building. Storage containers are not allowed and pallets, boxes, cardboard etc. shall not be stored outside.

14. In order to further enhance pedestrian safety the applicant shall include the following on the construction drawings:

    a. Provide additional lighting, visibility, and warning signage where the pedestrian access crosses the drive-through aisle between Laurel Road and the building; and

b. The applicant shall design and maintain the landscaping within the pedestrian pathway north of the drive-through entrance to allow for better pedestrian visibility to oncoming vehicles traveling to and from the intersection of Laurel Road and Mercedes Lane.

Architectural Details:

15. Roof-mounted equipment shall be architecturally screened from view.

16. All exterior light fixtures shall be of quality design and materials, and parking lot lights shall match existing parking lot lights in the shopping center to the maximum extent possible. Specs for the exterior fixtures, including building lights, shall accompany the construction drawings for building permits, and be subject to the review and approval of the Community Development Director.

Landscaping:

17. A landscaping and irrigation plan for all front yard, right-of-way, parks, open space, and trail landscaping shall conform to the Oakley Water Efficient Landscape Ordinance ("WELO"), and the Guidelines for Implementation of the City of Oakley Water Efficient Landscape Ordinance and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance by including the following signed statement on the cover sheet or same sheet as the WELO calculations in a visible text box: "These plans are certified to conform to the Oakley Water Efficiency Landscape Ordinance."

18. California native drought tolerant plants shall be used as much as possible. All trees shall be a mix of 15-gallon and 24-inch box; all shrubs shall be a minimum five-gallon size, except as otherwise noted.

19. All landscaped areas not covered by shrubs or groundcover shall be covered with bark or acceptable alternative as reviewed and approved by the Community Development Director. On slopes greater than 3 to 1, the Applicant shall use an alternative to bark per the review and approval of the Community Development Director. Areas covered with bark shall use a weed barrier.

20. The Applicant shall maintain all private landscaping until occupancy.

Signage:

21. All proposed permanent and temporary signage shall meet the requirements of the Laurel Plaza Master Sign Program approved by the City of Oakley on April 21, 2008, as applicable, and with the City's Zoning Ordinance. All proposed signage shall be reviewed by the Planning and Building Divisions.

Waste Management Plan:

22. The Applicant shall submit a Waste Management Plan that complies with the City of Oakley Construction and Demolition Debris Recycling Ordinance.

Building Division Conditions

23. Plans shall meet the currently adopted Uniform Codes as well as the newest T-24 Energy requirements from the State of California Energy Commission. To confirm the most recent adopted codes please contact the Building Division at (925) 625-7005.

24. Prior to requesting a Certificate of Occupancy from the Building Division, all Conditions of Approval required for occupancy must be completed. When the Public Works Division and the Planning Division place Conditions of Approval on the project, those divisions will sign off on the project prior to the request for a Building division final inspection. Similarly, if the Health Department and/or Fire Department reviewed and approved the original plans, those departments must sign off on the project prior to the request for a final inspection by the Building Division.

Public Works and Engineering Conditions

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF AN ENCROACHMENT AND/OR GRADING PERMIT:

25. GENERAL. All public improvements shall be made according to the latest adopted City Standard Drawings and Specifications. All work shall conform to the applicable City ordinances. The adjacent public right-of-way shall be kept clear of all job-related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the City performing the required maintenance at the developer's expense.

26. ENCROACHMENT PERMIT. All work in the public right-of-way, including any lockage or partial closure of sidewalks will require an Encroachment Permit. Special provisions such as limitations on works hours, protective enclosures, or other means to facilitate public access in a safe manner may be required.

27. GRADING PERMIT. All earthwork must comply with the City's Grading Ordinance. A Grading Permit must be issued by the public works department prior to site disturbance.

28. PUBLIC WORKS INSPECTIONS. The developer or their representative shall notify the Engineering Inspector at least forty-eight (48) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all improvements in approved plans. Failure to do so will result in rejection of work that was completed without inspection.

29. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:

30. Along with the project applicant, attend a pre-construction meeting with the City Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;

    a. Acknowledge in writing that they have read and understand the project conditions of approval and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.

31. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the City Engineer.

32. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the State SMARTS system for projects disturbing more than one acre and obtain a WDID number. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, City standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the City of Oakley's NPDES Permit.

33. DUST CONTROL. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the City, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and

staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the City Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept daily during the workweek to the satisfaction of the City. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.

34. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and homeowner to make sure that all dirt tracked into the public right-of-way is cleaned up daily. Mud, silt, concrete and other construction debris SHALL NOT be washed into the City's storm drains. Construction entrances must be in place per the Erosion Control Plan.

35. TRAFFIC CONTROL PLAN. The project sponsor will be required to work with the Public Works Department to develop a traffic control plan per the current California MUTCD. This plan will include, but not be limited to, the following measures:

    a. Construction activities shall be strategically timed and coordinated to minimize traffic disruption for schools, residents, businesses, and special events. The schools located on the haul route shall be contacted to help with the coordination of the trucking operation to minimize traffic disruption.

    b. Flag persons shall be placed at locations necessary to control one-way traffic flow, if required. All flag persons shall have the capability of communicating with each other to coordinate the operation.

    c. Prior to construction, advance notification of all affected residents and emergency services shall be made regarding one-way operation, specifying dates and hours of operation and lane closures on main arterial and collector streets and will be permitted only between the hours of 8:30 A.M. to 2:30 P.M. on M, T, TH & F. 8:30 A.M. to 12:00 P.M. on W.

    d. The traffic control plan shall be reviewed for compliance to the project's Haul Route, approved by the City of Oakley.

    e. A full road closure will require a detour plan and a road closure permit issued by the Public Works Department.

36. CONSTRUCTION MANAGEMENT PLAN. The Applicant shall submit a construction management plan that shall incorporate at a minimum the Earth Movement Plan, Traffic Control Plan, Project Schedule, site security fencing, employee parking, construction staging area, construction trailer, and proposed outhouse locations. The public street shall not be used for any construction related activities, including parking for workers and storage of vehicles.

37. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Public Works & Engineering Inspector and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

38. SIDEWALK REPAIR. The developer shall repair and replace to existing City standards any sidewalk damaged now or during construction of this project. Sidewalk repair shall match existing color, texture and design, and shall be constructed per City Standard Details. The limits of sidewalk repair will be determined by the Public Works Inspector during the construction phase of the project.

39. CURB AND GUTTER. The developer shall repair and replace to existing City standards any curb and gutter damaged now or during construction of this project. New curb and gutter shall be constructed per City Standard Details. The limits of curb and gutter repair will be determined by the Public Works Inspector during the construction phase of the project.

40. CONSTRUCTION NOISE. Between the hours of 7:30 a.m. to 5:30 p.m., weekdays and 9:00 a.m. to 5:30 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA. Pickup and delivery of materials and equipment is restricted to the hours listed above unless prior written approval is obtained by the Public Works Department.

41. GOOD HOUSEKEEPING. Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the

sidewalk and/or the street will not be allowed unless a special permit is issued by the Engineering Division. The adjacent public right-of-way shall be kept clear of all job-related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the City performing the required maintenance at the developer's expense.

42. ACCESS AGREEMENT. Provide copy for City's review of the private joint access agreement and maintenance agreement with adjoining parcels within the project to utilize share access and utilities

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE GRADING PLAN:

43. GEOLOGY AND SOIL MITIGATION MEASURES. A geotechnical investigation shall be conducted for the project to determine the surface and sub-surface conditions at the site and to determine the potential for surface fault rupture on the site. The geotechnical study shall provide recommendations for site grading as well as the design of foundations, retaining walls, concrete slab-on-grade construction, excavation, drainage, on-site utility trenching and pavement sections. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design, and erosion control. All recommendations of the investigation shall be incorporated into project plans. One copy of the geologic report shall be submitted with the grading permit and public improvement application. Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations. The applicant's soils engineer's approval shall then be conveyed to the City either by letter or by signing the plans.

44. GRADING.

a. Grade any slopes with a vertical height of four (4) feet or more at a slope of 3H to 1V. Retaining walls that may be installed to reduce the slope must be masonry and comply with the City's building code.

b. Retaining wall or other suitable option acceptable by the City Engineer is required where the grade differential between property or adjacent lots are greater than 6". Retaining walls are required to be identified on the grading plans and shall have a note stating a separate building permit is required for retaining wall greater than four (4) feet in height.

c. At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 300 feet to the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with the name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall always be kept current and shall consist of persons with authority to indicate and implement corrective action in their area of responsibility. The names of the individual responsible for noise and litter control shall be expressly identified in the notice. The notice shall be reissued with each phase of major grading activity. A copy of the notice shall be concurrently transmitted to the City Engineer. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.

d. Submit a Haul Route Plan to the City Engineer for review and approval prior to importing or exporting any material from the site. The plan shall include the location of the borrow or fill area, the proposed haul routes, the estimated number and frequency of trips, and the proposed schedule of hauling. Based on this plan, the City Engineering shall determine whether pavement condition surveys must be conducted along the proposed haul routes to determine what impacts the trucking activities may have. The project proponents shall be responsible to repair to their pre-construction condition any roads along the utilized routes.

e. Prior to commencement of any site work that will be result in a land disturbance of one acre or more, the applicant shall provide evidence to the City Engineer that the requirements for obtaining a State General Construction Permit have been met. Such evidence may be a copy of the Notice of Intent Letter sent by the State Water Resources Control Board. The WDID Number shall be shown on the grading plan prior to approval by the City Engineer.

f. The burying of any construction debris is prohibited on construction sites

45. NPDES – NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM. Comply with all rules, regulations and procedures of the NPDES for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, the Regional Water Quality Control Board (Central Valley – Region IV), including the Stormwater C.3 requirements as detailed in the Guidebook available at www.cccleanwater.org

Compliance shall include developing long-term best management practices (BMP's) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMP's in accordance with the Contra Costa Clean Water Program for the site's storm water drainage.

- Offer pavers for household driveways and/or walkways as an option to buyers.
- Minimize the amount of directly connected impervious surface area.
- Delineate all storm drains with “No Dumping, Drains to the Delta” permanent metal markers per City Standards.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Distribute public information items regarding the Clean Water Program to buyers.
- Other alternatives as approved by the City Engineer.
- Prepare an Operations and Maintenance Manual for the project’s storm water control measures.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE IMPROVEMENT PLAN:

46. DRAINAGE IMPROVEMENTS.

    a. Collect and convey all stormwater entering and /or originating on this property, without diversion and within an adequate storm drainage facility, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage facility that conveys the storm waters to an adequate natural watercourse.

    b. Submit a final hydrology and hydraulic report including 10-year and 100-year frequency event calculations for the proposed drainage system and stormwater pond to the city Engineer for review and approval. The report shall includes study of the downstream stormdrain facilities to confirm its adequacy and mitigate on-site so that the peak flows of post-project conditions do not exceed the pre-project peak flows.

    c. Design and construct all storm drainage facilities in compliance with the Municipal Code and City design standards.

    d. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

    e. On-site parking area and driveways shall not surface drain across public sidewalk or driveway aprons.

47. SIGHT DISTANCE EXHIBIT. For the project driveways’ ingress and egress, provide an exhibit that will analyze the sight distance required for the appropriate speed limit identified with this project as required by the City Engineer.

48. DESIGN CHANGES. The Applicant's registered Engineer shall notify the City Engineer, in writing, at least 72 hours in advance of all differences between the proposed work and the design indicated on the plans. Any proposed changes shall be subject to the approval of the City before altered work is started. A plan revision must be submitted for approval by the City Engineer.

49. JOINT TRENCH PLANS. The applicant shall submit Joint Trench Composite Plans to the City for review prior to approval of improvement plans or recordation of the final map. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer. The joint trench plans shall include street and/or site lighting and associated photometrics. A letter shall be provided by PG&E stating that public streetlight billing will be per Rule LS2A, and that private lights shall be metered with billing to the owner. Pole numbers, assigned by PG&E, shall be clearly delineated on the plans.

50. UTILITIES & UNDERGROUNDING.

    a. Underground all new and existing utility distribution facilities per City of Oakley code section Title 6 Chapter 8 Underground Utility Districts.

    b. All utility boxes shall be installed underground, and all wires and cables must be installed in conduits. Compliance with this condition shall be at the discretion of the City Engineer.

    c. Above ground utility boxes shall be camouflaged per the review and approval of the City Engineer.

    d. A written approval from Diablo Water District and Iron House Sanitary District must be provided that all underground utility improvements have passed all testing requirements prior to commencement of paving a street.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF THE BUILDING PERMIT:

51. PAD CERTIFICATION. A letter from a licensed land surveyor stating that the building pad was constructed in accordance with the approved plans shall be provided prior to commencing with foundation construction of the building.

52. SOILS ENGINEER CONSTRUCTION OBSERVATION. During construction, all excavations and grading shall be inspected by the applicant’s soils engineer prior to placement of concrete and/or backfill so they can verify that the actual

conditions are as anticipated in the design-level geotechnical report and recommend appropriate changes in the recommendations contained in the report, if necessary. The results of the construction observation and testing should be documented in an “as-built” letter/report prepared by the applicants’ soils engineer and submitted to the City before any building permit is granted.

53. RIGHTS OF ENTRY. Furnish necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road and drainage improvements.

54. ACCESS AGREEMENTS. Develop for the City’s review and approval and enter into a private joint access agreement that allows the adjacent parcels within the project to utilize common drive aisles.

55. LANDSSCAPE AGREEMENT. Enter into an agreement with the City that requires the right of way landscaping adjacent to the site to be maintained as part of the on-site landscaping at the property owner’s expense to a standard acceptable and agreed upon by the City.

56. AGREEMENT FOR STORMWATER BEST MANAGEMENT PRACTICES INSPECTION AND MAINTENANCE OBLIGATIONS. The property owner shall enter into an agreement with the City for maintenance of the stormwater filtration devices required to be installed on this project. The agreement will specify that certain routine maintenance shall be performed by the property owner and will specify device maintenance reporting requirements. The agreement will also specify routine inspection requirements, permits and payment of fees. The agreement shall be recorded prior to release of any occupancy permits.

57. AS-BUILT PLANS. After completion of the construction of all work, the original plans shall have all changes (change orders and field changes) clearly marked. The "as-built" plans shall again be signed and "wet-stamped" by the civil engineer who prepared the plans, attesting to the changes. The original "as-built" plans shall be review and approved the Engineering Inspector. A Mylar and AutoCAD disk of the approved "as-built" plans shall be provided to the City before acceptance of improvements.

58. IMPACT FEES. Comply with the requirements of the development impact fees listed below, in addition to those noticed by the City Council in Resolution 85-00 and 08-03. The applicant shall pay the fees in the amounts in effect at the time each building permit is issued.

    a. Traffic Impact Fee (authorized by Ordinance No. 14-00, adopted by Resolution 49-03);

b. Regional Transportation Development Impact Mitigation Fee or any future alternative regional fee adopted by the City (authorized by Ordinance No. 14-00, adopted by Resolution No. 73-05);

c. Park Land Dedication In-Lieu Fee (adopted by Ordinance No. 03-03);

d. Park Impact Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 19-03);

e. Public Facilities Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 18-03);

f. Fire Facilities Impact Fee (adopted by Resolution No. 09-01);

g. General Plan Fee (adopted by Resolution No. 53-03).

h. East Contra Costa County Habitat Conservation Plan Fee (adopted by Resolution No. 112-07 & 124-07).

59. ANNEXATIONS

a. Annex the property to the City of Oakley Community Facilities District No. 2018-1 Fire Protection Services (CFD – Community Facilities District) for funding certain services within the boundaries of the City of Oakley including fire protection services. The applicant/owner/developer shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of the annexations shall be paid by the applicant/owner/developer. The assessment shall be the per parcel annual amount set by CFD at the time of the annexation. Annexation shall be completed prior to filing of any map action.

b. Participate in the provision of funding to maintain police services by voting to approve a special tax for new parcels created by a new map or map action. The tax shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. The election to provide for the tax shall be completed prior to filing of the final map or map action. If the commercial and office buildings are occupied prior to the City receiving the first disbursement from the tax bill, the project proponent shall be responsible for paying the pro-rate share for the remainder of the tax year prior to the City conducting a final inspection.

c. Annex the property to the City of Oakley Community Facilities District No. 2015-2 (CFD) for funding the maintenance and operation costs associated with regional, community and neighborhood parks, public area landscaping, street lights and storm water facilities. The applicant

shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of the annexations shall be paid by Applicant. The assessment shall be the per parcel annual amount set by CFD at the time of annexation. Annexation shall be completed prior to filing of the map creating new parcels or any map action.

Advisory Notes

The following Advisory Notes are provided to the Applicant as a courtesy but are not a part of the conditions of approval. Advisory Notes are provided for the purpose of informing the Applicant of additional ordinance requirements that must be met in order to proceed with development.

A. The Applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building or grading permits.

B. The project will require a grading permit pursuant to the Ordinance Code.

C. Applicant shall comply with the requirements of Ironhouse Sanitary District.

D. The Applicant shall comply with the requirements of the Diablo Water District.

E. Comply with the requirements of the East Contra Costa Fire Protection District.

F. Comply with the requirements of the Building Inspection Division. Building permits are required prior to the construction of most structures.

G. This project may be subject to the requirements of the Department of Fish and Game. It is the Applicant's responsibility to notify the Department of Fish and Game, P.O. Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Game Code.

H. This project may be subject to the requirements of the Army Corps of Engineers. It is the Applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.

I. The Applicant shall obtain an encroachment permit for construction within existing City rights of way.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the May 25, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

OAKLEY

CALIFORNIA

McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)

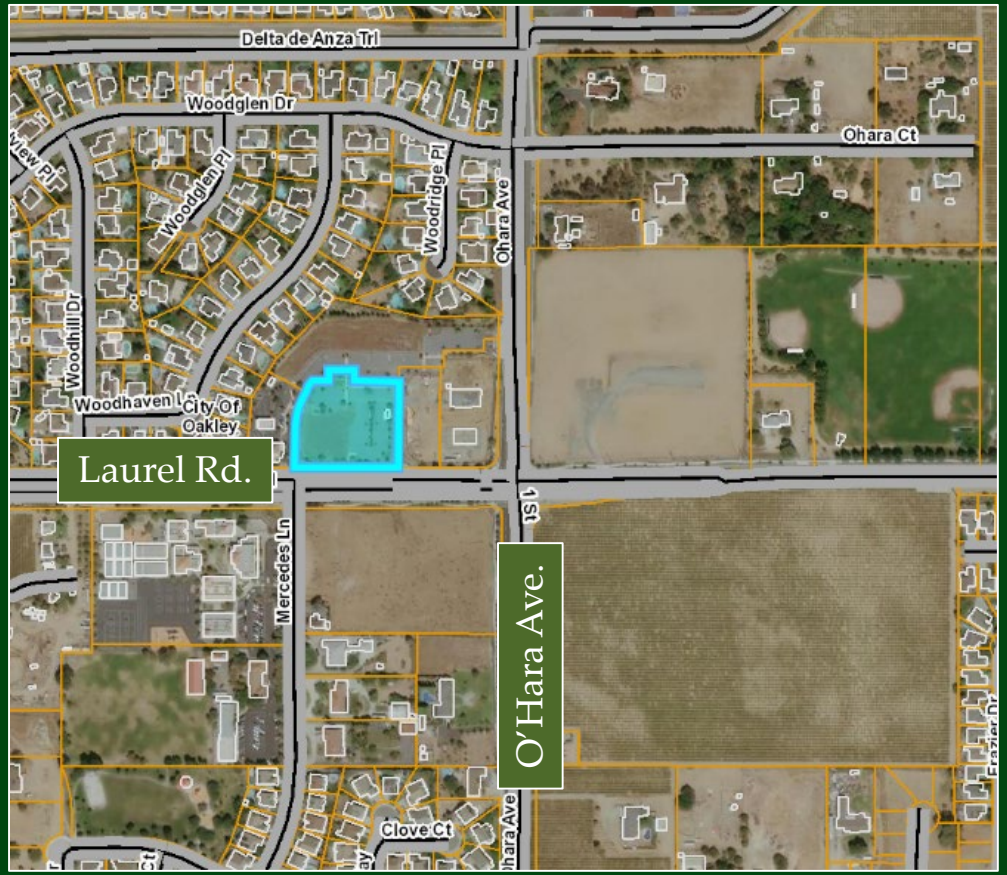
City of Oakley

City Council Meeting

May 25, 2021

Vicinity Map

Project Area Map

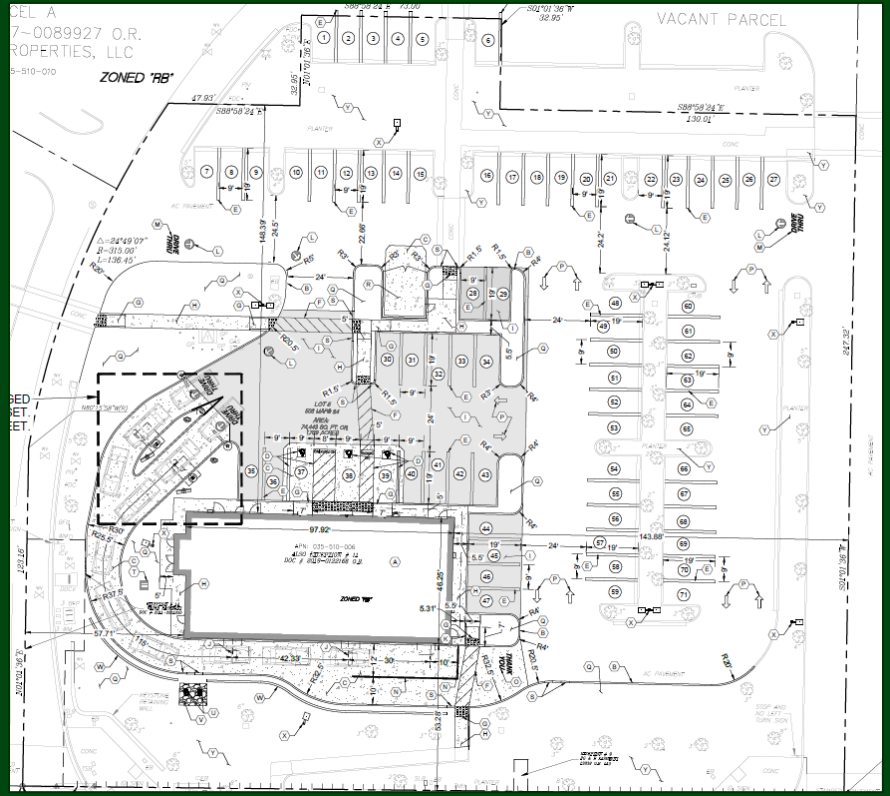


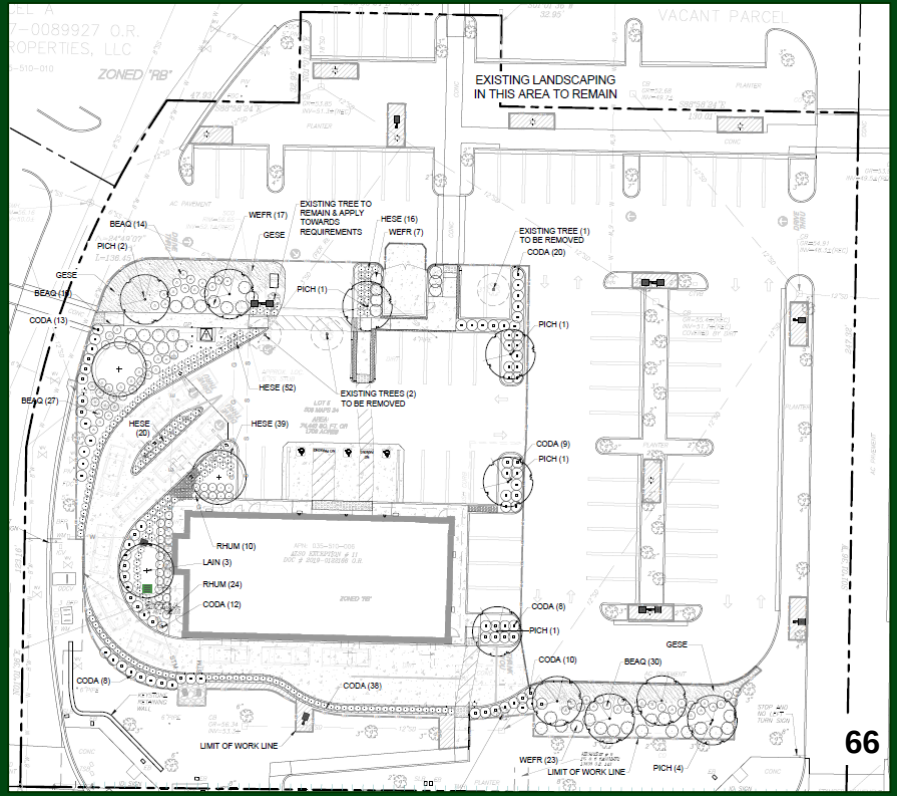
- Laurel Plaza Shopping Center
- N/W corner Laurel Rd. and O'Hara Ave.
- Fronts Laurel Rd.
- Apx. 300 feet east of O'Hara Ave.

Project Details

- 4,365 sf. drive-through quick serve restaurant
- 1.7-acre parcel
- Requires a CUP to operate a "Drive-Through Restaurant"
- Requires DR to construct a new project
- Proposes 71 Parking Spaces (including 3 ADA)
- General Plan = Commercial (CO)
- Zoning = RB (Retail Business) District

Proposed Site and Landscape Plan





Proposed Elevations

Laurel Plaza Entitlement History

- First approved Reso. No. 24-08 (March 11, 2008)
  - Rezone from NB to RB
  - Tentative Map to subdivide 7.01-acres into 5 parcels
  - Conditional Use Permit for Rite-Aid with drive-through
  - Development Plan for Rite-Aid with drive-through

Laurel Plaza Entitlement History

- Planning Commission Reso No. 05-08 (April 21, 2008)
  - Remaining parcels (bank, grocery, drive-through, retail pads)
- Rite-Aid and grocery pursued by property owner, but never constructed
- City Council approves Laurel Plaza Mini-Mart and Gas Station with Car Wash CUP and DR (May 9, 2017) – Constructed without car wash component

Citizen Planning Advisors

- One Advisor commented that project design seemed to meet the criteria of City standards

Environmental Review

- Laurel Plaza Shopping Center analyzed under California Environmental Quality Act (CEQA) through Initial Study/Mitigated Negative Declaration (SCH 2008012068)
- Mitigation Measures adopted for several impact categories
- Joint Traffic Study conducted and peer reviewed for McDonald's and concurrent drive-through application
- Projects result in overall reduction of generated peak hour traffic from original project
- Pedestrian circulation improvements recommended

Pedestrian Circulation Recommendations

- Traffic Study found pedestrian circulation to be adequate and meet applicable standards
- Recommendations for enhanced safety are not mitigation measures (See COA #14)
  - Additional lighting, visibility, and warning signage where crosswalk crosses drive-through aisle
  - Landscaping along pathway near western driveway entrance allows for pedestrian visibility to oncoming vehicles

Conditional Use Permit Analysis

- When analyzing a CUP application, Staff may not consider:
  - type of food being offered for sale for drive-through restaurants (e.g. burgers, chicken, ice cream, coffee, etc.)
  - specific brand or franchise behind the application
  - whether the same business already exists in Oakley
- Focus is on analyzing the conditionally permitted use, in this case a "drive-through", in relation to the General Plan, applicable zoning district, and required findings for a CUP

Conditional Use Permit Analysis

- Site is adequate in size and shape
- Laurel Rd. and O'Hara Ave. able to handle generated traffic
- Project will be designed, constructed, and operated in a manner compatible with intended character of the General Plan and zoning regulations
- Allow for continued growth and orderly development and consistent with various elements of General Plan
- Complies with CEQA

Design Review Analysis

- Meets required setback, circulation and parking, landscape, and buffer requirements
- Architecture meets criteria in Design Guidelines
- Site adequately landscaped, including drive-through screen wall
- Streetscape already fully improved, including landscaping

Staff Determination

City Council approve the project titled, "McDonald's Drive-Through Quick Serve Restaurant at Laurel Plaza Conditional Use Permit (CUP 03-20) and Design Review (DR 09-20)," as conditioned.

City Attorney Memo

- City Attorney will verbally summarize contents of the memo, which is included as Attachment 1 to the Staff Report
- City Attorney's memo covers:
  - Quasi-Judicial vs. Quasi-Legislative Actions
  - The Specific Decision to be Made
  - Substantial Evidence vs. Speculation
  - Conclusion

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 25, 2021

TO: City Council

FROM: Joshua McMurray, Interim City Manager

SUBJECT: **Burroughs Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) - An application requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District and to subdivide the approximately 43.24-acre project site into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and Zoned A-3 (Heavy Agriculture). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025)**

Summary and Recommendation

This is a public hearing on an application by Westgate Ventures requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District and to subdivide the approximately 43.24-acre project site into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and zoned A-3 (Heavy Agriculture). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025).

There is also an agreement that needs to be entered into with the Contra Costa Water District, which will be discussed in more detail later in this report. Staff has provided a Draft Resolution that would allow the City to enter into the agreement.

Staff recommends the City Council:

- Adopt the Mitigated Negative Declaration (included as a finding in the proposed Rezone ordinance and Vesting Tentative Map resolution);

- Waive the first reading and introduce an Ordinance approving the Rezone, as conditioned;

- Adopt a resolution approving the Vesting Tentative Map and Design Review, as conditioned; and

- Adopt a resolution authorizing the City Manager to enter into the Contra Costa Water District Abstract of Memorandum of Agreement and Supplement to the North Dutch Slough Properties Memorandum of Agreement.

Background

History of the Dutch Slough Properties

Prior to incorporation of the City, Contra Costa County designated approximately 1,500 acres owned by the Emerson, Gilbert, and Burroughs families (the "Dutch Slough area"), for urban development and executed Development Agreements (DAs) with the land owners. Upon incorporation, the DAs with the County became binding upon the City.

In fall of 2001, the Dutch Slough land owners submitted an application to the Cal-Fed Delta Program to sell the properties north of the CCWD/USBR Canal to create the Dutch Slough Tidal Marsh Restoration Project. On September 2002, the City Council approved a Memorandum of Understanding ("MOU") between the City and the Dutch Slough land owners summarizing the terms of basic understanding regarding the disposition of the northern and southern portions of the properties and the future planning for the southern portions. In August 2003, the MOU was supplemented by DAs between the City and the Dutch Slough land owners to formalize and secure the rights created in the MOU, General Plan, and the Department of Water Resources (DWR) transaction.

In March of 2005 the City Council approved a collaborative planning processing for the Dutch Slough area. A group of five developers and the City developed the Dutch Slough Planning Framework Study to guide the development of the three properties made up of the Emerson, Gilbert and Burroughs properties. After the completion of the Dutch Slough Planning Framework Study, the City began processing the Tentative Maps for the three properties and one Environmental Impact Report for the Dutch Slough project area. This cooperative framework went away during the recession and the Emerson and Gilbert properties have now developed separately. Emerson Ranch has been mostly built out with Neighborhoods 1-5 being developed and Neighborhood 6 is under construction and the commercial parcel has a project proposed which will be scheduled for an upcoming City Council meeting. The Gilbert property (Delaney Park) is currently under construction with four active home builders.

The Burroughs property is comprised of two parcels. APN 032-081-026, which is approximately 17.90-acres, is owned by the Burroughs Family and APN 032-081-025, which is approximately 27-acres, is owned by the City. The City received the 27-acres as part of the transaction discussed above between the State and parcel owners. In addition to the 27-acres, the City also received the land for the 55-acre regional park at the end of Sellers Avenue, some land off of Jersey Island road and some "seed" money to fund the initial design of the regional park.

The Burroughs property was never entitled with a subdivision map, although there is a Development Agreement as mentioned previously that was first approved in 2003 and amended in 2015. That Development Agreement is only for the portion of the property owned by the Burroughs family and not the City owned portion of the project site.

It has long been envisioned that the proceeds from any land sales of the City owned parcel would go to benefit the 55-acre regional park site at the end of Sellers Avenue. While Staff has been diligent in seeking and applying for grant monies, this alternative revenue source would go to help fund the first phase of the park along with grants and other funding sources not yet identified.

Cooperative Agreement with Westgate Services

On December 10, 2019, the Oakley City Council approved the Cooperative Agreement between the City and Westgate Services for the entitlement and Preparation for Sale of this property. There are significant economies of scale to plan, entitle and develop both the Burroughs' 18 acres and the City's 27 acres together. The planning and entitlement work would include geotechnical analyses, biological consultants, civil engineering, preliminary architectural and other related consultancy. It is also believed that the sales proceeds on the sale of the jointly-planned parcels to be much higher than if planned, entitled and sold separately.

The Cooperative Agreement set forth the terms and conditions of the proposed arrangement with WestGate. The key provisions include:

- WestGate overseeing the various consultants and professionals needed to plan, entitle and sell the property.

- Unless a particular consultant is only needed for the Burroughs Property, or the City's property, all costs of consultants will be shared equally. (Price proposals/bids will be jointly reviewed by WestGate and the City and be mutually agreed upon).

- Communication and coordination between WestGate and the City will focus on the main goal of maximizing value of the properties.

- WestGate will process all entitlement documents with the City to include, any General Plan Amendment (not being proposed), Tentative Map, Design Review, etc.

- WestGate will assist with the marketing and sale of the City property to a merchant homebuilder and will receive 2.5% of the sales price as commission.

- WestGate would also receive upon sale of the property a $30,000 a fee for coordinating the work of the consultants and entitlement process.

- The City would not charge for City staff time for this development; however, costs to the City by outside parties providing services needed to process the development application would be billed to the development.

Project Description

Surrounding Uses

The 43.24-acre Burroughs project site is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025). It is bordered on the west by the Delaney Park, on the south by land within the unincorporated area of the County, to the north by the Contra Costa Canal, and to the east by the Contra Costa Canal and Jersey Island Road. Properties within the East Cypress Corridor Specific Plan are east of Jersey Island Road.

Figure 1. Vicinity Map

General Plan and Zoning

General Plan: The project site is designated "Single Family High" in the Oakley 2020 General Plan. The "Single Family High" designation allows for a gross density range of 3.8 – 5.5 dwelling units per acre. The proposed project density falls within the middle of the range at 4.8 dwelling units per acre. The project includes a request to rezone the site from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District. The project site has long been envisioned to contain residential uses and the rezone application will clean up the zoning inconsistency in that the project will change the zoning from an old Contra Costa County Zone, A-3, that existed at incorporation to a zone district that is compatible with the current land use designation. The Planned Development (P-1) District is compatible with the "Single Family High" General Plan designation.

Zoning: The project is proposing a Rezone to the Planned Development (P-1) District. The P-1 District allows for project specific development regulations, including minimum lot sizes, setbacks, and uses, as specified in OMC section 9.1.1002.

Proposed Rezoning

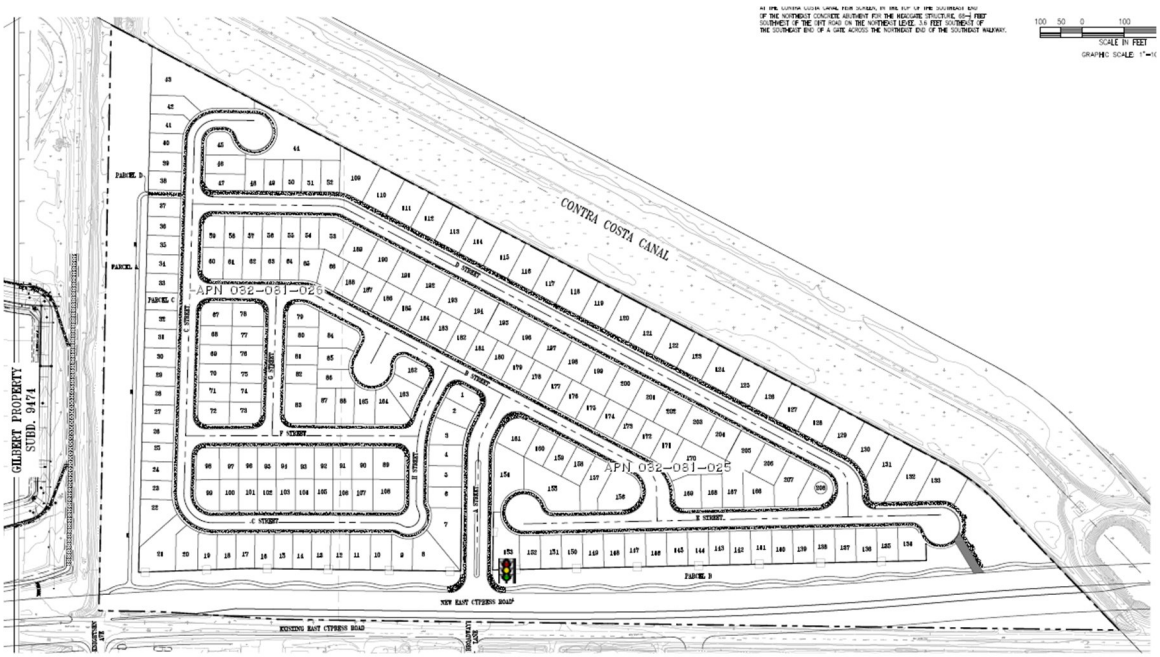
A Rezone ultimately needs to be compatible with the underlying General Plan Land Use Designation of a property. When evaluating a Rezone, the General Plan/Zoning compatibility matrix (Table 2-6 in the Oakley General Plan 2020) gives guidance on what zoned districts are compatible with a particular land use designation. In the case of this project, the underlying land use designation is Single Family-High and the zoning districts found to be compatible with SH include Single-Family Residential (R-6) District, Single-Family Residential (R-7) District, Single-Family Residential (R-10) District, or Planned Unit Development (P-1) District. The P-1 District allows for any land uses permitted by an approved final development plan which are in harmony with each other, serve to fulfill the function of the planned unit development, and are consistent with the General Plan. The applicant has proposed the Planned Unit Development (P-1) District, which in this case would allow for the proposed project.

Proposed Vesting Tentative Map

The project proposal includes a Vesting Tentative Map to subdivide the 43.24-acre site consisting of 2 parcels into 208 single-family lots.

The Vesting Tentative Map Exhibit is depicted as Figure 2 on the following page:

Figure 2. Vesting Tentative Map Exhibit



Central Valley Project Inclusion

Water is provided to the project site by the DWD, and untreated water is provided to Diablo Water District (DWD) by the CCWD. Per CCWD's 2015 Urban Water Management Plan (UWMP), DWD's primary water supply for its distribution system is treated surface water from the United States Bureau of Reclamation's Central Valley Project (CVP) purchased from the CCWD.

The proposed project site would need to obtain water inclusion into the CVP through CCWD and the Bureau of Reclamation. The application would be submitted through CCWD and would be processed by the Bureau. The proposed six-lane Cypress Road in this location would continue through the Burroughs Project and would not be considered as part of the Bureau's CVP Inclusion Review. In addition, ground disturbance on the Burroughs property would not take place until such time as the CVP Inclusion review is completed.

As noted above, the proposed project and the project specific roadway improvements to E. Cypress Road would not infringe upon any CCWD or Bureau land. An exhibit has been prepared to show the improvements that need to be constructed and how the improvements are solely within the City of Oakley right-of-way. Roadway improvements are necessary for the Cypress Preserve project to the east of the Burroughs project site.

The roadway improvements do take place on CCWD/Bureau land by the Grand Cypress Preserve project to the east within the East Cypress Corridor Specific Plan and that project has already received inclusion into the CVP and all associated environmental permits that allow for that road construction have been obtained.

The Agreements and Attached Resolution authorizing the City Manager to sign the Agreements are necessary in order to formally kick-off CCWD and the Bureau with the inclusion process. The Agreement's do require the payment of fees and Staff has communicated with CCWD that we do not intend to develop the site as the City and that when the land is sold to a builder, those fees would then be paid. CCWD is comfortable with that arrangement.

Analysis

Rezone

To revisit the project description section, the Planned Unit Development (P-1) District is compatible with the Single-Family Residential, High Density (SH) land use designation and would allow for a single-family residential use as a permitted use. The project, as conditioned, is well thought out and will allow the site to be developed in the vision of the applicant in a manner consistent with the Single-Family Residential, High Density (SH) land use designation.

Vesting Tentative Map

The Vesting Tentative Map has been reviewed against all applicable codes including the Subdivision Map Act and the Zoning Ordinance. The applicant has proposed the Planned Unit Development (P-1) District which allows the project to develop its own unique development standards. The Zoning Requirements Plan lists the specific zoning standards applicable to this project. The minimum lot sizes proposed in this development range from 3,375 square feet to 5,200 square feet. As there is not a design review application proposed at this time, the Zoning Requirements Plan and lotting exhibits in the attached project plans are meant to demonstrate that the lots proposed are adequate for housing and will be able to accommodate a wide range of housing footprints. The Vesting Tentative Map as proposed meets all applicable codes and regulations. A breakdown of the lots, Burroughs versus City, and minimum lot sizes is below.

LOT COUNT TABLE			
LOT SIZE	BURROUGHS PROPERTY	CITY OF OAKLEY	SUB TOTAL
45'x 75'	93		93
50'x 80'		71	71
65'x 80'		44	44
		TOTAL LOTS	208

The 208 lot subdivision will be accessed though its primary entrance off East Cypress Road and directly north of the existing Broadway Lane, which is in the unincorporated area of the County. This intersection will be signalized and is part of the project and has been conditioned as such. The main entry leads to a series of loop roads and cul-de-sacs that provide for multiple neighborhoods within the larger subdivision. The project is conditioned to construct roadway improvements along the projects frontage, to include 6 travel lanes, curb, gutter, sidewalk, landscaping and lighting. Because the frontage of the project is approximately split between 25% Burroughs and 75% City, the City will plan to construct the full improvements as part of a Capital Improvement Project (CIP). The project is also conditioned to require whoever builds the project to enter into a cost-sharing agreement with the City to account for the 25% that will not be funded by the City.

The overall project site has multiple constraints which attributed to the overall design of the subdivision. Although the constraints add to the overall project costs and reduce the developable area of the site, the subdivision as designed is well thought out and consistent with the type of subdivisions currently being constructed to the projects west in Emerson Ranch and Delaney Park. The first constraint deals with the overall elevation of the site and the need to bring that base elevation out of the floodplain. Typically, and what was done on both projects to the west, a levee would be constructed around the projects perimeter to provide flood protection. That was first considered for this project but during the initial planning, it was found that the project site would be required to connect to the Delaney Park storm water pond. That pond will provide the site both water treatment and provide capacity in the event of a large storm. With that connection, the site will need to be raised several feet to accommodate for gravity flow. The connection for that and most utilities will be through a jack and bore under Little Dutch Slough, in order to connect to the stub outs at the east end of Delaney Park. With the fill required to raise the site to accommodate utilities, the need for the levee system went away as the site will be raised above the elevation needed to provide for flood protection. One of the unique features that was not originally planned, but as a result, is that the lots that back up to the north end of the project site will all have view lots, looking over the Contra Costa Canal and DWR restoration project land further north. These lots are also the largest lots in the subdivision with all the view lots being at least 6,000 square feet or larger. The provide landscape plans show enhanced view fencing that will allow for open views to the north. This fence will require CCWD approval and the project has been conditioned as such.

Another site constraint has to deal with the irregular shape of the project site. This is further exacerbated by the 75-foot environmental setback from Little Dutch Slough at the west property line of the site. That constraint has led to a pretty unique trail opportunity that has been incorporated into the project design. If a levee was going to be part of this project, Staff would have required a trail on top of the crown of the levee. Since a levee is not required, we have still worked with the applicant to provide a loop trail. The loop follows the project frontage and will utilize the sidewalk

along East Cypress Road (to be constructed with this project). Form the project frontage, the trail extends north within the environmental setback. This area will be planted with native vegetation and trees to provide a unique setting. Those plantings have already been reviewed and approved by the Habitat Conservancy and the long term maintenance of this area will be funded through the Community Facilities District that the project is conditioned to annex into. The trail then extends to the east and follows the frontage of lots 47-52, and lots 109-133. This area of the trail features a detached, widened 8-foot asphalt path in front of those lots. This widened path will help activate the subdivision and will provide for a much different experience then your standard 5-foot monolithic sidewalk. The trails then heads south to the sidewalk on East Cypress Road, just south of lot 133. An Emergency Vehicle Access area also exists in this location in the event the Fire District or any other emergency personnel need access to the site, alternative from the primary access, north of Broadway Lane.

California Environmental Quality Act (CEQA)

An Initial Study and Mitigated Negative Declaration ("MND") have been prepared for this project pursuant to the California Environmental Quality Act (CEQA). The Notice of Intent to Adopt a MND and Initial Study was circulated for public review and comment from April 9, 2021 to May 10, 2021 and was filed with the County Clerk and Governor's Office of Planning and Research State Clearinghouse. A copy of the MND and Initial Study are attached. The City Council must adopt the MND in order to approve the project. Adoption of the MND is included as a finding in the proposed Rezone ordinance and Vesting Tentative Map resolution.

The City did receive comment letters during the public review period from the California Department of Transportation, East Contra Costa Fire Protection District, and the Central Valley Water Quality Control Board. The comment letters and the responses to the comments are contained in Attachment 5. If changes were needed to the MND, those have been identified in the Errata at the end of Attachment 5.

Citizen Planning Advisors

The Oakley Citizen Planning Advisors received copies of the Applicant's Plans via email on November 1, 2017. Per City Council Resolution 15-14, which established the Citizen Planning Advisors, Staff did not receive any comments from the Citizen Planning Advisors.

Findings

Draft findings are included in the attached ordinance and resolution.

Recommendation

Staff recommends the City Council:

- Adopt the Mitigated Negative Declaration (included as a finding in the proposed Rezone ordinance and Vesting Tentative Map resolution);

- Waive the first reading and introduce an Ordinance approving the Rezone, as conditioned;

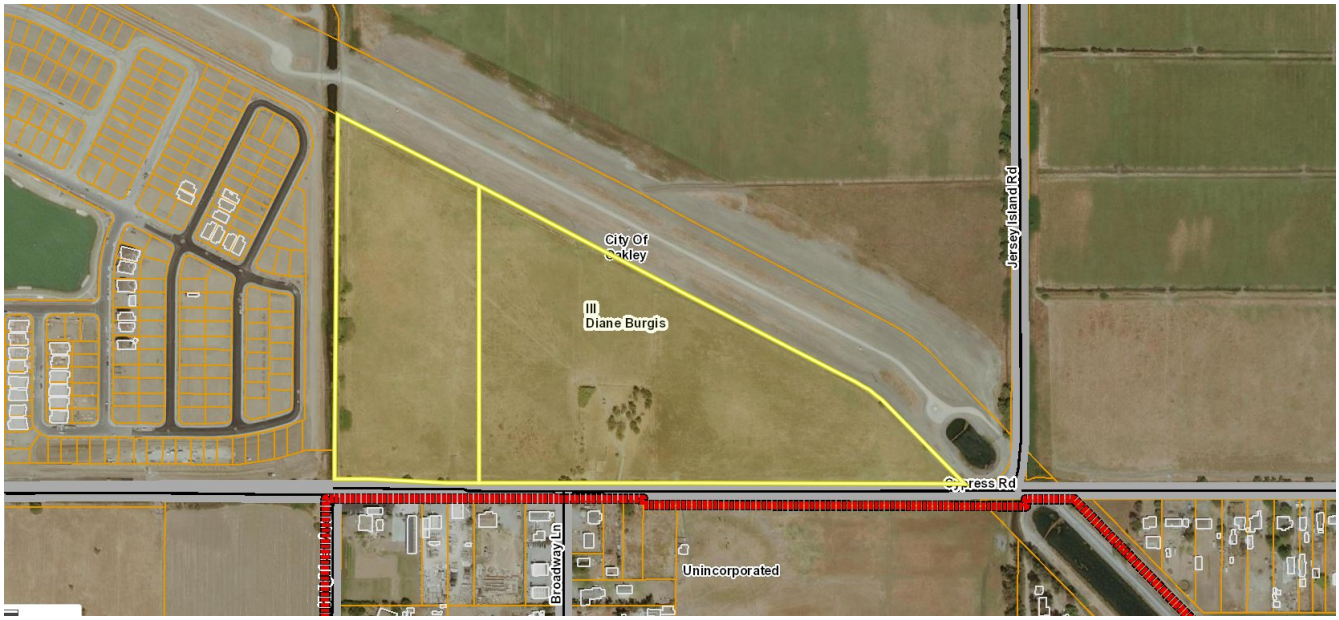
- Adopt a resolution approving the Vesting Tentative Map and Design Review, as conditioned; and

- Adopt a resolution authorizing the City Manager to enter into the Contra Costa Water District Abstract of Memorandum of Agreement and Supplement to the North Dutch Slough Properties Memorandum of Agreement.

Attachments

1. Vicinity Map
2. Public Hearing Notice
3. Project Plans
4. Initial Study with Mitigated Negative Declaration
5. Initial Study with Mitigated Negative Declaration Response to Comments and Errata
6. Proposed Rezone Ordinance with Exhibit “A”
7. Proposed Tentative Map Resolution with Exhibit “A”
8. Contra Costa Water District Abstract of Memorandum of Agreement
9. Contra Costa Water District Supplement to the North Dutch Slough Properties Memorandum of Agreement
10. North Dutch Slough Memorandum of Agreement dated April 10, 2006
11. Draft Resolution Authorizing Signature of the two CCWD Agreements
12. PowerPoint Presentation

Vicinity Map
Burroughs Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21)
The project is located at the northeast corner of East Cypress Rd. and Knightsen Ave.
APNs. 032-081-026 and 032-081-025



OAKLEY
CALIFORNIA

Due to safety precautions related to Covid-19, this meeting will be phone-in only. Changes in "How to Review" are found below.

City of Oakley
3231 Main Street
Oakley, CA 94561
www.oakleyinfo.com

NOTICE OF PUBLIC HEARING

Notice is hereby given that on **May 25, 2021** at 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council of the City of Oakley will hold a phone-in Public Hearing ~~at the Council Chambers located at 3231 Main Street, Oakley, CA 94561~~ for the purposes of considering an application as listed below**.**

Project Name: Burroughs Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21)

Project Location: The project is located at the northeast corner of East Cypress Rd. and Knightsen Ave.

(APNs. 032-081-026 and 032-081-025)

Applicant: City of Oakley, 3231 Main Street, Oakley, CA 94561 and Westgate Ventures, 2551 San Ramon Valley Blvd., Suite 224, San Ramon, CA 94583

Request: This is a public hearing requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from A-3 (Heavy Agriculture Zone) to P-1 (Planned Development) and to subdivide the 2 parcels into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and zoned A-3 (Heavy Agriculture, holdover from the County prior to incorporation). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025).

California Environmental Quality Act (CEQA): This project was analyzed in an Initial Study pursuant to CEQA Guidelines, to which a Mitigated Negative Declaration was made available to the public and all requesting parties, and posted with the Contra Costa County Clerk and Governor's Office of Planning and Research for at least 30-days prior to the date of this hearing. The Planning Division found the project described above will not have a significant effect on the environment.

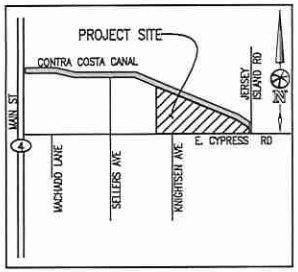
How to Review: The Staff Report and its attachments will be available for public review, on or before May 20, 2021 online at www.ci.oakley.ca.us/agendas-minutes-videos-archive/ by navigating to the May 25, 2021 agenda and clicking the project title link. Interested persons are invited to submit written comments prior to 5:00 P.M. the day of the hearing to Joshua McMurray, Community and Economic Development Director mcmurray@ci.oakley.ca.us. Those wishing to listen in and/or participate in the meeting may do so by calling: 1 (669) 900-9128 and using ID# 858 0900 5401. Callers are asked to mute phones unless speaking.

NOTICE IS ALSO GIVEN pursuant to Government Code Section 65009(b) that, if this matter is subsequently challenged in Court by you or others, you may be limited to raising only those issues you or someone else has raised at a Public Hearing described in this notice or in written correspondence delivered to the City of Oakley City Clerk at, or prior to, the Public Hearing.

SUBDIVISION 9557
VESTING TENTATIVE MAP
COVER SHEET

CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA

BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=100'



VICINITY MAP
NO SCALE

SHEET INDEX

1. COVER SHEET
2. EXISTING CONDITIONS AND CONSTRAINTS MAP
3. TYPICAL STREET SECTIONS
4. PRELIMINARY SITE PLAN
5. PRELIMINARY SITE PLAN
6. PRELIMINARY SITE PLAN
7. GRADING AND UTILITY PLAN
8. GRADING AND UTILITY PLAN
9. GRADING AND UTILITY PLAN
10. PRELIMINARY GRADING SECTIONS

NOTES:
THE OWNER RESERVES THE RIGHT TO FILE MULTIPLE FINAL MAPS ON THE LANDS SHOWN ON THIS MAP

GENERAL NOTES

OWNER:	CITY OF OAKLEY 3231 MAIN STREET OAKLEY, CA 94561 (925)-625-7000	ROBERT BURROUGHS ET AL 4803 SISK ROAD #201 SALIDA, CA 95368 (209)-470-4499
DEVELOPER:	WESTGATE VENTURES, LLC 2551 SAN RAMON VALLEY BLVD #224 SAN RAMON, CA 94583 ADAM TENNANT - (650)-400-5078	
ENGINEER:	BELLECCI & ASSOCIATES, INC. 2280 DIAMOND BLVD #100 CONCORD, CA 94520 (925)-685-4569	
A.P.N.:	032-081-025 (CITY OF OAKLEY) 032-081-026 (BURROUGHS)	
SITE AREA:	43.24 ACRES	
EXISTING ZONING:	A-3	
PROPOSED ZONING:	P-1	
EXISTING USE:	VACANT	
PROPOSED USE:	SINGLE FAMILY RESIDENTIAL	

SERVICES:	
WATER SUPPLY-	DIABLO WATER DISTRICT
SANITARY SEWER-	IRONHOUSE SANITARY DISTRICT
STORM DRAIN-	CITY OF OAKLEY
GAS & ELECTRIC-	PACIFIC GAS & ELECTRIC
FIRE-	EAST CONTRA COSTA FIRE PROTECTION DISTRICT
TELEPHONE-	AT&T
CABLE TV-	COMCAST
FLOODING:	SITE FALLS WITHIN FIRM PANEL NUMBERS 06013C 0360G, ZONE AE (EL 9, 1988NAVD) - DATED MARCH 21, 2017 100 YEAR FLOOD ELEVATION = 9.3± NOTE: THE ENTIRE SITE FALLS WITHIN THE 100 YEAR FLOOD PLAN
TOPOGRAPHY:	AERIAL TOPOGRAPHY PROVIDED BY: 360 AERIAL SURVEYS DATED JANUARY 10, 2020
BASIS OF ELEVATION:	ELEVATIONS SHOWN ARE BASED 1988 NAVD
BASIS OF BEARINGS:	CALIFORNIA COORDINATE SYSTEM, ZONE III (NAD 83).
BENCHMARK:	USGS DESIGNATION - 11.19 USBR, HS3789 ELEVATION 13.8. BENCHMARK LOCATED AT THE CONTRA COSTA CANAL FISH SCREEN, IN THE TOP OF THE SOUTHEAST END OF THE NORTHEAST CONCRETE ABUTMENT FOR THE HEADGATE STRUCTURE, 98± FEET SOUTHWEST OF THE DIRT ROAD ON THE NORTHEAST LEVEE, 3.8 FEET SOUTHEAST OF THE SOUTHEAST END OF A GATE ACROSS THE NORTHEAST END OF THE SOUTHEAST WALKWAY.

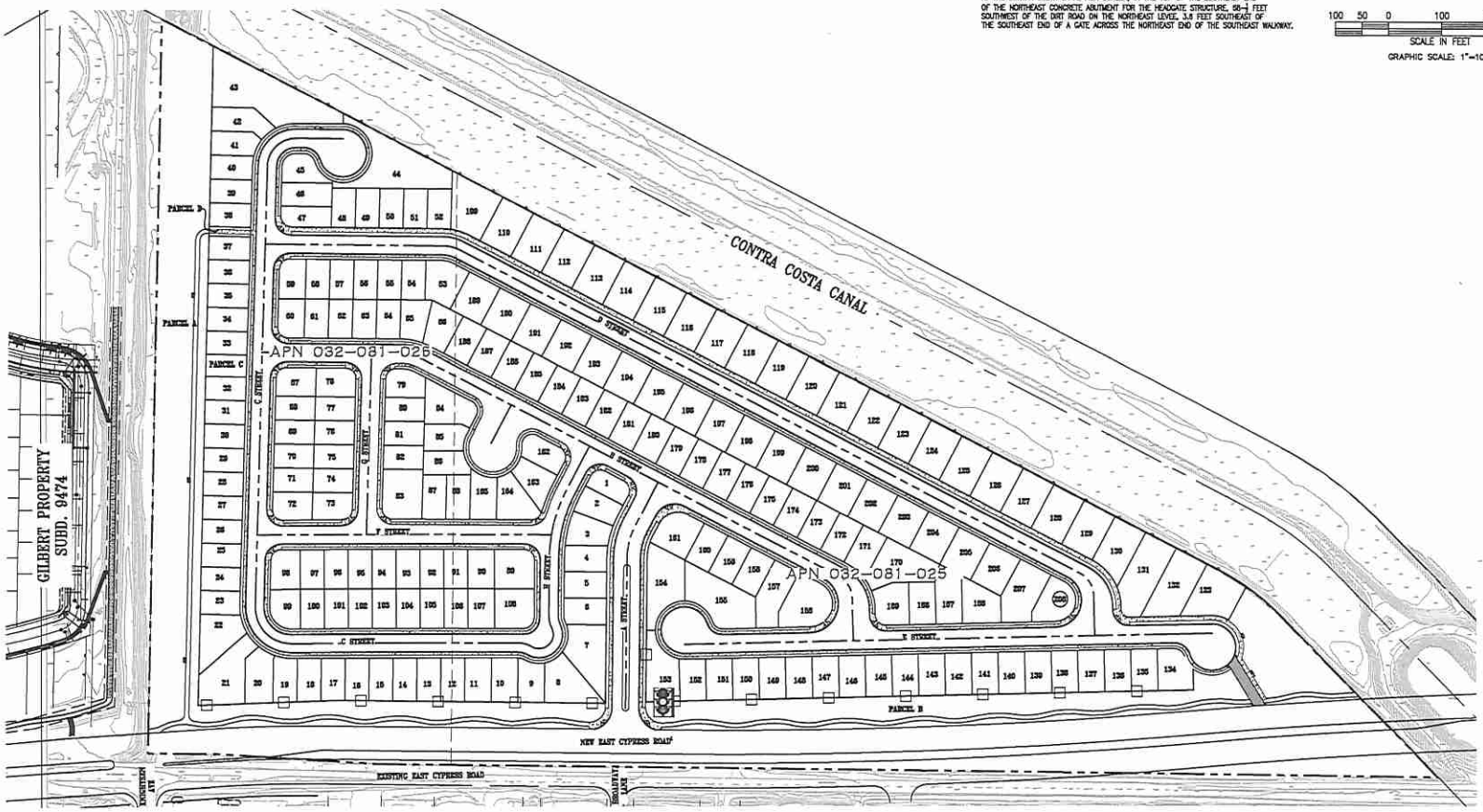
N

100 50 0 100 200 300
SCALE IN FEET
GRAPHIC SCALE: 1"=100'

TOTAL PROPOSED LOTS	208

PARCEL NAME	AREA (AC)	USAGE
A	3.27	OPEN SPACE
B	1.49	OPEN SPACE
C	0.08	OPEN SPACE
D	0.02	OPEN SPACE

GRADING SUMMARY QUANTITIES	
CUT	5,800 CY
FILL	176,100 CY
TOTAL IMPORT	170,300 CY



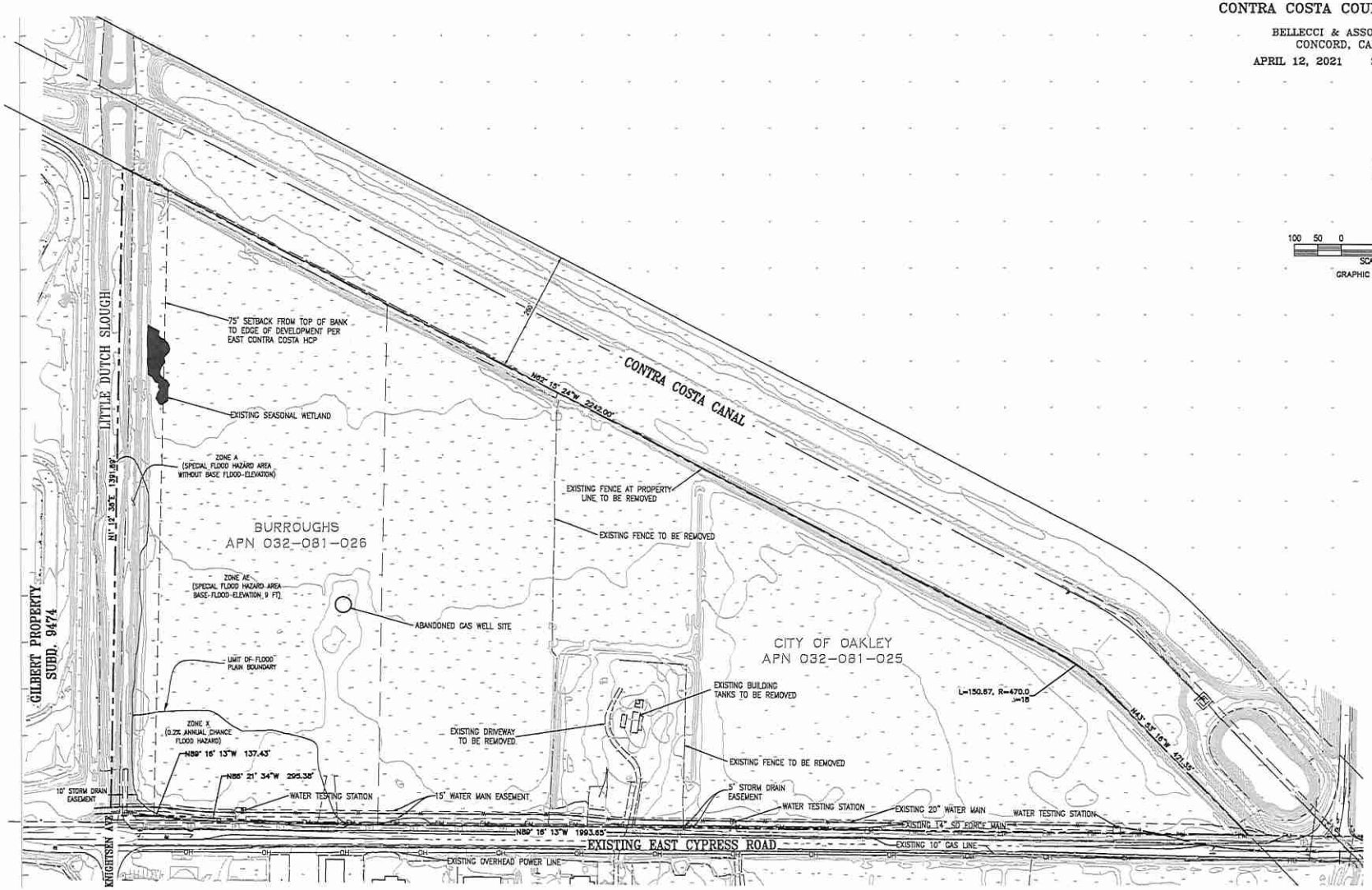
1. = NEW EAST CYPRESS ROAD SHOWN PER CITY OF OAKLEY APPROVED "EAST CYPRESS ROAD PRECISE PLAN". NEW ECR TO BE DESIGNED AND CONSTRUCTED BY THE CITY OF OAKLEY THROUGH THE CITY'S CIP PROGRAM.

SHEET 1 OF 10
JOB NO. 19115

SUBDIVISION 9557
VESTING TENTATIVE MAP
EXISTING CONDITIONS AND CONSTRAINTS MAP

CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA

BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=100'



SHEET 2 OF 10
JOB NO. 19115

SUBDIVISION 9557
VESTING TENTATIVE MAP
TYPICAL STREET SECTIONS

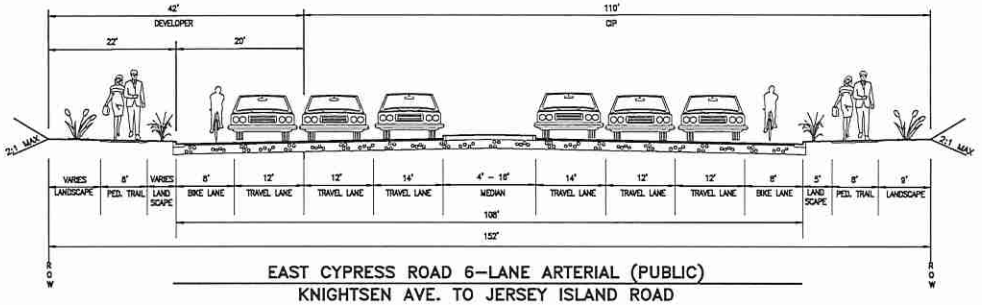
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA

BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA

APRIL 12, 2021

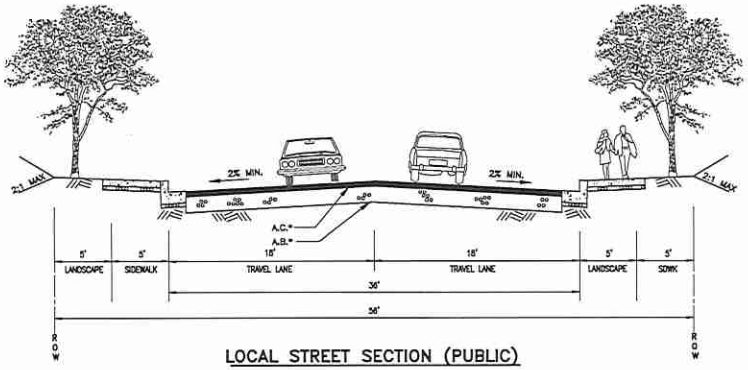
NOTE:

* = AC AND AB SECTIONS TO BE BASED ON ROADWAY AND R VALUES



EAST CYPRESS ROAD 6-LANE ARTERIAL (PUBLIC)
KNIGHTSEN AVE. TO JERSEY ISLAND ROAD

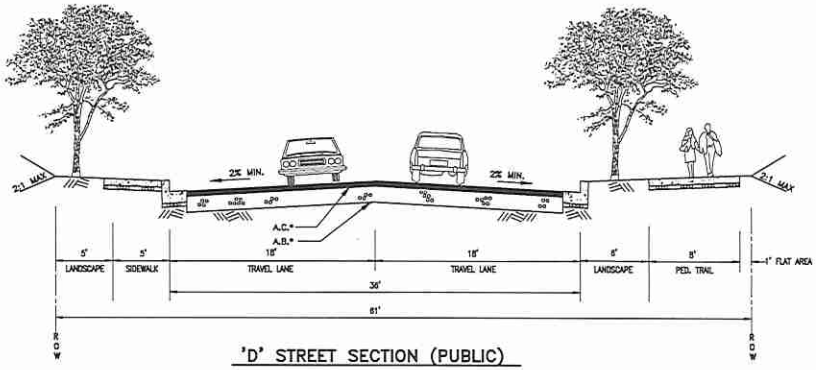
N.T.S.



LOCAL STREET SECTION (PUBLIC)

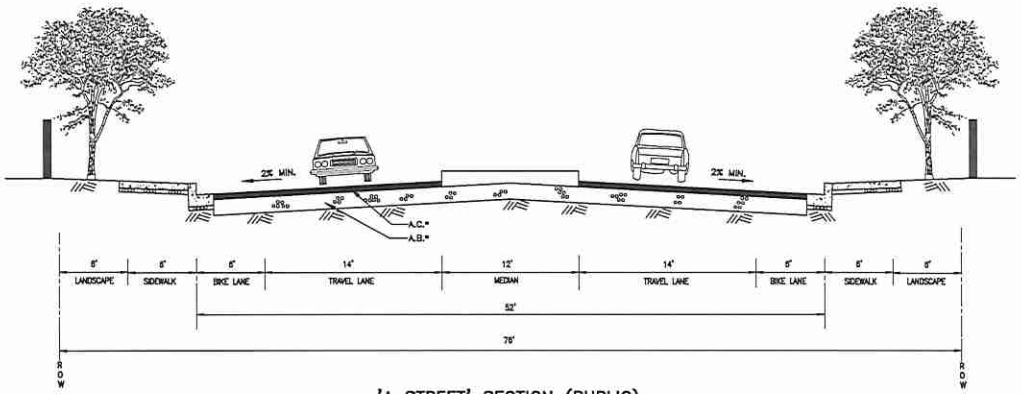
N.T.S.

B STREET, C STREET, E STREET, F STREET, G STREET, H STREET



'D' STREET SECTION (PUBLIC)

N.T.S.



'A STREET' SECTION (PUBLIC)

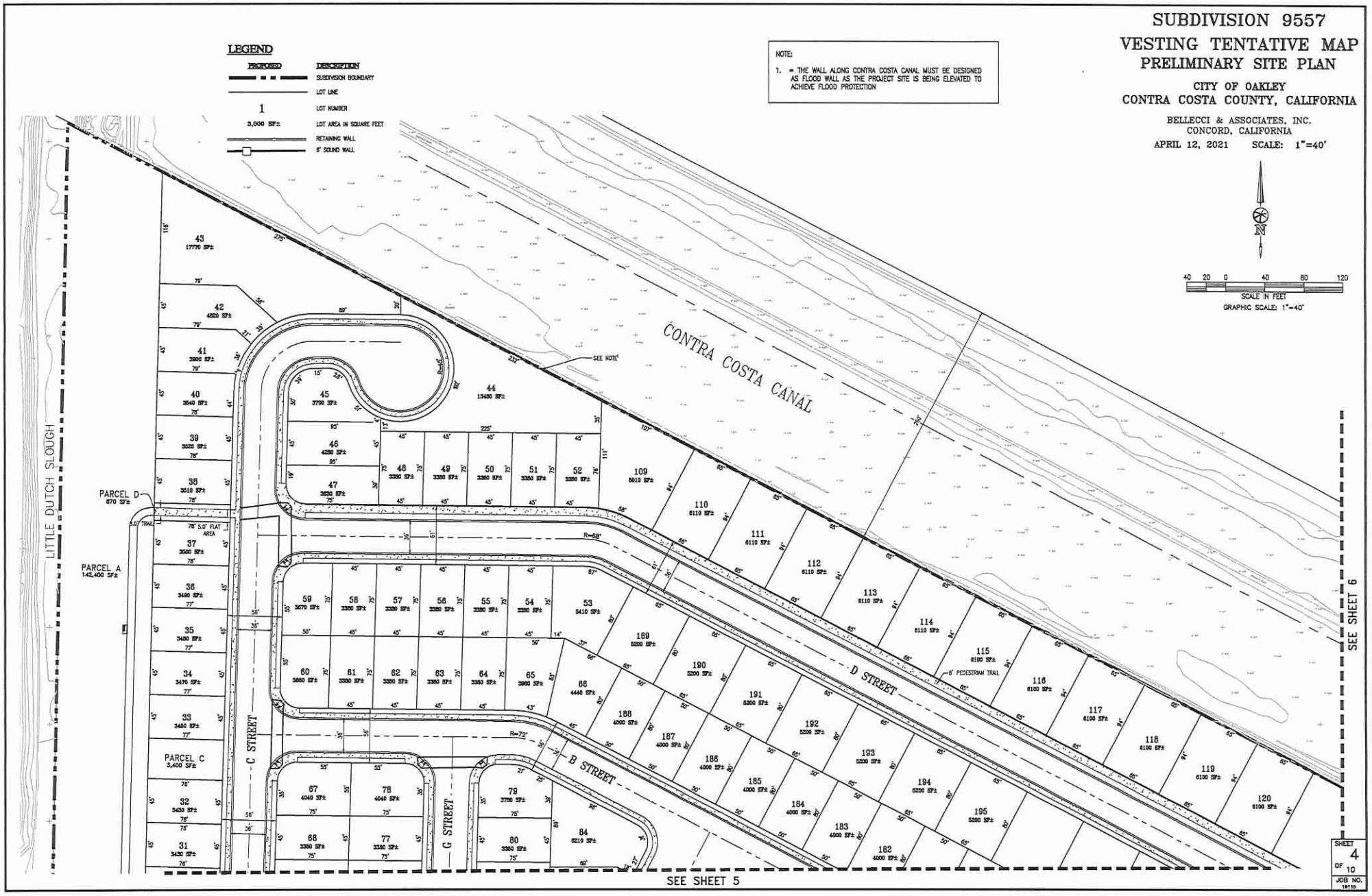
N.T.S.

SHEET 3 OF 10
JOB NO. 19119

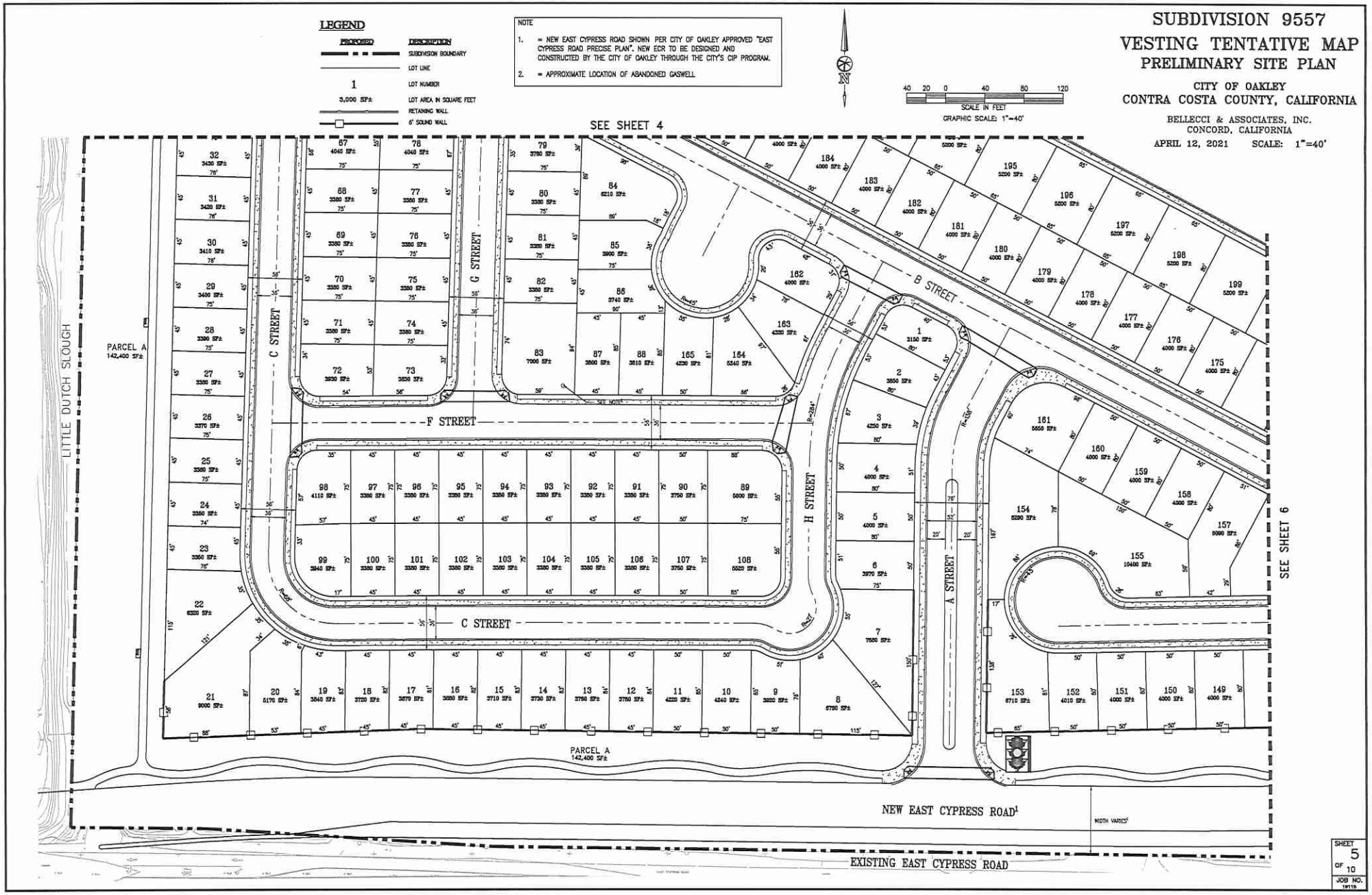
SUBDIVISION 9557
VESTING TENTATIVE MAP
PRELIMINARY SITE PLAN

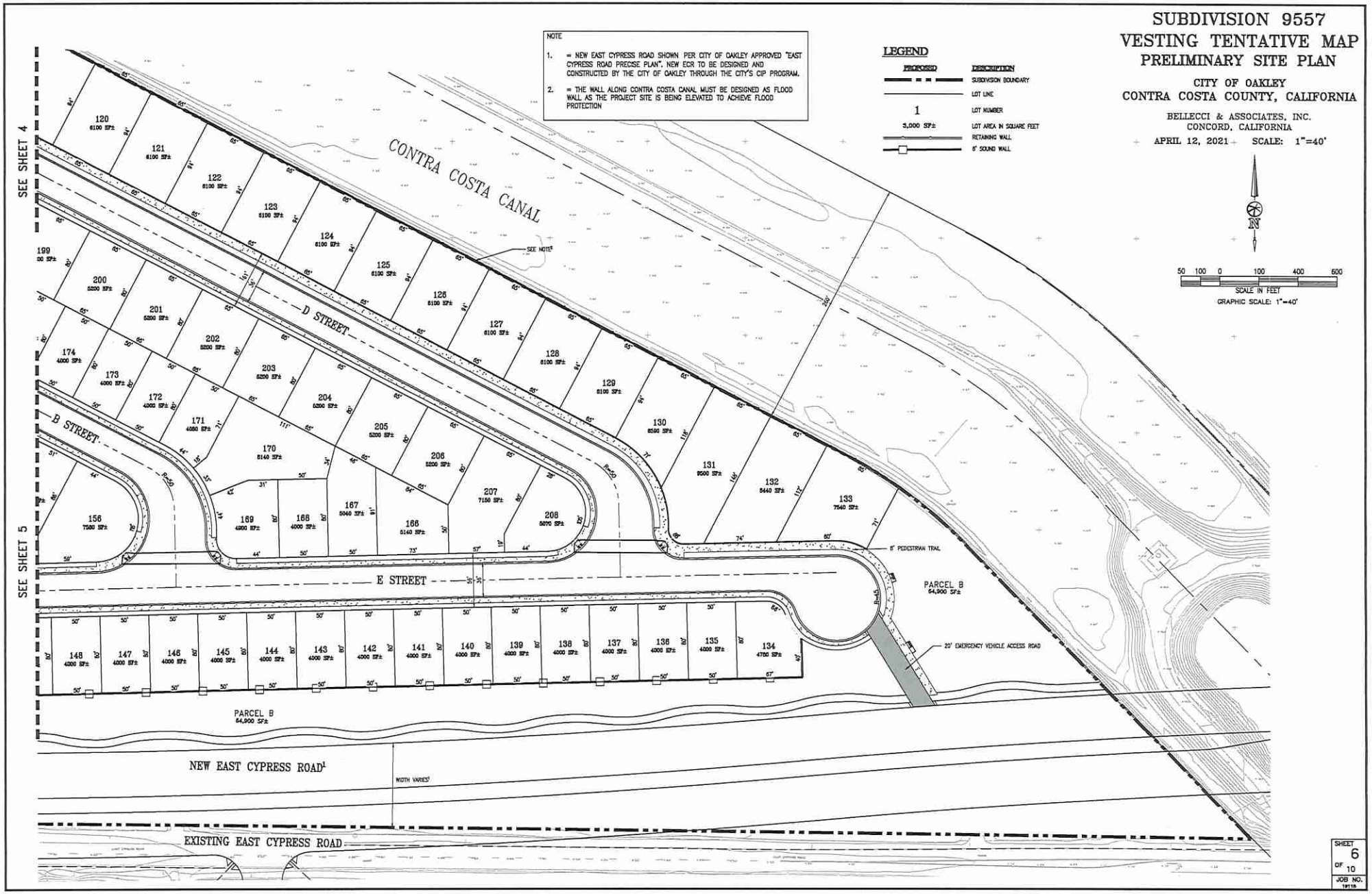
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA

BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'



SHEET 4 OF 10
JOB NO. 19115


LEGEND
PROPOSED
DESCRIPTION
SUBDIVISION BOUNDARY
LOT LINE
1 LOT NUMBER
3,000 SF± LOT AREA IN SQUARE FEET
RETAINING WALL
6' SOUND WALL
NOTE
1. = NEW EAST CYPRESS ROAD SHOWN PER CITY OF OAKLEY APPROVED "EAST CYPRESS ROAD PRECISE PLAN". NEW ECR TO BE DESIGNED AND CONSTRUCTED BY THE CITY OF OAKLEY THROUGH THE CITY'S CIP PROGRAM.
2. = APPROXIMATE LOCATION OF ABANDONED GASWELL
N
40 20 0 40 80 120
SCALE IN FEET
GRAPHIC SCALE: 1"=40'
SUBDIVISION 9557
VESTING TENTATIVE MAP
PRELIMINARY SITE PLAN
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA
BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'
SEE SHEET 4
SEE SHEET 6
LITTLE DUTCH SLOUGH
PARCEL A
142,400 SF±
C STREET
G STREET
F STREET
H STREET
B STREET
A STREET
PARCEL A
142,400 SF±
NEW EAST CYPRESS ROAD¹
WIDTH VARIES²
EXISTING EAST CYPRESS ROAD
SHEET 5 OF 10
JOB NO. 19115


SUBDIVISION 9557
VESTING TENTATIVE MAP
PRELIMINARY SITE PLAN
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA
BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'
NOTE
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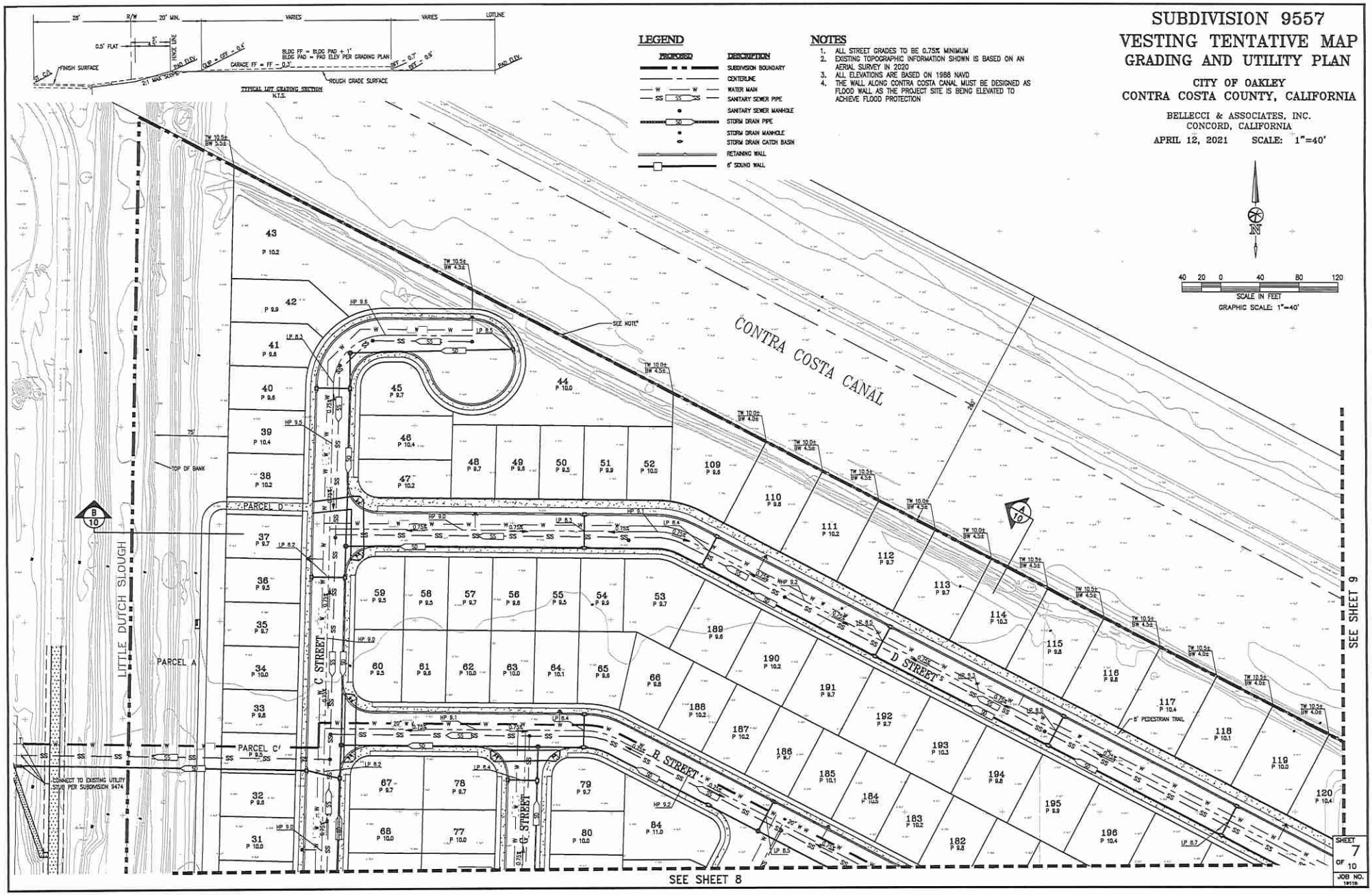
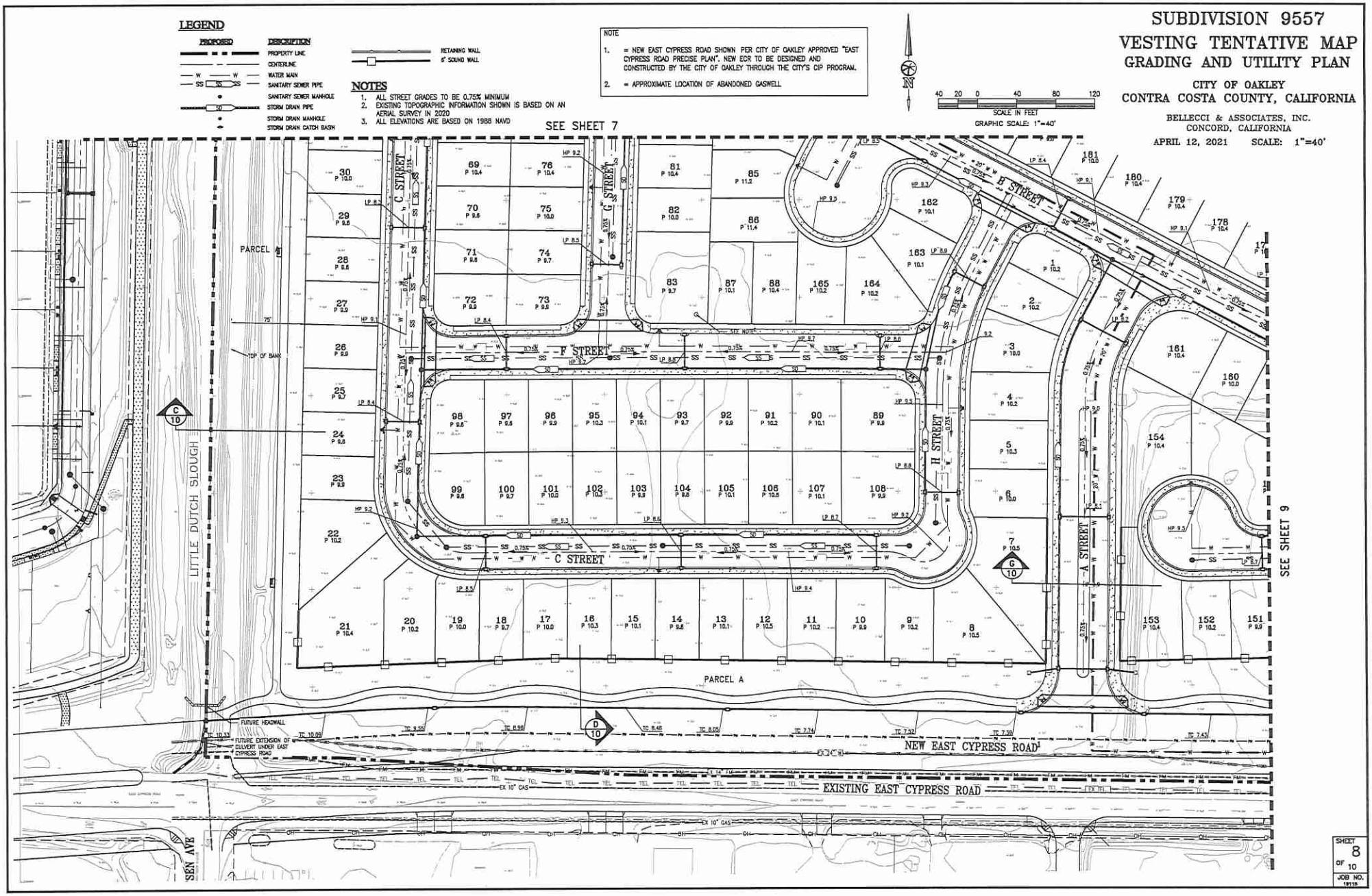
2. = THE WALL ALONG CONTRA COSTA CANAL MUST BE DESIGNED AS FLOOD WALL AS THE PROJECT SITE IS BEING ELEVATED TO ACHIEVE FLOOD PROTECTION
LEGEND
PROPOSED
DESCRIPTION
SUBDIVISION BOUNDARY
LOT LINE
1 LOT NUMBER
3,000 SF± LOT AREA IN SQUARE FEET
RETAINING WALL
6' SOUND WALL
CONTRA COSTA CANAL
SEE NOTE 2
D STREET
B STREET
E STREET
8' PEDESTRIAN TRAIL
20' EMERGENCY VEHICLE ACCESS ROAD
PARCEL B
64,900 SF±
NEW EAST CYPRESS ROAD 1
WIDTH VARIES
EXISTING EAST CYPRESS ROAD
SEE SHEET 4
SEE SHEET 5
SCALE IN FEET
GRAPHIC SCALE: 1"=40'
SHEET 6 OF 10
JOB NO. 19115


SUBDIVISION 9557
VESTING TENTATIVE MAP
GRADING AND UTILITY PLAN
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA
BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'
LEGEND
PROPOSED
DESCRIPTION
SUBDIVISION BOUNDARY
CENTERLINE
WATER MAIN
SANITARY SEWER PIPE
SANITARY SEWER MANHOLE
STORM DRAIN PIPE
STORM DRAIN MANHOLE
STORM DRAIN CATCH BASIN
RETAINING WALL
6' SOUND WALL
NOTES
1. ALL STREET GRADES TO BE 0.75% MINIMUM
2. EXISTING TOPOGRAPHIC INFORMATION SHOWN IS BASED ON AN AERIAL SURVEY IN 2020
3. ALL ELEVATIONS ARE BASED ON 1988 NAVD
4. THE WALL ALONG CONTRA COSTA CANAL MUST BE DESIGNED AS FLOOD WALL AS THE PROJECT SITE IS BEING ELEVATED TO ACHIEVE FLOOD PROTECTION
TYPICAL LOT GRADING SECTION
N.T.S.
CONTRA COSTA CANAL
LITTLE DUTCH SLOUGH
PARCEL A
PARCEL C
PARCEL D
C STREET
D STREET
E STREET
G STREET
TOP OF BANK
6' PEDESTRIAN TRAIL
CONNECT TO EXISTING UTILITY STUB PER SUBDIVISION 9474
SEE SHEET 8
SEE SHEET 9
SCALE IN FEET
GRAPHIC SCALE: 1"=40'
SHEET 7 OF 10
JOB NO.


LEGEND
PROPOSED
DESCRIPTION
PROPERTY LINE
CENTERLINE
WATER MAIN
SANITARY SEWER PIPE
SANITARY SEWER MANHOLE
STORM DRAIN PIPE
STORM DRAIN MANHOLE
STORM DRAIN CATCH BASIN
RETAINING WALL
6' SOUND WALL
NOTES
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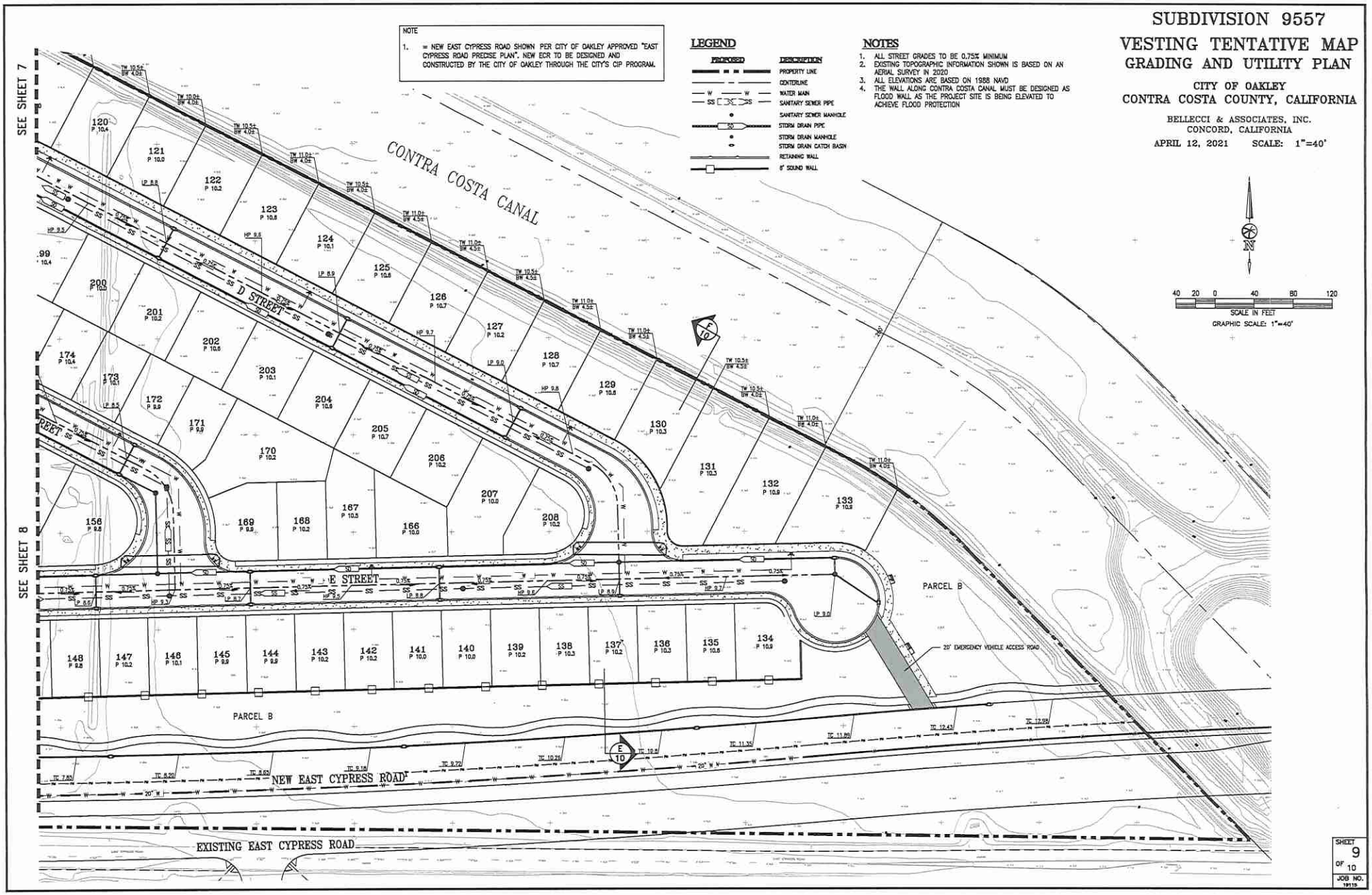
2. = APPROXIMATE LOCATION OF ABANDONED GASWELL
SCALE IN FEET
GRAPHIC SCALE: 1"=40'
SUBDIVISION 9557
VESTING TENTATIVE MAP
GRADING AND UTILITY PLAN
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA
BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'
SEE SHEET 7
SEE SHEET 9
PARCEL A
LITTLE DUTCH SLOUGH
TOP OF BANK
FUTURE HEADWALL
FUTURE EXTENSION OF CULVERT UNDER EAST CYPRESS ROAD
NEW EAST CYPRESS ROAD
EXISTING EAST CYPRESS ROAD
SEN AVE
C STREET
F STREET
H STREET
B STREET
A STREET
SHEET 8 OF 10
JOB NO. 19118


SUBDIVISION 9557
VESTING TENTATIVE MAP
GRADING AND UTILITY PLAN
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA
BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA
APRIL 12, 2021 SCALE: 1"=40'
NOTE
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LEGEND
PROPOSED
DESCRIPTION
PROPERTY LINE
CENTERLINE
WATER MAIN
SANITARY SEWER PIPE
SANITARY SEWER MANHOLE
STORM DRAIN PIPE
STORM DRAIN MANHOLE
STORM DRAIN CATCH BASIN
RETAINING WALL
8' SOUND WALL
NOTES
1. ALL STREET GRADES TO BE 0.75% MINIMUM
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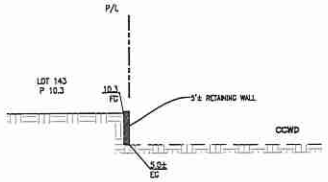
3. ALL ELEVATIONS ARE BASED ON 1988 NAVD
4. THE WALL ALONG CONTRA COSTA CANAL MUST BE DESIGNED AS FLOOD WALL AS THE PROJECT SITE IS BEING ELEVATED TO ACHIEVE FLOOD PROTECTION
SEE SHEET 7
SEE SHEET 8
CONTRA COSTA CANAL
D STREET
E STREET
PARCEL B
20' EMERGENCY VEHICLE ACCESS ROAD
NEW EAST CYPRESS ROAD
EXISTING EAST CYPRESS ROAD
N
40 20 0 40 80 120
SCALE IN FEET
GRAPHIC SCALE: 1"=40'
SHEET 9 OF 10
JOB NO. 19115

SUBDIVISION 9557
VESTING TENTATIVE MAP
GRADING SECTIONS

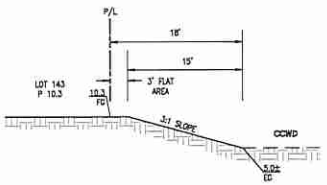
CITY OF OAKLEY
CONTRA COSTA COUNTY, CALIFORNIA

BELLECCI & ASSOCIATES, INC.
CONCORD, CALIFORNIA

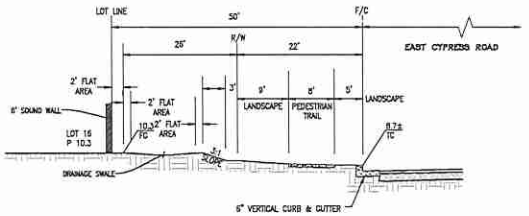
APRIL 12, 2021



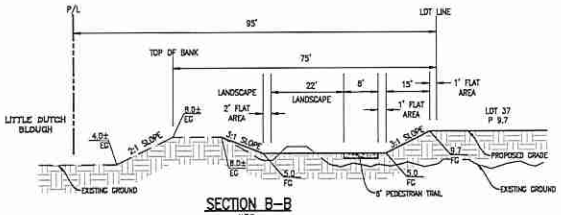
SECTION A–A
N.T.S.



SECTION A–A (IF ALLOWED BY CCWD)
N.T.S.



SECTION D–D
N.T.S.



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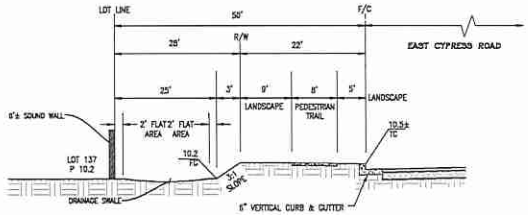

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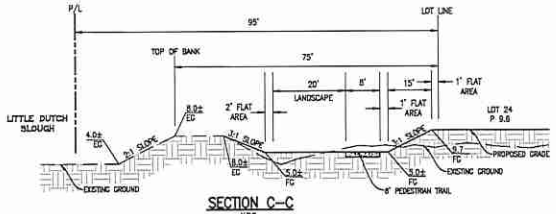

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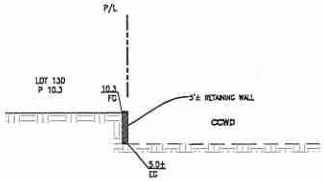

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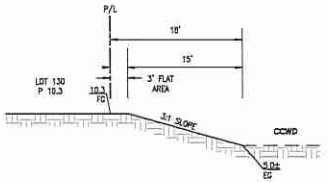

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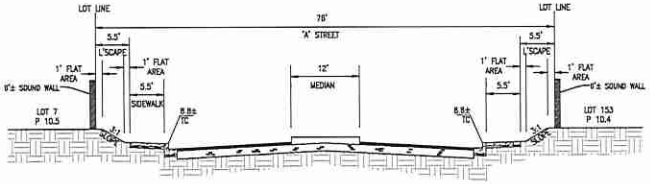

SECTION G–G
N.T.S.

SHEET 10 OF 10
JOB NO. 19113

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ZIP 94103 PH (415) 864-1521 FAX (415) 864-4796

WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS

OAKLEY, CALIFORNIA

CONCEPTUAL LANDSCAPE PLAN

SCALE: 1" = 70'

DATE: 4/7/21

0 35 70 140 210

L1.0

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WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS
OAKLEY, CALIFORNIA

SECTIONS / ENLARGEMENT - KEY MAP
SCALE:1" = 70'
DATE: 4/7/21

0 35 70 140 210

L1.1

NOTE:

1. PLANTING DESIGN TO CONTINUE ALONG STREET FRONTAGE
2. STREET TREES ARE CONSISTENT WITH NEIGHBORING GILLBERT / DELANEY PROPERTY

(A) ENTRY ENLARGEMENT

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WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS
OAKLEY, CALIFORNIA

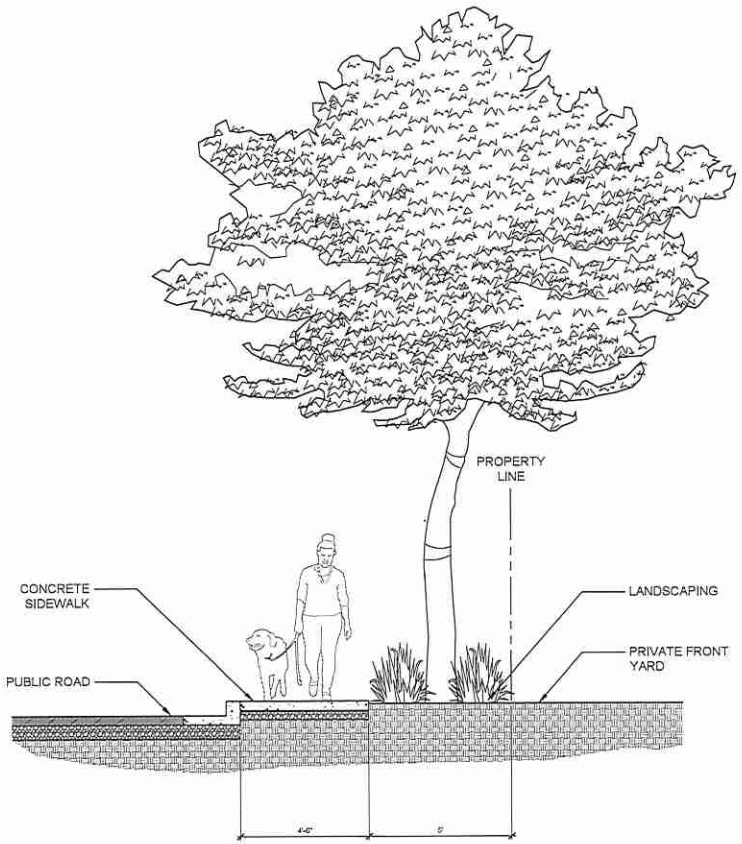
CONCEPTUAL LANDSCAPE DESIGN - ENLARGEMENT

SCALE:1" = 20'

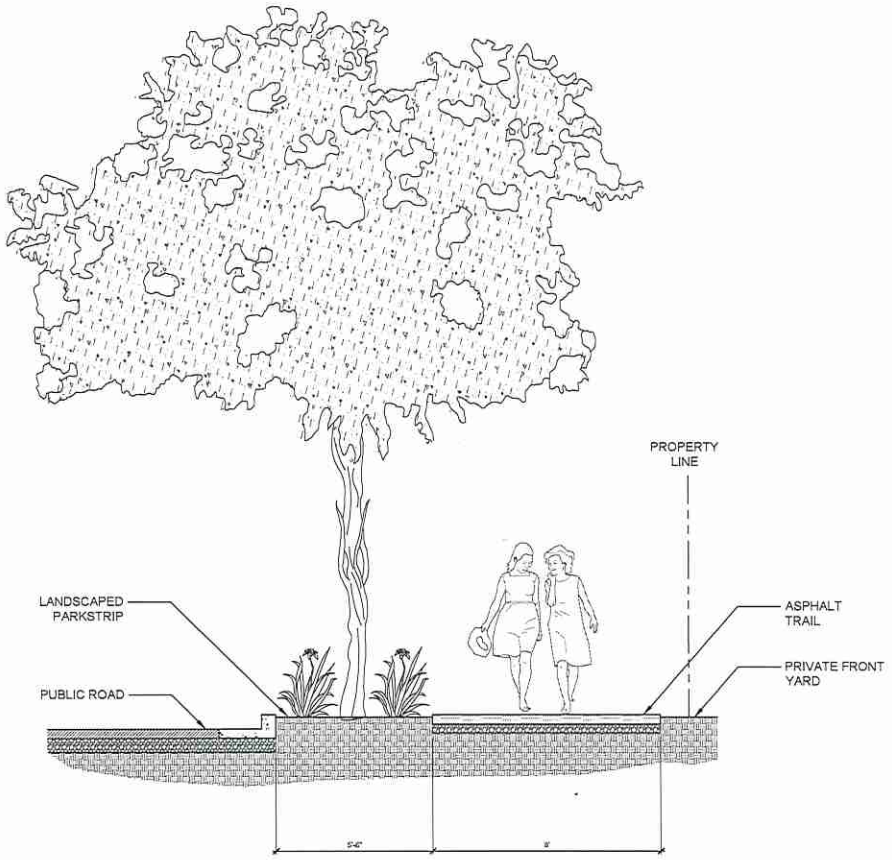
DATE: 4/7/21

0 10 20 40 60

L1.2



A TYPICAL SIDEWALK SECTON



B TYPICAL TRAIL SECTION

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WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS

OAKLEY, CALIFORNIA

CONCEPTUAL LANDSCAPE DESIGN - SECTIONS

SCALE:1/2" = 1'-0"

DATE: 4/7/21

0 1 2 4 6

L1.3

DECORATIVE METAL FENCE

GOOD NEIGHBOR FENCE

VIEW FENCE

SOUND WALL

ASPHALT TRAIL

BENCH

REMOVABLE BOLLARD

ENTRY MONUMENT WALL

SCALE: 1/2" = 1'-0"

Acer macrophyllum
Bigleaf Maple

Alnus rhombifolia
White Alder

x Chitalpa tashkentensis
Chitalpa

Cratagegus phaenopyrum
Washington Hawthorn

Ginko biloba
Maidenhair Tree

Gingko biloba 'Princeton Sentry'
Princeton Sentry Maidenhair Tree

Populus freemontii 'Nevada'
Fremont Cottonwood

Pyrus calleryana 'New Bradford'
New Bradford Flowering Pear

Quercus agrifolia
Coast Live Oak

Robinia 'Purple Robe'
Locust

Tristaniopsis laurina 'Elegant'
Elegant Water Gum

Ulmus parvifoliA
Chinese Elm

TREES

SHRUBS

VINES

GROUNDCOVER

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WESTGATE VENTURES
CITY OF OAKLEY
BURROUGHS
OAKLEY, CALIFORNIA

CONCEPTUAL IMAGERY - PLANTING
SCALE: NTS DATE: 4/7/21

L2.1

TREE LEGEND

STREET TREES

SYMBOL	BOTANICAL NAME	COMMON NAME
	X CHITALPA TASHKENTENSIS	CHITALPA
	CRATAEGUS PHAENOPYRUM	WASHINGTON HAWTHORN
	GINKGO BILOBA	MAIDENHAIR TREE
	GINKGO BILOBA 'PRINCETON SENTRY'	MAIDENHAIR TREE
	PYRUS CALLERYANA 'NEW BRADFORD'	NEW BRADFORD FLOWERING PEAR
	QUERCUS ILEX	HOLLY OAK
	ROBINIA 'PURPLE ROBE'	LOCUST
	TRISTANIOPSIS LAURINA 'ELEGANT'	ELEGANT WATER GUM
	ULMUS PARVIFOLIA	CHINESE ELM

TREES ALONG LITTLE DUTCH SLOUGH

SYMBOL	BOTANICAL NAME	COMMON NAME
	ACER MACROPHYLLUM	BIGLEAF MAPLE
	POPULUS FREEMONTII 'NEVADA'	FREMONT COTTONWOOD
	ALNUS RHOMBIFOLIA	WHITE ALDER
	QUERCUS AGRIFOLIA	COAST LIVE OAK

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WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS

OAKLEY, CALIFORNIA

CONCEPTUAL TREE PLAN

SCALE:1" = 70'

DATE: 4/7/21

0 35 70 140 210

L3.0

NOTES:

1. CLEARANCE SHOWN ARE FOR TREES
2. KEEP TREES 15' CLEAR FROM STOP SIGNS OR CURB RADIUS AND REFER TO PG&E FOR PLANTING REQUIREMENT NEAR OVERHEAD LINES
3. LOT FRONTAGE SIZE, DRIVEWAY LOCATIONS, AND UTILITY LOCATIONS SHALL BE DESIGNED TO ALLOW FOR MAXIMUM STREET TREE PLANTING

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WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS

OAKLEY, CALIFORNIA

TYPICAL LOT TREE PLANTING AND UTILITIES SETBACK

SCALE:1" = 10'

DATE: 4/7/21

0 5 10 20 30

L3.1

TREE PALETTE

STREET TREES

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	X CHITALPA TASHKENTENSIS	CHITALPA	24" BOX	L	35'H X 30'W
	CRATAEGUS PHAENOPYRUM	WASHINGTON HAWTHORN	24" BOX	M	30'H X 20'W
	GINKGO BILOBA	MAIDENHAIR TREE	24" BOX	M	35'-50'H X 25'-40'W
	GINKGO BILOBA 'PRINCETON SENTRY'	MAIDENHAIR TREE	24" BOX	M	45'H X 20'W
	PYRUS CALLERYANA 'NEW BRADFORD'	NEW BRADFORD FLOWERING PEAR	24" BOX	M	30'H X 35'W
	QUERCUS ILEX	HOLLY OAK	24" BOX	L	30-60'H X 30-60'W
	ROBINIA 'PURPLE ROBE'	LOCUST	24" BOX	L	40'H X 30'W
	TRISTANIOPSIS LAURINA 'ELEGANT'	ELEGANT WATER GUM	24" BOX	M	30'H X 30'W
	ULMUS PARVIFOLIA	CHINESE ELM	24" BOX	M	45'H X 35'W

TREES ALONG LITTLE DUTCH SLOUGH

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	ACER MACROPHYLLUM	BIGLEAF MAPLE	24" BOX	H	40-75'H X 40-75'W
	POPULUS FREEMONTII 'NEVADA'	FREMONT COTTONWOOD	24" BOX	M	40-80'H X 30-50'W
	ALNUS RHOMBIFOLIA	WHITE ALDER	24" BOX	H	50-90'H X 40-70'W
	QUERCUS AGRIFOLIA	COAST LIVE OAK	24" BOX	L	20-70'H X 25-80'W

MEDIUM ACCENT TREES (FRONT YARDS)

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	CARPINUS BETULUS `FASTIGIATA`	EUROPEAN HORNBEAM	15 GAL	M	30'H X 25'W
	CERCIS CANADENSIS	EASTERN REDBUD	15 GAL	M	25'-35'H X 25-35'W
	CRATAEGUS PHAENOPYRUM	WASHINGTON HAWTHORN	15 GAL	M	30'H X 20'W
	GINKGO BILOBA 'PRICETON SENTRY'	MAIDENHAIR TREE	15 GAL	M	45'H X 20'W
	LAURUS NOBILIS 'SARATOGA'	SWEET BAY	15 GAL	L	30'H X 20'W
	LYONOTHAMNUS FLORIBUNDUS	IRONWOOD	15 GAL	L	30'H x 20'W
	ROBINIA 'PURPLE ROBE'	LOCUST	15 GAL	L	40'H X 30'W
	PISTACIA CHINENSIS	CHINESE PISTACHE	15 GAL	L	35'H X 30'W

SMALL ACCENT TREES (FRONT YARDS)

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	ACER PALMATUM 'SANGO KAKU'	CORAL BARK MAPLE	15 GAL	M	25'H X 20'W
	GEIJERA PARVIFLORA	AUSTRALIAN WILLOW	15 GAL	L	25'H X 20'W
	LAGERSTROEMIA 'MUSKOGEE'	CRAPE MYRTLE	15 GAL	L	25'H X 15'W
	MAGNOLIA X SOULANGEANA	SAUCER MAGNOLIA	15 GAL	M	25'H X 25'W
	PRUNUS YEDOENSIS `AKEBONO`	FLOWERING CHERRY	15 GAL	M	25'H X 25'W
	RHUS LANCEA	AFRICAN SUMAC	15 GAL	L	20'H X 20'W

PLANTING DESIGN INTENT STATEMENT

The projects shrub and ground cover planting design utilizes all low water use drought tolerant plant materials for maximum water conservation. The trees consist of a mix of primarily low and medium water use species. Some high water use native riparian trees species are utilized along the West side of the project for mitigation compliance. Shade tolerant low water use plants will be utilized on the North facing sides of the project. The plants have been selected utilizing the Model Water Efficient Landscape Ordinance WUCOLS Plant Lists. A minimum of 3" of bark mulch will be placed in all shrub and groundcover areas.

WATER USE DESIGN INTENT STATEMENT

The irrigation system will comply with the State of California's Model Water Efficient Landscape Ordinance as adopted by the City of Oakley. System will be a fully automatic, low gallon system with matched precipitation rate emitters on each circuit. The low, medium and high water use hydrozones will be on separate valve circuits. All new trees will have separate drip or bubbler circuits. The remote control valves will have integral pressure regulators to prevent fluctuations and ensure constant application rates to minimize over or under watering. The electronic irrigation controller will be weather based and make automatic adjustments based on current climate along with multiple programs and application cycles/start times. A rain switch will be installed to prevent irrigation during rainy periods. A flow sensor and master valve will be connected to the controller to allow automatic shut off of any valve circuit or main line in the event of a pipe brake to prevent water waste.

PLANT PALETTE

SHRUBS

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
LARGE					
	LAVATERA ASSURGENTIFLORA	MALLOW	5 GAL	L	10'H X 10'W
	NANDINA DOMESTICA	HEAVENLY BAMBOO	5 GAL	L	6'H X 4'W
	PITTOSPORUM TOBIRA 'VARIAGATA'	VARIAGATED TOBIRA	5 GAL	L	5'H X 5'W
	PRUNUS CAROLINIANA 'BRIGHT 'N TIGHT'	CAROLINA LAUREL	5 GAL	L	8'H x 7'W
	RHAPIOLEPIS INDICA 'SPRINGTIME'	INDIAN HAWTHORN	5 GAL	L	5'H X 5'W
	XYLOSMA CONGESTUM	SHINY XYLOSMA	5 GAL	L	10'H X 10'W
MEDIUM					
	ASPIDISTRA ELATIOR	CAST IRON PLANT	1 GAL	L	3'H X 3'W
	CEANOTHUS SPECIES	LILAC	1 GAL	L	4'H X 8'W
	DIETES BICOLOR	FORTNIGHT LILY	1 GAL	L	3'H X 3'W
	ERYSIMUM 'BOWEL'S MAUVE'	BOWELS MAUVE WALLFLOWER	5 GAL	L	3'H X 4'W
	EURYOPS SPECIES	DAISY	5 GAL	L	4'H X 4'W
	FESTUCA MAIREI	ATLAS FESCUE	1 GAL	L	3'H X 3'W
	GARRYA SPECIES	SILK TASSEL	5 GAL	L	4'H X 4'W
	GREVILLEA 'NOELII'	GREVILLEA	5 GAL	L	4'H X 5'W
	LAVANDULA ANGUSTIFOLIA	ENGLISH LAVENDER	1 GAL	L	2'H X 3'W
	LOMANDRA LONGIFOLIA 'BREEZE'	DWARF MAT RUSH	1 GAL	L	3'H X 3'W
	LORAPETALUM 'SHANG-WHITE'	EMERALD SNOW FRINGE	5 GAL	L	4'H X 3'W
	NADINA SPECIES	BAMBOO	1 GAL	L	3'H X 3'W
	PHORMIUM HYBRIDS	FLAX	5 GAL	L	4'H X 3'W
	RHAPHIOLEPIS SPECIES	HAWTHORN	5 GAL	L	4'H X 4'W
	ROSMARINUS OFFICINALIS `TUSCAN BLUE`	ROSEMARY	5 GAL	L	6'H X 3'W
	SALVIA SPECIES	SAGE	5 GAL	L	3.5'H X 3'
	WESTRINGIA FRUTICOSA `MORNING LIGHT`	COASTAL ROSEMARY	5 GAL	L	3.5'H X 3.5'W
SMALL					
	CALLISTEMON 'LITTLE JOHN'	BOTTLE BRUSH	1 GAL	L	3'H X 3'W
	CEANOTHUS SPECIES	LILAC	1 GAL	L	2'H X 8'W
	FESTUCA OVINA GLAUCA	BLUE FESCUE	1 GAL	L	1'H X 1'W
	LANTANA 'DWARF YELLOW	DWARF LANTANA	1 GAL	L	2'H X 3'W
	PHORMIUM HYBRIDS 'TONEY TIGER'	FLAX	1 GAL	L	2'H X 2'W
	SANTOLINA VIRENS	GREEN LAVENDER COTTON	1 GAL	L	2.5'H X 2.5'W

VINES

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	GELSEMIUM SEMPERIENS	YELLOW JASMINE	1 GAL	L	15'H X 5'W
	MACFADYENA UNGUIS-CATI	CAT'S CLAW VINE	1 GAL	L	25'H X 25'W

GROUNDCOVER

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	ARCTOSTAPHYLOS SPECIES	CARPET MANZANITA	1 GAL	L	1'H X 5'W
	ECHEVERIA SPECIES	ECHEVERIA	4" POT	L	6"H X 6"W
	ERODIUM REICHARDII	ALPINE GERANIUM	4" POT	L	3"H X 12"W
	CEANOTHUS SPECIES	CALIFORNIA LILAC	1 GAL	VL	1'H X 10'W
	CORPOSMA KIRIKI 'VARIEGATA'	CREEPING CORPOSMA	1 GAL	L	1'H X 5'W
	MYOPORUM PARVIFOLIUM	MYOPORUM	1 GAL	L	1'H X 7'W
	SEDUM SPECIES	STONECROP	4" POT	L	1'H X 2'W

SHRUBS ALONG LITTLE DUTCH SLOUGH

SYMBOL	BOTANICAL NAME	COMMON NAME	CONT	WATER USE	MATURE HEIGHT & SPREAD
	ACHILLEA MILLEFOLIUM	YARROW	1 GAL	L	2.5'H 'X 2.5'W
	ARCTOSTAPHYLOS 'JOHN DOURLY'	JOHN DOURLY MANZANITA	1 GAL	L	2'H X 5'W
	ARCTOSTAPHYLOS 'HOWARD MCMINN'	HOWARD MCMINN MANZANITA	1 GAL	L	7'H X 9'W
	CEANOTHUS GRISEUS VAR. 'YANKEE POINT'	YANKEE POINT CEANOTHUS	1 GAL	L	2.5'H X 9'W
	GALVESIA SPECIOSA	ISLAND BUSH SNAPDRAGON	5 GAL	L	3'H X 9'W
	IRIS DOUGLASIANA	DOUGLAS IRIS	1 GAL	L	1.5'H X 2.5'W
	LIMONIUM CALIFORNICUM	WESTERN MARSH ROSEMARY	1 GAL	L	2'H X 2'W
	MAHONIA REPENS	CREEPING OREGON GRAPE	1 GAL	L	1.5'H X 2.5'W
	MIMULUS CARDINALIS	SCARLET MONKEY FLOWER	1 GAL	L	2'H X 3'W
	MUHLENBERGIA RIGENS	DEER GRASS	5 GAL	L	4.5'H X 5'W
	OENOTHERA CALIFORNICA	CALIFORNIA EVENING PRIMROSE	5 GAL	L	1.5'H X 8'W
	RHAMNUS CALIFORNICA	ITALIAN BUCKTHORN	5 GAL	L	7'H X 6'W
	ROSA CALIFORNICA	CALIFORNIA WILD ROSE	5 GAL	L	9'H X 9'W
	SALVIA CLEVELANDII	CLEVELAND SAGE	5 GAL	L	4'H X 7'W
	SISYRINCHIUM BELLUM	BLUE EYED GRASS	1 GAL	L	1.5'H X 2.5'W
	ZAUSCHNERIA CALIFORNICA	CALIFORNIA FUCHSIA	1 GAL	L	1'H X 2.5'W

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LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-8521 FAX (415) 864-4796

WESTGATE VENTURES
CITY OF OAKLEY
BURROUGHS
OAKLEY, CALIFORNIA

CONCEPTUAL PLANT LIST
SCALE:NTS
DATE: 4/7/21

L3.2

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WESTGATE VENTURES
CITY OF OAKLEY

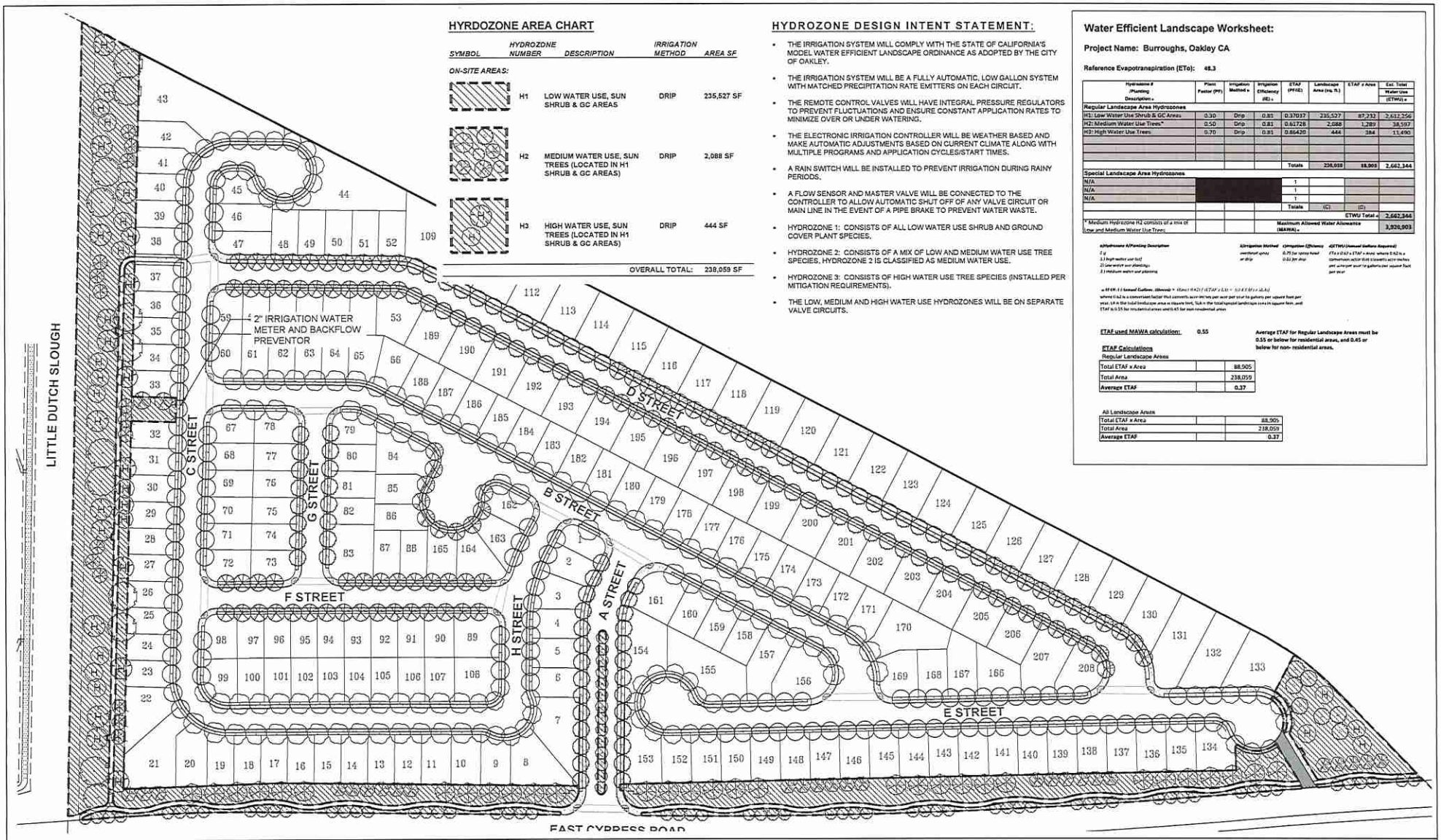
BURROUGHS
OAKLEY, CALIFORNIA

PRIVATE / PUBLIC LANDSCAPE MAINTENANCE MAP

SCALE:1" = 70'

DATE: 4/7/21

L3.3



HYRDOZONE AREA CHART

SYMBOL	HYDROZONE NUMBER	DESCRIPTION	IRRIGATION METHOD	AREA SF
ON-SITE AREAS:				
	H1	LOW WATER USE, SUN SHRUB & GC AREAS	DRIP	235,527 SF
	H2	MEDIUM WATER USE, SUN TREES (LOCATED IN H1 SHRUB & GC AREAS)	DRIP	2,088 SF
	H3	HIGH WATER USE, SUN TREES (LOCATED IN H1 SHRUB & GC AREAS)	DRIP	444 SF
		OVERALL TOTAL:		238,059 SF

HYDROZONE DESIGN INTENT STATEMENT:

- THE IRRIGATION SYSTEM WILL COMPLY WITH THE STATE OF CALIFORNIA'S MODEL WATER EFFICIENT LANDSCAPE ORDINANCE AS ADOPTED BY THE CITY OF OAKLEY.
- THE IRRIGATION SYSTEM WILL BE A FULLY AUTOMATIC, LOW GALLON SYSTEM WITH MATCHED PRECIPITATION RATE EMITTERS ON EACH CIRCUIT.
- THE REMOTE CONTROL VALVES WILL HAVE INTEGRAL PRESSURE REGULATORS TO PREVENT FLUCTUATIONS AND ENSURE CONSTANT APPLICATION RATES TO MINIMIZE OVER OR UNDER WATERING.
- THE ELECTRONIC IRRIGATION CONTROLLER WILL BE WEATHER BASED AND MAKE AUTOMATIC ADJUSTMENTS BASED ON CURRENT CLIMATE ALONG WITH MULTIPLE PROGRAMS AND APPLICATION CYCLES/START TIMES.
- A RAIN SWITCH WILL BE INSTALLED TO PREVENT IRRIGATION DURING RAINY PERIODS.
- A FLOW SENSOR AND MASTER VALVE WILL BE CONNECTED TO THE CONTROLLER TO ALLOW AUTOMATIC SHUT OFF OF ANY VALVE CIRCUIT OR MAIN LINE IN THE EVENT OF A PIPE BRAKE TO PREVENT WATER WASTE.
- HYDROZONE 1: CONSISTS OF ALL LOW WATER USE SHRUB AND GROUND COVER PLANT SPECIES.
- HYDROZONE 2: CONSISTS OF A MIX OF LOW AND MEDIUM WATER USE TREE SPECIES. HYDROZONE 2 IS CLASSIFIED AS MEDIUM WATER USE.
- HYDROZONE 3: CONSISTS OF HIGH WATER USE TREE SPECIES (INSTALLED PER MITIGATION REQUIREMENTS).
- THE LOW, MEDIUM AND HIGH WATER USE HYDROZONES WILL BE ON SEPARATE VALVE CIRCUITS.

Water Efficient Landscape Worksheet:

Project Name: Burroughs, Oakley CA

Reference Evapotranspiration (ETo): 48.3

Hydrozone # /Planting Description a	Plant Factor (PF)	Irrigation Method b	Irrigation Efficiency (IE) c	ETAF (PF/IE)	Landscape Area (sq. ft.)	ETAF x Area	Est. Total Water Use (ETWU) e
Regular Landscape Area Hydrozones							
H1: Low Water Use Shrub & GC Areas	0.30	Drip	0.81	0.37037	235,527	87,232	2,612,256
H2: Medium Water Use Trees.*	0.50	Drip	0.81	0.61728	2,088	1,289	38,597
H3: High Water Use Trees	0.70	Drip	0.81	0.86420	444	384	11,490
				Totals	238,059	88,905	2,662,344
Special Landscape Area Hydrozones							
N/A				1			
N/A				1			
N/A				1			
				Totals	(C)	(D)	
						ETWU Total =	2,662,344
* Medium Hydrozone H2 consists of a mix of Low and Medium Water Use Trees				Maximum Allowed Water Allowance (MAWA) =			3,920,903

a)Hydrozone #/Planting Description
1) g
1.) high water use turf
2) low water use planting
3.) medium water use planting

b)Irrigation Method
overhead spray or drip

c)Irrigation Efficiency
0.75 for spray head
0.81 for drip

d)ETWU (Annual Gallons Required)
ETo x 0.62 x ETAF x Area, where 0.62 is a conversion factor that converts acre-inches per acre per year to gallons per square foot per year.

e) MAWA = (Annual Gallons Allowed) = (Eto) (0.62) [(ETAF x LA) + (1-ETAF) x SLA)]
where 0.62 is a conversion factor that converts acre-inches per acre per year to gallons per square foot per year, LA is the total landscape area in square feet, SLA is the total special landscape area in square feet, and ETAF is 0.55 for residential areas and 0.45 for non-residential areas.

ETAF used MAWA calculation: 0.55

Average ETAF for Regular Landscape Areas must be 0.55 or below for residential areas, and 0.45 or below for non- residential areas.

ETAF Calculations

Regular Landscape Areas

Total ETAF x Area		88,905
Total Area		238,059
Average ETAF		0.37

All Landscape Areas

Total ETAF x Area		88,905
Total Area		238,059
Average ETAF		0.37

VAN DORN ABED
LANDSCAPE ARCHITECTS, INC.
81 14TH STREET, SAN FRANCISCO, CA
ZIP 94103 PH (415) 864-8121 FAX (415) 864-4796

WESTGATE VENTURES
CITY OF OAKLEY

BURROUGHS

OAKLEY, CALIFORNIA

HYDROZONE MAP

SCALE:1" = 70'

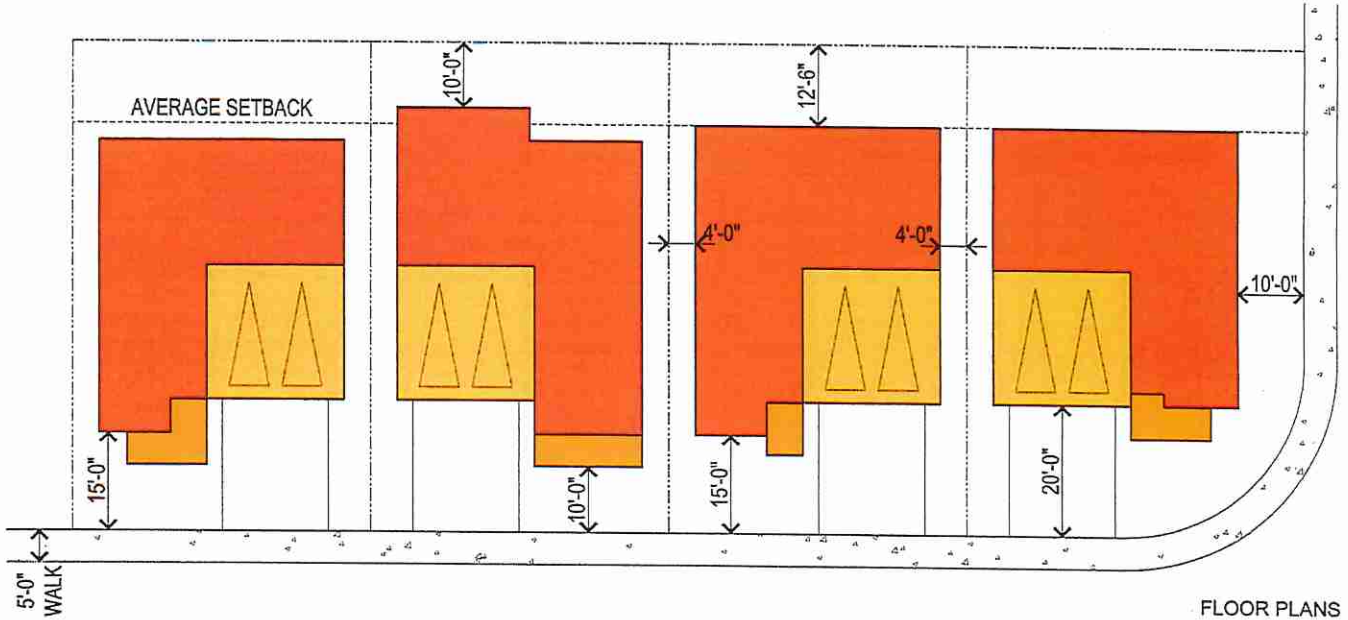
DATE: 2/5/21

0 35 70 140 210

L4.0

TYPICAL STREETCAPE

ZONING REQUIREMENTS	
LOT SIZE	45' x 75'
SETBACKS	
Front Yard	
Living	15'
Porch	10'
Garage	20' Front Load
Rear Yard	
Minimum	10'
Average	12'-6"
Side Yard (Interior Lot)	
Minimum	4'
Side Yard (Corner Lot)	
Min. Interior	4'
Min. Streetside	10'
BLDG. HEIGHT	
Stories	2
Max. Height	35'



FLOOR PLANS

Burroughs Property
Oakley, CA
October 20, 2020

45X75 LOTS

SDG Architects, Inc.
3361 Walnut Blvd. Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com

TYPICAL STREETCAPE

ZONING REQUIREMENTS	
LOT SIZE	50' x 80'
SETBACKS	
Front Yard	
Living	15'
Porch	15'
Garage	20' Front Load
	15' Side Load
Rear Yard	
Minimum	15'
Side Yard (Interior Lot)	
Minimum	5'
Side Yard (Corner Lot)	
Min. Interior	5'
Min. Streetside	10'
BLDG. HEIGHT	
Stories	2
Max. Height	35'

FLOOR PLANS

50X80 LOTS

Burroughs Property
Oakley, CA
October 20, 2020

SDG Architects, Inc.
3361 Walnut Blvd. Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com

TYPICAL STREETCAPE

ZONING REQUIREMENTS	
LOT SIZE	65' x 80'
SETBACKS	
Front Yard	
Living	15'
Porch	15'
Garage	20' Front Load
	15' Side Load
Rear Yard	
Minimum	15'
Side Yard (Interior Lot) - 1 Story	
Minimum	5'/5'
Side Yard (Interior Lot) - 2 Story	
Minimum	5'/10'
Side Yard (Corner Lot)	
Min. Interior	5'
Min. Streetside	10'
BLDG. HEIGHT	
Stories	2
Max. Height	35'

FLOOR PLANS

Burroughs Property
Oakley, CA
October 20, 2020

65X80 LOTS

SDG Architects, Inc.
3361 Walnut Blvd. Suite 120
Brentwood, CA 94513
925.634.7000 | sdgarchitectsinc.com

City of Oakley
Community Development Department

Burroughs Project

Initial Study/Mitigated Negative Declaration

April 2021

Prepared by

RANEY PLANNING & MANAGEMENT, INC. 20 years

1501 Sports Drive, Suite A, • Sacramento • CA • 95834
Office 916.372.6100 • Fax 916.419.6108

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Appendices

Appendix A: CalEEMod Modeling Results;
Appendix B: Jurisdictional Delineation Report;
Appendix C: Application and Planning Survey Report;
Appendix D: Preliminary Geotechnical Exploration;
Appendix E: Phase I ESA for the Oakley Property;
Appendix F: Phase I ESA for the Burroughs;
Appendix G: Phase II ESA for the Oakley Property;
Appendix H: Phase II ESA for the Burroughs Property;
Appendix I: Noise and Vibration Assessment; and
Appendix J: Traffic Impact Study.

INITIAL STUDY

A. BACKGROUND

1. Project Title: Burroughs Project

2. Lead Agency Name and Address: City of Oakley
Community Development Department
3231 Main Street
Oakley, CA 94561

3. Contact Person and Phone Number: Joshua McMurray
Planning Manager
(925) 625-7000

4. Project Location: Northeast of the intersection of E. Cypress Road and Knightsen Avenue
Oakley, CA 94561
Assessor's Parcel Numbers (APNs): 032-081-025 (City of Oakley) and
032-081-026 (Burroughs)

5. Project Sponsor: Westgate Ventures
Real Estate Services
2551 San Ramon Valley Blvd, Suite 224
San Ramon, CA 94583

The City of Oakley
Community Development Department
3231 Main Street
Oakley, CA 94561

6. Existing General Plan: Single-Family High (SH)

7. Existing Zoning: Heavy Agriculture (A-3)

8. Proposed Zoning: Planned Development (P-1)

9. Required Approvals from Other Public Agencies: California Department of Fish and Wildlife
Bay Area Air Quality Management District
Contra Costa County Conservancy
San Francisco Regional Water Quality Control Board
U.S Army Corp of Engineers

10. Project Description Summary:

The Burroughs Project (proposed project) is located on approximately 43.24 acres of land on the eastern side of the City of Oakley. Development would consist of 208 single-family residential units, seven new public roads (A – G Street), widening of East Cypress Road (E. Cypress Road), establishment of a 75-foot stream setback, and a public trail characterized by trees, shrubs, groundcover, and bike racks. Primary access to the project site would be at the intersection of E. Cypress Road and A Street. The single-family residential lots would range in size from 3,150 square feet (sf) to 18,130 sf. The project site is currently designated Single-Family High (SH) under the General Plan Land Use Map in the City of Oakley. The proposed project would require approval of a Rezone of the project site from Heavy Agriculture (A-3) to Planned Development (P-1) and a Vesting Tentative Map (VTM).

12. Surrounding Land Uses and Setting:

The 43.24-acre site is triangular-shaped and consists of annual grasslands that are currently being used to support grazing cattle. Surrounding existing land uses include agricultural land to the north, southeast, and directly east, Gilbert residential development to the west, recently undergrounded Contra Costa Canal to the north, and rural commercial, single-family residences, and the City limits to the south.

13. Status of Native American Consultation Pursuant to Public Resources Code Section 21080.3.1:

In compliance with Assembly Bill (AB) 52 (Public Resources Code Section 21080.3.1), project notification letters were distributed to Amah Mutsun Tribal Band of Mission San Juan Bautista, Chicken Ranch Rancheria of Me-Wuk Indians, Guidiville Indian Rancheria, Indian Canyon Mutsun Band of Costanoan, Tule River Indian Tribe, Wilton Rancheria, Muwekma Ohlone Indian Tribe of the SF Bay Area, Nashville Enterprise Miwok-Maidu-Nishinam Tribe, North Valley Yokuts Tribe, the Ohlone Indian Tribe, and the Confederated Villages of Lisjan. Letters requesting consultation were not received by the City within the AB 52 30-day response period.

B. SOURCES

All technical reports and modeling results prepared for the project analysis are available at: https://www.ci.oakley.ca.us/ceqa-documents/. The following documents are referenced information sources utilized by this analysis:

1. Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines*. May 2017.
2. Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines* [pg. 7-1]. May 2017.
3. Bay Area Air Quality Management District. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. May 2017.
4. California Air Pollution Control Officers Association. *CalEEMod User's Guide Version 2016.3.2 Appendix A: Calculation Details for CalEEMod* [pg. 14]. October 2017
5. California Air Resources Board. *The 2017 Climate Change Scoping Plan Update.* January 20, 2017.
6. California Building Standards Commission. *California Green Building Standards Code*. 2019.
7. California Department of Conservation. *California Important Farmland Finder.* Available at: https://maps.conservation.ca.gov/DLRP/CIFF/. Accessed February 2021.
8. California Department of Forestry and Fire Protection. *Contra Costa County, Very High Fire Hazard Severity Zones in LRA*. June 12, 2018.
9. California Department of Resources Recycling and Recovery (CalRecycle). *SWIS Facility/Site Summary Details: Potrero Hill Landfill (48-AA-0075)*. Available at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1194?siteID=3591. Accessed March 2021.
10. California Department of Resources Recycling and Recovery (CalRecycle). *SWIS Facility/Site Summary Details: Potrero Hill Landfill (48-AA-0075)*. Available at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1194?siteID=3591. Accessed March 2021.
11. California Department of Transportation. *California State Scenic Highway System Map.* Available at: https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=2e921695c43643b1aaf7000dfcc19983. Accessed February 2021.
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16. Diablo Water District. *2015 Urban Water Management Plan.* June 2016.
17. ENGEO Incorporated. *Burroughs Property Preliminary Geotechnical Exploration.* January 7, 2020.

18. ENGEO Incorporation. *Phase I Environmental Site Assessment for the Burroughs Property*. December 23, 2019.
19. ENGEO Incorporated. *Phase I Environmental Site Assessment for City of Oakley Property.* December 24, 2019.
20. ENGEO Incorporated. *Phase II Environmental Site Assessment for the Burroughs Property*. December 7, 2020.
21. ENGEO Incorporated. *Phase II Environmental Site Assessment for the City of Oakley Property.* December 7, 2020
22. FEMA. FEMA Flood Map Service. Available at: https://msc.fema.gov/portal/search?AddressQuery=East%20Cypress%20Road%2C%20Oakley%2C%20Cal ifornia#searchresultsanchor. Accessed February 2021.
23. Flores, Areana, Bay Area Air Quality Management District. Personal communication [phone], Jacob Byrne, Senior Associate/Air Quality Technician, Raney Planning & Management. September 17, 2019.
24. Illingworth and Rodkin, Inc. Burroughs Property Noise and Vibration Assessment. January 20, 2021.
25. Northwest Information Center. Re: Record search results for the proposed Burroughs project. February 25, 2021.
26. South Coast Air Quality Management District. 2008. *Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold*. Available at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf. Accessed October 2020.
27. TJKM. *Burroughs Residential Development Draft Traffic Impact Analysis*. March 31, 2021.
28. Zentner Planning and Ecology. *Application and Planning Survey Report for the Burroughs and City of Oakley Residential Development.* 2020.
29. Zentner Planning and Ecology. *Burroughs Property Residential Development Project Section 404 Jurisdictional Delineation Report.* May, 2020.

C. ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is "Potentially Significant" as indicated by the checklist on the following pages.

✖ **Aesthetics**	☐ **Agriculture and Forest Resources**	✖ **Air Quality**
✖ **Biological Resources**	✖ **Cultural Resources**	☐ **Energy**
✖ **Geology and Soils**	✖ **Greenhouse Gas Emissions**	✖ **Hazards and Hazardous Materials**
✖ **Hydrology and Water Quality**	☐ **Land Use and Planning**	☐ **Mineral Resources**
☐ **Noise**	☐ **Population and Housing**	☐ **Public Services**
☐ **Recreation**	☐ **Transportation**	✖ **Tribal Cultural Resources**
☐ **Wildfire**	☐ **Utilities and Service Systems**	☐ **Mandatory Findings of Significance**

D. DETERMINATION

On the basis of this Initial Study:

☐ I find that the Proposed Project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

✖ I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the applicant. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature	Date
Joshua McMurray	City of Oakley
Printed Name	For

E. BACKGROUND AND INTRODUCTION

This Initial Study (IS) provides an environmental analysis pursuant to the California Environmental Quality Act (CEQA) for the proposed project. The applicant has submitted this application to the City of Oakley, which is the Lead Agency for the purposes of CEQA review. The IS contains an analysis of the environmental effects of construction and operation of the proposed project.

In December 2002, the City of Oakley adopted the Oakley General Plan and the Oakley General Plan Environmental Impact Report (EIR). The General Plan EIR was a program-level EIR, prepared pursuant to Section 15168 of the CEQA Guidelines (Title 14, California Code of Regulations, Sections 15000 et seq.). The General Plan EIR analyzed full implementation of the Oakley General Plan and identified measures to mitigate the significant adverse project and cumulative impacts associated with the General Plan. Pursuant to CEQA Guidelines Section 15150(a), the City of Oakley General Plan and General Plan EIR are incorporated by reference. Due to the current public health emergency, the Community Development Department is closed to the public until further notice. Both documents are available online at:

https://www.ci.oakley.ca.us/departments/planning-zoning/reference-documents/

The impact discussions for each section of this IS have been largely based on information in the Oakley General Plan and the Oakley General Plan EIR.

The mitigation measures prescribed for environmental effects described in this IS would be implemented in conjunction with the project, as required by CEQA, and the mitigation measures would be incorporated into the project. In addition, findings and a project Mitigation Monitoring and Reporting Program (MMRP) would be adopted in conjunction with approval of the project.

The Burroughs family and the City of Oakley own the two parcels comprising the project site. The project site was previously utilized as irrigated pasture land with two residences, one modular, and associated buildings in the south-central part of the property. The former residences were constructed on top of a former sand dune. However, the sand was mined and removed from the property prior to construction of the residences because sand in the region was highly valued for agricultural purposes. The two residences and buildings have been since removed and only two small concrete foundations remain as well as several ornamental trees.

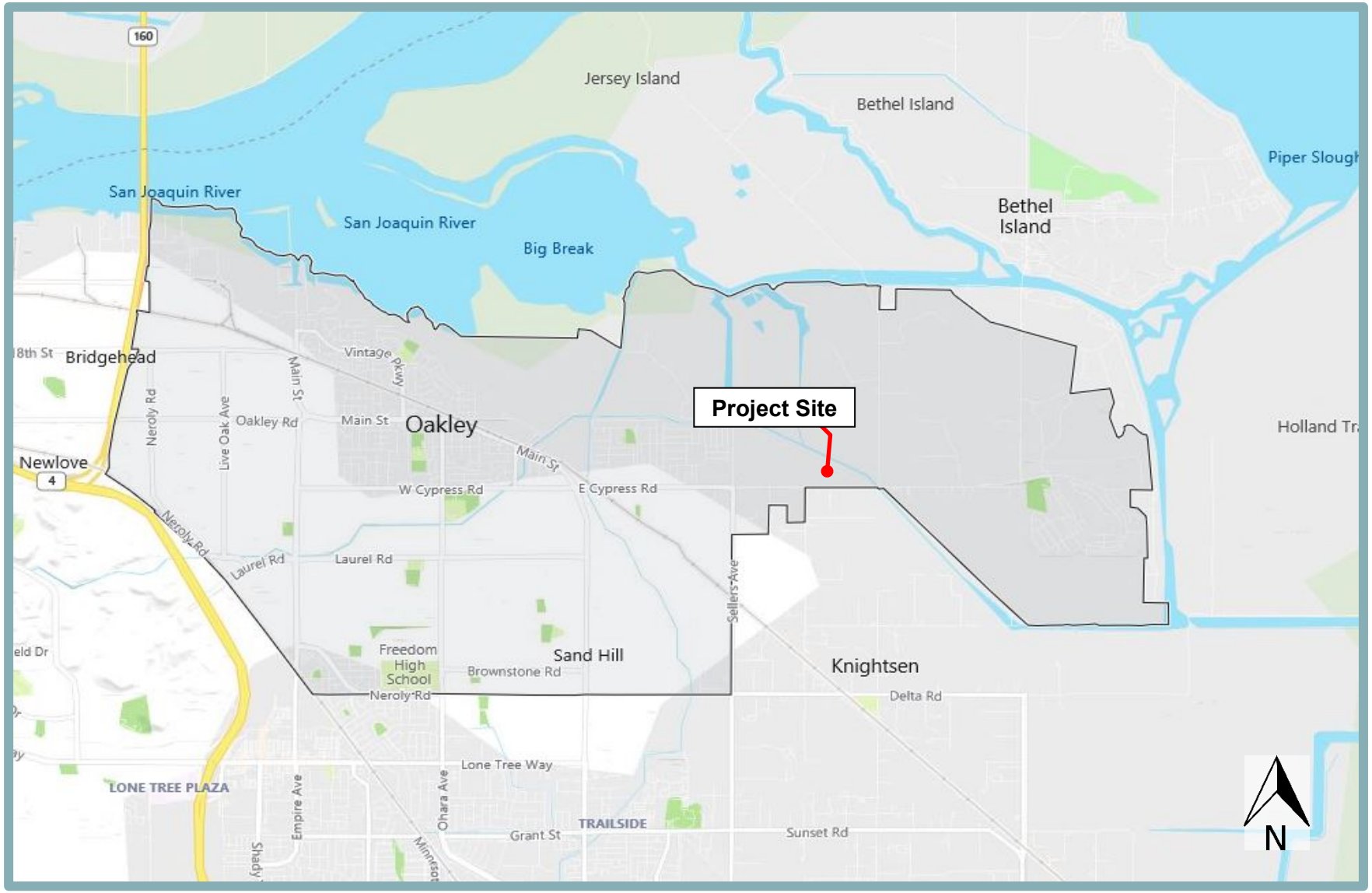
`F. PROJECT DESCRIPTION

The following section includes a description of the proposed project site location and setting, as well as the project components and the discretionary actions required for the proposed project.

Project Location and Setting

The project site parcels total approximately 43.24 acres, located northeast of the intersection of E. Cypress Road and Knightsen Avenue in the City of Oakley, California (see Figure 1). The site is located approximately 1.5 miles east on Cypress Road from Sate Route (SR) 4 in the northeastern region of Contra Costa County. The project site is identified by Assessor's Parcel Numbers (APN) 032-081-025 and 032-081-026. APN 032-081-025 is owned by the City of Oakley while APN 032-081-026 is privately owned by the Burroughs family. Per the City's General Plan, the project site is designated SH and the site is zoned A-3.

Figure 1
Regional Project Location



Currently, the project site is undeveloped and consists of vacant land with annual grasslands and ruderal vegetation. The project site is currently being used to support a small number of grazing cattle. The entire project site has been subject to high levels of disturbance from grazing and agricultural uses over the past couple of years. The project site was previously used as an irrigated pasture with multiple structures in the south-central part of the property. The structures have been removed, but two concrete slabs, one with a water trough on top, remain within the project site. Former drainage ditches surround the project site on the northern, western, and parts of the southern property edge. The former drainage ditches were constructed as part of the prior irrigation infrastructure that was abandoned prior to 2005. In addition, sand in the project site was mined and removed because sand in the region was highly valued for agricultural purposes. The overall topography of the project site is level and heavily vegetated with irrigation ditches and remnants of a sand dune in the south-central part of the site. Surrounding existing land uses include agricultural land to the north, southeast, and directly east, Gilbert residential development to the west, recently undergrounded Contra Costa Canal to the north, and rural commercial, single-family residences, and the City limits to the south (see Figure 2).

Project Components

The proposed project would include a residential community of 208 single-family residential units, a public trail, established 75-foot stream setback, widening of E. Cypress Road, and seven new public roads (A-G Street). The proposed public roads would serve as internal circulation through the residential community. In addition, the proposed project requires a rezone from A-3 to P-1. The following sections describe soil import/grading, the VTM, Central Valley Project Inclusion, utilities, and discretionary actions associated with the proposed project.

Soil Import and Grading

The proposed project is anticipated to begin construction in July 2022 and continue in one single phase through April 2025. The entire project site is currently located within a 100-year flood plain zone. Therefore, import of 170,000 cubic yards of fill would be required to raise the overall elevation of the project site approximately five feet above the current elevation for flood protection. In addition, all trees would be removed on the project site. Tree removal would comply with the Oakley zoning code. Proposed slopes within the project site would consist of a 3:1 slope from the proposed lot towards the pedestrian trail and eventually E. Cypress Road. The 3:1 slope would exist along both sides of the pedestrian trail, bordering both the lot line and Little Dutch Slough as well as E. Cypress Road. All street grades within the project would have a 0.75 percent minimum grade.

Vesting Tentative Map

The VTM includes 208 single-family lots ranging in size from 3,150 sf to 18,130 sf. The VTM includes parcels A, B, C, and D as well as the widening of E. Cypress Road. Parcel A includes the proposed 75-foot stream setback and the proposed public trail. Parcel B includes the proposed public trail in the southeastern portion of the project site as well an Emergency Vehicle Access (EVA) by way of E Street and E. Cypress Road. Parcel C is located on the western boundary of the project site, and includes an easement for the water, sanitary sewer, and a storm drain pipes that would connect to the Gilbert property to the west. Parcel D provides the proposed subdivision access to the trail. In addition, the frontage improvements associated with the widening of E. Cypress Road is located along the southern border of the site (see Figure 3).

Figure 2
Project Site Boundaries

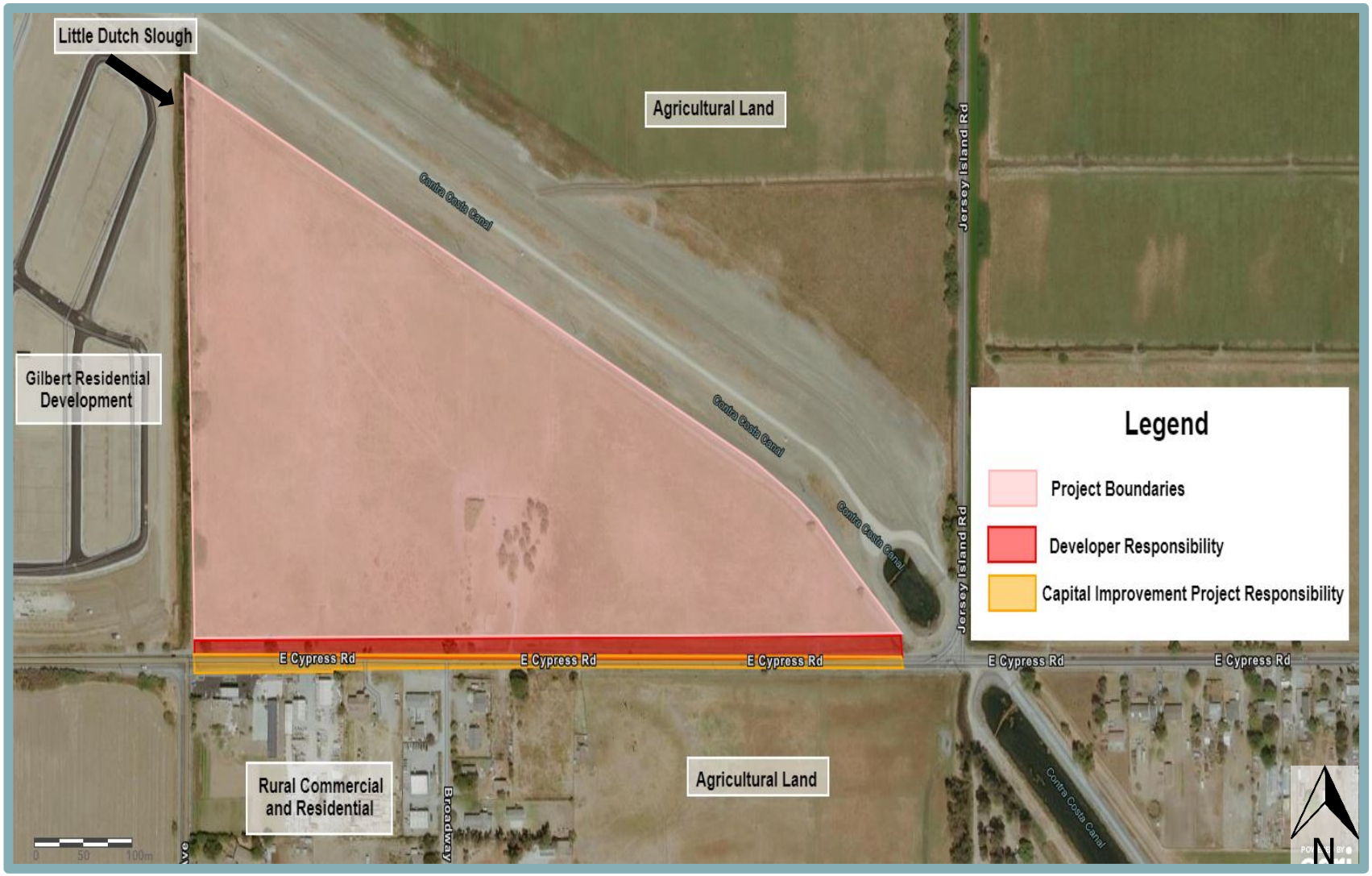
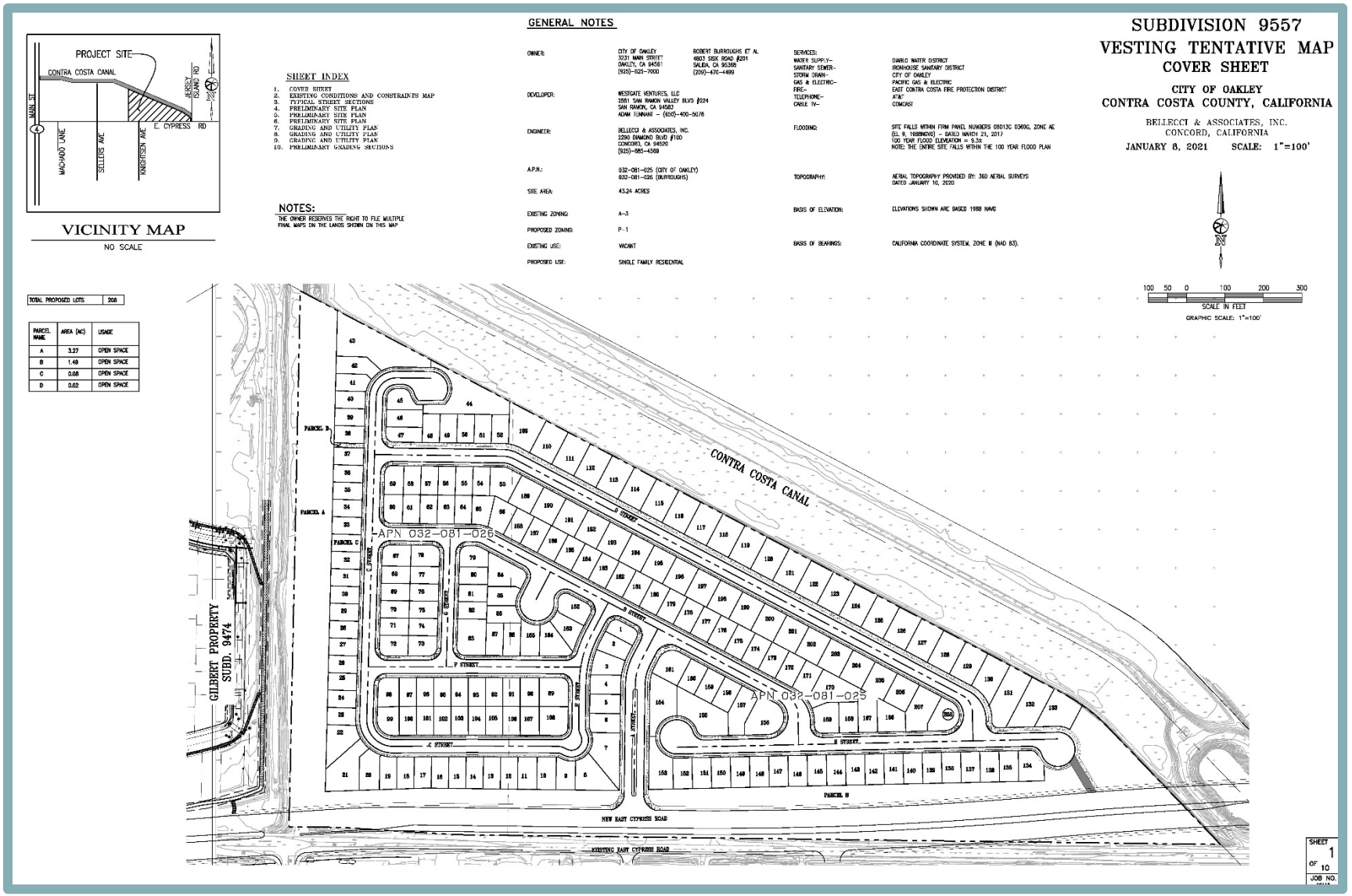


Figure 3
Vesting Tentative Map



A portion of the Burroughs property hereby referred to as "the Oakley portion of the Burroughs property", that is owned by the City of Oakley consists of 27 acres and is identified as APN 032-081-025. The balance of the Burroughs property, approximately 18 acres, APN 032-081-026 is under an option agreement between the Burroughs and Westgate Ventures (WGV).

In 2005 the City of Oakley and other property owners entered into a Memorandum of Agreement (MOA) with the Contra Costa Water District (CCWD) to contribute towards converting the adjacent unlined Canal into a pipeline. In 2021 the City/WGV and CCWD are in the process of amending the 2005 MOA to clarify how Canal fees will be paid as new homes are constructed. Once the City of Oakley approves the IS/MND and the tentative map then the City is bound to approve the Abstract of MOA that will bind its portion of the Burroughs development to the Canal fees. WGV will be required to sign and record the Abstract of MOA on its portion of the Burroughs development once it purchases the property.

Roadway Improvements and Project Access

Roadway infrastructure would be constructed to meet the standards of a single-family residential development and provide access to the project site. The proposed project would include seven new internal roads within the project site as well as widening the existing E. Cypress Road per City of Oakley approved "East Cypress Road Precise Plan." The new public roads would allow for internal circulation within the residential community and connect to E. Cypress Road by way of A Street as well as E Street. The intersection of E. Cypress Road and A Street would provide the main entrance to the proposed project. E Street would provide an EVA connecting to E. Cypress Road. Each of the residential homes would have parking on the new public roads as well as parking within their own driveway and garage.

Frontage improvements of E. Cypress Road would include a median, three new lanes, a bike path, a pedestrian trail, and landscaping improvements (see Figure 4). The widening of E. Cypress Road would include one 14-foot-wide lane and two 12-foot-wide lanes. The proposed eight-foot bicycle lane would be adjacent and parallel to E. Cypress Road. Additionally, the proposed eight-foot pedestrian trail would run parallel to the proposed bicycle lane. Landscaping improvements would include nine-feet of landscaping between the southern boundary of the project site and the pedestrian trail as well as five feet of landscaping between the pedestrian trail and bike lane. The frontage improvements would be designed and constructed as part of the City of Oakley Capital Improvement Program (CIP) project. As the City owns approximately 27-acres of the approximately 43.24-acres of the project site, the CIP project would include construction of the improvements with a requirement for reimbursement for the areas now owned by the City. The CIP project would include improvements within the City of Oakley Right-of Way and would not infringe on CCWD or Bureau of Reclamation (Bureau) land.

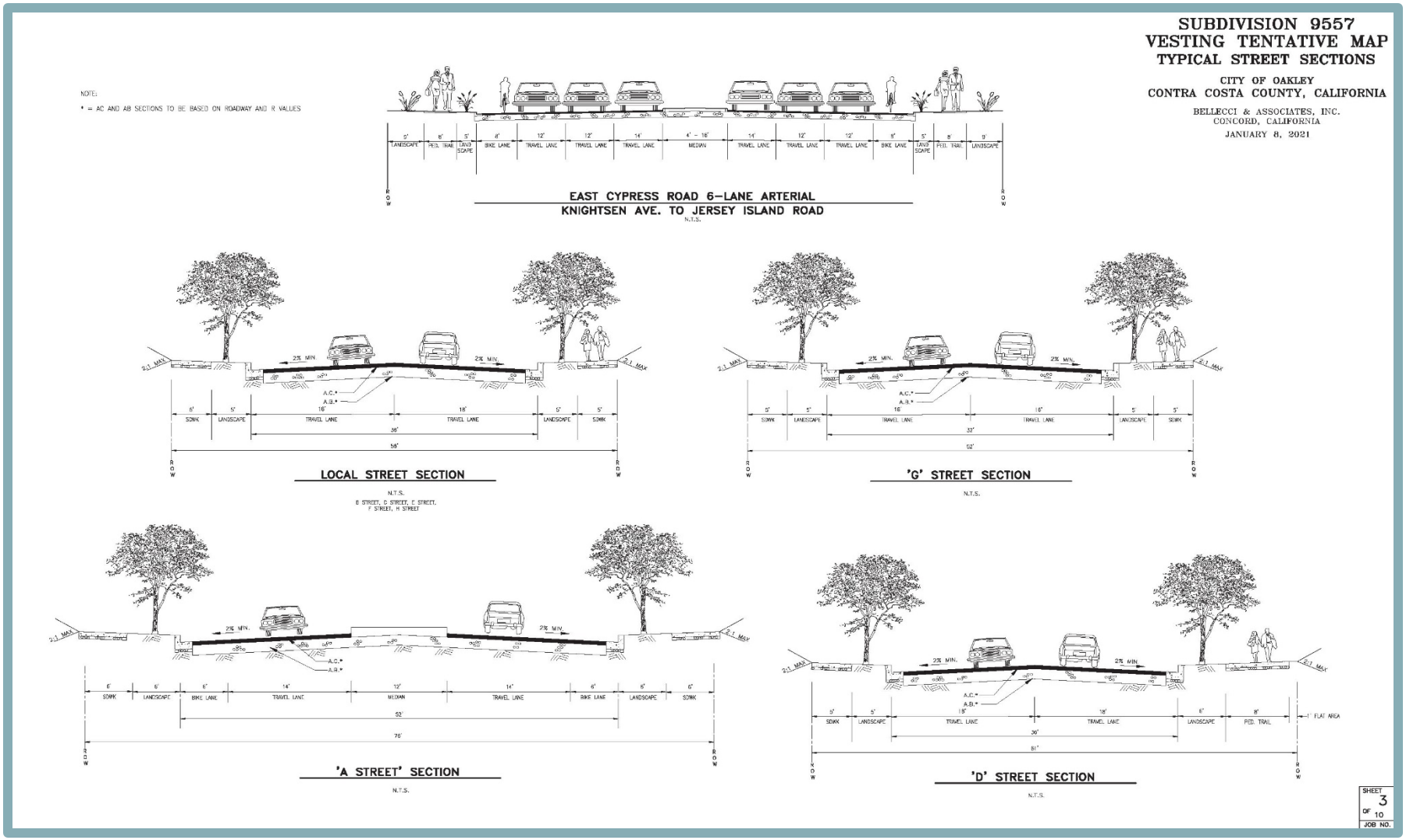
Stream Setback

The proposed project would establish a 75-foot stream setback from Little Dutch Slough from the top of bank to the west of the project site. The stream setback would be permanently protected by a deed restriction.

Public Trail

A public trail would provide recreational use for the future residences. The public trail would outline the permitter of the residential units along the southern and western portion of the project site. The public trail adjacent to the western portion of the project site would be established within the 75-foot stream setback. Along the western portion of the project site, the public trail would run parallel to Little Dutch Slough.

Figure 4
Typical Street Sections



Along the southern portion of the project site, the public trail would be adjacent to E. Cypress Road. The public trail would have various trees, shrubs, vines, groundcover, benches, and bike racks along the path (see Figure 5).

Central Valley Project Inclusion

Water is provided to the project site by the DWD, and untreated water is provided to Diablo Water District (DWD) by the CCWD. Per CCWD's 2015 Urban Water Management Plan (UWMP), DWD's primary water supply for its distribution system is treated surface water from the United States Bureau of Reclamation's Central Valley Project (CVP) purchased from the CCWD.

The proposed project site would need to obtain water inclusion into the CVP through CCWD and the Bureau. The application would be submitted through CCWD and would be processed by the Bureau. The proposed six-lane Cypress Road in this location would continue through the Burroughs Project and would be considered as part of the Bureau's CVP Inclusion Review. In addition, ground disturbance on the Burroughs property would not take place until such time as the CVP Inclusion review is completed.

As noted above, the proposed project and the project specific roadway improvements to E. Cypress Road would not infringe upon any CCWD or Bureau land. An exhibit has been prepared to show the improvements that need to be constructed and how the improvements are solely within the City of Oakley right-of-way (see Figure 6). Roadway improvements are necessary for the Cypress Preserve project to the east of the Burroughs project site.

The roadway improvements do take place on CCWD/Bureau land and that project has already received inclusion into the CVP and all associated environmental permits that allow for that road construction have been obtained.

Utilities

The following is a discussion of the planned utility services of the proposed project. The discussion is primarily based on the Iron House Sanitary Sewer Master Plan, the Diablo Water District 2020 Facilities Master Plan, and the Grading and Utility Plan for the proposed project (see Figure 7 and Figure 8). As noted in the Grading and Utility Plan, water, sewer and storm drain pipes would be extended below Little Dutch Slough to connect to the existing utility lines at the Gilbert property.

Water

CCWD, a public water agency, delivers water to 450,000 people in central and eastern Contra Costa County through the Contra Costa Canal, including the project site. The project site is within the treated water service area of the DWD, which receives untreated water from CCWD. DWD provides potable water service and would be able to supply adequate water to the proposed project (CCWD, 2015). Within the proposed residential community, the proposed project would install water lines throughout each new public road (A - G street) to serve the future residents

Sewer

The Iron House Sanitary District (ISD) would provide wastewater services to the future residents of the proposed project. Sewer infrastructure exists along E. Cypress Road as well as the single-family residential development to the west of the proposed project. The proposed project would place sanitary sewer pipes and sanitary sewer manholes throughout the single-family residential community to serve the future residents.

Figure 5
Landscape Plan

Figure 6
Developer and Capital Improvement Project Cost Sharing Exhibit

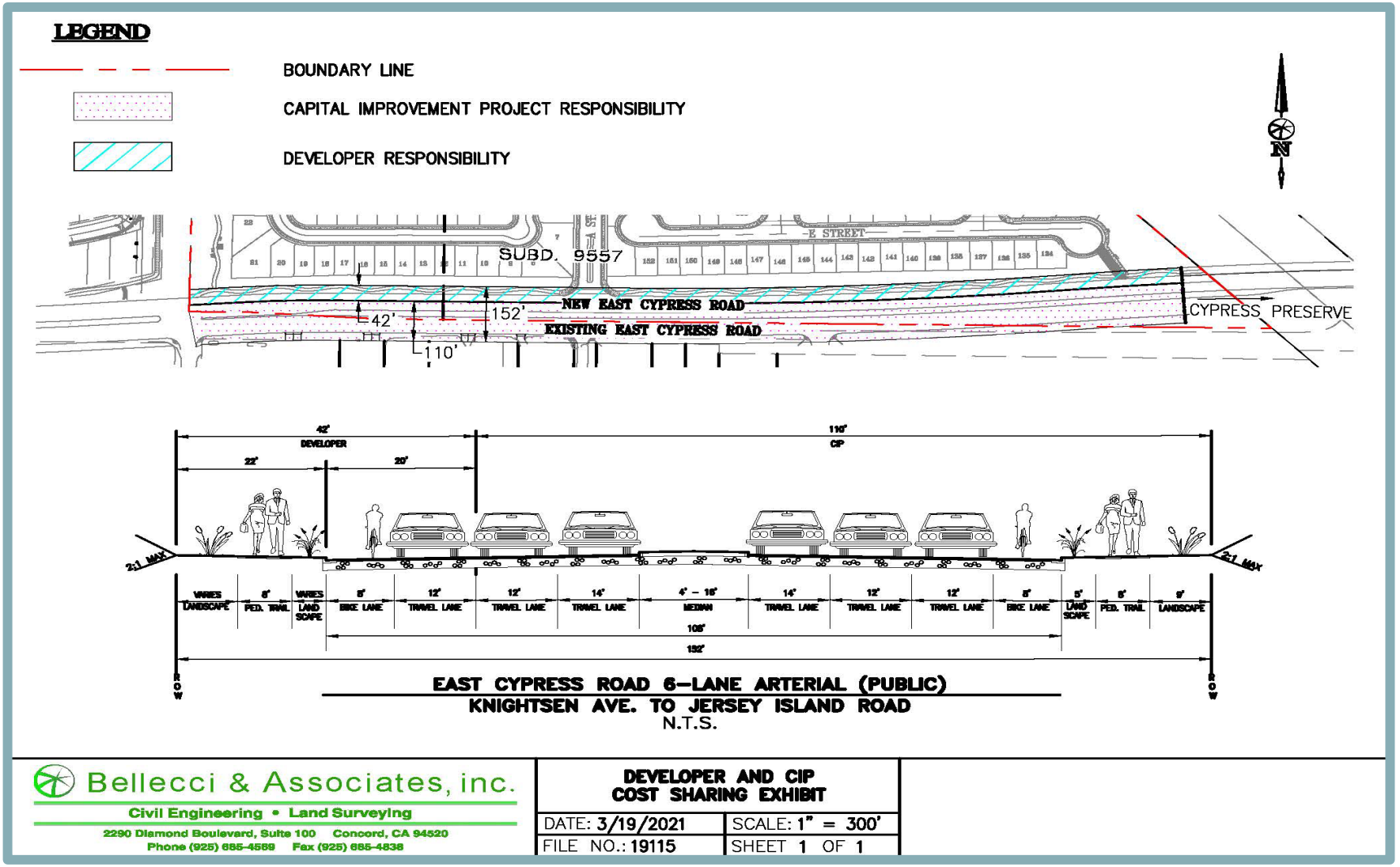


Figure 7
Grading and Utility Plan

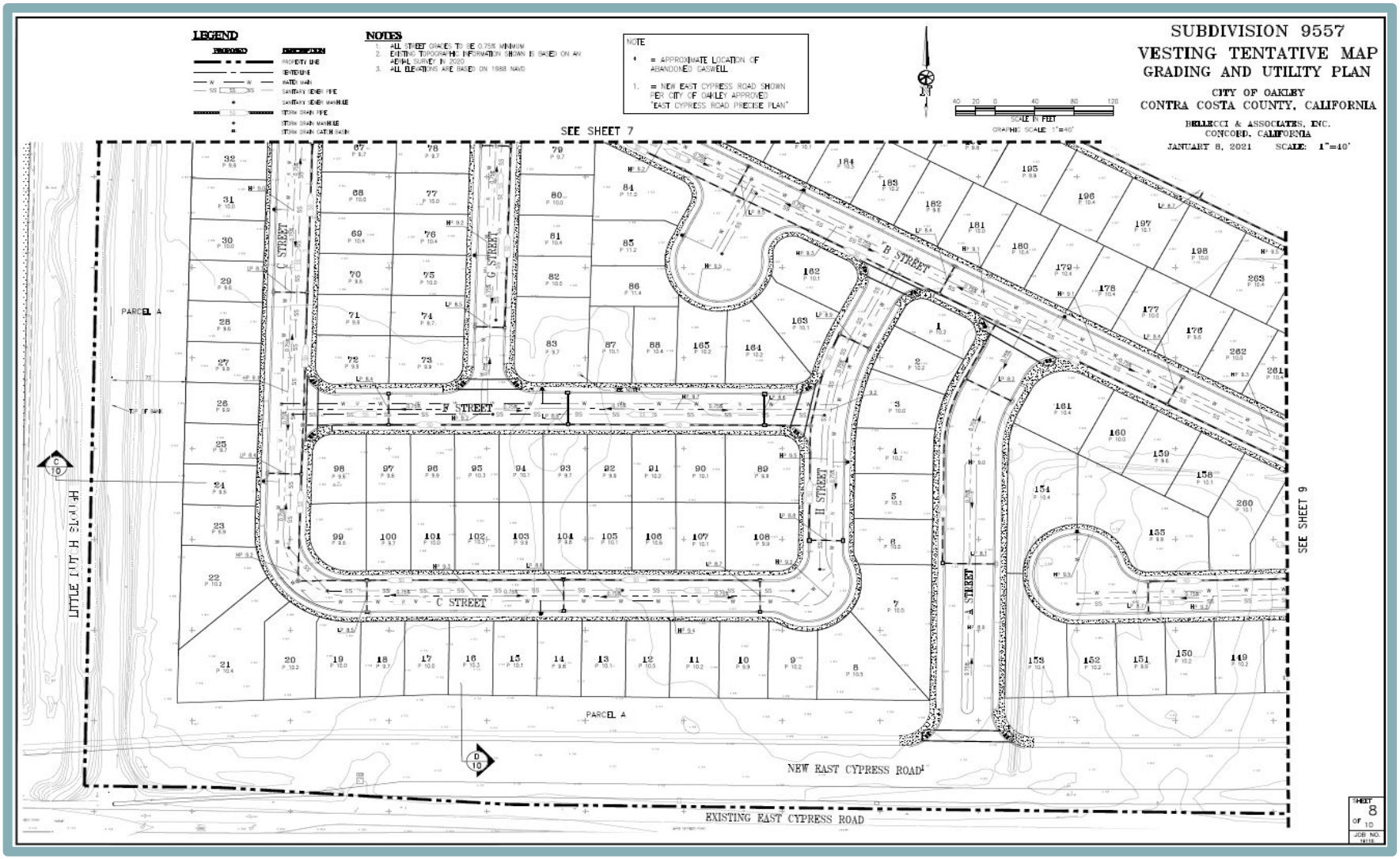
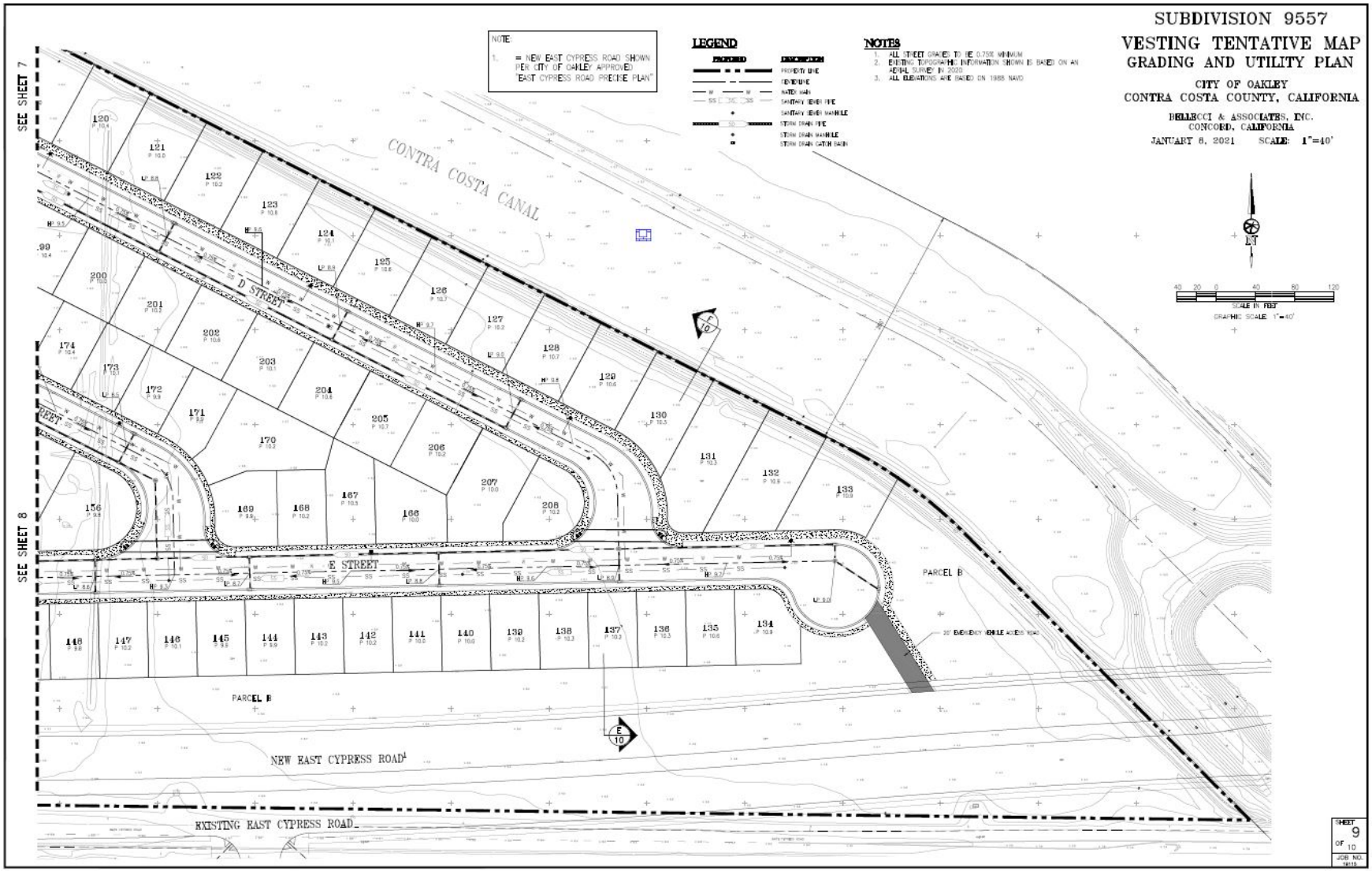


Figure 8
Grading and Utility Plan



Storm Drainage

Collected storm water would be directed to the adjacent Gilbert property where it would then be directed into the existing Gilbert stormwater treatment facilities. Stormwater facilities include large diameter pipelines, a detention lake that provides capacity of storms up to the 100-year storm event and provides stormwater quality treatment, a storm drain pump station, and a discharge force main pipeline that discharges the excess storm flows to Emerson Slough. The stormwater facilities have been constructed on the Gilbert property, west of the proposed project, and were appropriately sized to treat storm water runoff for the proposed project site.

Discretionary Actions

Implementation of the proposed project would require the following discretionary actions by the City of Oakley:

- Adoption of the Initial Study/Mitigated Negative Declaration;
- Adoption of the Mitigation Monitoring and Reporting Program;
- Rezoning from Heavy Agriculture A-3 to Planned Development (P-1);
- Approval of a VTM;
- Enter into an amended MOA with CCWD regarding Contra Costa Canal Replacement Project fees; and
- At time of VTM approval, sign and record the Abstract of MOA related to APN 032-081-025.

G. ENVIRONMENTAL CHECKLIST

The following checklist contains the environmental checklist form presented in Appendix G of the CEQA Guidelines. The checklist form is used to describe the impacts of the proposed project. A discussion follows each environmental issue area identified in the checklist. Included in each discussion are project-specific mitigation measures required, where necessary, as part of the proposed project.

For this checklist, the following designations are used:

Potentially Significant Impact: An impact that could be significant, and for which mitigation has not been identified. If any potentially significant impacts are identified, an EIR must be prepared.

Less Than Significant With Mitigation Incorporated: An impact that requires mitigation to reduce the impact to a less-than-significant level.

Less-Than-Significant Impact: Any impact that would not be considered significant under CEQA relative to existing standards.

No Impact: The project would not have any impact.

I. AESTHETICS. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?	☐	☐	✖	☐
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State scenic highway?	☐	☐	✖	☐
c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	✖	☐
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	✖	☐	☐

Discussion

a. Examples of typical scenic vistas include mountain ranges, ridgelines, or bodies of water as viewed from a highway, public space, or other area designated for the express purpose of viewing and sightseeing. In general, a project's impact to a scenic vista would occur if development of the project would substantially change or remove a scenic vista. A scenic vista includes any such areas designated by a federal, state, or local agency. Scenic resources in Oakley, as defined in the City's General Plan, include predominant natural landscape features such as the Delta Waterway, Marsh Creek, and views of Mount Diablo to the west. The City of Oakley does not specifically identify scenic vistas within the City's planning area, but the conclusion could be drawn that any development which would impact views of any of the aforementioned landscape features from public viewpoints would result in an impact to scenic vistas. The nearest location where public views of the Delta are afforded is SR 160, which is a raised highway. The proposed project is approximately five miles east of SR 160 and approximately four miles north east of SR 4. In addition, the zoning requirements for the proposed residences allow a maximum height of 35 feet. Considering the limited height of the proposed homes and the existing height and distance SR 160, the proposed project would not be built too high to obstruct potential views of the Delta from the public roadway. Furthermore, the project site is not located in close proximity to other existing scenic resources. Because the proposed project is not in an area designated as a scenic vista by the City of Oakley and would not adversely affect a scenic vista, the project would result in a ***less-than-significant*** impact.

b. According to the California Scenic Highway Mapping System, administered by Caltrans, the eastern portion of SR 4 and the southern portion of SR 160 are eligible for State Scenic Highway designation.[1] As noted above, the proposed project is approximately five miles east of SR 160 and approximately four miles north east of SR 4 within the section of the roadway eligible for state designation. Therefore, the proposed project is removed from SR 160 and

[1] California Department of Transportation. *California State Scenic Highway System Map.* Available at: https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=2e921695c43643b1aaf7000dfcc19983. Accessed February 2021.

SR 4 that visibility from the highway is not possible. Because the proposed project is not visible from both SRs, the proposed project would not damage scenic resources, including trees, rock, outcroppings, canal, and historic buildings, within a State Scenic Highway and would result in a ***less-than-significant*** impact.

c. Currently, the character of Oakley is that of a primarily low-density residential community, with a downtown area. The proposed project includes a planned single-family residential community. The development of the proposed project would contribute to the low-density residential character through development of single-family homes; thus, contributing to the small-town rural community of Oakley. Furthermore, the proposed project is consistent with the City's single-family residential development directly west of the proposed project. While development of the project site would alter the existing setting, vacant land, to a residential community, the residential community would maintain open space elements within the proposed Little Dutch Slough setback. The proposed setback area would include native trees, plants, groundcover, and shrubs . As such, the setback area would preserve certain open space elements, such as the aforementioned native vegetation. As a result, the proposed project would be consistent with the single-family residential character of the City and would preserve open space elements consistent with the existing aesthetics of the region. As viewed from E. Cypress Road and the unincorporated area of the County to the south, the proposed project would be consistent with the existing development to the west.

   Because the proposed project would include single-family residential homes consistent with the General Plan and surrounding development, the proposed project would not substantially degrade the existing visual character or quality of public views of the site. Therefore, the proposed project would result in a ***less-than-significant*** impact.

d. Currently, the project site is undeveloped and consists of vacant land with annual grasslands and ruderal vegetation. The project site does not contain any structures and, thus, does not currently emit any sources of light and glare. Development of the proposed residences would add new sources of light and glare to the site, where none exists. The project site is located near existing development including similar land uses. Light and glare associated with the proposed project would be expected to be similar to that of the surrounding area and shall be directed away from adjacent properties per the stipulations of Section 9.1.1604, Design Review, of the Oakley Municipal Code.

   The proposed project would be subject to the rules and regulations within the Oakley Municipal Code. However, the project site currently does not have any sources of light and glare. Because the proposed project would create sources of light and glare where none currently exist, which could affect nearby land uses, impacts from light and glare associated with the proposed project could be considered ***potentially significant***.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

I-1. Prior to issuance of building permits, the applicant shall prepare and submit a detailed lighting plan for review and approval by the Community Development Department. The plan shall show conformance with City performance standards for street lighting and glare, including shielding of all on-site lighting so that light is directed within the project site and does not illuminate adjacent properties, and indicate the location and design of proposed lighting and lighted signs. The applicant shall implement the final plan as approved by the City.

II. AGRICULTURE AND FOREST RESOURCES. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	✖	☐
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	✖	☐
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	✖
d. Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	✖
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	✖	☐

Discussion

a,e. Currently, the project site is undeveloped and consists of vacant land with ruderal vegetation. The project site is currently used for cattle grazing. Per the Department of Conservation Farmland Mapping and Monitoring Program, the entire project site consists of Farmland of Local Importance.[2] Farmland of Local Importance is land important to the local agricultural economy as determined by the City. In addition, as noted above, the project site is currently used for cattle grazing; however, the City's General Plan designates this site as SH. Considering the existing land use designation for the project site, the City anticipated that the project site would be developed for urban uses, and did not anticipate on-going grazing activity to occur on the site.

The 2020 Oakley General Plan EIR evaluated the impacts of Prime Farmland conversion that would result from buildout of the General Plan and determined that potential impacts would be reduced to less-than-significant with implementation of General Plan goals and policies aimed at preserving agricultural lands. Given the fact that the 2020 General Plan designated the proposed project site for development, the conversion of Prime Farmland and Farmland of Statewide Importance was already evaluated and considered in the General Plan EIR analysis. Furthermore, the project site is not Prime Farmland, Unique Farmland, or Farmland of Statewide importance and is currently not farmed.

Because the project would not convert Prime Farmland, Unique Farmland, Farmland of Statewide Importance, or forest land as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, is

[2] California Department of Conservation. *California Important Farmland Finder.* Available at: https://maps.conservation.ca.gov/DLRP/CIFF/. Accessed February 2021.

consistent with the conclusions in the General Plan EIR, and is currently not farmed, the project's impact would be ***less-than-significant***.

b. Currently, the project site is designated as SH per the City's General Plan and the site is currently zoned A-3. The project site is not under a Williamson Act Contract.

The proposed project includes rezoning the project site from A-3 to P-1. P-1 zoning allows diversification in the relationship of various uses, buildings, structures, lot sizes, open spaces and ensures compatibility with surrounding land uses and compliance with the General Plan and Municipal Code. Considering the existing General Plan designation for the project site, the City anticipated that the project site would be developed for urban uses, and did not anticipate agricultural activity to occur within the site. In addition, according to the Oakley General Plan EIR, the entire Planning Area falls within the County Urban Limit Line (ULL) and was, therefore, designated generally for urban development. The rezoning of the site ensures consistency with the General Plan land use designation. The buildout of the project site was anticipated within the General Plan; therefore, the Oakley General Plan EIR anticipated the conversion of agricultural uses to urban development within the project site. In addition, implementation of General Plan policies and goals reduces the conversion of agricultural land to urban uses to as less-than-significant impact. As a result, the proposed project would result in a ***less-than-significant*** impact related to conflicting with existing zoning for agricultural use or a Williamson Act Contract.

c,d. The project area is not considered forest land (as defined in Public Resources Code Section 12220[g]), timberland (as defined by Public Resources Code Section 45256), and is not zoned Timberland Production (as defined by Government Code Section 51104[g]). Therefore, the proposed project would have ***no impact*** with regard to conversion of forest land or any potential conflict with forest land, timberland, or Timberland Production zoning.

III. AIR QUALITY. *Would the project:*	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?	☐	✖	☐	☐
b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	✖	☐	☐
c. Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	✖	☐
d. Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☐	☐	✖	☐

Discussion

a,b. The City of Oakley is located in the San Francisco Bay Area Air Basin (SFBAAB), which is under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The SFBAAB area is currently designated as a nonattainment area for State and federal ozone, State and federal fine particulate matter 2.5 microns in diameter ($PM_{2.5}$), and State respirable particulate matter 10 microns in diameter (PM_{10}) ambient air quality standards (AAQS). The SFBAAB is designated attainment or unclassified for all other AAQS. It should be noted that on January 9, 2013, the U.S. Environmental Protection Agency (USEPA) issued a final rule to determine that the Bay Area has attained the 24-hour $PM_{2.5}$ federal AAQS. Nonetheless, the Bay Area must continue to be designated as non-attainment for the federal $PM_{2.5}$ AAQS until such time as the BAAQMD submits a redesignation request and a maintenance plan to the USEPA, and the USEPA approves the proposed redesignation.

In compliance with regulations, due to the nonattainment designations of the area, the BAAQMD periodically prepares and updates air quality plans that provide emission reduction strategies to achieve attainment of the AAQS, including control strategies to reduce air pollutant emissions through regulations, incentive programs, public education, and partnerships with other agencies. The current air quality plans are prepared in cooperation with the Metropolitan Transportation Commission and the Association of Bay Area Governments (ABAG).

The most recent federal ozone plan is the 2001 Ozone Attainment Plan, which was adopted on October 24, 2001 and approved by the California Air Resources Board (CARB) on November 1, 2001. The plan was submitted to the USEPA on November 30, 2001 for review and approval. The most recent State ozone plan is the 2017 Clean Air Plan, adopted on April 19, 2017. The 2017 Clean Air Plan was developed as a multi-pollutant plan that provides an integrated control strategy to reduce ozone, PM, toxic air contaminants (TACs), and greenhouse gases (GHGs). Although a plan for achieving the State PM_{10} standard is not required, the BAAQMD has prioritized measures to reduce PM in developing the control strategy for the 2017 Clean Air Plan. The control strategy serves as the backbone of the BAAQMD's current PM control program.

The aforementioned air quality plans contain mobile source controls, stationary source controls, and transportation control measures to be implemented in the region to attain the State and federal AAQS within the SFBAAB. Adopted BAAQMD rules and regulations, as

well as the thresholds of significance, have been developed with the intent to ensure continued attainment of AAQS, or to work towards attainment of AAQS for which the area is currently designated nonattainment, consistent with applicable air quality plans. The BAAQMD's established significance thresholds associated with development projects for emissions of the ozone precursors reactive organic gases (ROG) and oxides of nitrogen (NOx), as well as for PM_{10} and $PM_{2.5}$, expressed in pounds per day (lbs./day) and tons per year (tons/yr), are listed in Table 1. By exceeding the BAAQMD's mass emission thresholds for ROG, NO_X, PM_{10}, or $PM_{2.5}$, a project would be considered to conflict with or obstruct implementation of the BAAQMD's air quality planning efforts.

Table 1
BAAQMD Thresholds of Significance

Pollutant	Construction	Operational	
	Average Daily Emissions (lbs./day)	Average Daily Emissions (lbs./day)	Maximum Annual Emissions (tons/yr)
ROG	54	54	10
NO_x	54	54	10
PM_{10} (exhaust)	82	82	15
$PM_{2.5}$ (exhaust)	54	54	10

Source: BAAQMD, CEQA Guidelines, May 2017.

Particulate matter can be split into two categories: fugitive and exhaust. The BAAQMD thresholds of significance for exhaust are presented in Table 1. It should be noted that BAAQMD does not maintain quantitative thresholds for fugitive emissions of PM_{10} or $PM_{2.5}$, rather, BAAQMD requires all projects within the district's jurisdiction to implement Basic Construction Mitigation Measures (BCMMs) related to dust suppression.

The proposed project's construction and operational emissions were quantified using the California Emissions Estimator Model (CalEEMod) software version 2016.3.2 – a statewide model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify air quality emissions, including GHG emissions, from land use projects. The model applies inherent default values for various land uses, including construction data, vehicle mix, trip length, average speed, compliance with the 2016 California Building Standards Code (CBSC), etc. To reflect compliance with the 2019 CBSC, the model is adjusted to incorporate a Title 24 exceedance. Where project-specific information is available, such information should be applied in the model. Accordingly, the proposed project's modeling assumes the following project and/or site-specific information:

- Construction would begin in July 2022 and occur over approximately three years;
- Operational trip generation rates were updated to 9.44 vehicle trips per unit, consistent with the project-specific Traffic Impact Analysis;
- Natural gas fireplaces would be included in all of the units;
- The project site is located within 1.5 miles of the nearest transit stop; and
- The project would comply with the Model Water Efficient Landscape Ordinance (MWELO) and the 2019 CALGreen Code;
- The project would comply with all applicable provisions of the 2019 California CBSC, including meeting 100 percent of electricity demand through on-site renewable energy generation; and
- Approximately 170,000 cubic yards of fill would be imported to the project site.

As noted above, during site grading, approximately 170,000 cubic yards of fill would be imported. In order to present the most accurate analysis of emissions associated with soil hauling, emissions were calculated using haul truck emission factors for the Contra Costa County region for year 2022 as reported by the CARB's EMFAC2017 Web Database v1.0.2 tool for EMFAC2011 vehicle categories. Emission factors for Heavy-Heavy Duty Diesel Single Unit Construction Trucks, or T7 single construction trucks, were used as a conservative estimate to represent the type of haul trucks that would travel to and from the project site during the hauling period. Consistent with industry standard assumptions, the off-model calculations assumed that each haul truck can accommodate 16 cubic yards of fill, and that each haul trip would be 20 miles in length on average.[3]

The proposed project's estimated emissions associated with construction and operations are presented and discussed in further detail below. A discussion of the proposed project's contribution to cumulative air quality conditions is provided below as well. All CalEEMod modeling results are included as Appendix A to this IS/MND.

Construction Emissions

According to the CalEEMod modeling results, buildout of the proposed project would result in maximum unmitigated construction criteria air pollutant emissions as shown in Table 2.

Table 2
Maximum Unmitigated Construction Emissions (lbs./day)

Pollutant	On-Site Construction Emissions[1]	Haul Truck Emissions[2]	Total Construction Emissions	Threshold of Significance	Exceeds Threshold?
ROG	11.05	0.92	11.97	54	**NO**
NO_X	38.89	46.64	85.53	54	**YES**
PM_{10}*	1.64	0.63	2.27	82	**NO**
$PM_{2.5}$*	1.51	0.60	2.11	54	**NO**

Notes:
* Denotes emissions from exhaust only. BAAQMD does not have adopted PM thresholds for fugitive emissions.
1 Emissions calculated on-model using CalEEMod 2016.3.2.
2 Emissions calculated off-model using haul truck emission factors from EMFAC2017 v1.0.2.

Sources: CalEEMod, March 2021, and EMFAC2017 (see Appendix A)

As shown in the table, the proposed project's construction emissions would be below the applicable thresholds of significance for ROG, PM_{10}, and $PM_{2.5}$. However, construction of the proposed project would exceed the applicable threshold for NO_X.

All projects within the jurisdiction of the BAAQMD are required to implement all of the BAAQMD's Basic Construction Mitigation Measures, which would be required by the City as conditions of approval:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

[3] California Air Pollution Control Officers Association. *CalEEMod User's Guide Version 2016.3.2 Appendix A: Calculation Details for CalEEMod* [pg. 14]. October 2017.

3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
8. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

The proposed project's required implementation of the BAAQMD's Basic Construction Mitigation Measures listed above for the project's construction activities, would help to minimize construction-related emissions.

Nevertheless, because construction of the proposed project would exceed the applicable threshold of significance for NO_X, project construction could result in a potentially significant impact.

Operational Emissions

According to the CalEEMod results, buildout of the proposed project would result in maximum unmitigated operational criteria air pollutant emissions as shown in Table 3.

Table 3
Maximum Unmitigated Operational Emissions

Pollutant	Proposed Project Emissions		Threshold of Significance		Exceeds Threshold?
	lbs./day	tons/yr.	lbs./day	tons/yr.	
ROG	13.11	2.20	54	10	**NO**
NO_X	15.59	2.13	54	10	**NO**
PM_{10}*	0.61	0.05	82	15	**NO**
$PM_{2.5}$*	0.61	0.04	54	10	**NO**

Note:
* Denotes emissions from exhaust only. BAAQMD does not have adopted PM thresholds for fugitive emissions.

Source: CalEEMod, March 2021 (see Appendix A).

As shown in the table, operations of the proposed project would be below the applicable thresholds of significance. Thus, operations of the project would not be considered to conflict with air quality plans during project operations.

Cumulative Emissions

Past, present, and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By nature, air pollution is largely a cumulative impact. A single project is not sufficient in size to, by itself, result in nonattainment of AAQS. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant. In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. The thresholds of significance presented in Table 1 represent the levels at which a project's individual emissions of criteria air pollutants or precursors would result in a cumulatively considerable contribution to the SFBAAB's existing air quality conditions. If a project exceeds the significance thresholds presented in Table 1, the proposed project's emissions would be cumulatively considerable, resulting in significant adverse cumulative air quality impacts to the region's existing air quality conditions. Because the proposed project would result in operational emissions below the applicable thresholds of significance, operations of the project would not be expected to result in a cumulatively considerable contribution to the region's existing air quality conditions. However, as noted above, construction of the project would exceed the applicable thresholds of significance. As such, construction of the proposed project could result in a short-term cumulatively considerable contribution to regional air quality conditions.

Conclusion

According to BAAQMD, if a project would not result in significant and unavoidable air quality impacts, after the application of all feasible mitigation, the project may be considered consistent with the air quality plans. Because construction of the proposed project could result in emissions that exceed the applicable thresholds of significance, the project could conflict with or obstruct implementation of regional air quality plans.

Based on the above, operations of the proposed project would not conflict with or obstruct implementation of the applicable air quality plans, violate any air quality standards or contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in any criteria air pollutant. However, construction of the proposed project could exceed the applicable threshold of significance for NO_X and, therefore, impacts would be considered ***potentially significant***.

Mitigation Measure(s)

The most effective way to reduce construction-related NO_X emissions is by improving the engine tier/engine efficiency of construction equipment. Off-road diesel engines that are used in construction equipment fall into efficiency tiers, with the most efficient being the Tier 4 emission standards. Engine Tiers 3 through 1 are regressively less efficient. Based on modeling conducted, as shown in Table 4, use of Tier 4 construction equipment for all on-site construction activities would be sufficient to reduce the project's overall construction-related emissions of NO_X to below the applicable threshold of significance. Therefore, implementation of the following mitigation measure would reduce the construction-related emissions of NO_X to below the applicable threshold of significance, and would reduce the above potential impact to a *less-than-significant* level.

Table 4
Maximum Mitigated Construction Emissions (lbs./day)

Pollutant	On-Site Construction Emissions[1]	Haul Truck Emissions[2]	Total Construction Emissions	Threshold of Significance	Exceeds Threshold?
ROG	9.50	0.92	10.42	54	**NO**
NO_X	4.72	46.64	51.36	54	**NO**
PM_{10}*	0.10	0.63	0.73	82	**NO**
$PM_{2.5}$*	0.10	0.60	0.70	54	**NO**

Notes:
* Denotes emissions from exhaust only. BAAQMD does not have adopted PM thresholds for fugitive emissions.
1 Emissions calculated on-model using CalEEMod 2016.3.2.
2 Emissions calculated off-model using haul truck emission factors from EMFAC2017 v1.0.2.

Sources: CalEEMod, March 2021, and EMFAC2017 (see Appendix A)

III-1. *Prior to approval of any grading plans, the project applicant shall show on the plans via notation that the contractor shall ensure that the heavy-duty off-road vehicles (50 horsepower or more) to be used during construction activities associated with the project, including owned, leased, and subcontractor vehicles, shall be California Air Resources Board (CARB) Tier 4 Final.*

In addition, all off-road equipment operating at the project site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to five minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB. Clear signage regarding idling restrictions should be placed at the entrances to the construction site.

Portable equipment over 50 horsepower must have either a valid District Permit to Operate (PTO) or a valid statewide Portable Equipment Registration Program (PERP) placard and sticker issued by CARB.

Conformance with the foregoing requirements shall be included as notes and be confirmed through review and approval of grading plans by the City of Oakley Community Development Department.

c. Some land uses are considered more sensitive to air pollution than others, due to the types of population groups or activities involved. Heightened sensitivity may be caused by health problems, proximity to the emissions source, and/or duration of exposure to air pollutants. Children, pregnant women, the elderly, and those with existing health problems are especially vulnerable to the effects of air pollution. Sensitive receptors are typically defined as facilities where sensitive receptor population groups (i.e., children, the elderly, the acutely ill, and the chronically ill) are likely to be located. Accordingly, land uses that are typically considered to be sensitive receptors include residences, schools, playgrounds, childcare centers, retirement homes, convalescent homes, hospitals, and medical clinics. Existing sensitive receptors in the project area include the single-family residences to the south and west, with the nearest located approximately 175 feet south of the project site.

The major pollutant concentrations of concern are localized carbon monoxide (CO) emissions, TAC, and criteria pollutant emissions, which are addressed in further detail below.

Localized CO Emissions

Localized concentrations of CO are related to the levels of traffic and congestion along streets and at intersections. High levels of localized CO concentrations are only expected where background levels are high, and traffic volumes and congestion levels are high. Emissions of CO are of potential concern, as the pollutant is a toxic gas that results from the incomplete combustion of carbon-containing fuels such as gasoline or wood.

To provide a conservative indication of whether a project would result in localized CO emissions that would exceed the applicable threshold of significance, BAAQMD has established screening criteria for localized CO emissions. According to BAAQMD, a proposed project would result in a less-than-significant impact related to localized CO emission concentrations if all of the following conditions are true for the project:

- The project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans;
- The project traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour; and
- The project traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, underpass, etc.).

According to the Traffic Impact Analysis prepared for the proposed project by TJKM, the proposed project is expected to generate 1,794 daily vehicle trips, 154 of which would be during the AM peak hour, and 206 during the PM peak hour.[4] As indicated in Figure 5, Existing Peak Hour Traffic Volumes, of the Traffic Impact Analysis, the nearby study intersections experience between one and 1,381 vehicles during the peak hour. Therefore, the addition of 360 total peak hour trips per day generated by the proposed project would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour. Furthermore, areas where vertical and/or horizontal mixing is limited due to tunnels, underpass, or similar features do not exist in the project area. Therefore, based on the BAAQMD's screen criteria for localized CO emissions, the proposed project would not be expected to result in substantial levels of localized CO at surrounding intersections or generate localized concentrations of CO that would exceed standards or cause health hazards.

TAC Emissions

Another category of environmental concern is TACs. The CARB's *Air Quality and Land Use Handbook: A Community Health Perspective* (Handbook) provides recommended setback distances for sensitive land uses from major sources of TACs, including, but not limited to, freeways and high traffic roads, distribution centers, and rail yards. The CARB has identified diesel particulate matter (DPM) from diesel-fueled engines as a TAC; thus, high volume freeways, stationary diesel engines, and facilities attracting heavy and

[4] TJKM. *Burroughs Residential Development Draft Traffic Impact Analysis*. January 13, 2021.

constant diesel vehicle traffic are identified as having the highest associated health risks from DPM. Health risks associated with TACs are a function of both the concentration of emissions and the duration of exposure, where the higher the concentration and/or the longer the period of time that a sensitive receptor is exposed to pollutant concentrations would correlate to a higher health risk.

The proposed project does not include any operations that would be considered a substantial source of TACs. Accordingly, operations of the proposed project would not expose sensitive receptors to excess concentrations of TACs.

Short-term, construction-related activities could result in the generation of TACs, specifically DPM, from on-road haul trucks and off-road equipment exhaust emissions. However, as discussed above, construction is temporary and occurs over a relatively short duration in comparison to the operational lifetime of the proposed project. Health risks are typically associated with exposure to high concentrations of TACs over extended periods of time (e.g., 30 years or greater), whereas the construction period associated with the proposed project would likely be limited to approximately three years. All construction equipment and operation thereof would be regulated per the In-Use Off-Road Diesel Vehicle Regulation, which is intended to help reduce emissions associated with off-road diesel vehicles and equipment, including DPM. Project construction would also be required to comply with all applicable BAAQMD rules and regulations, particularly associated with permitting of air pollutant sources.

During construction, only portions of the project site would be disturbed at a time. Operation of construction equipment would occur on such portions of the site intermittently throughout the course of a day over the overall construction period. Because construction equipment on-site would not operate for any long periods of time and would be used at varying locations within the site, associated emissions of DPM would not occur at the same location (or be evenly spread throughout the entire project site) for long periods of time. Due to the temporary nature of construction and the relatively short duration of potential exposure to associated emissions, sensitive receptors in the area would not be exposed to pollutants for a permanent or substantially extended period of time. Furthermore, any one nearby sensitive receptor would be exposed to varying concentrations of DPM emissions throughout the construction period. According to BAAQMD, research conducted by CARB indicates that DPM is highly dispersive in the atmosphere. Thus, emissions at the project site would be substantially dispersed at the nearest sensitive receptors, and the concentration of DPM at the nearest sensitive receptors would be lower than the concentration of DPM at the source of emissions.

Considering the short-term nature of construction activities, the regulated and intermittent nature of the operation of construction equipment, the highly dispersive nature of DPM, and the distance of the nearest sensitive receptor from the project site, the likelihood that any one sensitive receptor would be exposed to high concentrations of DPM for any extended period of time, during development the project, would be low. For the aforementioned reasons, project construction would not be expected to expose sensitive receptors to substantial pollutant concentrations.

Criteria Pollutants

The BAAQMD thresholds of significance were established with consideration given to the health-based air quality standards established by the National Ambient Air Quality

Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS), and are designed to aid the district in achieving attainment of the NAAQS and CAAQS,[5] for which the SFBAAB is in nonattainment, but the thresholds of significance do not represent a level above which individual project-level emissions would directly result in public health impacts. Rather, the thresholds of significance represent emissions levels that would ensure that project-specific emissions would not inhibit attainment of regional NAAQS and CAAQS. Considering that, following implementation of Mitigation Measure III-1, the proposed project would not result in short-term construction-related or long-term operational emissions of criteria pollutants that would exceed BAAQMD standards, the proposed project would not inhibit attainment of regional NAAQS and CAAQS.

Conclusion

Based on the above discussion, the proposed project would not expose any sensitive receptors to substantial concentrations of pollutants, including localized CO, TACs, or criteria pollutants, during construction or operation. Therefore, the proposed project would result in a ***less-than-significant*** impact related to the exposure of sensitive receptors to substantial pollutant concentrations.

d. Emissions of principal concern include emissions leading to odors, emission that have the potential to cause dust, or emissions considered to constitute air pollutants. Air pollutants have been discussed in sections "a" through "c" above. Therefore, the following discussion focuses on emissions of odors and dust.

Per the BAAQMD CEQA Guidelines, odors are generally regarded as an annoyance rather than a health hazard.[6] Manifestations of a person's reaction to odors can range from psychological (e.g., irritation, anger, or anxiety) to physiological (e.g., circulatory and respiratory effects, nausea, vomiting, and headache). The presence of an odor impact is dependent on a number of variables including: the nature of the odor source; the frequency of odor generation; the intensity of odor; the distance of odor source to sensitive receptors; wind direction; and sensitivity of the receptor.

Due to the subjective nature of odor impacts, the number of variables that can influence the potential for an odor impact, and the variety of odor sources, quantitative analysis to determine the presence of a significant odor impact is difficult. Typical odor-generating land uses include, but are not limited to, wastewater treatment plants, landfills, and composting facilities. The proposed project would not introduce any such land uses.

Construction activities often include diesel-fueled equipment and heavy-duty trucks, which could create odors associated with diesel fumes that may be considered objectionable. However, construction activities would be temporary, and hours of operation for construction equipment would be restricted to the hours of 7:30 AM to 7:00 PM on weekdays and 9:00 AM to 7:00 PM on weekends and holidays per Section 4.2.208 of the City of Oakley Municipal Code. Project construction would also be required to comply with all applicable BAAQMD rules and regulations, particularly associated with permitting of air pollutant sources. The aforementioned regulations would help to minimize emissions, including emissions leading to odors. Accordingly, substantial objectionable odors would not be expected to occur during construction activities.

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5 Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines*. May 2017.
6 Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines* [pg. 7-1]. May 2017.

BAAQMD regulates objectionable odors through Regulation 7, Odorous Substances, which does not become applicable until the Air Pollution Control Officer (APCO) receives odor complaints from ten or more complainants within a 90-day period. Once effective, Regulation 7 places general limitation on odorous substances and specific emission limitations on certain odorous compounds, which remain effective until such time that citizen complaints have not been received by the APCO for one year. The limits of Regulation 7 become applicable again when the APCO receives odor complaints from five or more complainants within a 90-day period. Thus, although not anticipated, if odor complaints are made after the proposed project is developed, the BAAQMD would ensure that such odors are addressed and any potential odor effects are minimized or eliminated.

With respect to dust, as noted previously, all projects under the jurisdiction of BAAQMD are required to implement the BAAQMD's Basic Construction Mitigation Measures. Such measures would act to reduce construction-related dust by ensuring that haul trucks with loose material are covered, reducing vehicle dirt track-out, and limiting vehicle speeds within project site, among other methods, which would ensure that construction of the proposed project does not result in substantial emissions of dust. Although the project would require soil hauling, all haul trucks would be covered to minimize emissions of fugitive dust during transport. Following project construction, vehicles operating within the project site would be limited to paved areas of the site, and non-paved areas would be landscaped. Thus, project operations would not include sources of dust that could adversely affect a substantial number of people.

For these reason, construction and operation of the proposed project would not result in emissions (such as those leading to odors) adversely affecting a substantial number of people, and a ***less-than-significant*** impact would occur.

IV. BIOLOGICAL RESOURCES. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	✖	☐	☐
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Wildlife or US Fish and Wildlife Service?	☐	✖	☐	☐
c. Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	✖	☐	☐
d. Interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites?	☐	☐	✖	☐
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	✖	☐	☐
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	✖	☐

Discussion

The following discussion is based primarily on a Jurisdictional Delineation Report[7] (Appendix B) and an Application and Planning Survey Report (Appendix C) prepared by Zentner Planning & Ecology.

a. The project site is undeveloped and consists of vacant land with annual grasslands and limited trees. The project site is currently used for cattle grazing. The entire project site has been subject to high levels of disturbance from past agricultural activities, sand mining, and previous irrigation. Currently, the project site is adjacent to Little Dutch Slough and Contra Costa Canal. Little Dutch Slough parallels the western border of the project site while the recently undergrounded Contra Costa Canal outlines the properties northeastern border. The overall topography of the project site is relatively level with the exception of Little Dutch Slough, the lowest part of the site at approximately sea level, and the levelled dune, the highest part of the project site.

   Former residences and outbuildings have been removed from the property; however, two concrete foundations and ornamental trees remain within the project site. The project site

[7] Zentner Planning and Ecology. *Burroughs Property Residential Development Project Section 404 Jurisdictional Delineation Report.* May, 2020.

also contains water troughs, a number of barbed wire fences, and irrigation ditches that are no longer in use.

Special-status species include plants, fish, and wildlife species that may be designated as threatened or endangered by the federal Endangered Species Act (ESA), or the California Endangered Species Act (CESA). Specific protections and permitting mechanisms for species differ under ESA and CESA, and a species' designation under one law does not automatically provide protection under the other. In addition, California Department of Fish and Wildlife (CDFW) has developed a list of special species as "a general term that refers to all of the taxa the California Natural Diversity Database (CNDDB) is interested in tracking, regardless of their legal or protection Status." The list includes the inventory developed by other organizations, including for example, the Audubon Watch List Species, the Bureau of Land Management Sensitive Species, and United States Fish and Wildlife Services Birds of Special Concern. Plant species on the California Native Plant Society (CNPS) Rare and Endangered Plant Inventory (Inventory) with California Rare Plant Ranks (Rank) of 1, 2, and 3 are also considered special-status plant species and must be considered under CEQA. Rank 4 species are typically only afforded protection under CEQA when such species are particularly unique to the local area (e.g., range limit, low abundance/low frequency, limited habitat) or are otherwise considered locally rare. Additionally, any species listed as sensitive within local plans, policies and ordinances are likewise considered sensitive.

Fully protected and designated rare plant species include specific plant and wildlife species that are designated in California Fish and Game Code (CFGC) as protected even if not listed under CESA or the ESA. By law, CDFW may not issue an Incidental Take Permit for Fully Protected Species. Under the California Native Plant Protection Act (NPPA), CDFW has listed 64 "rare" or "endangered" plant species, and prevents "take", with few exceptions, of these species. CDFW may authorize take of species protected by the NPPA through the Incidental Take Permit process, or under a natural conservation community plan. In addition to regulations for special-status species, most native birds in the United States, including non-status species, have baseline legal protections under the Migratory Bird Treaty Act (MBTA) of 1918 and CFGC, i.e., Sections 3503, 3503.5 and 3513. Under the MBTA and CFGC laws/codes, the intentional harm or collection of adult birds, as well as the intentional collection or destruction of active nests, eggs, and young is illegal. For bat species, the Western Bat Working Group (WBWG) designates conservation status for species of bats, and bats with a high or medium-high priority are typically given special consideration under CEQA.

The proposed project is within the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP). The ECCC HCP/NCCP was approved in August 2007 and the City of Oakley approved the implementing ordinance on November 13, 2007. The ECCC HCP/NCCP establishes mitigation required in order to avoid direct impacts on fully protected wildlife species, covered migratory birds, wetlands, and hydrologic conditions. The ECCC HCP/NCCP authorizes take coverage pursuant to FESA and CESA and provides compensatory mitigation for 28 special-status plant and animal species. The project includes a covered activity under the ECCC HCP/NCCP as residential development "activity within Urban Develop Area" as defined by the Habitat Conservation Plan (HCP) (Section 2.3, HCP/NCCP).

Zentner Planning & Ecology visited the project site to map vegetation, aquatic communities, unvegetated land cover types, document plant and wildlife species present, and evaluate habitat on-site for the potential to support special-status species as defined by CEQA. Based on the site visit, Zentner Planning & Ecology, concluded that the habitat types present within

the project site include annual grassland, ruderal, developed, seasonal wetland, and slough. Most of the site is annual grassland that has been historically disturbed by previous agricultural activities. The site's annual grassland is dominated by common, non-native grassland species such as Bermuda grass (*Cynodon dactylon),* Italian ryegrass (*Lolium multiflorum*), soft chess (*Bromus hordeaceus*), ripgut brome (*Bromus diandrus*), and tall fescue (*Festuca arundinacea*).[8]

The potential for special-status species to occur on the project site is discussed in further detail below.

Special Status Plants

Special-status plants generally occur in relatively undisturbed areas within vegetation communities such as vernal pools, marshes and swamps, chenopod scrub, seasonal wetlands, riparian scrub, chaparral, alkali playa, dunes, and areas with unusual soil characteristics. Experienced biologists completed thorough reconnaissance surveys of the property to assess the sites likelihood of supporting rare plants. The project biologists completed a series of three special status plant survey to capture the bloom season of all rare plants with a potential to occur on site. The botanical field surveys were completed in accordance with CDFW and USFWS protocols for special status plant species and sensitive natural communities that have a potential to occur on site. According to the Application and Planning Survey Report, suitable land is present for various covered or no-take species. For example, the project site contains suitable habitat for the Contra Costa goldfields (Lastehnia conjugens), a no-take species. However, during site surveys, rare plants were not identified on the site and the biologists determined that the disturbed and heavily modified condition of the site as well as the current grazing practices would make it highly unlikely that a rare plant would occur on site.

Due to the absence of special-status plants, construction activities associated with the proposed project would not result in adverse effects to special-status plant species.

Special-Status Wildlife

According to the ECCC HCP/NCCP Application and Planning Survey Report conducted by Zentner Planning and Ecology, seven special-status animals covered under the ECCC HCP/NCCP have the potential to occur on the project site: Western burrowing owl (WBO), Swainson's Hawk, Golden Eagle, and the Giant Garter Snake (GGS). The following discussion provides additional details on each of these species.

Western Burrowing Owl

The WBO occurs as a year-round resident and winter visitor in much of California's lowlands, inhabiting open areas with sparse or non-existent tree or shrub canopies. Typical habitat includes annual or perennial grassland, although human-modified areas, such as agricultural lands and airports are also used. Breeding typically takes place from March to July. 42.36 acres of the 43.24-acre site consists of annual grassland habitat providing potentially suitable breeding habitat for the WBO. A number of ground squirrel burrow were identified on the project site, though no WBO or signs of WBO have been observed near these burrow openings. As well, grassland habitat on neighboring properties (within 500 feet of the project site) could support breeding WBO. In addition, the WBO is known to occur in the region as there are a number of CNDDB records of WBO within the region. Though WBO were not observed on the project site or in the surrounding 500-foot buffer, a pre-construction survey

[8] Zentner Planning and Ecology. Application and *Planning Survey Report for the Burroughs.* July 2015.

of this area should be completed prior to beginning project work to ensure the species is not impacted by the project.

Swainson's Hawk

Swainson's hawk is a summer resident and migrant in California's Central Valley and scattered portions of the southern California interior. Areas typically used for nesting include the edge of narrow bands of riparian vegetation, isolated patches of oak woodland, lone trees, and also planted and natural trees associated with roads, farmyards and sometimes adjacent residential areas. Foraging occurs in open habitats, including grasslands, open woodlands, and agricultural areas. The project plans on removing all trees within the project site. According to the Application and Planning Survey Report, all trees within 1,000 feet of the project site that have the potential to support nesting Swainson's hawks have been mapped. Nesting Swainson's hawks within this area during project planning were not identified. However, the CNDDB has two records of Swainson's hawks nesting within 0.5 miles of the project site, though one of these records describes a nest in a tree that has been removed and the other record indicates that the nest is not active. Potential nesting tees would be removed as part of the proposed project. However, a pre-construction survey would be completed prior to the start of construction to ensure that nesting Swainson's hawks are not impacted by the project.

Golden Eagle

Golden eagles are fairly adaptable in habitat but often reside in areas with few shared ecological characteristics. In addition, golden eagles tend to avoid developed areas. Golden eagles were not observed during the project planning surveys and due to the habitats on and in the area around the project site, nesting golden eagles are highly unlikely to be found in this area. The closest record of a nesting golden eagle is over 10 miles away from the project site. For these reasons, a golden eagle is unlikely to occur on the project site. However, a pre-construction survey should be conducted prior to project implementation to ensure golden eagles are not impacted by the project.

Giant Garter Snake

The GGS is found in Central California, and historically ranges through much of Central California's Sacramento and San Joaquin Valleys. The GGS inhabits agricultural wetlands and other waterways such as irrigation and drainage canals. The site contains 0.3 acres of Little Dutch Slough, which runs along the project site's western border and provides potentially suitable habitat for the GGS. Little Dutch Slough connects directly to the Sacramento/San Joaquin Bay Delta System where the GGS is known to occur. However, the closest CNDDB record of the GGS is almost four miles away from the project site and the GGS is most commonly observed along watercourses and drainages in the central valley with few as far down in the watershed as the project site. However, to ensure the species is not impacted by the proposed project, a pre-construction survey would be completed, clearing for construction within 200 feet of the Slough's edge would be minimized, and all personnel working in this area would receive mandatory training regarding the species.

Conclusion

Based on the above, the proposed project would not result in impacts to special-status plant species. Although the field survey did not identify any special-status wildlife species within the project site, implementation of the proposed project could potentially result in adverse effects to WBO, Swainson's hawk, golden eagle, and GGS. Thus, the proposed project could have an adverse effect, either direct or through habitat modification, on species identified as special-status species in local or regional plans, policies, or regulations, or by the CDFW or the USFWS, and a ***potentially significant*** impact could result.

Mitigation Measure(s)

The proposed project's participation in the ECCC HCP/NCCP would provide a mechanism to adequately mitigate impacts to special-status species within the project site included in the ECCC HCP/NCCP Permit Area. Moreover, the ECCC HCP/NCCP includes minimization, avoidance, and mitigation measures intended to reduce potential impacts to covered species. The following mitigation measures have been designed to fulfill the requirements of the ECCC HCP/NCCP, including requirements related to minimization, avoidance, and mitigation measures. Implementation of the following mitigation measures would reduce the above impact to a *less-than-significant* level.

Western Burrowing Owl

IV-1. Preconstruction Surveys

Prior to any ground disturbance related to covered activities, a qualified biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having potential burrowing owl habitat. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 1995).

On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place not more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

IV-2. Avoidance and Minimization and Construction Monitoring

If burrowing owls are found during the breeding season (February 1 – August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1 – January 31), the project proponent shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below).

During the breeding season, buffer zones of at least 250 feet in which construction activities cannot occur will be established around each occupied burrow (nest site). Buffer zones of 160 feet will be established around each burrow being used during the nonbreeding season. The buffers will be delineated by highly visible, temporary construction fencing.

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. The doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for one week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Swainson's Hawk

IV-3. Preconstruction Survey

Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15 – September 15), a qualified biologist shall conduct a preconstruction survey not more than one month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are required (see below).

IV-4. Avoidance and Minimization and Construction Monitoring

During the nesting season (March 15 – September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project applicant can apply to the Implementing Entity for a waiver of this avoidance measure. The waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place.

All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the project proponent according to the requirements of Mitigation Measure IV-5.

IV-5. Mitigation for Loss of Nest Trees

Should the proposed project result in the loss of non-riparian Swainson's hawk nest trees, the proposed applicant shall implement the following measures:

- *If determined feasible by the City of Oakley Planning Division, the project applicant shall provide for the planting of 15 saplings for every tree lost with the objective of having at least five mature trees established for every tree lost according to the requirements listed below; and either of the following:*

    1. *Pay the Implementing Entity an additional fee to purchase, plant, maintain, and monitor 15 saplings on the ECCC HCP/NCCP Preserve System for every tree lost according to the requirements listed below, OR*

    2. *The project proponent will plant, maintain, and monitor 15 saplings for every tree lost at a site to be approved by the Implementing Entity (e.g., within an HCP/NCCP Preserve or existing open space linked to HCP/NCCP preserves), according to the requirements listed below.*

  The following requirements will be met for all planting options:

    - *Tree survival shall be monitored at least annually for five years, then every other year until year 12. All trees lost during the first five years will be replaced. Success will be reached at the end of 12 years if at least five trees per tree lost survive without supplemental irrigation or protection from herbivory. Trees must also survive for at least three years without irrigation.*
    - *Irrigation and fencing to protect from deer and other herbivores may be needed for the first several years to ensure maximum tree survival.*
    - *Native trees suitable for this site should be planted. When site conditions permit, a variety of native trees will be planted for each tree lost to provide trees with different growth rates, maturation, and life span, and to provide a variety of tree canopy structures for Swainson's hawk. This variety will help to ensure that nest trees will be available in the short term (five-10 years for cottonwoods and willows) and in the long term (e.g., Valley oak, sycamore). This will also minimize the temporal loss of nest trees.*
    - *Riparian woodland restoration conducted as a result of covered activities (i.e., loss of riparian woodland) can be used to offset the nest tree planting requirement above, if the nest trees are riparian species.*
    - *Whenever feasible and when site conditions permit, trees should be planted in clumps together or with existing trees to provide larger areas of suitable nesting habitat and to create a natural buffer between nest trees and adjacent development (if plantings occur on the development site).*

Prior to the issuance of tree removal permits for the project site, the City of Oakley Planning Division shall be notified whether the proposed project would include removal of nesting trees. Such removal be required for implementation of the proposed project, the Contra Costa County Conservancy shall be notified and the foregoing measures shall be implemented as applicable, through the tree removal permit granted by the City of Oakley.

Golden Eagle

IV-6. Preconstruction Survey

Prior to implementation of covered activities, a qualified biologist shall conduct a preconstruction survey to establish whether nests of golden eagles are occupied (see Section 6.3.1, Planning Surveys). If nests are occupied, minimization requirements and construction monitoring shall be required.

IV-7. Avoidance and Minimization

Covered activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

IV-8. Construction Monitoring

Construction monitoring shall focus on ensuring that covered activities do not occur within the buffer zone established around an active nest. Although golden eagle nest sites do not occur within or near the Urban Limit Line (ULL), covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring shall ensure that direct effects to golden eagles are minimized.

Giant Garter Snake

IV-9. Preconstruction Surveys

Prior to any ground disturbance related to covered activities, a qualified biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having suitable GGS habitat and 200 feet of adjacent uplands, measured from the outer edge of each bank. The surveys shall delineate suitable habitat and document any sightings of GGS.

IV-10. Avoidance and Minimization Requirements

To the maximum extent practicable, impacts on GGS habitat as a result of covered activities shall be avoided. If feasible, in areas near construction activities, a buffer of 200 feet from suitable habitat shall be delineated within which vegetation disturbance or use of heavy equipment is prohibited.

If impacts on GGS habitat as a result of covered activities are not avoided, the following measures shall be implemented. The measures are based on USFWS's Standard Avoidance and Minimization Measures during Construction Activities in GGS Habitat (U.S. Fish and Wildlife Service 1999).

- *Limit construction activity that disturbs habitat to the period between May 1 and September 30. May 1 through September 30 is the active period for GGS, and direct mortality is minimized because snakes are more likely to independently move away from disturbed area. If activities are necessary in GGS habitat between October 1 and April 30, the USFWS Sacramento Field Office shall be contacted to determine if additional measures beyond those described below are necessary to minimize and avoid take.*
- *In areas where construction is to take place, dewater all irrigation ditches, canals or other aquatic habitat between April 15 and September 30 to remove habitat of GGS. Dewatered areas must remain dry, without puddled water remaining, for at least 15 consecutive days prior to the excavation or filling of that habitat. If a site cannot be completely dewatered, netting and salvage of prey items may be necessary.*

IV-11. Construction Monitoring

If suitable habitat for GGS cannot be avoided between October 1 and April 30 the USFWS Sacramento Field Office shall be contacted to determine if additional measures beyond those described below are necessary, and the following actions shall be performed. A USFWS-approved biologist shall conduct a construction survey no more than 24 hours before construction in suitable habitat and will be on site during construction activities in potential aquatic and upland habitat to ensure that individuals of giant garter snake encountered during construction will be avoided. The biologist shall provide USFWS with a field report form documenting the monitoring efforts within 24 hours of commencement of construction activities. The monitor shall be available thereafter. If a snake is encountered during construction activities, the monitor shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake will not be harmed. GGS encountered during construction activities should be allowed to move away from the construction area on their own. Only personnel with a USFWS recovery permit pursuant to Section 10(a)(1)(A) of the ESA will have the authority to capture and/or relocate GGS that are encountered in the construction area. The project area will be reinspected whenever a lapse in construction activity of two weeks or more has occurred.

To ensure that construction equipment and personnel do not affect nearby aquatic habitat for GGS outside construction areas, silt fencing shall be erected to clearly define the aquatic habitat to be avoided; restrict working

areas, spoils, and equipment storage and other project activities to areas outside of aquatic or wetland habitat; and maintain water quality and limit construction runoff into wetland areas through the use of fiber bales, filter fences, vegetation buffer strips, or other appropriate methods.

Fill or construction debris may be used by GGS as over-wintering sites. Therefore, upon completion of construction activities, any temporary fill or construction debris must be removed from the site.

Construction personnel shall be trained to avoid harming GGS. A qualified biologist approved by USFWS shall inform all construction personnel about the life history of GGS; the importance of irrigation canals, marshes/wetlands, and seasonally flooded areas such as rice fields to giant garter snakes; and the terms and conditions of the Plan related to avoiding and minimizing impacts on giant garter snake.

b,c. According to the Application and Planning Survey Report, the site contains annual grassland, ruderal, developed, seasonal wetland, and slough. The seasonal wetland (located in the northwestern portion of the site near Little Dutch Slough) is grass dominated and does not pond or hold water at the surface, but becomes saturated by winter and spring rains for sufficient time to sustain hydrophytic vegetation. Though the wetland contains hydrophytic vegetation, the wetland also contains a prominence of non-hydrophytes, which suggests occasional winter and spring dry-down during periods between storms due to slow but steady percolation. Vegetation within the seasonal wetland is dominated by Mexican rush (*Juncus mexicanus*) and tall fescue. Also present are meadow barley (*Hordeum brachyantherum*), Italian rye grass (*Festuca perennis*), wild geranium (*Geranium dissectum*), and white clover (*trifolium repens*).

According to the Jurisdictional Delineation Report, the small seasonal wetland meets the wetland soils and hydrology wetland criteria, but narrowly fails to meet the wetland vegetation criteria. However, given the close proximity to meeting the wetland vegetation criteria and provided that the seasonal wetland has wetland soils and hydrology indicator, the small seasonal wetland is considered to meet the wetland criteria. As part of the proposed project, the seasonal wetland would be filled to construct single-family residential homes. Such development would fill wetlands or other waters of the U.S. or state regulated by the United States Army Corp of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and/or the CDFW. As a result, the proposed project could create an adverse impact on federally protected wetlands, riparian habitats, or sensitive natural communities.

The ECCC HCP/NCCP provides for compensatory wetland habitat within dedicated preserve areas. The payment of ECCC HCP/NCCP fees as a result of the project would be used for restoration/creation of wetlands, which would represent compensatory wetlands for those impacted by the project.

Based on the above, implementation of the proposed project could have a substantial adverse effect on sensitive natural communities and/or have a substantial adverse effect on State or Federally protected aquatic resources (including, but not limited to, marsh,

vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption, or other means. Thus, a significant impact could occur.

Mitigation Measure(s)

The proposed project's participation in the ECCC HCP/NCCP would provide a mechanism to adequately mitigate impacts to wetland habitat within the project site included in the ECCC HCP/NCCP Permit Area. Moreover, the ECCC HCP/NCCP includes minimization, avoidance, and mitigation measures intended to reduce potential impacts to wetlands. The following mitigation measures have been designed to fulfill the requirements of the ECCC HCP/NCCP, including requirements related to minimization, avoidance, and mitigation measures. Implementation of the following mitigation measures would reduce the above impact to a *less-than-significant* level.

IV-12. *Prior to the issuance of grading or construction permits for development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Wetland Mitigation Fee in compliance with Article 7, Habitat Conservation Plan/Natural Community Conservation Plan Implementing Program, of the Oakley Municipal Code. Payment of the Wetland Mitigation Fee would address the loss of wetland habitat within the project site covered by the ECCC HCP/NCCP. The fees would be used in part to restore or create compensatory wetlands.*

Alternately, the project applicant may, in accordance with the terms of Oakley Municipal Code Article 7, create and restore wetlands in lieu of some or all of the mitigation fees. All applicable mitigation fees shall be paid, or an "in-lieu-of fee" agreement executed, prior to the issuance of a grading permit for the project.

The Oakley Planning Division and the Contra Costa County Conservancy shall approve the final method of compliance with the ECCC HCP/NCCP provisions.

IV-13. *Prior to the issuance of grading and construction permits, the project applicant shall obtain a CWA Section 404 permit, CWA Section 401 Water Quality Certification permit, and a Lake and Streambed Alteration Agreement from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the California Department of Fish and Wildlife.*

d. The project site is located in a relatively urbanized area and is bordered by new single-family residential development to the west, rural commercial and single-family development to the south, across E. Cypress Road. Such development acts as a barrier for wildlife species with limited crossing opportunities. According to the Application and Planning Survey Report, common wildlife species may likely use the site to some degree for local movements. For example, wildlife species may utilize the 75-foot setback along Little Dutch Slough. However, due to adjacent urban development, the site does not provide connectivity to any significant habitat areas and is not a designated wildlife corridor. Because the site does not provide connectivity between significant habitat areas, the loss of the project site as open space would not constitute a loss of a migration corridor on a regional scale. As a result, the proposed project would not interfere substantially with

the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites.

Based on the above, the project would not interfere substantially with the movement of any resident or migratory fish or wildlife species or with established resident or migratory wildlife corridors, or impede the use of wildlife nursery sites, and a ***less-than-significant*** impact would occur.

e. The proposed project would remove all trees within the project site. However, within the 75-foot established stream setback, all land that is disturbed by grading and trail construction would be seeded with native grasses and forbs. The area would be restored to a vegetated condition similar to, or with increased native plant diversity and cover, as compared to pre-construction. The goal of the restoration is to create habitat that has a greater ecological value than the disturbed habitat by increasing native plant cover and diversity.

   As noted in Section 9.1.1112 of the City's Municipal Code, heritage and protected trees may only be destroyed or removed when a permit for such actions has been granted or such activities are found to be exempt per the stipulations of Section 9.1.1112. Permit applications must be submitted to the Oakley Community Development Department and must show any trees to be removed or protected. The applicant shall contain the location, number, species, and size of the protect tree to be destroyed cut down, or removed and a statement of reasons for the proposed action, together with such information as may be required by the Community Development Department, including an arborist report.

   All trees on the project site would be removed during construction; thus, the project applicant would be required to submit proposed methods of compensation or replacement. In compliance with the City's Municipal Code, removed trees may be replaced through planting of compensatory trees. Additionally, the project applicant may elect to pay in-lieu fees or provide a combination of on-site replacement tree planting with in-lieu fee payment to the satisfaction of the Director of the Community Development or Planning Commission.

   The proposed project would include submittal of a tree removal permit application to the City for the proposed on-site improvements as part of the overall project approval. However, without compliance with applicable standards included in Section 9.1.1112 of the City's Municipal Code, the proposed project could result in conflicts with the City of Oakley's regulations regarding Heritage and Protected Tree preservation, which would be considered a ***potentially significant*** impact.

   Mitigation Measure(s)

   Implementation of the following mitigation measure would reduce the above impact to a *less-than-significant* level.

   IV-14. *Prior to project-related tree removal, the project applicant shall be required to comply with the standards included in Section 9.1.1112 of the City's Municipal Code by implementing one of the options provided in Section 9.1.1112(g)(11)(a), to the satisfaction of the Director of the Community Development Department or the Planning Commission, as applicable.*

f. The project site is a covered activity under the ECCC HCP/NCCP as residential development "activity within Urban Development Area" as defined by the HCP (Section 2.3, HCP/NCCP). The proposed project would comply with conservation and mitigation measures set forth for coverage under the under the ECCC HCP/NCCP. The project applicant mut set forth Best Management Practices (BMPs) defined by the ECCC HCP/NCCP. For example, the applicant shall allow any wildlife encountered during the course of construction to leave the construction area unharmed as required by the ECCC HCP/NCCP. The applicant has prepared an Application and Planning Survey Report that would need to be reviewed and approved by Contra Costa Conservancy. Compliance with the ECCC HCP/NCCP, would result in a ***less-than-significant*** impact in regards to conflicting with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan.

V. CULTURAL RESOURCES. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?	☐	✖	☐	☐
b. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5?	☐	✖	☐	☐
c. Disturb any human remains, including those interred outside of dedicated cemeteries.	☐	✖	☐	☐

Discussion

a-c. Historical resources are typically features that are associated with the lives of historically important persons and/or historically significant events, that embody the distinctive characteristics of a type, period, region or method of construction, or that have yield, or may be likely to yield, information important to the pre-history or history of the local area, California, or the nation. Examples of typical historical resources include, but are not limited to, buildings, farmsteads, rail lines, bridges, and trash scatters containing objects such as colored glass and ceramics. According to the City's General Plan EIR, listed State and federal inventories are not within the Planning Area or the Oakley City limits. The largest concentration of historic resources is located in the City's "old town." However, the proposed project is 2.7 miles west and would not impact old town structures downtown.

To identify any known resources at the project site, a search of the California Historical Resources Information System (CHRIS) was conducted for the project site, which included review of the cultural resources files at the Northwest Information System at California State University, Sonoma State. According to the records search, the project site does not contain recorded archaeological resources. The State Office of Historic Preservation Built Environment Resources Directory (OHPBERD), which includes listings of the California register of Historical Resources, California State Historical Landmarks, California State Points of Historical Interest, and the National Register of Historic Places, does not list recorded buildings or structures within or immediately adjacent to the proposed project site. In addition, the NWIC base maps show the proposed project to be within the boundary of Dutch Slough Rural Historic Landscape District, described as rural open space and a ranch or farm.

Currently, the project site is undeveloped and consists of vacant land with annual grasslands and limited trees. The project site is currently being used to support a small number of grazing cattle. The entire project site has been subject to high levels of disturbance from grazing and agricultural uses over previous years. The project site was previously used as an irrigated pasture land with multiple structures in the south-central part of the property. The structures have been since removed, but two concrete slabs, one with a water trough on top, remain within the project site. Former drainage ditches surround the project site on the northern, western, and parts of the southern property edge. However, the site does not contain any permanent structures which could be considered historical resources pursuant to Section 15064.5 of the CEQA Guidelines.

According to the CHRIS search, with respect to tribal cultural resources, a moderate potential of identifying unrecorded Native American Archaeological resources exists within the project area. In addition, a review of historical literature and maps indicate the possibility of historic-period activity within the project area. As a result, a moderate to high potential exists for unrecorded historic-period archaeological resources to be found within the proposed project. Finally, a 1928 Brentwood USGS 7.5-minute topographic quadrangle depicts two gas wells within the project area that may meet the Office of Historic Preservation's minim age standard that buildings, structure, and objects 45 years or older may be of historic value.[9] Thus, while unlikely, the potential exists for subsurface, unrecorded archaeological resources to be encountered on the project site during grading and other ground-disturbing activities associated with the proposed project.

Based on the above, the possibility exists that previously undiscovered historical or archaeological resources, including human remains, could be uncovered during ground-disturbing activities associated with construction of the proposed project. Therefore, the project could result in a potentially significant impact with respect to causing a substantial adverse change in the significance of a unique historical or archaeological resource pursuant to Section 15064.5 and/or disturbing human remains.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

V-1. *If buried archaeological, paleontological, and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the discovery and the developer shall immediately notify the City of Oakley Planning Division of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery, as appropriate. The archaeologist shall be required to submit to the City of Oakley Planning Division for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the area of discovery would not be allowed until the preceding work has occurred.*

V-2. *Pursuant to State Health and Safety Code §7050.5 (c) State Public Resources Code §5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop within 100 feet of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person believed to be the most likely descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. Additional work is not to take place within 100 feet of the find until the identified appropriate actions have been implemented.*

[9] Northwest Information Center. Re: Record search results for the proposed Burroughs project. February 25, 2021.

VI. ENERGY. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☐	☐	✖	☐
b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	✖	☐

Discussion

a,b. The main forms of available energy supply are electricity, natural gas, and oil. A description of the 2019 California Green Building Standards Code (CALGreen Code) and the Building Energy Efficiency Standards, with which the proposed project would be required to comply, as well as discussions regarding the proposed project's potential effects related to energy demand during construction and operations are provided below.

California Green Building Standards Code

The 2019 California Green Building Standards Code, otherwise known as the CALGreen Code (CCR Title 24, Part 11) is a portion of the CBSC, which became effective on January 1, 2020.[10] The purpose of the CALGreen Code is to improve public health, safety, and general welfare by enhancing the design and construction of buildings through the use of building concepts having a reduced negative impact or positive environmental impact and encouraging sustainable construction practices. The CALGreen standards regulate the method of use, properties, performance, types of materials used in construction, alteration repair, improvement and rehabilitation of a structure or improvement to property. The provisions of the code apply to the planning, design, operation, construction, use, and occupancy of every newly constructed building or structure throughout California. Requirements of the CALGreen Code include, but are not limited to, the following measures:

- Compliance with relevant regulations related to future installation of electric vehicle charging infrastructure in residential and non-residential structures;
- Indoor water use consumption is reduced through the establishment of maximum fixture water use rates;
- Outdoor landscaping must comply with the California Department of Water Resources' MWELO, or a local ordinance, whichever is more stringent, to reduce outdoor water use;
- Diversion of 65 percent of construction and demolition waste from landfills;
- Mandatory use of low-pollutant emitting interior finish materials such as paints, carpet, vinyl flooring, and particle board; and
- For some single-family and low-rise residential structures developed after January 1, 2020, mandatory on-site solar energy systems capable of producing 100 percent of the electricity demand created by the residence(s). Certain residential developments, such as developments that are subject to substantial shading, rendering the use of on-site solar photovoltaic systems infeasible, may be exempt from the foregoing requirement on a case-by-case basis.

[10] California Building Standards Commission. *California Green Building Standards Code*. 2019.

Building Energy Efficiency Standards

The 2019 Building Energy Efficiency Standards is a portion of the CBSC. Energy reductions relative to previous Building Energy Efficiency Standards are achieved through various regulations, including requirements for the use of high efficacy lighting, improved water heating system efficiency, and high-performance attics and walls. For residential buildings, compliance with the 2019 standards would use approximately seven percent less energy due to energy efficiency measures compared to homes built under the 2016 standards.[11] The Building Energy Efficiency Standards require residential buildings that are three stories or less to include solar photovoltaic systems. Once solar electricity generation is factored in, homes built under the 2019 standards will use approximately 53 percent less energy than those under the 2016 standards.

Construction Energy Use

Construction of the proposed project would involve on-site energy demand and consumption related to use of oil in the form of gasoline and diesel fuel for construction worker vehicle trips, hauling and materials delivery truck trips, and operation of off-road construction equipment. In addition, diesel-fueled portable generators may be necessary to provide additional electricity demands for temporary on-site lighting, welding, and for supplying energy to areas of the site where energy supply cannot be met via a hookup to the existing electricity grid. Project construction would not involve the use of natural gas appliances or equipment.

Even during the most intense period of construction, due to the different types of construction activities (e.g., site preparation, grading, building construction), only portions of each project parcel would be disturbed at a time, with operation of construction equipment occurring at different locations on the project site, rather than a single location. In addition, all construction equipment and operation thereof would be regulated pursuant to the CARB In-Use Off-Road Diesel Vehicle Regulation. The In-Use Off-Road Diesel Vehicle Regulation is intended to reduce emissions from in-use, off-road, heavy-duty diesel vehicles in California by imposing limits on idling, requiring all vehicles to be reported to CARB, restricting the addition of older vehicles into fleets, and requiring fleets to reduce emissions by retiring, replacing, or repowering older engines, or installing exhaust retrofits. In addition, as a means of reducing emissions, construction vehicles are required to become cleaner through the use of renewable energy resources. The In-Use Off-Road Diesel Vehicle Regulation would therefore help to improve fuel efficiency for equipment used in construction of the proposed project. Technological innovations and more stringent standards are being researched, such as multi-function equipment, hybrid equipment, or other design changes, which could help to further reduce demand on oil and limit emissions associated with construction.

The CARB prepared the 2017 Climate Change Scoping Plan Update (2017 Scoping Plan),[12] which builds upon previous efforts to reduce GHG emissions and is designed to continue to shift the California economy away from dependence on fossil fuels. Appendix B of the 2017 Scoping Plan includes examples of local actions (municipal code changes, zoning changes, policy directions, and mitigation measures) that would support the State's climate goals. The examples provided include, but are not limited to, enforcing idling time restrictions for construction vehicles, utilizing existing grid power for electric energy rather

[11] California Energy Commission. *Title 24 2019 Building Energy Efficiency Standards FAQ*. November 2018.

[12] California Air Resources Board. *The 2017 Climate Change Scoping Plan Update*. January 20, 2017.

than operating temporary gasoline/diesel-powered generators, and increasing use of electric and renewable fuel-powered construction equipment. The regulation described above, with which the proposed project must comply, would be consistent with the intention of the 2017 Scoping Plan and the recommended actions included in Appendix B of the 2017 Scoping Plan.

Based on the above, the temporary increase in energy use occurring during construction of the proposed project would not result in a significant increase in peak or base demands or require additional capacity from local or regional energy supplies. In addition, the proposed project would be required to comply with all applicable regulations related to energy conservation and fuel efficiency, which would help to reduce the temporary increase in demand.

Operational Energy Use

Energy use associated with operation of the proposed project would be typical of residential uses, requiring electricity and natural gas for heating, ventilation, and air conditioning (HVAC), interior and exterior building lighting, electronic equipment, machinery, refrigeration, appliances, security systems, and more. Maintenance activities during operations, such as landscape maintenance, would involve the use of electric or gas-powered equipment. As noted above, the project would be required to include a solar photovoltaic system in accordance with the Building Energy Efficiency Standards. In addition to on-site energy use, the proposed project would result in transportation energy use associated with vehicle trips generated by the proposed residential development.

The proposed project would be subject to all relevant provisions of the most recent update of the CBSC, including the CALGreen Code and the Building Energy Efficiency Standards. Adherence to the most recent CALGreen Code and the Building Energy Efficiency Standards would ensure that the proposed structures would consume energy efficiently through the incorporation of such features as efficient water heating systems, high performance attics and walls, and high efficacy lighting. Required compliance with the CBSC would ensure that the building energy use associated with the proposed project would not be wasteful, inefficient, or unnecessary.

With regard to transportation energy use, the proposed project would comply with all applicable regulations associated with vehicle efficiency and fuel economy. In addition, as discussed in Section XVII, Transportation, of this IS/MND, the proposed project is not anticipated to increase VMT.

Conclusion

Based on the above, construction and operations of the proposed residences, the proposed project would not result in wasteful, inefficient, or unnecessary consumption of energy resources or conflict with or obstruct a state or local plan for renewable energy or energy efficiency. Thus, a ***less-than-significant*** impact would occur.

VII. GEOLOGY AND SOILS. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	✖	☐	☐
ii. Strong seismic ground shaking?	☐	✖	☐	☐
iii. Seismic-related ground failure, including liquefaction?	☐	✖	☐	☐
iv. Landslides?	☐	✖	☐	☐
b. Result in substantial soil erosion or the loss of topsoil?	☐	✖	☐	☐
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	✖	☐	☐
d. Be located on expansive soil, as defined in Table 18-1B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?	☐	✖	☐	☐
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	✖
f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	✖	☐	☐

Discussion

ai.-ii. The project site has been subject to a geological hazards and preliminary geotechnical report prepared by ENGEO Incorporated (ENGEO) for the proposed project (Appendix D).[13] Based on the findings of the geotechnical report, ENGEO determined that active faults do not cross the site and the site is not located within an Alquist-Priolo Earthquake Zone; however, five nearby active faults are capable of producing significant ground shaking at the site. The active faults nearby include the Greenville Connected Fault (12 miles from the project site), the Mount Diablo Thrust Fault (19.5 miles from the project site), Calaveras Fault (22.5 miles from the project site), Hayward-Rodgers Creek Fault (31 miles from the project site), and the San Andres Fault (50 miles from the project site). Furthermore, the project site is located within the Great Valley Geomorphic Province of California, characterized as an area of moderate seismicity. Further seismic activity and ground shaking can be expected to occur in this area; therefore, development of the

[13] ENGEO Incorporated. *Burroughs Property Preliminary Geotechnical Exploration.* January 7, 2020.

proposed project should be designed to accommodate for strong earthquake ground shaking.

An earthquake of moderate to high magnitude generated by the above faults could cause seismic ground shaking at the site. Proper engineering of the proposed buildings in compliance with the existing standards of the CBSC would ensure that the proposed project would not be subject to substantial risks related to seismic ground shaking. Projects designed in accordance with the CBSC should be able to: 1) resist minor earthquakes without damage, 2) resist moderate earthquakes without structural damage but with some nonstructural damage, and 3) resist major earthquakes without collapse but with some structural as well as nonstructural damage. Conformance with the design standards is enforced through building plan review and approval by the City. Conformance to the current building code recommendations does not constitute any kind of guarantee that significant structural damage would not occur in the event of a maximum magnitude earthquake; however, it is reasonable to expect that a well-designed and well-constructed structure would not collapse or cause loss of life in a major earthquake. However, the potential still exists for seismic related ground rupture to occur on the project site. Therefore, a ***potentially significant*** impact could occur related to seismic surface rupture.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above potential impact to a *less-than-significant* level.

VII-1. *All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by the Director of Public Works/City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations specified in the geotechnical report prepared for the proposed project by ENGEO are properly incorporated and utilized in the project design.*

aiii,iv,
c. The proposed project's potential effects related to liquefaction, landslides, lateral spreading, and subsidence/settlement are discussed in detail below

Liquefaction and Settlement

Liquefaction is the temporary transformation of loose, saturated granular sediments from a solid state to a liquefied state as a result of seismic ground shaking. In the process, the soil undergoes transient loss of strength, which commonly causes ground displacement or ground failure to occur. Because saturated soils are a necessary condition for liquefaction, soil layers in areas where the groundwater table is near the surface have higher liquefaction potential than those in which the water table is located at greater depths. Additionally, loose unsaturated sandy soils have the potential to settle during strong seismic shaking. Liquefaction can often result in subsidence or settlement.

According to the geotechnical report, the soil within the project site is characterized by relative thickness of non-liquifiable surface soil and potentially liquefiable soil; therefore, the risk of surface disruption is low to moderate from most of the site, but may be moderate to high in the eastern portion of the site. Results from a liquefaction analysis, within the geotechnical report, indicate the relatively continuous sand layer between the surficial clay sand approximately 20 feet below the ground surface may be potentially liquefiable.

ENGEO estimates up to approximately four inches of total settlement from liquefaction during a design-level seismic event. In addition, undocumented fill was identified within the vicinity of the abandoned residence foundation during ENGEO's field exploration. Additionally, undocumented fill may be found within the vicinity of the abandoned gas well and the adjacent drainage ditches. Undocumented fills can undergo excessive settlement, especially under new fill or building loads. ENGEO recommends complete removal of this material to competent native soils.

Landslides

Seismically-induced landslides are triggered by earthquake ground shaking. The risk of landslide hazard is greatest in areas with steep, unstable slopes. However, the topography of the site is relatively level; therefore, the risk of a landslide is very low. Therefore, the proposed project would not be subject to landslide risks and would not expose people or structures to potential risk of loss, injury, or death involving landslides.

Lateral Spreading

Lateral spreading is horizontal/lateral ground movement of relatively flat-lying soil deposits towards a free face such as an excavation, channel, or open body of water; typically, lateral spreading is associated with liquefaction of one or more subsurface layers near the bottom of the exposed slope. According to the geotechnical report, given the depth of the potentially liquefiable soils, and the fact that the proposed project is inland of the existing river channel, and will not be exposed to a nearby free face, the potential for significant lateral spreading is low. Therefore, the proposed project would not be subject to risks associated with lateral spreading.

Conclusion

Although the proposed project would not be exposed to hazards related to landslides, the proposed project could be subject to substantial risks related to liquefaction, settlement, and lateral spreading. Therefore, these risks could present a ***potentially significant*** hazard within the project site.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above potential impact to a *less-than-significant* level.

VII-2. Implement Mitigation Measure VII-1.

b. The proposed project would include grading of the project site prior to construction of the proposed residences. During construction activities, topsoil would be moved and graded, leading to disturbed soils. In addition, soil would be imported onto the project site to remove to the site from the flood zone. The new importation of soil would result in the raising of the Burroughs Project site by approximately five feet in all areas of the site. Such disturbed soils could suffer from wind and water erosion while the topsoil is exposed. Following development of the site, all exposed soils would be covered with impervious surfaces or landscaping, thus, long-term erosion would not occur.

The proposed project would be designed to minimize the potential for future erosion. Nonetheless, due to the potential for exposure of topsoil on the proposed project site during construction activities, implementation of the proposed project could result in

substantial erosion or the loss of topsoil. Therefore, a ***potentially significant*** impact could occur.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

VII-3. *Prior to the issuance of a grading permit, the project applicant shall prepare to the satisfaction of the Community Development Department, an erosion control plan that utilizes standard construction practices to limit the erosion effects during construction of the proposed project. Actions should include, but are not limited to, the following:*

- *Placement of new fill during the dry season, April 15 to October 15;*
- *Hydro-seeding;*
- *Placement of erosion control measures within drainage ways and ahead of drop inlets;*
- *The temporary lining (during construction activities) of drop inlets with "filter fabric";*
- *The placement of straw wattles along slope contours;*
- *Use of a designated equipment and vehicle "wash-out" location;*
- *Use of siltation fences;*
- *Use of on-site rock/gravel road at construction access points; and*
- *Use of sediment basins and dust palliatives.*

d. Expansive soils can undergo significant volume changes with changes in moisture content. Specifically, such soils shrink and harden when dried and expanded and soften when wetted. If structures are underlain by expansive soils, foundation systems must be capable of withstanding the potential damaging movements of the soil. According to the geotechnical report, subsurface exploration indicates that portions of the existing surface soil likely have a high shrink/swell potential with variations in moisture content. Expansive soils can shrink or swell and cause heaving and cracking of slabs-on-grade, pavements, and structures founded on shallow foundations. Successful performance of structures on expansive soil requires special attention during construction. Because the project site could be located on expansive soil, as defined in Table 18-1B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property, a ***potentially significant*** impact could occur.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above potential impact to a *less-than-significant* level.

VII-4. *Implement Mitigation Measure VII-1.*

e. The proposed project would connect to existing City sewer services, thus, the construction or use of septic tanks or other alternative wastewater disposal system is not included within the project. Therefore, ***no impact*** would occur regarding the use of soils to adequately support the use of septic tanks or alternative wastewater disposal systems would occur.

f. According to the Oakley General Plan Draft EIR, few archeological or paleontological finds have occurred in the City. However, given the rich history of the Planning Area, the City requires site evaluation prior to development of undeveloped areas, as well as required procedures if artifacts are unearthed during construction. Historically, the site has been heavily disturbed with current cattle grazing and past irrigated pasture land. However, the potential exists for previously unknown paleontological resources to occur within the project site. Ground-disturbing activity such as grading, trenching, or excavating associated with implementation of the proposed project would have the potential to disturb or destroy such resources if present. Therefore, the proposed project could result in the direct or indirect destruction of a unique paleontological resource, and a ***potentially significant*** impact could occur.

Mitigation Measure(s)

Implementation of Mitigation Measures V-1 and V-2 would reduce the potential impact to a *less-than-significant* level.

VII-5. Implement Mitigation Measures V-1 and V-2.

VIII. GREENHOUSE GAS EMISSIONS. *Would the project:*	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	✖	☐	☐
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gasses?	☐	✖	☐	☐

Discussion

a,b. Emissions of GHGs contributing to global climate change are attributable in large part to human activities associated with the industrial/manufacturing, utility, transportation, residential, and agricultural sectors. Therefore, the cumulative global emissions of GHGs contributing to global climate change can be attributed to every nation, region, and city, and virtually every individual on Earth. An individual project's GHG emissions are at a micro-scale level relative to global emissions and effects to global climate change; however, an individual project could result in a cumulatively considerable incremental contribution to a significant cumulative macro-scale impact. As such, impacts related to emissions of GHG are inherently considered cumulative impacts.

Implementation of the proposed project would cumulatively contribute to increases of GHG emissions. Estimated GHG emissions attributable to future development would be primarily associated with increases of carbon dioxide (CO_2) and, to a lesser extent, other GHG pollutants, such as methane (CH_4) and nitrous oxide (N_2O) associated with area sources, mobile sources or vehicles, utilities (electricity and natural gas), water usage, wastewater generation, and the generation of solid waste. The primary source of GHG emissions for the project would be mobile source emissions. The common unit of measurement for GHG is expressed in terms of annual metric tons of CO_2 equivalents ($MTCO_2e$/yr).

The BAAQMD developed a threshold of significance for project-level GHG emissions in 2009. The District's approach to developing the threshold was to identify a threshold level of GHG emissions for which a project would not be expected to substantially conflict with existing California legislation. At the time that the thresholds were developed, the foremost legislation regarding GHG emissions was AB 32, which established an emissions reduction goal of reducing statewide emissions to 1990 levels by 2020.[14] The GHG emissions threshold of significance recommended by BAAQMD to determine compliance with AB 32 is 1,100 $MTCO_2e$/yr or 4.6 $MTCO_2e$ per service population per year ($MTCO_2e$/SP/yr). If a project generates GHG emissions above the BAAQMD's adopted threshold level, the project is considered to generate significant GHG emissions and conflict with AB 32. It is noted that the goal year for AB 32 (2020) has elapsed. Nonetheless, the aforementioned thresholds are still applicable in determining the significance of project-related GHG emissions under CEQA, and represent the BAAQMD's only adopted GHG thresholds at the time of analysis.

[14] Bay Area Air Quality Management District. *California Environmental Quality Act Guidelines Update: Proposed Thresholds of Significance*. May 2017.

The foregoing threshold is intended for use in assessing operational GHG emissions only. Construction of a proposed project would result in GHG emissions over a short-period of time in comparison to the operational lifetime of the project. To capture the construction-related GHG emissions due to buildout of the proposed project, such emissions are amortized over the anticipated project lifetime and added to the operational GHG emissions. Given that construction-related GHG emissions would not occur concurrently with operational emissions and would cease upon completion of construction activities, combining the two emissions sources represents a conservative estimate of total project GHG emissions.

Since the adoption of BAAQMD's GHG thresholds of significance, the State legislature has passed AB 197 and Senate Bill (SB) 32, which builds off of AB 32 and establishes a statewide GHG reduction target of 40 percent below 1990 levels by 2030. Considering the legislative progress that has occurred regarding statewide reduction goals since the adoption of BAAQMD's standards, the emissions thresholds presented above would determine whether a proposed project would be in compliance with the 2020 emissions reductions goals of AB 32, but would not demonstrate whether a project would be in compliance with SB 32. In accordance with the changing legislative environment, the BAAQMD has begun the process of updating the District's CEQA Guidelines; however, updated thresholds of significance have not yet been adopted. In the absence of BAAQMD-adopted thresholds to assess a project's compliance with SB 32, the City has chosen to consider additional GHG emissions thresholds.

The BAAQMD has determined that projects with operational emissions equal to or less than 1,100 $MTCO_2e$/yr or 4.6 $MTCO_2e$/SP/yr would comply with the emission reductions target of 1990 levels by 2020 set forth by AB 32. SB 32 requires that by 2030 statewide emissions be reduced by 40 percent beyond the 2020 reduction target set by AB 32; therefore, in the absence of specific guidance from BAAQMD or the CARB, the City assumes that in order to meet the reduction targets of SB 32, a proposed project would be required to reduce emissions by an additional 40 percent beyond the emissions reductions currently required by BAAQMD for compliance with AB 32. Assuming a 40 percent reduction from current BAAQMD targets, adjusted for the projected population, a proposed project would be in compliance with SB 32 if the project's emissions did not exceed 660 $MTCO_2e$/yr or 2.6 $MTCO_2e$/SP/yr.

In addition to the quantitative thresholds described above, the City has also determined that a qualitative analysis assessing the project's compliance with the CARB's *California's 2017 Climate Change Scoping Plan* (2017 Scoping Plan) is warranted. The CARB's 2017 Scoping Plan establishes a strategy to meet California's 2030 GHG targets; accordingly, should the project be shown to comply with the 2017 Scoping Plan, the proposed project would be considered consistent with Statewide reduction targets for the year 2030. Based on recommendations from BAAQMD, a project's compliance with the local actions contained in Appendix B of the 2017 Scoping Plan may be used to assess a project's compliance with the 2017 Scoping Plan and, thus, consistency with SB 32.[15]

By using the BAAQMD thresholds of significance for GHG, the updated SB 32 thresholds discussed above, and evaluating the project's consistency with applicable plans, the City would comply with Section 15064.4(b)(3) of the CEQA Guidelines, which suggests that

[15] Flores, Areana, Bay Area Air Quality Management District. Personal communication [phone], Jacob Byrne, Senior Associate/Air Quality Technician, Raney Planning & Management. September 17, 2019.

lead agencies consider the extent that the project would comply with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction of GHG emissions.

GHG Emissions Thresholds

Construction GHG emissions are a one-time release and are, therefore, not typically expected to generate a significant contribution to global climate change. Neither the City nor BAAQMD has an adopted threshold of significance for construction-related GHG emissions and does not require quantification. Nonetheless, the proposed project's construction GHG emissions, as well as operational emissions, have been estimated using CalEEMod and EMFAC2017 under the same assumptions discussed in Section III, Air Quality, of this IS/MND (see Appendix A).

The emissions estimates prepared for the proposed project determined that unmitigated construction of the project would result in total GHG emissions of 1,881.86 $MTCO_2e$ over the entire construction period. In the analyses below, the construction GHG emissions are amortized over the anticipated 30-year lifetime of the proposed project.[16]

Compliance with AB 32

As shown in Table 5, the project's total unmitigated annual GHG emissions in the first year of project operation, 2025, including amortized construction-related emissions, were estimated to be approximately 2,146.43 $MTCO_2e$/yr, which would exceed BAAQMD's 1,100 $MTCO_2e$/yr threshold of significance for GHG emissions. However, the proposed project is expected to generate approximately 678 residents. Thus, the project annual GHG emissions per capita would be 3.16 $MTCO_2e$/SP/yr, which falls below the BAAQMD's 4.6 $MTCO_2e$/SP/yr threshold of significance for GHG emissions. Therefore, the proposed project would not conflict with the emissions reduction targets of AB 32.

Table 5
Unmitigated Annual Project GHG Emissions (2022)

Source	Annual GHG Emissions ($MTCO_2e$/yr)
Operational GHG Emissions:	2,083.70
Area	*28.70*
Energy	*304.28*
Mobile	*1,601.42*
Waste	*125.68*
Water	*23.62*
Amortized Construction GHG Emissions:	62.73
Total Annual GHG Emissions	**2,146.43**
Total Annual GHG Emissions per Capita	**3.16 $MTCO_2e$/SP/yr**
BAAQMD AB 32 Threshold	**1,100 $MTCO_2e$/yr or 4.6 $MTCO_2e$/SP/yr**
Exceeds Thresholds?	**YES**

Note: 208 units x 3.26 persons per dwelling unit = 678 residents

Source: CalEEMod, March 2021 (see Appendix A).

[16] South Coast Air Quality Management District. 2008. *Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold*. Available at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf. Accessed October 2020.

Compliance with SB 32

As shown in Table 6, the project's total unmitigated annual GHG emissions in the year 2030, including amortized construction-related emissions, were estimated to be approximately 1,973.43 $MTCO_2e$/year and 2.91 $MTCO_2e$/SP/year. Thus, implementation of the proposed would result in emissions that exceed the threshold used for this analysis for GHG emissions in the year 2030. Thus, the proposed project could conflict with the emissions reduction targets of SB 32.

Table 6
Unmitigated Annual Project GHG Emissions (2030)

Source	Annual GHG Emissions ($MTCO_2e$/yr)
Operational GHG Emissions:	1,910.70
Area	*28.70*
Energy	*304.28*
Mobile	*1,430.63*
Waste	*125.68*
Water	*21.41*
Construction-Related GHG Emissions:	62.73
Total Annual GHG Emissions	**1,973.43**
Total Annual GHG Emissions per Capita	**2.91 $MTCO_2e$/SP/yr**
SB 32 Threshold	**660 $MTCO_2e$/yr or 2.6 $MTCO_2e$/SP/yr**
Exceeds Thresholds?	**YES**
Source: CalEEMod, March 2021 (see Appendix A).	

Consistency with 2017 Scoping Plan

Appendix B to the CARB's 2017 Scoping Plan provides examples of potentially feasible mitigation measures that could be considered to assess a project's compliance with the State's 2030 GHG emissions reductions goals. Thus, general compliance with the Local Actions within the 2017 Scoping Plan could be considered to demonstrate the project's compliance with SB 32. The project's consistency with the applicable Local Actions within the 2017 Scoping Plan is assessed in Table 7 below.

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
Construction	
Enforce idling time restrictions for construction vehicles.	CARB's In-Use Off-Road Vehicle Regulations include restrictions that limit idling time to five minutes under most situations. Construction fleets and all equipment operated as part of on-site construction activities would be subject to CARB's idling restrictions. As such, the proposed project would be required to comply with this measure.
Require construction vehicles to operate with the highest tier engines commercially available.	In compliance with Mitigation Measure III-1, the project applicant would be required to use construction equipment that complies with the highest tier engines commercially available. As such, the proposed project would comply with this measure.
Divert and recycle construction and demolition waste, and use locally-sourced building materials with a	The CALGreen Code requires the diversion of construction and demolition waste, and the proposed project would be required to comply with the most up-to-date CALGreen Code. The project applicant has not

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
high recycled material content to the greatest extent feasible.	committed to using locally-sourced building materials or materials with a high recycled content, and, thus, compliance with this portion of the suggested measure is uncertain at this time.
Minimize tree removal, and mitigate indirect GHG emissions increases that occur due to vegetation removal, loss of sequestration, and soil disturbance.	Any tree removal associated with the proposed project would be subject to the regulations set forth in Section 9.1.1112 of the City's Municipal Code. As noted therein, any protected trees that are to be removed shall be replaced. As such, the project would mitigate for losses in sequestration and would be considered to generally comply with the suggested measure.
Utilize existing grid power for electric energy rather than operating temporary gasoline/diesel powered generators.	The contractor would use existing grid electricity to the extent feasible. However, the possibility exists that temporary generators will be used for electricity in instances where grid electricity is not accessible. Overall, the project would be considered to generally comply with the suggested measure.
Increase use of electric and renewable fuel powered construction equipment and require renewable diesel fuel where commercially available.	The project applicant has not committed to the use of alternatively fueled construction equipment. Furthermore, the commercial availability of renewable diesel in the project area is currently unknown. Consequently, compliance with this suggested measure is uncertain at this time.
Require diesel equipment fleets to be lower emitting than any current emission standard.	In compliance with Mitigation Measure III-1, the project applicant would be required to use Tier 4 construction equipment. Such engines are considered lower emitting than any current emission standard. As such, the proposed project would comply with this measure.
Operations	
Comply with lead agency's standards for mitigating transportation impacts under SB 743.	As noted in Section XVII, Transportation, of this IS/MND, implementation of the project would result in a less-than-significant impact to VMT. As such, the proposed project would comply with this measure.
Require on-site EV charging capabilities for parking spaces serving the project to meet jurisdiction-wide EV proliferation goals.	Per the 2019 CALGreen Code, residential projects are required to install a listed raceway to accommodate a dedicated 208/240-volt branch circuit for each unit, which would be suitable for EV charging. Compliance with the 2019 CALGreen Code would ensure that the proposed project provides sufficient EV charging infrastructure to comply with this suggested measure.
Dedicate on-site parking for shared vehicles.	This measure relates to multi-family residences and commercial land uses where separated parking areas are typically provided that would allow for the designation of preferential parking spaces. As such, the measure is not applicable to the proposed project, and the project is considered consistent with the measure.
Provide adequate, safe, convenient, and secure on-site bicycle parking and storage in multi-family residential projects and in non-residential projects.	The proposed project is a single-family residential development. Therefore, this measure does not apply.

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
Provide on- and off-site safety improvements for bike, pedestrian, and transit connections, and/or implement relevant improvements identified in an applicable bicycle and/or pedestrian master plan.	The proposed project would provide on-site pedestrian infrastructure as well as off-site pedestrian improvements along the project frontage with a connection to the proposed pedestrian trail sidewalk on E. Cypress Road. Additionally, pedestrian infrastructure would be constructed along Little Dutch Slough. Considering the project would provide pedestrian and bicycle facility improvements, the proposed project would be generally consistent with the suggested measure.
Require on-site renewable energy generation.	The 2019 CBSC requires that residential structures that are three-stories or less in height be constructed with renewable energy systems sufficient to provide 100 percent of the electricity required for the residence. The proposed single-family residences would be subject to such requirements. Due to the CBSC's requirements regarding renewable energy systems for residential land uses, the proposed project would include on-site renewable energy generation and would comply with this measure.
Prohibit wood-burning fireplaces in new development, and require replacement of wood-burning fireplaces for renovations over a certain size development.	The proposed project would not include wood-burning fireplaces. Thus, the proposed project would comply with the suggested measure.
Require cool roofs and "cool parking" that promotes cool surface treatment for new parking facilities as well as existing surface lots undergoing resurfacing.	The 2019 CBSC contains requirements for the thermal emittance, three-year aged reflectance, and Solar Reflectance Index (SRI) of roofing materials used in new construction and re-roofing projects. Such standards, with which the project would be required to comply, would help to reduce heating and cooling costs associated with the proposed project. In addition, the proposed project would include 208 garages, which reduces the amount of exposed pavement surfaces. Therefore, surface lot heat effects would be reduced compared to provision of all necessary parking spaces in uncovered surface lots. Therefore, the proposed project would generally comply with the suggested measure.
Require solar-ready roofs.	The 2019 CBSC requires that new residential structures under three stories generate 100 percent of electricity needs from on-site solar. Therefore, the proposed project would comply with this suggested measure.
Require organic collection in new developments.	Per Chapter 20, Solid Waste Collection and Regulations, of the Municipal Code, the proposed project would be required to subscribe to a solid waste collection service. In addition, the City's garbage provider offers green waste collection services. As such, future residents would have access to the organic collection service. Thus, the proposed project would include organic collection and the project would comply with the suggested measure.
Require low-water landscaping in new developments (see CALGreen Divisions 4.3 and 5.3 and the Model	Landscaping within the project site would be required to comply with the CALGreen code and all water efficiency measures therein, including the MWELO regulations

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
Water Efficient Landscape Ordinance [MWELO], which is referenced in CALGreen). Require water efficient landscape maintenance to conserve water and reduce landscape waste.	adopted by the City of Oakley. Accordingly, the proposed project is anticipated to comply with this measure.
Achieve Zero Net Energy performance building standards prior to dates required by the Energy Code.	Through the CBSC requirements, the proposed single-family residences are anticipated to achieve Zero Net Energy. Therefore, the proposed project is anticipated to comply with this measure.
Encourage new construction, including municipal building construction, to achieve third-party green building certifications, such as the GreenPoint Rated program, LEED rating system, or Living Building Challenge.	The project applicant has not committed to achieving third-party green building certification. Consequently, compliance with this suggested measure is uncertain at this time.
Require the design of bike lanes to connect to the regional bicycle network.	Marked bike lanes exist in the project vicinity. Bicycle lanes and bike parking would be located within the proposed pedestrian trail. As noted in the Traffic Impact Study prepared for the proposed project, the proposed project would not conflict with existing or planned pedestrian, bicycle, or transit facilities as per the Contra Costa Countywide Bicycle and Pedestrian Plan (2018) and the City of Oakley 2020 General Plan. Considering the above, the proposed project would comply with the general intent of the suggested measure.
Expand urban forestry and green infrastructure in new land development.	Landscaping improvements would be included throughout the project site. A variety of trees, shrubs, vines, and ground cover would be provided along the project drive aisles and trail, as well as along the perimeter of the proposed units within the project site. As such, the development would expand upon urban forestry and green infrastructure, and would comply with this measure.
Require preferential parking spaces for park and ride to incentivize carpooling, vanpooling, commuter bus, electric vehicles, and rail service use.	The measure relates to multi-family residential development and commercial land uses, and the proposed project includes only single-family development. As a result, the measure does not apply to the proposed project.
Develop a rideshare program targeting commuters to major employment centers.	The project site would be developed with residences and therefore, would not be considered a major employment center. Consequently, the measure does not apply to the proposed project.
Require gas outlets in residential backyards for use with outdoor cooking appliances such as gas barbeques if natural gas service is available.	The project applicant has not committed to providing natural gas service for outdoor cooking appliances. Accordingly, compliance with this measure is uncertain at this time.
Require the installation of electrical outlets on the exterior walls of both the front and back of residences to promote the use of electric	Pursuant to California Electrical Code, Article 210.52(E), the project would be required to include at least one electrical outlet to be located in the perimeter of a balcony, desk, or porch. The project applicant has not committed to

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
landscape maintenance equipment.[2]	providing additional exterior electrical outlets to promote the use of electric landscape maintenance equipment. Consequently, the project would partially comply with the suggested measure.
Require the design of the electric outlets and/or wiring in new residential unit garages to promote electric vehicle usage.	The CBSC requires that new residential unit garages be designed with wiring sufficient to provide future installation of electric vehicle charging infrastructure. Therefore, the proposed project would be required to comply with this measure.
Provide electric outlets to promote the use of electric landscape maintenance equipment to the extent feasible on parks and public/quasi-public lands.	The project applicant has not committed to providing electrical outlets in the private parks or landscaping areas proposed for the project site. Compliance with this measure is uncertain at this time.
Require each residential unit to be "solar ready," including installing the appropriate hardware and proper structural engineering.	The CBSC requires all residences three-stories or less in height to include renewable energy systems. The proposed residences would be three-stories or less in height, and would thereby be required to generate 100 percent of project electricity needs from on-site solar. Thus, the proposed project would comply with this measure.
Require the installation of energy conserving appliances such as on-demand tank-less water heaters and whole-house fans.	The proposed project would be required to comply with the CBSC, which includes standards related to installation of energy-efficient appliances and building features such as water heaters and ventilation systems. Thus, the project would generally comply with the suggested measure.
Require each residential and commercial building equip buildings [sic] with energy efficient AC units and heating systems with programmable thermostats/timers.	The proposed project would be required to comply with the CBSC, which includes standards related to energy-efficient heating and cooling systems. Thus, the project would generally comply with the suggested measure.
Require large-scale residential developments and commercial buildings to report energy use, and set specific targets for per-capita energy use.	The project applicant has not committed to reporting energy use or setting specific energy use targets. Accordingly, compliance with this suggested measure is uncertain at this time.
Require each residential and commercial building to utilize low flow water fixtures such as low flow toilets and faucets (see CALGreen Divisions 4.3 and 5.3 as well as Appendices A4.3 and A5.3).	The proposed project would be required to comply with the residential water efficiency regulations within CALGreen. Thus, the proposed project would comply with this suggested measure.
Require the use of energy-efficient lighting for all street, parking, and area lighting.	All proposed exterior lighting would be LED type, consistent with the 2019 Building Energy Efficiency Standards. Thus, the proposed project would comply with the suggested measure.
Require the landscaping design for parking lots to utilize tree cover and compost/mulch.	The preliminary landscaping plans include tree, shrub, ground cover, and vine planting throughout the proposed project site and parking lots. Thus, the proposed project would comply with the suggested measure.

Table 7
Project Consistency with the 2017 Scoping Plan

Suggested Measure	Consistency Discussion
Incorporate water retention in the design of parking lots and landscaping, including using compost/mulch.	Parking areas are not proposed as part of the project. In addition, the proposed project would include the use of mulch on all exposed soil surfaces in landscaped areas and would include several bioretention basins to treat runoff from each drainage management area. Accordingly, water retention features are incorporated into the overall project design, and the proposed project would comply with the suggested measure.
Require the development project to propose an off-site mitigation project which should generate carbon credits equivalent to the anticipated GHG emission reductions. This would be implemented via an approved protocol for carbon credits from California Air Pollution Control Officers Association (CAPCOA), the California Air Resources Board, or other similar entities determined acceptable by the local air district. The project may alternatively purchase carbon credits from the CAPCOA GHG Reduction Exchange Program, American Carbon Registry (ACR), Climate Action Reserve (CAR) or other similar carbon credit registry determined to be acceptable by the local air district.	The suggested mitigation measures included in the 2017 Scoping Plan are not considered to be requirements for local projects under CEQA, but instead represent options for projects to demonstrate compliance with the 2017 Scoping Plan. The inclusion of GHG off-set mitigation projects or the purchase of carbon credits is typically dependent on a project's exceedance of the previously identified quantitative GHG thresholds. However, neither BAAQMD nor the City have identified quantitative thresholds that could be used to determine that the project's anticipated emissions would be such that an off-site mitigation project or purchase of GHG reduction credits would be required in order to comply with SB 32. Considering that the project has been shown to be generally consistent with the foregoing measures, the City, in its discretion as lead agency, has chosen not to require the project to implement an off-site mitigation project or purchase GHG reduction credits.

Source: California Air Resources Board. AB 32 Scoping Plan [Appendix B]. Accessible at: https://www.arb.ca.gov/cc/scopingplan/scopingplan.htm. Accessed March 2021.

As shown in Table 7, the proposed project would comply with the majority of the suggested measures and, thus, the proposed project would be considered generally consistent with the 2017 Scoping Plan. Because the 2017 Scoping Plan is the CARB's strategy for meeting the State's 2030 emissions goals established by SB 32, the project would be considered to comply with the goals of SB 32.

Consistency with Plan Bay Area 2040

The San Francisco Bay Area's Plan Bay Area 2040 has been prepared jointly by the San Francisco Bay Area Metropolitan Transportation Commission (MTC) and the ABAG. Plan Bay Area 2040 is a regional plan intended to provide a strategy for the reduction of GHG emissions and air pollutants within the San Francisco Bay Area. The Plan Bay Area 2040 is a long-range plan that serves as a Regional Transportation Plan and Sustainable Communities Strategy (SCS). As an SCS, the Plan Bay Area 2040 is required to comply with regional targets for reducing GHG emissions through the integration of transportation and land use planning. ABAG has not provided a specified means of identifying an individual development project's compliance with the Plan Bay Area 2040. For the purposes of this analysis, the proposed project is compared to the overall goal of the Plan

Bay Area 2040, which is to reduce regional GHG emissions through the reduction of transportation-related emissions.

The proposed project would include pedestrian infrastructure on-site as well as off-site pedestrian facility improvements. The project would include construction of a new asphalt sidewalk and bike trail along the southern and western frontages of the project site. The public trail would connect pedestrian and bike paths to the internal public roads. Furthermore, as discussed in further detail in Section XVII, Transportation, the proposed project is not anticipated to contribute to a Citywide increase in VMT.

Because the project would substantially contribute to an increase in regional VMT, the proposed project would be considered consistent with the Plan Bay Area 2040, and would not conflict with the regional GHG reduction targets included therein.

Conclusion

Based on the above, project emissions would be below the BAAQMD's threshold of significance and would not be considered to conflict with the emissions reductions required by AB 32. In addition, the project would be generally consistent with the 2017 Scoping Plan. However, project emissions in the year 2030 would not achieve the emissions reductions required by SB 32. Therefore, the proposed project would be considered to conflict with the goals of SB 32, and could result in a ***potentially significant*** impact related to GHG emissions.

VIII-1 *Prior to the issuance of building permits, the applicant shall prepare and submit to the City a GHG Reduction Plan to quantifiably reduce GHG emissions such that the project, by the year 2030, would result in an efficiency ratio of 2.6 $MTCO_2e$/SP/yr either through the implementation of the following on-site measures, through off-site measures such as purchasing carbon offsets that use CARB-consistent protocols or through other off-site mitigation measures as described in this mitigation measure, or a combination of on-site, carbon offsets, and other off-site mitigation measures. Proof of implementation of the GHG Reduction Plan shall be submitted to the City of Oakley Community Development Department.*

Examples of measures that may be used to reduce GHG emissions include, but are not limited to, the following:

- *Orient buildings to maximize passive solar heating;*
- *Use renewable diesel to fuel construction fleets;*
- *Provide fully operational charging stations and preferential parking spots for electric vehicles;*
- *Install energy star or equivalent appliances in all residences;*
- *Limit installation of natural gas fueled appliances;*
- *Install solar water heating;*
- *Provide outdoor electrical outlets to allow for use of electrically-powered landscaping equipment at all residences within the project site;*
- *Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and*

- *Purchase carbon credits to offset project annual emissions. Off-site credits shall be real, quantifiable, permanent, verifiable, enforceable, and additional, consistent with the standards set forth in California Health and Safety Code Section 38562, subdivisions (d)(1) and (d)(2). Such credits shall be based on protocols that are consistent with the criteria set forth in subdivision (a) of Section 95972 of Title 17 of the California Code of Regulations. Such credits must be purchased through one of the following:*

    (i) A California Air Resources Board (CARB)-approved registry, such as the Climate Action Reserve, the American Carbon Registry, and the Verified Carbon Standard;
    (ii) Any registry approved by CARB to act as a registry under the California Cap and Trade program; or
    (iii) Through the California Air Pollution Control Officers Association (CAPCOA) GHG Rx and the Bay Area Air Quality Management District (BAAQMD);
    (iv) In the event that no credits meeting these criteria are available within California, the applicant may purchase credits elsewhere so long as: (a) the Governor or the Governor's designee has made the findings set forth in Government Code Section 12894; (b) and these findings have been submitted to the Legislature; and (c) California has accepted the credits as meeting the linkage standards contained in Government Code Section 12894 or its successor statute.

If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by the City of Oakley Community Development Department. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.

IX. HAZARDS AND HAZARDOUS MATERIALS. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	✖	☐
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?	☐	✖	☐	☐
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	✖	☐
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	✖
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☐	✖
f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	✖	☐
g. Expose people or structures, either directly or indirectly, to the risk of loss, injury or death involving wildland fires?	☐	☐	✖	☐

Discussion

a. Residential uses are not typically associated with the routine transport, use, disposal, or generation of substantial amounts of hazardous materials. Construction activities would involve the use of heavy equipment, which would contain fuels and oils, and various other products such as concrete, paints, and adhesives. The use of chemicals required for construction activities would be required to comply with all relevant California Health and Safety Codes and local City ordinances regulating the handling, storage, and transportation of hazardous and toxic materials. Additionally, on-site operational maintenance may involve the use of common household cleaning products, fertilizers, and herbicides, any of which could contain potentially hazardous chemicals; however, such products would be expected to be used in accordance with label instructions. Due to the regulations governing use of such products and the small amount anticipated to be used on the site, routine use of such products would not represent a substantial risk to public health or the environment. Therefore, the proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, and a ***less-than-significant*** impact would occur.

b. Two Phase I Environmental Site Assessments (ESAs) were prepared for APN 032-081-025 (City of Oakley Property)[17] and APN 032-081-025 (Burroughs Property)[18] (Appendices E and F). In addition, two Phase II ESAs were prepared for the City of Oakley Property[19] and the Burroughs Property[20] (Appendix G and H). Both Phase I and Phase II ESAs are discussed below.

The Phase I ESA included a review of local, state and federal environmental record sources, standard historical sources, aerial photographs, fire insurance maps and physical setting sources; a reconnaissance of the project site to review site use and current conditions to check for the storage, use, production or disposal of hazardous or potentially hazardous materials; and interview with persons knowledgeable about current and past site use.

As discussed previously, the project site is undeveloped and consists of vacant land with annual grasslands and ruderal vegetation; with the exception of perimeter fencing, overhead electric transmission lines along the northern perimeter, and underground water, natural gas, and sanitary sewer lines along the southern perimeter. Historically, the project site has been used for cattle grazing and gas production, the latter of which has since been abandoned. In addition, structures are currently not located on the project site.

Review of historic aerial photographs and topographic maps indicate that a residential structure existed near the southern perimeter of the project site from at least 1914 to sometime prior to 1968. The residence was demolished and removed from the project site by 1968. By 1981, a modular home was placed on the project site near the location of the remaining concrete foundations. The modular home was removed prior to 1999. One abandoned gas well is located within the project site. In addition, a Valero gas station was observed at the southeast corner intersection of Knightsen Avenue and E. Cypress Road.

The project site was reviewed for hazardous materials storage, superficial staining or discoloration, debris, stressed vegetation, or other conditions that may be indicative of potential sources of soil or groundwater contamination. The project site was also checked for evidence of fill/ventilation pipes, ground subsidence, or other evidence of existing or preexisting underground storage tanks.

The California Department of Health Services has conducted studies of radon risks throughout the state, sorted by zip code. Results of the studies indicate that three tests were conducted within the project zip code, with tests not exceeding the current EPA action level of 4 picocuries per liter (pCi/L_1).

The Phase I ESA did not find documentation or physical evidence of soil, soil gas, or groundwater impairments associated with the use of the project site. In addition, a review of regulatory databases maintained by county, state, and federal agencies did not find

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17 ENGEO Incorporated. *Phase I Environmental Site Assessment for City of Oakley Property.* December 24, 2019.

18 ENGEO Incorporated. *Phase I Environmental Site Assessment for the Burroughs Property*. December 23, 2019.

19 ENGEO Incorporated. *Phase II Environmental Site Assessment for the City of Oakley Property.* December 7, 2020

20 ENGEO Incorporated. *Phase II Environmental Site Assessment for the Burroughs Property*. December 7, 2020.

documentation hazardous materials violations or discharge on the project site. Furthermore, a review of regulatory agency records and available databases did not identify contaminated facilities within the appropriate American Society for Testing and Materials (ASTM) search distances that would be expected to impact the Property. Based on the findings of this assessment, Recognized Environmental Conditions (RECs), historical RECs, and controlled RECs were not identified for the Property.

However, the Phase I ESA accounts for features of potential environmental concern that were contained in the databases or observed on the property. The features include a former dry gas well as well as former residences.

One abandoned dry gas production well is located near the western perimeter of the project site. The dry gas well is a 7,700-foot deep well installed in 1964 and ceased production prior to 1985. The well was abandoned and received clearance from the Division of Oil/Gas (DOGGR) in 2004. Although the gas well has no record of a release, subsurface impacts associated with the historic gas production may have occurred.

Based on the Phase I ESA, it is possible that a septic system was installed to support the historic residences that existed on the project site. Given the age of the structures, a potential exists for near-surface soil impacts due to past pesticide applications and lead-based paint. Existing septic systems and domestic/irrigation wells should be removed/abandoned in accordance with County and State regulations prior to the development of the proposed project.

Based on the finding of the Phase I ESA, the report recommends a limited subsurface assessment to be undertaken to determine if the former gas well operations have impacted site soil, soil gas, and/or groundwater. In addition, near-surface soil sampling should be performed within the area of the former structures to address potential impacts due to pesticides and lead-based paints. The Phase II ESA includes a soil, soil gas, and groundwater analysis, to evaluate potential impacts associated with the former dry gas production well and former residences.

The abandoned gas well does not pose an environmental concern, provided that utilities do not overlie the well. However, to evaluate potential hazardous impacts, the ESA report collected soil, groundwater, and soil gas samples. Because the former structures would be located within the widening of E. Cypress Road, the soil results were compared to corresponding San Francisco Regional Water Quality Control Board (SFRWQCB) Environmental Screening Levels (ESLs) for commercial use. Within the Burroughs Property, in regards to the abandoned gas wells proximity to surrounding residential lots, the soil gas laboratory results were compared to the SFRWQCB ESLs for residential land use.

The on-site soil sampling results found detectable concentrations of arsenic, lead, and 4,4'-DDT. The reported arsenic concentrations are within typical background concentrations. In addition, the reported concentrations for lead and 4,4'-DDT are below the applicable SFRWQCB ESLs for commercial soil. The review of soil gas laboratory test results found detectable concentrations of total petroleum hydrocarbons (TPH)-Gasoline, oxygen, and several Volatile Organic Compounds (VOCs). The TPH-Gasoline and the VOCs were below the respective SFRWQCB ESLs. The benzene was reported above the RWQCB ESLs; however, benzene concentrations remain below the Department of Toxic

Substances Control (DTSC) Vapor Intrusion Guidance Levels reflection new residential construction.

Groundwater sampling results found detectable concentrations of barium, chromium, and molybdenum below the applicable California Maximum Contaminant Levels (CA MCL). The other groundwater analytes, VOC analytes, TPH-Gasoline, TPH-Diesel, and TPH-Motor Oil, were reported at non-detectable concentrations.

Conclusion

Based on the above, the proposed project site does not represent a significant health risk for future residential land uses and further environmental studies were not recommended. Therefore, the proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials from the former dry gas well. However, the project applicant shall show the location of the future inhabited structures in proximity to the abandoned gas well to ensure the future residences are not in proximity to the well. Therefore, a ***potentially significant*** impact would occur.

Mitigation Measure(s)

Implementation of the following mitigation measure would reduce the above potential impact to a *less-than-significant* level.

IX-.1. *Prior to final map approval, the project applicant shall submit to the City of Oakley Engineering Department, for review and approval, plans which show that future inhabited structures will not be located over the abandoned gas well. The plans should be completed in compliance with the DOGGR Construction Site Review Program, which includes guidelines and recommendations for setbacks and mitigation measures for venting systems. Prior to construction, the specific location of the former dry gas well should be determined and surveyed in the field.*

IX-2. *Prior to construction, because grading is proposed proximate to the abandoned well location, DOGGR should be consulted to determine if the wells would require modification in casing height.*

IX-3. *Prior to the issuance of grading permit, the existing septic systems and domestic/irrigation wells shall be removed/abandoned in accordance with County and State regulations.*

c. The nearest school is the Delta Vista Middle School approximately 1.2 miles west of the proposed project. As a result, the proposed project is not within one-quarter mile of an existing or proposed school. Therefore, the project would have not impact related to hazardous emissions or the handling of hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school and a ***less-than-significant*** impact would occur.

d. The project site is not located on or near a site that is included in a list of hazardous materials site complied pursuant to Government Code Section 65962.5.[21] Therefore, the proposed project would have ***no impact*** with respect to being located on a hazardous materials site.

e. The two airports closest to the proposed project are the Buchanan Field Airport and Rio Vista Airport. The Buchanan Field Airport is approximately 21 miles west of the project and the Rio Vista Airport is approximately 11 miles north of the project site. Therefore, the proposed project site is not located within two from the project site. As such, the proposed project site is not located within two miles of any public airports and does not fall within an airport land use plan area. Therefore, ***no impact*** related to a safety hazard for people residing or working in the project area would occur.

f. During operation, the proposed project would provide adequate access for emergency vehicles and would not interfere with potential evacuation or response routes used by emergency response teams. During construction of the proposed project, all construction equipment would be staged on-site so as to prevent obstruction of local and regional travel routes in the City that could be used as evacuation routes during emergency events. In addition, the proposed project would include the construction of a new EVA road between E. Cypress Road and E Street. Construction of an EVA road within the project site would ensure that multiple routes of access exist between the project site, which would improve emergency vehicle circulation within the site. In addition, the widening of E. Cypress Road would significantly improve emergency vehicle access to the project site by providing more road space. As a result, the proposed project would have a ***less-than-significant*** impact with respect to impairing the implementation of or physically interfering with an adopted emergency response plan or emergency evacuation plan.

g. According to the California Department of Forestry and Fire Protection (CAL FIRE) Fire and Resource Assessment Program, the proposed project site is not located within a Very High Fire Hazard Severity Zone. [22] In addition, the proposed project is adjacent to single-family residential development to the west and E. Cypress Road to the south of the project site. As such, the project site would not be subject to wildland fires. Therefore, the proposed project would not expose people or structures to the risk of loss, injury or death involving wildland fires, and a ***less-than-significant*** impact would occur.

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[21] Department of Toxic Substances Control. EnviroStor. Available at: https://www.envirostor.dtsc.ca.gov/public/. Accessed February 2021.

[22] California State Geoportal. *California Fire Hazard Severity Zone.* January 13 2020. Available at: https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414. Accessed February 2021.

X. HYDROLOGY AND WATER QUALITY. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?	☐	✖	☐	☐
b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☐	✖	☐
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i. Result in substantial erosion or siltation on- or off-site;	☐	✖	☐	☐
ii. Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;	☐	✖	☐	☐
iii. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	✖	☐	☐
iv. Impede or redirect flood flows?	☐	☐	✖	☐
d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☐	✖
e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	✖	☐

Discussion

a, ci-iii. The following discussion provides a summary of the proposed project's potential to violate water quality standards/waste discharge requirement, alter the drainage pattern of the site resulting in erosion or siltation, increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site, contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems, or otherwise degrade water quality during construction and operation.

Potential Water Quality Violations During Construction

The following discussion provides a summary of the proposed project's potential to violate water quality standards during construction activities.

During the early stages of construction activities, topsoil would be exposed due to grading and excavation of the site. In addition, shallow groundwater was encountered beneath the surface of the project site. Dewatering wells may be needed during grading activities. Discharge of groundwater may result in potential water quality violations during construction. Discharges into water from fixed points, known as point sources, can affect

surface and groundwater, as well as enter the storm drain system. At no time would stormwater be directed to Bureau lands at the adjacent Contra Costa Canal.

As part of the project, soil import would be included that could potentially cause substantial sediment pollutants. After grading and prior to overlaying the ground with impervious surfaces, structures, or landscaping, the potential exists for wind and water to discharge sediment and/or urban pollutants into stormwater runoff, which could adversely affect water quality.

Water quality degradation is regulated by the federal National Pollutant Discharge Elimination System (NPDES) Program, established by the Clean Water Act, which controls and reduces pollutants to water bodies from point and non-point discharges. In California, the NPDES permitting program is administered by the State Water Resources Control Board through nine RWQCBs. The project site is located within the jurisdiction of the SFBRWQCB. Projects that disturb one or more acres of soil, or disturb less than one acre, but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). A Notice of Intent must be filed with the RWQCB and the General Permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared. Because the project site disturbs more than one acre, the project would be subject to the aforementioned State NPDES General Permit conditions. Preparation of an SWPPP would ensure that any adverse construction-related impacts to water quality degradation would be prevented by the inclusion of BMPs for erosion and pollution prevention. Per Chapter 6.11.212 of the Oakley Municipal Code, all construction should conform to the requirements of the California Stormwater Quality Association BMPs Handbook for Construction Activities and New Development and Redevelopment, the ABAG Manual of Standards for Erosion & Sediment Control Measures, the City's grading and erosion control ordinance and other generally accepted engineering practices for erosion control as required by the Community Development Director when undertaking construction activities.

Consistent with State guidelines and Section 6.11 of the Municipal Code, the proposed project would be required to implement BMPs, including erosion and sediment control BMPs and non-stormwater management and materials management BMPs. Erosion controls include practices to stabilize soil, to protect the soil in its existing location, and to prevent soil particles from migrating. Examples of erosion control BMPs include preserving existing vegetation, mulching, and hydroseeding. Sediment controls include practices to collect soil particles after they have migrated, but before the sediment leaves the site. Examples of sediment control BMPs include street sweeping, fiber rolls, silt fencing, gravel bags, sand bags, storm drain inlet protection, sediment traps, and detention basins. Wind erosion controls prevent soil particles from leaving the site in the air. Examples of wind erosion control BMPs include applying water or other dust suppressants to exposed soils on the site. Tracking controls prevent sediment from being tracked off-site via vehicles leaving the site to the extent practicable. Tracking controls could include a stabilized construction entrance, which would not only limit the access points to the construction site, but also function to partially remove sediment from vehicles prior to leaving the site.

While the final materials management BMPs to be used during construction of the proposed project are currently unknown, the project would likely include a combination of the BMP examples listed above. Final BMPs for the proposed project construction would be chosen in consultation with the applicable California Stormwater Quality Association

Stormwater BMP Handbooks and implemented by the project contractor. Prior to development, the proposed project would be required to create a SWPPP to mitigate any potential runoff from the project site. However, should the SWPPP not be reviewed and approved, the proposed project could violate water quality standards and/or waste discharge requirements, and a significant impact could occur related to violation of any federal, State, or County potable water quality standards, create or contribute runoff, or otherwise substantially degrade surface or ground water quality during construction of the proposed project.

Potential Water Quality Violations During Operation

The proposed project would include the construction of residential development and associated improvements. As such, the project site would be covered in mostly impervious surfaces. During operations, the proposed project would generate multiple vehicle and truck trips to and from the project site. Vehicles and other urban activities release contaminants onto the impervious surfaces. Anticipated runoff contaminants associated with the proposed project include sediments, pesticides, oil and grease, nutrients, metals, bacteria, and trash.

To reduce stormwater pollution, all incorporated Cities and the Contra Costa County Flood Control and Water Conservation District joined together to form the Contra Costa Clean Water Program (CCCWP). The CCCWP obtained a Joint Municipal NPDES Permit from the San Francisco Bay Central Valley RWQCBs in September 1993 and January 1994, respectively. CCCWP staff monitors the NPDES permit program and Stormwater Utility areas. The CCCWP develops and implements specific programs to meet NPDES requirements.

The proposed project would utilize stormwater detention basins that have been constructed within the adjacent Gilbert property and would be graded in such a way to ensure that stormwater flows towards these basins from all areas of the project site. The stormwater detention basins were recently constructed and have been sized appropriately to accommodate and treat runoff from the Burroughs Project in accordance with the criteria provided in the applicable Provision C.3 Amendments of the CCCWP's amended NPDES Permit. The storm drain improvements have been sized to accommodate the approved Gilbert property development as well as the proposed development. The storm drain improvements include large diameter pipelines extended to the southern and eastern limits of the Gilbert project, a detention lake that provides capacity of storms up to the 100-year event as well as stormwater quality treatment, a storm drain pump stations, and a discharge force main pipeline that discharges the excess storm flows to the Emerson Slough.

Following completion of project buildout, the site would be largely covered with impervious surfaces and landscaping areas, and topsoil would no longer be exposed. In addition, the stormwater detention basins were sized appropriately to treat runoff in accordance with the criteria provided in the applicable Provision C.3 Amendments of the CCCWP's amended NPDES Permit. As such, the potential for erosion and associated impacts to water quality would be reduced. As a result, the proposed project would result in a less-than-significant impact because the proposed project would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality during operations of the proposed project.

Conclusion

Based on the above, the proposed project would not result in potential water quality violations during operation. However, prior to construction and grading, should the SWPPP not be reviewed and approved, the proposed project could violate water quality standard and/or waste discharge requirements, and a ***potentially significant*** impact could occur related to violation of any federal, State, or County potable water quality standards, create or contribute runoff, or otherwise substantially degrade surface or ground water quality during construction.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the impact to *less-than-significant*.

X-1. *Prior to any grading activities, the applicant shall provide a Stormwater Pollution Prevention Plan (SWPPP) for the entire project site which shall include construction and post construction BMPs (including both physical and programs BMPs) to the satisfaction of the City Engineer. The SWPPP shall include the following:*

- *Utilize on-site sediment control BMPs to retain sediment on the project site, such as: straw wattle; silt fences, storm drain inlet protection, erosion control blankets, and concrete washouts;*
- *Stabilized construction entrances and/or Wheel washing racks;*
- *Cover soil, equipment and supplies that could contribute pollution prior to rainfall events or monitoring runoff;*
- *Perform monitoring of discharges to the stormwater system; and*
- *Provide permanent cover to stabilize the disturbed surfaces after construction has been completed, as the project is a phased development.*

b,e. Water would be provided to the project site through new connections to the existing water infrastructure surrounding the site. The DWD provides water service to Oakley and surrounding areas within its Diablo Water District Sphere of Influence (DWD SOI). DWDs water supply comes from a commitment of 30 million gallons per day (MGD) from the CCWD, a public water agency, which delivers water to 450,000 people in central and eastern Contra Costa County through the Contra Costa Canal. Currently, all of DWD District's raw water supply is from surface water from the Contra Costa Canal which obtains water from the Sacramento-San Joaquin Delta at the Rock Slough intake. Groundwater is used in the City for emergency purposes only due to deteriorating water quality. In addition, an ultimate network of major distribution system pipelines was identified for service to future development within the DWDSOI and to Bethel Island. Therefore, the proposed project would not rely on groundwater as a source of water supply, and the proposed project would not contribute to the depletion of groundwater.

The project's drainage system would include connection to the adjacent Gilbert stormwater detention basin that would manage runoff from all on-site impervious areas. Therefore, the proposed project would result in a ***less-than-significant*** impact with respect to substantially decreasing groundwater supplies, interfering substantially with groundwater recharge, or conflicting with or obstructing implementation of a water quality control plan or sustainable groundwater management plan.

civ. According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map for the project site, the project site is located within an Area of Special Flood Hazard (Zone AE).[23] Therefore, the project site is located within a 100-year flood plain. In addition, according to the Oakley General Plan, substantial areas within the City are subject to flooding, especially areas along the coast and northeast of the Contra Costa Canal. However, the proposed project includes importing soil to raise the elevation of the site by five feet to protect the development from flood hazards. Therefore, the proposed project would not expose future residents and structures to hazards related to flooding and a ***less-than-significant*** impact would occur.

d. As discussed under question civ, the project site is located within a flood hazard zone. However, as noted above, the import of soil would reduce the risk of flooding to the project site. Tsunamis are defined as sea waves created by undersea fault movement, whereas a seiche is a long-wavelength, large-scale wave action set up in a closed body of water. The project site is not located in proximity to a coastline and would not be potentially affected by flooding risks associated with tsunamis. A seiche is a long-wavelength, large-scale wave action set up in a closed body of water such as a lake or reservoir. Seiches do not pose a risk to the proposed project, as the project site is not located adjacent to a large closed body of water. The project site is approximately 2 miles south of the San Joaquin River; however, this river is not a closed body of water and would not result in hazards related to seiches. Based on the above, the proposed project would not pose a risk related to release of pollutants due to project inundation flooding, tsunami, or seiche, and ***no impact*** would occur

[23] FEMA. FEMA Flood Map Service. Available at: https://msc.fema.gov/portal/search?AddressQuery=East%20Cypress%20Road%2C%20Oakley%2C%20California#searchresultsanchor. Accessed February 2021.

XI. LAND USE AND PLANNING. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Physically divide an established community?	☐	☐	✖	☐
b. Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	✖	☐

Discussion

a. A project risks dividing an established community if the project introduces infrastructure, alters land use conditions in the surrounding community, or isolates an existing land use. Currently, the project site is undeveloped and consists of vacant land with annual grasslands and limited trees; therefore, the proposed project involves construction on a vacant site. As a result, the proposed project would not physically divide an established community. Surrounding development in the project vicinity includes rural commercial and single-family residential to the west and south of the project site. The proposed residences would be compatible with the existing development in the project area. In addition, the site is in an area planned for single-family residential development per the Oakley General Plan. Furthermore, the proposed E. Cypress Road widening would improve connectivity between the proposed residences and surrounding uses in the project area, which include schools, parks, and commercial uses. As such, the proposed project would not physically divide an established community and a ***less-than-significant*** impact would occur.

b. The proposed project is consistent with the General Plan; therefore, single-family residential development has been anticipated at project site. The proposed project would not conflict with City policies and regulations adopted for the purpose of avoiding or mitigating an environmental effect. For example, because the project would introduce new residents and increase the demand for recreational facilities, the project applicant would be required to pay the City's parks and recreation impact fees or donate parkland and/or improvements to the City. In addition, in compliance with the Section 9.1.1112 of the City's Municipal Code, the proposed project would be required to include replacement trees for any that are removed within the project site. Furthermore, compliance with the ECCC HCP/NCCP would mitigate and minimize significant impacts to special-status plants, wildlife, and wetlands. Implementation of the mitigation measures included within this IS/MND would ensure all environmental impacts of the proposed project have been reduced to a ***less-than-significant*** level.

XII. MINERAL RESOURCES. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	✖
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	✖

Discussion

a,b. The City of Oakley General Plan Background Report states that the only viable mineral resource currently mined in the City of Oakley is sand. Currently, the mining of sand does not occur at the project site and much of the adjacent land is developed for residential and commercial uses. The site previously included valuable sand resources; however, the site has been previously mined and would no longer have valuable sand resources. As a result of previous sand mining, the project site is highly disturbed. Due to the previously disturbed nature of the project site, the area would likely not be a source of minerals. Additionally, the nearest active mine in California is the Kennedy Mine, located approximately 57 miles from the project site. Thus, the proposed project would not result in the loss of availability of a known mineral resource or a locally important mineral recovery site; therefore, the proposed project would have ***no impact*** to mineral resources.

XIII. NOISE. *Would the project result in:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	✖	☐
b. Generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	✖	☐
c. For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	✖

Discussion

The following discussion is based primarily on a Noise and Vibration Assessment prepared by Illingworth and Rodkin, Inc (Appendix I).[24]

a. The following sections present information regarding sensitive noise receptors in proximity to the project site, the existing noise environment, and the potential for the proposed project to result in impacts during project construction and operation. The following terms are referenced in the sections below:

- Decibel (dB): A unit of sound energy intensity. An A-weighted decibel (dBA) is a decibel corrected for the variation in frequency response to the typical human ear at commonly encountered noise levels. All references to decibels (dB) in this report will be A-weighted unless noted otherwise.
- Average, or equivalent, sound level (L_{eq}): The L_{eq} corresponds to a steady-state A weighted sound level containing the same total energy as a time varying signal over a given time period (usually one hour).
- Day-Night Average Level (L_{dn}): The average sound level over a 24-hour day, with a +10 decibel weighing applied to noise occurring during nighttime (10:00 PM to 7:00 AM) hours.

Sensitive Noise Receptors

Some land uses are considered more sensitive to noise than others, and, thus, are referred to as sensitive noise receptors. Land uses often associated with sensitive noise receptors generally include residences, schools, libraries, hospitals and passive recreational areas. Noise sensitive land uses are typically given special attention in order to achieve protection from excessive noise.

[24] Illingworth and Rodkin, Inc. Burroughs Property Noise and Vibration Assessment. January 20, 2021.

Existing Noise Environment

The project site is located northeast of the intersection of Knightsen Avenue and E. Cypress Road in the City. The existing noise in the project area is primarily defined by vehicular traffic along E. Cypress Road. In October 2020, Ilingtown Worth & Rodkin, Inc., collected noise data at the project site and in the site vicinity for the Woodbury at Emerson Residential Project located approximately one half of one mile west of the site, north of E. Cypress Road and west of Sellers Avenue. The noise data is applicable to the existing noise environment of the project site and will be used for the purpose of this analysis to the existing noise environment of the project site. The noise monitory survey included two long-term (LT) measurements and four short term (ST) measurements. Long-term measure (LT-1) was made along E. Cypress Road and the two short-term measurements were made at the Burroughs site.

Exterior Noise Environment

It should be noted that recent rulings by the California Supreme Court have clarified that environmental analyses prepared under CEQA are intended to analyze a project's impact on the environment, rather than the potential impact of the environment on the project (Ballona Wetlands Land Trust v. City of Los Angeles, (2011) 201 Cal.App.4th 455, 473 [Ballona]). Therefore, the discussion below is based on the projects impact to the environment, and not the potential impact of the environment on the project. As a result, traffic noise impacts on the project will not be discussed.

Standards of Significance

The City of Oakley establishes an exterior noise level criterion of 65 dB L_{dn} or less within outdoor activity areas of residential land uses. Additionally, the City requires that cumulative noise exposure from exterior noise sources within noise-sensitive dwellings not exceed 45 dB L_{dn}.

The Oakley Municipal Code establishes maximum noise limits for construction activities. Specifically, Section 4.2.0 208 prohibits construction activities at the site or in areas adjacent to the site to the hours between 7:30 AM and 7:00 PM, Monday through Friday and 9:00 AM to 7:00 PM on Saturday, Sunday, State, and Federal or Local Holidays.

Construction Noise

Noise impacts resulting from construction depend upon the noise generated by various pieces of construction equipment, the timing and duration of noise-generating activities, and the distances between construction noise sources and noise-sensitive areas. Construction noise impacts primarily result when construction activities occur during noise-sensitive areas times of the day (e.g., early morning, evening, or nighttime hours), if the construction occurs in areas immediately adjoining noise-sensitive land uses, or when construction lasts over extended periods of time.

Construction activities would include excavation, site preparation, grading, building construction, paving, and architectural coating. During each stage of construction, there would be a different mix of equipment operating, and noise levels would vary by stage and vary within stages, based on the amount of equipment in operation and the location at which the equipment is operating. In addition, the hauling of excavated materials and construction materials would generate truck trips on local roadways.

Construction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used. Table 8 lists typical ranges of construction

noise levels at a distance of 50 feet. Typical hourly average construction-generated noise levels from domestic housing projects are about 81 to 89 dBA L_{eq} measured at a distance of 50 feet from the center of the site during busy construction periods when all pertinent equipment is present at the site. When the minimum required equipment is present at the site, noise levels produced by domestic housing projects are about 65 to 83 dBA L_{eq}.

TABLE 8
CONSTRUCTION EQUIPMENT NOISE

Type of Equipment	Maximum Level, dB at 50 feet
Auger Drill Rig	84
Backhoe	78
Compactor	83
Compressor (air)	78
Concrete Saw	90
Dozer	82
Dump Truck	76
Excavator	81
Generator	81
Jackhammer	89
Pneumatic Tools	85

Source: ***Federal Highway Administration, Roadway Construction Noise Model User's Guide, January 2006.***

All construction throughout the site would occur simultaneously through one phase. The center of the project site would be approximately 500 feet from the nearest residences to the south, opposite of E. Cypress Road, and approximately 1,000 feet from the nearest residential property line shared with the existing development to the west.

Average noise levels produced by residential housing construction activities would range from 45 to 68 dBA L_{eq} at 500 feet and from 39 to 62 dBA L_{eq} at 1,000 feet. In addition, long periods of construction occurring along the project site's southern and western property lines may generate noise levels that would exceed ambient conditions up to 10 dBA. Therefore, construction activities must implement standard construction noise BMPs to reduce noise and limit annoyance at nearby receptors.

However, implementation of construction BMPs would reduce construction noise and minimize annoyance at the nearest residents to a less-than-significant level. BMPs include, but are not limited to, the following:

- Pursuant to the City of Oakley Municipal Code Section 4.2.208, prohibit construction activities at the site or in areas adjacent to the site to the hours between 7:30 AM and 7:00 PM., Monday through Friday and 9:00 AM to 7:00 PM on Saturday, Sunday, and State, Federal or Local Holidays;
- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists;
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses;

- Acoustically shield stationary equipment located near residential receivers with temporary noise barriers;
- Locate staging areas and construction material areas as far away as possible from adjacent land uses;
- Prohibit all unnecessary idling of internal combustion engines;
- Route all construction traffic to and from the project site via designated truck routes and prohibit construction related heavy truck traffic in residential areas where feasible;
- Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented; and
- Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction.

Operational Noise

Operational noise associated with the proposed residential project would include heating, ventilation, and air condition equipment which would be present at each proposed residence. Noise levels produced by a typical residential heat pump are approximately 56 dBA at three feet during operation. Noise levels produced by a typical residential air conditioning condenser are approximately 66 dBA at three feet during operation. The nearest noise-sensitive uses would be located approximately 175 feet south of the residential property line where HVAC equipment may be located. At this distance, noise generated by mechanical equipment would reach 21 to 31 dBA. Operation and use of the proposed residences is expected to result in noises typically associated with residential development such as voices of the new residents, home maintenance activities, barking dogs, and children. The mentioned sources would not be expected to generate substantial noise-offsite. Therefore, operational noise levels would not exceed the General Plan standards and a less-than-significant impact would occur.

Traffic Noise Increases

As further discussed in Section XVII, Transportation/Traffic, of the IS/MND, the proposed project would increase vehicle trips and noise on local roadways. The Oakley General Plan Policy 9.16 establishes significant criteria for traffic noise increases due to roadway improvement projects. The criteria within Policy 9.16 may be reasonably applied to traffic noise increases resulting from the proposed project. Within the criteria, it states that where traffic noise levels are greater than 65 dBA L_{dn} at outdoor activity areas of noise-sensitive uses, a 1.5 dBA increase in noise levels would be considered significant.

Traffic data provided by TJKM was reviewed to calculate future traffic noise increases resulting from the proposed project. Through a comparison of future 2040 traffic volumes with and without the project, the proposed project would result in a 0 to 1 dBA increase an all-roadway segments analyzed in the traffic study. Therefore, the traffic nose increase generated from the proposed project would not exceed General Plan criteria.

Conclusion

Based on the above, operation and construction of the proposed project would not result in a substantial permanent increase in ambient noise levels in the vicinity of the project in

excess of standards established in the City's General Plan and the Municipal Code. Therefore, a ***less-than-significant*** impact would occur.

b. Similar to noise, vibration involves a source, a transmission path, and a receiver. However, noise is generally considered to be pressure waves transmitted through air, whereas vibration usually consists of the excitation of a structure or surface. As with noise, vibration consists of an amplitude and frequency. A person's perception to vibration depends on their individual sensitivity, as well as the amplitude and frequency of the source and the response of the system which is vibrating.

Vibration is measured in terms of acceleration, velocity, or displacement. A common practice is to monitor vibration in terms of peak particle velocities (PPV) in inches per second (in/sec). Standards pertaining to perception as well as damage to structures have been developed for vibration levels defined in terms of PPV. Human and structural response to different vibration levels is influenced by a number of factors, including ground type, distance between source and receptor, duration, and the number of perceived vibration events. Table 9, which was developed by the California Department of Transportation (Caltrans), shows the vibration levels that would normally be required to result in damage to structures. As shown in the table, the threshold for architectural damage to structures is 0.20 in/sec PPV and continuous vibrations of 0.10 in/sec PPV, or greater, would likely cause annoyance to sensitive receptors.

TABLE 9
EFFECTS OF VIBRATION ON PEOPLE AND BUILDINGS

PPV		Human Reaction	Effect on Buildings
mm/sec	in/sec		
0.15 to 0.30	0.006 to 0.019	Threshold of perception; possibility of intrusion	Vibrations unlikely to cause damage of any type
2.0	0.08	Vibrations readily perceptible	Recommended upper level of the vibration to which ruins and ancient monuments should be subjected
2.5	0.10	Level at which continuous vibrations begin to annoy people	Virtually no risk of "architectural" damage to normal buildings
5.0	0.20	Vibrations annoying to people in buildings (this agrees with the levels established for people standing on bridges and subjected to relative short periods of vibrations)	Threshold at which there is a risk of "architectural" damage to normal dwelling - houses with plastered walls and ceilings. Special types of finish such as lining of walls, flexible ceiling treatment, etc., would minimize "architectural" damage
10 to 15	0.4 to 0.6	Vibrations considered unpleasant by people subjected to continuous vibrations and unacceptable to some people walking on bridges	Vibrations at a greater level than normally expected from traffic, but would cause "architectural" damage and possibly minor structural damage

Source: Caltrans. Transportation Related Earthborne Vibrations. TAV-02-01-R9601. February 20, 2002.

Construction of the project may temporarily generate perceptible vibration when heavy equipment or impact tools are used near the boundary of the site. Proposed construction incudes demolition, site preparation, grading, trenching/foundation, paving, and new building

framing and finishing. In addition, the proposed project would not require pile driving, which would cause excessive vibration. Table 10 shows the typical vibration levels produced by construction equipment at various distances.

TABLE 10
VIBRATION LEVELS FOR VARIOUS CONSTRUCTION EQUIPMENT

Type of Equipment	PPV at 25 feet (in/sec)	PPV at 50 feet (in/sec)
Large Bulldozer	0.089	0.031
Loaded Trucks	0.076	0.027
Small Bulldozer	0.003	0.001
Auger/Drill Rigs	0.089	0.031
Jackhammer	0.035	0.012
Vibratory Hammer	0.070	0.025
Vibratory Compactor/roller	0.210 (less than 0.20 at 26 feet)	0.074

Source: Federal Transit Administration, Transit Noise and Vibration Impact Assessment Guidelines, May 2006.

The City of Oakley does not specify a construction vibration limit. For structural damage, Caltrans recommends a vibration limit of 0.5 in/sec PPV for buildings structurally sound and designed to modern engineering standards, 0.3 in/sec PPV for buildings that are found to be structurally sound but where structural damage is a major concern, and a conservative limit of 0.25 in/sec PPV for historic and some old buildings. The 0.3 in/sec PPV vibration limit would be applicable to properties in the vicinity of the project site.

Table 11 presents typical vibration levels that could be expected from construction equipment at a distance of 25 feet and summarizes the vibration levels at the minimum distance of 130 feet. Vibration levels would vary depending on soil conditions, construction methods, and equipment used. Jackhammers typically generate vibration levels of 0.035 in/sec PPV and drilling typically generates vibration levels of 0.09 in/sec PPV at a distance of 25 feet. Heavy vibration generating construction equipment, such as vibratory rollers or the dropping of heavy equipment (e.g., clam shovel drops), would have the potential to produce vibration levels of 0.3 in/sec PPV or more at buildings of normal conventional construction located within approximately 20 feet of the project site.

At 130 feet, vibration levels are calculated to reach a maximum of 0.034 in/sec PPV, which would not exceed the 0.3 in/sec PPV threshold for residential buildings. Cosmetic damage (e.g., hairline cracks in plaster, opening of old cracks, etc.) would not be expected at sensitive buildings located 20 feet or further from the project site. Construction vibration may still be perceptible at times, but with any type of construction, this would be anticipated and would not be considered significant, given the intermittent and short duration of the phases that have the highest potential of producing vibrations. Therefore, vibration impacts from the project would be considered less-than-significant.

Conclusion

Based on the above, construction and operation of the proposed project would not result in a substantial permanent increase in ground borne vibration or ground borne noise levels in the vicinity of the project in excess of standards established in the City's General Plan and the Municipal Code. Therefore, a ***less-than-significant*** impact could occur.

TABLE 11

VIBRATION SOURCE LEVELS FOR CONSTRUCTION EQUIPMENT

Equipment		Source PPV (in/sec) 25 ft.	PPV at 130 ft (Nearest Residential Building)
Cal Shovel Drop		0.202	0.033
Hydromill (slurry wall)	In soil	0.008	0.001
	In rock	0.017	0.003
Vibratory Roller		0.210	0.034
Hoe Ram		0.089	0.015
Large bulldozer		0.089	0.015
Caison drilling		0.089	0.015
Loaded trucks		0.076	0.012
Jackhammer		0.035	0.006
Small bulldozer		0.003	0.000

Source: Transit Noise and Vibration Impact Assessment Manual, U.S. Department of Transportation Federal Transit Administration, September 2018 as modified by Illingworth & Rodkin, Inc., January 2021.

c. The proposed project is not located within two miles of a public airport or private airstrip. Most aircraft activities associated with public airports or private airstrips are concentrated in the immediate environ, therefore, noise levels resulting from intermittent aircraft overflights would be less than 65dBA CNEL and compatible with the proposed land use. As a result, ***a less-than-significant*** impact would occur.

XIV. POPULATION AND HOUSING. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)?	☐	☐	✖	☐
b. Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	✖	☐

Discussion

a. Population growth itself does not constitute an environmental impact; rather, increased demands on the physical environment resulting from population increases are considered environmental impacts. The physical environmental effects associated with development of the proposed project are evaluated throughout this IS/MND.

The proposed project would include the development of 208 single-family residential units. Using the General Plan's average of 3.26 persons per household, the proposed project would add 678 residents to the City's population. Based on the 2020 population estimate of 43,387, the project would constitute a 1.6 percent increase in population within the City. The General Plan previously anticipated single-family residential development on the project site, and associated population growth was analyzed in the General Plan EIR. The proposed project would not result in substantially more intensive population growth beyond what has been anticipated by the City. Furthermore, the project site is located within an urbanized area of the City and is adjacent to existing residential development to the west. Therefore, development of the proposed project would not induce substantial unplanned population growth in an area, either directly or indirectly, and a ***less-than-significant*** impact would occur.

b. The proposed project would be developed on vacant land currently used for small scale cattle grazing. Currently, the project site is undeveloped and consists of vacant land with annual grasslands and limited trees. Therefore, the project would not displace substantial numbers of existing housing or people, and a ***less-than-significant*** impact would occur.

XV. PUBLIC SERVICES. *Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Fire protection?	☐	☐	✖	☐
b. Police protection?	☐	☐	✖	☐
c. Schools?	☐	☐	✖	☐
d. Parks?	☐	☐	✖	☐
e. Other Public Facilities?	☐	☐	✖	☐

Discussion

a. Fire protection is currently provided to the City of Oakley by the East Contra Costa Fire Protection District. A new fire station was built to accommodate increased demand, staffing and equipment in 2010. With the completion of the new fire station the City of Oakley General Plan anticipates fire service to be adequate for buildout of the City. Station 93 is located 2.5 miles northwest of the project site. The proposed project would be subject to the fire facilities impact fees set forth in the City of Oakley Municipal Code Section 9.2.504. Payment of the required impact fee would mitigate any potential impacts caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms with the City of Oakley's General Plan Policy 4.4.2. Additionally, the proposed project does not include any alterations to the circulation system of the surrounding area, which could conflict with the City of Oakley's General Plan Policy 4.4.4, or lead to a degradation in response times. Given the payment of fees in accordance with City of Oakley Municipal Code, the proposed project is not expected to cause significant degradation to response times or service ratios, which would induce the need for physically altered or expanded governmental facilities, the construction of which could cause significant environmental impacts, and the project would, therefore, result in a ***less-than-significant*** impact.

b. Police protection is currently provided to the City of Oakley by the Oakley Police Department and the Contra Costa County Sheriff's Office. The Oakley Police Department currently employs 43 persons, including the Chief of Police, the Lieutenant, six Sergeants, five Detectives, 21 Police Officers, and nine Police Services Assistants.[25] As previously discussed, the proposed project would include construction of 208 single-family residential units. An increase in demand for police services would occur because residences typically generate a higher demand for police services. Nevertheless, police service demand from residential development at the project site have been included in City of Oakley's demand predictions based on anticipated General Plan buildout. In addition, development fees would be applied to the proposed project, as well as a Police Services levy. Based on the above, the proposed project would create a demand that was anticipated for the site and would not induce the need for physically altered or expanded governmental facilities, the

[25] City of Oakley Police Department. *2017 Annual Report*. Available at: https://www.ci.oakley.ca.us/wp-content/uploads/2018/04/Annual-Report-2017-2-2.pdf. Accessed March 2021.

construction of which could cause significant environmental impacts. Therefore, the proposed project would result in a ***less-than-significant*** impact.

c. For elementary schools, the City is primarily served by the Oakley Union Elementary School District. High schools in the City are within the Liberty Union High School District. The Oakley General Plan has goals and policies set forth to ensure adequate primary and secondary schools in response to population growth. The City expects the General Plan to assist in the goal of providing an efficient and complete educational system for the citizens of Oakley. For example, Policy 4.65 set forth in the General Plan, ensures that school facility impacts fees are collected and shall work with developers and school districts to establish mitigation measures to ensure the availability of adequate school facilities. The proposed project would be subject to school facility impact fees. Payment of applicable development fees would be sufficient in reducing the impacts associated with an increase in students from the project. Therefore, the proposed project would result in a ***less-than-significant*** impact regarding an increase in demand for schools the construction of which could cause a significant impact.

d. The proposed project would result in development of 208 single-family residences. The City of Oakley Municipal Code 9.2.2.08 requires five acres of parkland per 1,000 residents. Based on the rate of 3.26 residents per single-family dwelling unit, the maximum buildout of the proposed project site would result in an increase of 678 new residents to the City. As a result, 3.39 acres of parkland would be required (0.005 x 678 = 3.39). Oakley resolution 19-03 requires subdividers of land within the City to dedicate land and/or pay fees in lieu of the dedication for the neighborhood and community parks and recreation programs.

The proposed project does not include any on-site parks; thus, the project would be subject to payment of in-lieu park fees. Therefore, given that the proposed project would be required to pay the applicable park in-lieu fee, the project would result in a ***less-than-significant*** impact on recreation.

XVI. RECREATION. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	✖	☐
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	✖	☐

Discussion

a. The City of Oakley provides and maintains the parks and recreational opportunities within the City. Within Oakley, recreational opportunities range from traditional active recreation, such as organized sports, to passive recreation of nature observation and bird watching. In Oakley, the predominant parks are neighborhood and community parks. Neighborhood parks generally abut residential areas and have amenities such as play areas, picnic areas, gathering areas, and open turf. Community parks are designed to serve the needs of several neighborhoods up to the whole community. According to the City's General Plan EIR, parks in Oakley are mostly located on school properties, flood control properties, or other joint-use sites.

The proposed project would develop 208 single-family residential units, and therefore result in the addition of residents to the City and a potential increase in the use of the existing parks and/or the demand for new neighborhood or community parks and recreation facilities in the area. However, the proposed project would include an on-site public trail that would outline the western and southern permitter of the proposed project. In addition, each residence within the proposed project would have a front and backyard.

The public trail would be characterized by various vegetative ground cover, shrubs, and trees. Throughout the trail, recreational facilities would be located periodically containing bike paths, bike racks, benches, etc. Therefore, the addition of the public trail would diversify recreational facilities throughout the City.

In addition, the proposed project would pay a park impact fee to pay for park and recreational facilities as required by Section 9.2.104 of the City's Municipal Code or dedicate park land. Therefore, the proposed project would result in a ***less-than-significant*** *impact* on recreation.

b. The proposed project includes the construction of an impervious pedestrian trail adjacent to the western and southern border of the proposed residential lots. The impervious pedestrian trail would be constructed within the 75-foot stream setback from Little Dutch Slough. All land within the setback that is disturbed by grading and trail construction would be seeded with native grasses and forbs. Therefore, the area disturbed would be restored to a vegetated condition similar to, or with increased native plan diversity, as compared to the pre-construction conditions. As a result, the proposed project would have a ***less-than-significant*** impact on the physical environment from the construction or expansion of recreational facilities.

XVII. TRANSPORTATION. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	☐	☐	✖	☐
b. Conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?	☐	☐	✖	☐
c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	✖	☐
d. Result in inadequate emergency access?	☐	☐	✖	☐

Discussion

a. The following discussion is based primarily on a Traffic Impact Analysis (TIA) prepared for the proposed project by TJKM (Appendix J).[26] As a result of SB 743, discussed further below, local jurisdictions may not rely on vehicle Level of Service (LOS) and similar measures related to delay as the sole basis for determining the significance of transportation impacts under CEQA. However, existing LOS at the study roadway facilities is presented herein to comply with General Plan LOS policies.

Study Intersection

As part of the TIA, TJKM evaluated transportation conditions at the following 10 intersections (Figure 9):

1. Jersey Island Road / E. Cypress Road
2. Knightsen Avenue / E. Cypress Road
3. Sellers Avenue / E. Cypress Road
4. Machado Lane / E. Cypress Road
5. Picasso Drive / E. Cypress Road
6. Main Street / E. Cypress Road
7. Main Street / Laurel Road
8. Main Street / Delta Road
9. Delta Road / Sellers Avenue[27]
10. E. Cypress Road / Project Entrance[28]
11. Sellers Avenue / Laurel Road

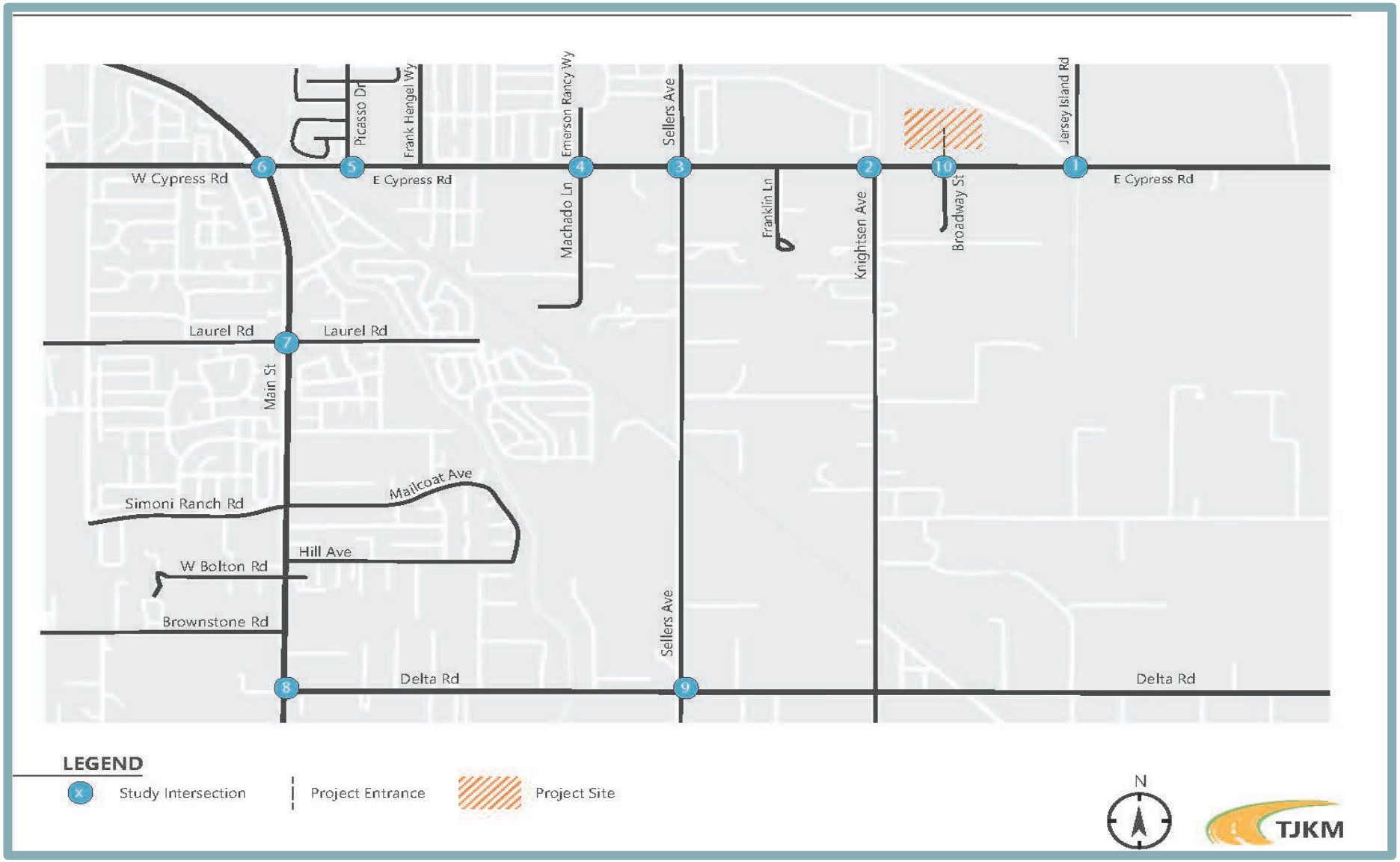
All intersections were evaluated based on conditions provided from the Citywide Traffic Model for the AM (7:00 AM – 9:00 AM) and PM (4:00 PM – 6:00 PM) peak periods for a typical weekday, except for the intersection at Delta Road/Sellers Avenue (Intersection #9) where the data was collected more recently.

26 TJKM. *Draft Traffic Impact Analysis for the Burroughs Project*. March 31, 2021.

27 Indicates new location included in the Citywide Traffic Model to evaluate Level of Service.

28 Indicates intersection would be evaluated under "plus Project" scenarios only.

Figure 9
Study Intersection Location



Source: TJKM, 2021

Study Scenarios

Conditions at each intersection were analyzed under the following scenarios.

- **Existing Conditions** – Provides an evaluation of current operations based on the current roadway and sidewalk network characteristics, transit service, and the existing Oakley Citywide Traffic Model;

- **Existing plus Project Conditions** – Similar to Existing Conditions, but with the addition of net new trips that would be generated by the project;

- **Background Conditions** – Provides an evaluation of project peak hour traffic operations based on the net change to travel patterns anticipated from approved (but not yet constructed) or fully/partially occupied developments in the City at the time of the Existing Conditions assessment. The analysis includes additional trips that would be generated if the approved developments were to operate at full occupancy. The conditions in this analysis were developed using the Updated Citywide Vistro Model; and

- **Background plus Project Conditions** – Similar to Background Conditions, but with the inclusion of vehicle trips that would be generated by the project. Includes an analysis that provides an assessment of project impacts that take into account other projects that would be completed within a similar timeframe as the project.

LOS Standards

Operations at each study intersection were evaluated based on LOS, a qualitative measure that describes operational conditions related to traffic stream and perceptions by motorists and passengers. The LOS generally describes conditions in terms of speed and travel time, delays, freedom to maneuver, traffic interruptions, comfort, convenience, and safety. Operational levels of service are given letter designations from A to F, with A representing the best operating conditions and F representing the worst conditions.

Per the City of Oakley General Plan, LOS D or a volume-to-capacity (V/C) ratio of 0.90 are the thresholds of acceptability for signalized intersections. Any signalized intersection operating worse than LOS D would be considered inconsistent with this standard. The intersection of Main Street and E. Cypress Road, which is a Congestion Management Program (CMP) intersection and the intersections along Main Street at Laurel Road and Delta Road, which are within Priority Development Areas (PDA) have standards of LOS E or better.

For this study, the study intersections were analyzed using Highway Capacity Manual (HCM) 6th Edition Methodology as per the City's guidance. Average control delay is reported in seconds per vehicle for signalized and all-way-stop-control intersections and critical delay for minor approaches is reported for two-way-stop-control intersections. Intersections operating worse than LOS D are considered inconsistent with the City's standard except for PDAs where the minimum acceptable operational standard is LOS E.

Project Trip Generation

The project vehicle trip generation rates were obtained from the reference *Trip Generation, 10th Edition*, published by the Institute of Transportation Engineers (ITE). Based on the applicable rates for Single-Family Detached Housing (ITE Code 210), the proposed project is forecasted to generate 1,964 daily vehicle trips, including 154 AM peak hour and 206 PM

peak hour vehicle trips, as summarized in Table 12.

TABLE 12

PROJECT VEHICLE TRIP GENERATION

Land Use (ITE Code)	Size[1]	Daily			AM Peak[2]					PM Peak[2]			
Single Family Detached Housing	208 DU	Rate	Trips	Rate	In:Out	In	Out	Rate	Total	In:Out	In	Out	Total
		9.44	1,964	0.74	25:75	39	115	0.99	154	63:37	130	76	206
Net New Trips			1,964			39	115		154		130	76	206

Notes:
Source: Institute of Transportation Engineers Trip Generation Manual, 10th Edition
[1]DU- Dwelling Units
[2]AM Peak - morning peak period (7:00 AM - 9:00 AM); PM Peak – evening peak period (4:00 PM-6:00 PM)

Existing Conditions Traffic LOS Analysis

Under Existing Conditions, intersections were analyzed based on lane geometries and traffic controls provided by the Existing Conditions scenario of the Citywide Traffic Model. Each of the study intersections operate at an acceptable LOS D or better under Existing Conditions, except the intersections of Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) which operate at LOS E or F during one or both peaks (see Table 13).

Existing Plus Project Conditions Traffic Analysis

Under the Plus Project Condition, intersection peak hour LOS at the study intersections were analyzed based on the addition of project trips to each intersection section studied. Table 14 summarizes the peak hour LOS at each section. As shown, all study intersections operate at acceptable LOS under Existing Plus Project Conditions, except the intersections Knightsen Avenue/E. Cypress Road (Intersection #2), Main Street/E. Cypress Road (Intersection #6), and Main Street/Delta Road (Intersection #8) which operates at LOS F during the AM peak.

Background plus Project Conditions Traffic Analysis

Under the Background plus Project Conditions analysis, additional traffic projected to be generated from approved development was forecasted for Background Conditions. The Background Conditions scenario includes additional traffic that would be generated by various specific plans and approved projects within the City of Oakley. The most notable project is the completion of the Laurel Road extension between Main Street and Sellers Avenue. The extension includes a railroad grade separation and widening/construction of Laurel Road to four lanes. In addition, Sellers Avenue is planned to be widened to four lanes between Laurel Road and E. Cypress Road. Cypress Road is planned to be fully improved to six lanes east of Sellers Avenue and to four lanes west of Sellers Avenue. The Background Conditions scenario includes additional traffic that would be generated by various approved projects completed within the City and redistribution of traffic due to the Laurel Road extension.

TABLE 13

EXISTING CONDITIONS INTERSECTION LOS

Intersection	Peak Hour	Control Delay	Existing Conditions	
			Delay[1]	LOS[2]
1. Jersey Island Road / E. Cypress Road	AM	One-way Stop	16.2	C
	PM		11.3	B
2. Knighsen Avenue / E. Cypress Road .	AM	Signalized	**37.3**	**E**
	PM		21.6	C
3. Sellers Avenue / E. Cypress Road	AM	Signalized	18.4	B
	PM		17.2	B
4. Machado Lane / E. Cypress Road	AM	Signalized	12.8	B
	PM		11.2	B
5. Picasso Drive / E. Cypress Road*	AM	Signalized	32.8	C
	PM		8.9	A
6. Main Street / E. Cypress Road*	AM	Signalized	**>80**	**F**
	PM		27.9	C
7. Main Street / Laurel Road*	AM	Signalized	46.2	D
	PM		37.0	D
8. Main Street / Delta Road*	AM	One-Way Stop	**>50**	**F**
	PM		40.5	E
9. Delta Road / Sellers Avenue	AM	All-Way Stop	9.3	A
	PM		13.0	B

Notes: **Bold** text indicates unacceptable intersection operations
1 Delay: Average control delay in seconds per vehicle. Results for minor approaches to two-way stop-controlled intersections are indicated in *italics*
2 LOS: Level of Service
* Indicates intersection is located in a PDA and has standard of LOS E.

Source: TJKM, 2021.

TABLE 14
EXISTING PLUS PROJECT CONDITIONS INTERSECTION LOS

Intersection	Peak Hour	Control Delay	Existing Conditions		Existing plus Project Conditions		
			Average Delay[1]	LOS[2]	Average Delay[1]	LOS[2]	Potential Significant LOS Impact?
1. Jersey Island Road / E. Cypress Road	AM	One-way Stop	16.2	C	16.2	C	No
	PM		11.3	B	11.3	B	No
2. Knightsen Avenue / E. Cypress Road .	AM	Signalized	**37.3**	**E**	**>50**	**F**	**Yes**
	PM		21.6	C	33.2	D	No
3. Sellers Avenue / E. Cypress Road	AM	Signalized	18.4	B	19.6	B	No
	PM		17.2	B	18.3	B	No
4. Machado Lane / E. Cypress Road	AM	Signalized	12.8	B	13.3	B	No
	PM		11.2	B	12.0	B	No
5. Picasso Drive / E. Cypress Road	AM	Signalized	32.8	C	40.4	D	No
	PM		8.9	A	8.9	A	No
6. Main Street / E. Cypress Road*	AM	Signalized	**>80**	**F**	**>80**	**F**	**Yes**
	PM		27.9	C	39.4	D	No
7. Main Street / Laurel Road*	AM	Signalized	46.2	D	49.7	D	No
	PM		37.0	D	50.4	D	No
8. Main Street / Delta Road*	AM	One-Way Stop	**>50**	**F**	**>50**	**F**	**Yes**
	PM		40.5	E	44.2	E	No
9. Delta Road / Sellers Avenue	AM	All-Way Stop	9.3	A	9.3	A	No
	PM		13.0	B	13.0	B	No
10. Project Driveway / E. Cypress Road	AM	Two-Way Stop	N/A	N/A	13.7	B	No
	PM				10.3	B	No

Notes: **Bold** text indicates unacceptable intersection operations
1 Delay: Average control delay in seconds per vehicle. Results for minor approaches to two-way stop-controlled intersections are indicated in *italics*
2 LOS: Level of Service
* Indicates intersection is located in a PDA and has standard of LOS E.

Source: TJKM, 2021.

Existing plus Project Traffic Impact

The proposed project impact to the intersection of Knightsen Avenue/E. Cypress Road (Intersection #2), Main Street/E. Cypress Road (Intersection #6), and Main Street/Delta Road (Intersection #8) adds five or more seconds of delay in the AM peak period. In addition, peak hour signal warrants were evaluated for the Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) intersections based on the *California Manual on Uniform Traffic Control Devices* (CA MUTD) guidelines for traffic signal warrant 3, which evaluates traffic signal installation for peak hour traffic. At the intersection of Knightsen Avenue/E. Cypress Road (Intersection #2) the peak hour signal warrant is met during both peak hours without the proposed project, based on the eastbound and westbound one-lane approach volumes on E. Cypress Road, and northbound one-lane approach on Knightsen Avenue, to 70 percent of the peak hour warrant thresholds. Thus, the warrant is satisfied because the major street, E. Cypress Road, has a posted speed limit exceeding 40 mph.

At the intersection of Main Street/Delta Road (Intersection #8) the peak hour signal warrant is met during both peak hours without the proposed project, based on the westbound approach volumes on Delta Road, and northbound and southbound approach volumes on Main Street, which satisfy the peak hour warrant thresholds. The intersections at Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) both operate at acceptable LOS D or better during the AM and PM peak hours with the implementation of traffic signals. The signalized intersection of Main Street/E. Cypress Road (Study Intersection #6) operates at unacceptable LOS F during the AM peak hour under Existing Conditions without and with the proposed project, due to lack of acceptable signal service to the westbound left-turn movement. Intersection operations improve to acceptable LOS D at this location by increasing phase splits at the eastbound and westbound left-turn approaches and providing a northbound right-turn overlap phase.

With the installation of signal control at Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) and signal timing improvements at Main Street/E. Cypress Road (Intersection #6) the impacts of the proposed project would not be substantial. Above mentioned intersections are included in the list of planned intersection improvements by the City's Traffic Impact Fee (TIF) program, including the signalization of the Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) intersections. With the installation of signal control at Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road (Intersection #8) and signal timing improvements at Main Street/E. Cypress Road (Intersection #6); the impacts of the proposed project would not be substantial. The abovementioned intersections are included in the list of planned intersection improvements by the City's TIF program, including the signalization of the Knightsen Avenue/E. Cypress Road (Intersection #2) and Main Street/Delta Road intersections (Intersection #8). The City currently has Capital Improvement Projects (CIP) for improvements at the intersections of Kightsen Avenue/E. Cypress Road and (Intersection #2) Main Street/E. Cypress Road (Intersection #8). Additionally, the City has made efforts and is exploring options to improve traffic conditions at Main Street/Delta Road (Intersection #8).

Background plus Project Conditions Traffic Impacts

Under Background plus Project Conditions Traffic Analysis, all study intersections operate at acceptable LOS D or better. Table 15 below summarizes the peak hour LOS at the study intersections under Background plus Project Conditions, with Background Condition results included for comparison purposes.

Future Impact Findings

The project slightly increases delay at several study intersections. The intersections were evaluated under the conditions in which the Oakley TIF is planned to improve many of the study intersections. The project contribution to future impacts would not be considered substantial with planned improvements, since the project would contribute a TIF payment to the City that would constitute the project's "fair share" contribution towards the funding of future improvements at the impacted locations, based on the City's adopted TIF program.

Project Driveway/E. Cypress Road (Intersection #10) is forecasted to operate at unacceptable LOS F during the AM and PM peak hours. Project Driveway/E. Cypress Road (Intersection #10) is not included in the Oakley TIF program. The impact due to the proposed project would be substantial, as it causes the project driveway to operate at unacceptable conditions. However, with signalization, the intersection operates at acceptable LOS D or better during both peaks. Therefore, the project would need to contribute to the entire cost of new traffic signals at Project Driveway/E. Cypress Road (Intersection #10). The project would contribute to the entire costs of new traffic signals at Project Driveway/E. Cypress Road (Intersection #10), therefore, reducing the overall impacts to the intersection.

Pedestrian, Bicycle, and Transit Facilities

The proposed project's potential impacts related to pedestrian, bicycle, and transit facilities are discussed below.

Pedestrian Facilities

Pedestrian facilities are comprised of crosswalks, sidewalks, pedestrian signals, and off-street paths, which provide safe and convenient routes for pedestrians to access destinations such as institutions, businesses, public transportation, and recreation facilities. Sidewalks are not provided in the immediate vicinity of the project. The closest sidewalk network on E. Cypress Road begins approximately 0.24 miles west of the intersection of E. Cypress Road and Machado Lane. Sidewalks are also provided on local collectors and arterials such as Picasso Drive, Main Street and Laurel Road. Sidewalks are not located on the side streets of Jersey Island Road, Knightsen Avenue, Sellers Avenue, Machado Lane and Delta Road, West Bolton Road, Brownstone Road, Monte Linda Road and Delta Road. Sidewalks would be added along the project frontage on E. Cypress Road. The new sidewalks would provide pedestrian access to two schools to the west of the development.

Bicycle Facilities

The City of Oakley 2020 General Plan (September 2002), City of Oakley Parks, Recreation, and Trails Master Plan 2020 (Summer 2007), and the Contra Costa County Bicycle and Pedestrian Plan (October 2009) propose that several new bicycle facilities be constructed in the future which includes trunk line bikeway network passing through Main Street and Laurel Road and a local multi-use trail on E. Cypress Road and Sellers Avenue in the vicinity of the project area.

TABLE 15

INTERSECTION TRAFFIC LEVEL OF SERVICE – BACKGROUND PLUS PROJECT CONDITIONS

ID	Intersection	Control	Peak Hour	Background Conditions		Background plus Project Conditions	
				Average[1] Delay	LOS[2]	Average[1] Delay	LOS[2]
1	Jersey Island Road/E. Cypress Road	Signalized	AM	5.0	A	5.0	A
			PM	5.2	A	5.2	A
2	Knightsen Avenue/E. Cypress Road	Signalized	AM	7.0	A	7.0	A
			PM	7.8	A	9.0	A
3	Sellers Avenue/E. Cypress Road	Signalized	AM	20.3	C	21.3	C
			PM	32.0	C	36.7	D
4	Machado Lane/E. Cypress Road	Signalized	AM	17.0	B	17.0	B
			PM	16.1	B	16.3	B
5	Picasso Drive/E. Cypress Road	Signalized	AM	14.3	B	14.4	B
			PM	8.4	A	8.4	A
6	Main Street/E. Cypress Road*	Signalized	AM	54.4	D	54.3	D
			PM	54.5	D	55.1	E
7	Main Street/Laurel Road*	Signalized	AM	39.5	D	40.6	D
			PM	50.3	D	53.5	D
8	Main Street/Delta Road*	Signalized	AM	5.7	A	5.7	A
			PM	5.9	A	5.9	A
9	Delta Road/Sellers Avenue	All-Way Stop	AM	9.6	A	9.6	A
			PM	13.4	B	13.4	B
10	Project Driveway/E. Cypress Road	One-Way Stop	AM	-	-	**117.2**	**F**
			PM	-	-	**107.6**	**F**
10	*Project Driveway/E. Cypress Road*	***Mitigated***	*AM*	*4.5*	*A*	*27.1*	D
		Signalized	*PM*	*9.2*	*A*	*16.1*	C
11	Sellers Road/Laurel Road	Signalized	AM	5.0	A	4.5	A
			PM	5.2	A	24.8	C

Notes: Bold text indicates unacceptable intersection operations.
* Indicates intersection is located in a Priority Development Area and has standard of LOS E (Plan Bay Area 2050).
[1] Delay: Average control delate in seconds per vehicle, reported values are overall for signalized and all-way-stop control intersections; and critical minor approaches for two-way-stop control intersections

Source: TJKM, 2021.

The existing bicycle facilities are at the following locations:

- Main Street- Class II bicycle facilities are provided between Cypress Road and Simoni Ranch Road on both sides;
- Laurel Road- Class II bicycle facilities are provided between Harvest Drive and Main Street on both sides;
- Marsh Creek Regional Trail- Class I bicycle facility provided along Marsh Creek which can be accessed through Delta road approximately 1.5 miles west of the project site; and
- Via Delta de Anza Trail- Class I bicycle facility provided along Contra Costa Canal which can be accessed through Cypress Road and O' Hara Avenue approximately two miles west of the project site.

Bicycle facilities, such as Class II Bicycle lanes would be constructed. Bicycle access along the project frontage would increase connectivity with the surrounding area.

Transit Facilities

Tri-Delta Transit provides transit services in the City of Oakley, with three lines connecting Brentwood and the Pittsburg/Bay Point Bay Area Rapid Transit (BART) station. Due to COVID-19 conditions, some of the routes and schedules may not currently be in full operation.

- *Route 300,* the Pittsburg BART/Brentwood Park & Ride route, is a weekday express route connecting Brentwood to the Pittsburg/Bay Point BART station via Oakley and Antioch. The bus travels along Main Street, operating from 4:15 AM to approximately 10:00 PM with 15 to 30-minute headways.
- *Route 383,* the Oakley/Antioch/Freedom High School route, connects Oakley to Antioch and Freedom High School in Oakley. The route, in both clockwise and counterclockwise directions, provides only weekday service. The counterclockwise route runs with approximate one-hour headways, and the clockwise route runs twice during the AM peak hour period only.
- *Route 391,* the BART/Pittsburg/Antioch/Oakley/Brentwood route, provides weekday service to most East County Cities. The route operates from 4:00 AM to 1:15 AM with 30 to 60-minute headways.
- *Route 393*, the BART/Pittsburg/Antioch/Oakley/Brentwood route, provides weekend service to Route 391. The route operates from 5:20 AM to 2:00 AM with approximately 60-minute headways.

At the project site, the nearest bus stops are located at the intersections of West Cypress Road/Fall Lane (1.7 miles west of the project site), and Main Street/Laurel Road (2.1 miles northeast of the project site) served by Routes 383, 391, and 393.

According to the TIA, the proposed project is not anticipated to have adverse impacts to existing or planned pedestrian, bicycle, or transit facilities as per the Contra Costa Countywide Bicycle and Pedestrian Plan (2018) and the City of Oakley 2020 General Plan.

Conclusion

The proposed project would not meet the City's acceptable LOS standards, as the project would result in increased delay at several study intersections forecasted to operate unacceptably due to future traffic growth generated by background growth and the proposed project. However, the City will require the project to pay the TIF that would constitute the project's "fair share" contribution towards the funding of future improvements, based on the

City's TIF program. Additionally, the proposed project would contribute to the entire cost of new traffic signals at the intersection of Project Driveway/E. Cypress Road (Intersection #10). Therefore, the proposed project would be considered to have a ***less-than-significant*** impact related to conflicting with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities.

b. Section 15064.3 of the CEQA Guidelines provides specific considerations for evaluating a project's transportation impacts. Pursuant to Section 15064.3, analysis of VMT attributable to a project is the most appropriate measure of transportation impacts. Other relevant considerations may include the effects of the project on transit and non-motorized travel. A lead agency may analyze a project's VMT qualitatively based on the availability of transit, proximity to destinations, etc. The following analysis is based on the report prepared by TJKM, which evaluated the project's potential VMT impact qualitatively.

TJKM conducted VMT analysis for the project in compliance with SB 743 through the Contra Costa Transportation Authority's (CCTA) recommended VMT analysis methodology. CCTA considers residential projects to have a significant impact on VMT if the project generated home-based VMT per resident is higher than the less stringent of the following:

- 85 percent of the home-based VMT per resident in the municipality; or
- 85 percent of the existing County-wide average home-based VMT per resident.

TJKM performed VMT analysis for the project with the CCTA Model. Two full model runs were performed in accordance with the CCTA VMT methodology to compare VMT under Baseline and Baseline plus Project Conditions. The first model run is for Baseline Conditions, which represent the Year 2020 traffic conditions for the City of Oakley. The second model run is for Baseline plus Project Conditions, which represent the Year 2020 plus project traffic conditions for the City of Oakley.

Under Baseline Conditions, the home based VMT per capita for the City of Oakley is 36.06. For the project to have a less-than-significant impact, the project must produce VMT within the 85 percent threshold, which equates to 30.65 (0.85 x 36.06). The 30.65 value is the less stringent home-based VMT per capita number as mentioned in the CCTA VMT methodology guidelines above.

Under Baseline plus Project Conditions, the project adds 208 Single Family Dwelling Units into Travel Analysis Zone (TAZ) #30302. The VMT per capita for the project TAZ is 28.80. The project generated VMT falls under the 85 percent threshold established above, thus, the proposed project has a less-than-significant impact on the City of Oakley VMT.

Furthermore, development of the proposed project would increase connectivity to the nearby neighborhoods by constructing new sidewalks along the project site frontage. By providing pedestrian and bicycle connectivity between the proposed residential units and the surrounding neighborhoods, VMT associated with the proposed project would be expected to be below the average VMT per capita. As a result, the proposed project would not conflict or be inconsistent with CEQA Guidelines Section 15064.3(b), and a ***less-than-significant*** impact would occur.

c,d. Access to the proposed project site is proposed from two new connections to E. Cypress Road, one at the intersection of E. Cypress Road and A Street, and the other at the

intersection of E. Cypress Road and E Street. Secondary access to the development would connect E. Cypress Road to E Street along an EVA road on the southeast portion of the property. As per the site plan, the project entrance would be 76 feet wide, and each minor street within would be 56 feet wide. The roadway widths are expected to accommodate on-street parking and truck access as well as EVA. The EVA is a 20-feet wide access road. In addition, E. Cypress Road would be widened during construction. The upgraded E. Cypress Road would be designed and constructed to meet currently applicable codes and requirements and to ensure that the roadway would not result in any increased hazards.

All interior drive aisles and parking stalls would comply with City design standards, and, thus, on-site circulation would be expected to function acceptably for emergency response vehicles. As such, the new street connections would improve emergency access and response times to the project site.

Conclusion

Based on the above, the proposed project would not substantially increase hazards due to a geometric design feature or incompatible uses, or result in inadequate emergency access, and a ***less-than-significant*** impact would occur.

XVIII. TRIBAL CULTURAL RESOURCES. *Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k).	☐	✖	☐	☐
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	✖	☐	☐

Discussion

a,b. As discussed in Section V, Cultural Resources, of this IS/MND, a records search of the CHRIS was performed of February 25, 2020 by the NWIC for cultural resource site records and survey reports within the project area. The CHRIS search indicated a moderate potential of identifying Native American archaeological resources and a moderate to high potential of identifying historic-period archaeological resources in the project area.

In compliance with AB 52 (Public Resources Code Section 21080.3.1), a project notification letter was distributed to the chairpersons of the Amah Mutsun Tribal Band of Mission San Juan Bautista, Chicken Ranch Rancheria of Me-Wuk Indians, Guidiville Indian Rancheria, Indian Canyon Mutsun Band of Costanoan, Tule River Indian Tribe, Wilton Rancheria, Muwekma Ohlone Indian Tribe of the SF Bay Area, Nashville Enterprise Miwok-Maidu-Nishinam Tribe, North Valley Yokuts Tribe, the Ohlone Indian Tribe, and the Confederated Villages of Lisjan. Letters requesting consultation were not received by the City within the AB 52 30-day response period**.**

Based on previous disturbance of the project site and the lack of identified tribal cultural resources, tribal cultural resources are not expected to occur on-site. Nevertheless, the possibility exists that development of the proposed project could result in a substantial adverse change in the significance of a tribal cultural resource if previously unknown tribal cultural resources are uncovered during grading or other ground-disturbing activities. Thus, a ***potentially significant*** impact to tribal cultural resources could occur.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

XVIII-1. Implement Mitigation Measures V-1 and V-2.

XIX. UTILITIES AND SERVICE SYSTEMS. *Would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Require or result in the relocation or construction of new or expanded water, wastewater treatment, or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	☐	☐	✖	☐
b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years?	☐	☐	✖	☐
c. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	✖	☐
d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	✖	☐
e. Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	☐	☐	✖	☐

Discussion

a. The Gilbert property included utility sizing and stubbed improvements to accommodate the future development of the proposed project. For example, the stormwater improvements within the Gilbert property include large diameter pipelines extended to the southeastern limits of the Gilbert property, a detention lake that provides capacity for storms up to the 100-year storm event, a storm drain pump station, and a discharge force main pipeline that discharges the excess storm flows to the Emerson Slough. The proposed project would construct water, sewer and storm drainage infrastructure beneath Little Dutch Slough west of the proposed project to connect to the utilities stubbed within the Gilbert property.

Therefore, the proposed project would not require or result in the relocation or construction of new or expanded water, wastewater treatment, or storm water drainage, electric power, natural gas, or telecommunications facilities that would cause significant environmental effects and a ***less-than-significant*** impact would occur.

b. Water is provided to the project site by the DWD, and untreated water is provided to DWD by CCWD. Per CCWD's 2015 UWMP, DWD's primary water supply for its distribution system is treated surface water from the United States Bureau of Reclamation's CVP purchased from the CCWD. CVP water is conveyed through the Contra Costa Canal and Los Vaqueros system, and treated at the Randall-Bold Water Treatment Plant (WTP) in Oakley, which is jointly owned by DWD and CCWD.[29]

[29] Diablo Water District. *2015 Urban Water Management Plan.* June 2016.

In addition, DWD has developed its own groundwater supply system to provide additional supply reliability. When fully implemented, groundwater may comprise up to 20 percent of DWD's total supply. Table 16 summarizes the current and projected available water supply from DWD's sources, presented in millions of gallons (MG).

Table 16
Current and Projected Available Water Supplies (MG)

Water Supply Source	2015	2020	2025	2030	2035	2040
Surface Water Purchased from CCWD	2,738	4,563	4,563	5,475	5,475	5,475
DWD Groundwater	672	924	924	1,176	1,176	1,176
Total Supply	3,410	5,487	5,487	6,651	6,651	6,651

Source: Diablo Water District, 2016.

Table 17 shows a comparison of projected water supply and demand during normal, single-dry, and multiple-dry years, as adapted from the 2015 UWMP. Results of the comparison show surpluses of water supply compared with demand of all conditions. As shown in the table, DWD has adequate supply sources to meet future needs under all conditions.

Furthermore, the proposed project is consistent with land use anticipated in the Oakley General Plan. As stated within, implementation of General Plan water supply policies and programs reduces impacts associated with buildout of the General Plan to a less-than-significant level. As a result, the proposed project would result in a ***less-than-significant*** impact related to having sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years.

c. The ISD provides wastewater service to the City and the unincorporated County areas. The Planning Area of the City is entirely within ISD's boundary. Wastewater services include the transmission of wastewater primarily from residential and some from commercial and light industry to a treatment facility, treatment, and then disposal of the wastewater and residual waste solids. Within the General Plan, policies and programs are presented to ensure an effective wastewater disposal system that would be provided to the citizens of Oakley. Implementation of the wastewater policies and programs, pursuant to buildout of the General Plan, reduces wastewater service impacts to a less-than-significant impact. For example, Program 4.9.A set forth in the General Plan requires new development to pay its fair share of the cost of on-and off-site wastewater infrastructure.

Due to the project consistency with the type and intensity of land use planned for at buildout, project implementation has been analyzed in the Oakley General Plan EIR. As noted therein, buildout of the General Plan, would result in a less-than-significant impact related to wastewater services with implementation of general plan policy and programs. In addition, the proposed development would pay its fair share of fees for on-site and off-site wastewater infrastructure.

Table 17
Summary of Water Demand Versus Supply During Hydrologic Normal, Single Dry, and Multiple Dry Years (MG)

		2020	2025	2030	2035	2040
Normal Year						
Total Water Supply		5,487	5,487	6,651	6,651	6,651
Total Water Demand		2,263	3,036	3,509	3,986	4,462
Surplus/Deficit		**+3,224**	**+3,224**	**+3,142**	**+2,665**	**+2,189**
Single Dry Year						
Total Surface Water Supply		5,487	5,487	6,651	6,651	6,651
Total Water Demand		2,263	3,036	3,805	4,578	5,349
Surplus/Deficit		**+3,224**	**+3,224**	**+3,142**	**+2,665**	**+2,189**
Multiple Dry Years						
First Year	Total Water Supply	5,487	5,487	6,651	6,651	6,651
	Total Water Demand	2,263	3,036	3,509	3,986	4,462
	Surplus/Deficit	**+3,224**	**+3,224**	**+3,142**	**+2,665**	**+2,189**
Second Year	Total Water Supply	5,487	5,487	6,651	6,542	6,323
	Total Water Demand	2,263	3,036	3,509	3,986	4,462
	Surplus/Deficit	**+3,224**	**+3,224**	**+3,142**	**+2,555**	**+1,860**
Third Year	Total Water Supply	5,030	5,030	6,104	5,994	5,830
	Total Water Demand	2,263	3,036	3,509	3,686	4,462
	Surplus/Deficit	**+2,767**	**+1,994**	**+2,594**	**+2,008**	**+1,368**

Note: Projected water demands for each hydrologic condition account for demand reductions needed to maintain an urban water use target of 163 gpd after 2020. The required reductions for are as follows: 296 MG for 2030; 592 MG for 2035, and 887 MG for 2040.

Source: Diablo Water District, 2016.

Therefore, the proposed project would result in a ***less-than-significant*** impact related to adequate capacity to serve the project's projected wastewater services demand.

d,e. Solid waste, recyclable materials, and compostable material collection within the City of Oakley is hauled to Potrero Hills Landfill located in Solano County to the north. The site has a maximum permitted through put of 4,330 tons per day. According to the California Department of Resources Recycling and Recovery (CalRecycle), the Potrero Hills Landfill has a remaining capacity of 13,872,000 cubic yards out of a total permitted capacity of 83,100,000, or 83 percent remaining capacity.[30] Due to the substantial amount of available capacity remaining at Potrero Hills Landfill, sufficient capacity would be available to accommodate the project's solid waste disposal needs. Therefore, a ***less-than-significant*** impact related to solid waste would occur as a result of the proposed project.

[30] California Department of Resources Recycling and Recovery (CalRecycle). *SWIS Facility/Site Summary Details: Potrero Hill Landfill (48-AA-0075)*. Available at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/1194?siteID=3591. Accessed March 2021.

XX. WILDFIRE. *If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:*	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Substantially impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	✖	☐
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☐	☐	✖	☐
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	✖	☐
d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	✖	☐

Discussion

a-d. As noted in Section IX, Hazards and Hazardous Materials, according to the California Department of Forestry and Fire Protection (CAL FIRE) Fire and Resource Assessment Program, the project site is not located within a Very High Fire Hazard Severity Zone.[31] In addition, the site is located on relatively flat topography adjacent to agricultural uses and single-family development. Due to the relative flat topography, people or structures would not be exposed to downslope, downstream flooding, or landslides from post-fire slope instability. Thus, the proposed project would not experience result in substantial risk or hazards related to wildfires, and a ***less-than-significant*** impact would occur.

[31] California Department of Forestry and Fire Protection. *Contra Costa County, Very High Fire Hazard Severity Zones in LRA*. June 12, 2018.

XXII. MANDATORY FINDINGS OF SIGNIFICANCE.	Potentially Significant Impact	Less-Than-Significant with Mitigation Incorporated	Less-Than-Significant Impact	No Impact
a. Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	✖	☐
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	✖	☐
c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	✖	☐

Discussion

a. As discussed in Section IV, Biological Resources, of this IS/MND, while a limited potential exists for Swainson's hawk, Burrowing Owl, Golden Eagle, GGS, and common nesting birds to occur on-site, Mitigation Measures IV-1 through IV-10 would ensure that any impacts related to special-status species would be reduced to a less-than-significant level.

The project site does not contain any on-site structures or known historic or prehistoric resources. Implementation of the proposed project is not anticipated to have the potential to result in impacts related to historic or prehistoric resources. Mitigation Measures V-1 and V-2 would ensure that in the event that prehistoric resources are discovered within the project site, such resources would be protected in compliance with the requirements of CEQA and other State standards.

The proposed project would not degrade the quality of the environment, substantially reduce or impact the habitat of fish or wildlife species, cause fish or wildlife populations to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory. Therefore, a ***less-than-significant*** impact would occur.

b. The proposed project, could incrementally contribute to cumulative impacts in the area. However, as demonstrated in this IS/MND, all potential environmental impacts that could occur as a result of project implementation would be reduced to a less-than-significant level through compliance with the mitigation measures included in this IS/MND, as well as applicable General Plan policies, Municipal Code standards, and other applicable local and State regulations.

Therefore, when viewed in conjunction with other closely related past, present, or reasonably foreseeable future projects, development of the proposed project would not result in a cumulatively considerable contribution to cumulative impacts, and the project's incremental contribution to cumulative impacts would be ***less than significant***.

c. As described in this IS/MND, the proposed project would comply with all applicable General Plan policies, Municipal Code standards, other applicable local and State regulations, and mitigation measures included herein. In addition, as discussed in Section III Air Quality, Section IV, Biological Resources, Section V, Cultural Resources, Section VII, Geology and Soils, Section IX, Hazards and Hazardous Materials, Section X, Hydrology and Water Quality, Section XIII, Noise, and Section XVII, Transportation, Section XVII, Tribal and Cultural Resources of this IS/MND, the proposed project would not cause substantial effects to human beings, including effects related to exposure to hazardous materials and noise. For example, Mitigation Measure IV-1 would require preconstruction surveys to minimize impacts to special status species. Therefore, the proposed project would result in a ***less-than-significant*** impact.

RESPONSES TO COMMENTS

INTRODUCTION

This Responses to Comments document contains comments received during the public review period of the Burroughs Initial Study/Mitigated Negative Declaration (IS/MND).

According to CEQA Guidelines Sections 15073 and 15074, the lead agency must consider the comments received during consultation and review periods together with the IS/MND. However, unlike with an Environmental Impact Report (EIR), comments received on an IS/MND are not required to be attached to the negative declaration, nor must the lead agency make specific written responses to public agencies. Nonetheless, the lead agency has chosen to provide responses to those specific public comments that are related to the environmental analysis contained in the IS/MND. Non-environmental comments have been considered by the City as part of staff's report to the City Council.

BACKGROUND

The City of Oakley used the following methods to solicit public input on the IS/MND: a Notice of Completion of the IS/MND was posted with the State Clearinghouse on April 9, 2021 The IS/MND was distributed to applicable public agencies, responsible agencies, and interested individuals. Due to the current public health emergency, the Community Development Department is closed to the public until further notice. The document was made available electrically on the City's website at, https://www.ci.oakley.ca.us/ceqa-documents/.The public review period ended May 10, 2021.

LIST OF COMMENTERS

The City of Oakley received three comment letters during the open comment period on the IS/MND for the proposed project. The comment letters were received from the following representatives and are included in the Responses to Comments section below:

Letter 1 .....Steven Aubert, East Contra Costa Fire District
Letter 2 .....Angela Nguyen-Tan, Central Valley Water Quality Control Board
Letter 3 ..... Casey Pancaro, Department of Water Resources

RESPONSES TO COMMENTS

The Responses to Comments below includes each comment letter, as well as responses to each comment. Each bracketed comment letter is followed by numbered responses to each bracketed comment. Where revisions to the IS/MND text were made, new text is double underlined and deleted text is ~~struck through~~.

All such revisions to the IS/MND are relatively minor, and do not affect the adequacy of the conclusions presented therein. CEQA Guidelines Section 15073.5 states the following regarding recirculation requirements for negative declarations:

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

Based on the above, pursuant to CEQA Guidelines Section 15073.5, recirculation of the IS/MND is not warranted.

Letter 1

East Contra Costa
Fire Protection District
Brian Helmick, Fire Chief

BOARD OF DIRECTORS
Brian Oftedal, President
Stephen Smith, Vice President
Adam Langro
Carrie Nash
Joe Young

May 3, 2021

Joshua McMurray
Community Development Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Re: Initial Study and Mitigated Negative Declaration for Burroughs Project Rezone (RZ 01-21) and Tentative Map (TM 01-21)

Dear Mr. McMurray:

We appreciate the opportunity to provide comments on the Initial Study/Mitigated Negative Declaration ("MND") for the Burroughs Project ("Project"). The East Contra Costa Fire Protection District ("District") is the primary fire protection and emergency services provider in the City of Oakley ("City"). The District also anticipates that it will be a "responsible agency" for this Project due to its role in approving plans for sufficient emergency access and compliance with applicable law, as well as the potential need to implement mitigation measures relating to wildfires, fire protection and emergency response, and hazardous materials. (See 14 Cal. Code Regs. §15381.) As drafted, the MND does not accurately characterize the impacts of the Project on the District. The City 1) should revise the MND to reflect that that payment of fire facility impacts fees will not fully mitigate the impacts of the Project on the District; and 2) undertake additional measures to mitigate the impacts, as described below.

A. Background

Our understanding is that the Project would entail "'The Burroughs Project' (proposed project) is located on approximately 43.24 acres of land on the eastern side of the City of Oakley. Development would consist of 208 single-family residential units, seven new public roads (A – G Street), widening of East Cypress Road (E. Cypress Road), establishment of a 75-foot stream setback, and a public trail characterized by trees, shrubs, groundcover, and bike racks. Primary access to the project site would be at the intersection of E. Cypress Road and A Street. The single-family residential lots would range in size from 3,150 square feet (sf) to 18,130 sf. The project site is currently designated Single-Family High (SH) under the General Plan Land Use Map in the City of Oakley. The proposed project would require approval of a Rezone of the project site from Heavy Agriculture (A-3) to Planned Development (P-1) and a Vesting Tentative Map (VTM)."

The District's average response times in the City of Oakley are in excess of the national standards for industry best practices. Without the appropriate measures, the proposed Project may compound response times throughout the District's service area. The District will need additional staffing, and equipment to provide fire protection and emergency response service to the Project at levels consistent with national standards.

17498049.1

Letter 1
Cont'd

East Contra Costa
Fire Protection District
Brian Helmick, Fire Chief

BOARD OF DIRECTORS
Brian Oftedal, President
Stephen Smith, Vice President
Adam Langro
Carrie Nash
Joe Young

B. Deficiencies in the Initial Study/Mitigated Negative Declaration

The MND does not accurately characterize the impacts of the Project on the District, or the effects of the proposed mitigation. The MND states that the Project will have a less-than-significant impact on fire protection because it would be subject to the City's fire facility impact fees established by the City of Oakley Municipal Code Section 9.2.502. (Appendix A at 51.) The MND further asserts that payment of impact fees would be sufficient to "mitigate any potential impacts caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms with the City of Oakley's General Plan Policy 4.4.2." (*Id.*) General Plan Policy 4.4.2 requires that new development pay its fair share costs for new fire protection facilities and services. (Oakley 2020 General Plan at 4-6.) Notwithstanding the impact fee revenue, the Project will not generate sufficient revenue, for operating costs, to allow the District to provide services to the Project consistent with national standards.

1-1

1. Recommended following additions to the MND

a. Fire protection is currently provided to the City of Oakley by the East Contra Costa Fire Protection District. A new fire station was built to accommodate increased demand, staffing and equipment in 2010, known as Station 55 located at 3200 East Cypress Road and is anticipated to be staffed as of March of 2022. With the completion of the new fire station the City of Oakley General Plan anticipates fire service to be adequate for buildout of the City. Station 53 is located 2.5 miles northwest of the project site at 530 O'Hara Avenue. The proposed project would be subject to the fire facilities impact fees set forth in the City of Oakley Municipal Code Section 9.2.504. Payment of the required impact fee would mitigate any potential impacts caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms to the City of Oakley's General Plan Policy 4.4.2. Additionally, the proposed project does not include any alterations to the circulation system of the surrounding area, which could conflict with the City of Oakley's General Plan Policy 4.4.4, or lead to a degradation in response times. Given the payment of fees in accordance with City of Oakley Municipal Code, the proposed project is not expected to cause significant degradation to response times or service ratios, which would induce the need for physically altered or expanded governmental facilities, the construction of which could cause significant environmental impacts, and the project would, therefore, result in a less-than-significant impact.

1-2

2. Payment of impact fees does not account for operating costs

Additionally, payment of impact fees, even at the new rate, will not address the District's increased operating expenses for providing service to the Project. Impact fees are a one-time revenue and are restricted to use for capital costs. (Oakley Municipal Code § 9.2.506.) The development of the Project would increase the property tax revenue generated by the property, and that increased revenue would be available for operating expenses. However, the District's allocation of property tax revenue from parcels districtwide are much lower than normal for similar fire districts. (Contra Costa County 2016-2017 Grand Jury Report 1706 at 5.) Accordingly, the new property tax revenue will be insufficient to cover the increased costs to the District to provide service to the Project at levels consistent with national standards. The District requests that the Project proponents participate in a community facilities district that will generate revenue sufficient to cover the shortfall.

1-3

Letter 1
Cont'd

East Contra Costa
Fire Protection District
Brian Helmick, Fire Chief

BOARD OF DIRECTORS
Brian Oftedal, President
Stephen Smith, Vice President
Adam Langro
Carrie Nash
Joe Young

C. Conclusion

1-4 The MND should reflect the fact that payment of impact fees and property taxes at the current rates will not generate sufficient revenue, for the operating costs, for the District to provide service to the Project consistent with national standards. The District further requests that the City and the Project proponent work with the District to implement the measures described above to provide this revenue. Please feel free to contact me if I can provide any further information.

Sincerely,

Steven Aubert
Fire Marshal/PIO
East Contra Costa Fire Protection District

17498049.1

LETTER 1: STEVEN AUBERT, EAST CONTRA COSTA FIRE PROTECTION DISTRICT

Response to Comment 1-1

The evaluation required under CEQA relates to whether the proposed project would result in a substantial adverse physical impact associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services. The analysis therefore is not intending to fully address the proposed project's ability to adequately cover the East Contra Costa Fire District's operating costs, rather, if the proposed project would result in adverse physical impacts that would cause significant environmental impacts in order to maintain acceptable service ratios, response times, or other performance objectives. As such, the comments regarding financing have been forwarded to the decision-makers for their consideration.

Response to Comment 1-2

In response to the comment, page 89 of the IS/MND is hereby revised as follows:

> Fire protection is currently provided to the City of Oakley by the East Contra Costa Fire Protection District. A new fire station was built to accommodate increased demand, staffing and equipment in 2010, known as Station 55 located at 3200 East Cypress Road and is anticipated to be staffed as of March of 2022. With the completion of the new fire station the City of Oakley General Plan anticipates fire service to be adequate for buildout of the City. Station ~~9~~53 is located 2.5 miles northwest of the project site at 530 O'Hara Avenue. The proposed project would be subject to the fire facilities impact fees set forth in the City of Oakley Municipal Code Section 9.2.504. Payment of the required impact fee would mitigate any potential impacts caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms to the City of Oakley's General Plan Policy 4.4.2. Additionally, the proposed project does not include any alterations to the circulation system of the surrounding area, which could conflict with the City of Oakley's General Plan Policy 4.4.4, or lead to a degradation in response times. Given the payment of fees in accordance with City of Oakley Municipal Code, the proposed project is not expected to cause significant degradation to response times or service ratios, which would induce the need for physically altered or expanded governmental facilities, the construction of which could cause significant environmental impacts, and the project would, therefore, result in a less-than-significant impact.

The above revision is for clarification purposes and does not change the analysis or conclusions of the IS/MND.

Response to Comment 1-3

Please refer to Response to Comment 1-1 above.

Response to Comment 1-4

Please refer to Response to Comment 1-1 above. However, in response to this comment and for clarification purposes, page 89 of the IS/MND is further revised as follows:

> Fire protection is currently provided to the City of Oakley by the East Contra Costa Fire Protection District. A new fire station was built to accommodate increased demand, staffing

and equipment in 2010, known as Station 55 located at 3200 East Cypress Road and is anticipated to be staffed as of March of 2022. With the completion of the new fire station the City of Oakley General Plan anticipates fire service to be adequate for buildout of the City. Station ~~9~~53 is located 2.5 miles northwest of the project site at 530 O'Hara Avenue. The proposed project would be subject to the fire facilities impact fees set forth in the City of Oakley Municipal Code Section 9.2.504. Payment of the required impact fee would ~~mitigate any~~ contribute towards increased operating costs ~~potential impacts~~ caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms to the City of Oakley's General Plan Policy 4.4.2. Additionally, the proposed project does not include any alterations to the circulation system of the surrounding area, which could conflict with the City of Oakley's General Plan Policy 4.4.4, or lead to a degradation in response times. Given the payment of fees in accordance with City of Oakley Municipal Code, the proposed project is not expected to cause significant degradation to response times or service ratios, which would induce the need for physically altered or expanded governmental facilities, the construction of which could cause significant environmental impacts, and the project would, therefore, result in a less-than-significant impact.

The above revision is for clarification purposes and does not change the analysis or conclusions of the IS/MND.

Letter 2

CALIFORNIA Water Boards

GAVIN NEWSOM GOVERNOR
JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

10 May 2021

Joshua McMurrary
City of Oakley
3231 Main Street
Oakley, CA 94561
mcmurray@ci.oakley.ca.us

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, BURROUGHS PROJECT, SCH#2021040251, CONTRA COSTA COUNTY

Pursuant to the State Clearinghouse's 9 April 2021 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Burroughs Project, located in Contra Costa County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

2-1

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of

Letter 2
Cont'd

Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

2-1 Cont'd

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Letter 2
Cont'd

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits[1]
The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

2-1 Cont'd

Industrial Storm Water General Permit
Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

Clean Water Act Section 404 Permit
If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification
If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic

[1] Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

Letter 2
Cont'd

General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

2-1 Cont'd

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

Letter 2
Cont'd

2-1
Cont'd

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit
If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit
If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/help/permit/

If you have questions regarding these comments, please contact me at (916) 464-0335 or Angela.Nguyen-Tan@waterboards.ca.gov.

Angela Nguyen-Tan
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

Response to Comment 2-1

The comment generally presents permits and regulations related to protecting the quality of groundwater and waters of the State. The proposed project would be subject to all applicable permits/regulations, as noted in the comment.

Letter 3

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY
GAVIN NEWSOM, *Governor*

DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791

May 10, 2021

Mr. Joshua McMurray
Community and Economic Development Director
City of Oakley
3231 Main Street
Oakley, CA 94561
mcmurray@ci.oakley.ca.us

SCH# 2021040251, Notice of Intent to Adopt a Mitigation Negative Declaration and Draft Initial Study/Mitigation Negative Declaration (IS/MND) for the Burroughs Project in Contra Costa County

Dear Mr. McMurray:

The California Department of Water Resources' (DWR) Environmental Compliance and Evaluations Branch (ECEB) staff have reviewed the City of Oakey's (Lead Agency) IS/MND for the proposed Burroughs Project (the Project). ECEB staff have the following comments:

Project Description

The proposed Project would consist of 208 single-family residential lots ranging in size from 3,150 square feet (sf) to 18,130 sf. Additionally, the proposed project would include seven new public roads (A – G Street), widening of East Cypress Road, establishment of a 75-foot stream setback, and a public trail characterized by trees, shrubs, groundcover, and bike racks. In addition, frontage improvements associated with the widening of East Cypress Road would be designed and constructed as part of the City of Oakley Capital Improvement Program (CIP).

The proposed Project is on land directly adjacent to Dutch Slough, an area in which DWR is engaged in a large-scale restoration project that has already gone through CEQA compliance (SCH 2021040251).

Specific Comments

IV. Biological Resources

Special-Status Wildlife

3-1

The overall coverage of special-status wildlife appears to be insufficient for CEQA compliance purposes. The IS/MND refers to seven special-status species covered under the East Contra Costa Habitat Conservation Plan (ECCHCP), but only four species are

Letter 3
Cont'd

3-1 Cont'd listed or discussed (IS/MND p. 39). The other three species should be listed and discussed. This section should also include a discussion of all potential special-status species in the area, both those covered by the ECCHCP and those not covered by the ECCHCP. These species include, but are not limited to: California legless lizard, Western pond turtle, and vernal pool invertebrates.

3-2 For example, Western pond turtles have been found in the adjacent Dutch Slough, is present in waterways in the vicinity, and have the potential to nest within the project boundaries, yet is not mentioned at all. These discussions should include impact conclusions and, if necessary, what mitigation measures will be used to ensure that the impact will be less than significant.

In addition to Swainson's Hawk and Golden Eagle, the IS/MND should also discuss other nesting birds covered under the Migratory Bird Treaty Act (16 U.S.C. 703–712, MBTA) and California Fish and Game Code sections 3503, 3503.5 and 3513 that are not discussed in the Special-Status Wildlife section (IS/MND p. 40). The list of migratory bird species protected under the MBTA is set forth at 50 C.F.R. § 10.13.

3-3 It is unclear exactly what resources were used by the Lead Agency to determine the potential for a species to occur within or adjacent to the project footprint. There is no indication of what databases were searched; please include all relevant information related to the data and surveys used for species determinations within the Biological Resources section, and please ensure that conclusions made are based on data and not assumptions.

3-4 Several of the justifications made in the special-species wildlife portion of the IS/MND are based on limited surveys done during a drought year, which may not be sufficiently indicative of normal conditions in which species would occur. Using data from a single, drought-stricken year severely limits analysis of potentially suitable aquatic - habitat that would hold water during non-drought conditions, and such non-drought conditions would potentially serve as viable habitat for several species within the proposed Project footprint. Yet, this single year of drought-impacted data was used to discount the potential for said species to use these aquatic habitats. Consequently, additional surveys of the seasonal wetland and upland habitat, including mapping of burrows, should be incorporated to provide a better representation of the habitat and the potential species that may occur in the area during normal conditions.

Western Burrowing Owl

3-5 The Western burrowing owl analysis fails to adequately address cumulative impacts. The Lead Agency acknowledges that Western burrowing owls are found in the vicinity, and discusses the available habitat surrounding the proposed Project (IS/MND p. 39). However, much of the adjacent habitat formerly occupied by Western burrowing owls has been modified for uses that are not compatible with Western burrowing owl use. Cumulative loss of this habitat should be addressed in this section, as several of the past occurrences in databases such as the CNDDB are now likely extirpated as the habitat is

Letter 3
Cont'd

3-5 Cont'd lost. Concurrent projects that are on-going are also reducing the availability of habitat for this species, including residential development to the west and east of the proposed Project site and restoration efforts at Dutch Slough.

Swainson's Hawk

3-6 The Swainson's Hawk analysis may lack sufficient survey data to adequately analyze the proposed Project's impacts on the species. The section titled "Swainson's Hawk" discusses conducting pre-construction surveys, but does not include discussion of any other surveys to be completed prior to the removal of potential nesting trees or prior to construction of the proposed Project which will reduce available foraging habitat for Swainson's hawks in the area (IS/MND p. 40). If additional surveys are planned, reference to those should be included in this discussion. Also, applicable mitigation measures to offset impacts to nesting birds and loss of foraging habitat should be discussed.

Special-Status Wildlife Mitigation Measures

3-7 The mitigation measures proposed are limited to only addressing the four species discussed in the IS/MND. The mitigation measures should be expanded to include measures for other species that should be discussed in the IS/MND, including but not limited to: nesting birds and raptors, special status bats, vernal pool invertebrates, the California legless lizard, and the Western pond turtle.

3-8 The mitigation measures should include a Worker's Environmental Awareness Training that covers all of the species with a potential to occur within and adjacent to the proposed Project's footprint. This training should include efforts comparable to what the proposed Project incorporated in Mitigation Measure IV-11, Paragraph five, for Giant Garter Snakes (IS/MND p. 46), but not limited solely to Giant Garter Snakes.

Please include an additional mitigation measure for Western burrowing owl that states that the proposed Project will comply with the Burrowing owl work group guidelines when conducting surveys available at:

https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842&inline.

Other General Comments

3-9 There is no discussion in the IS/MND that the proposed Project will take place immediately adjacent to a large habitat restoration project. There is potential for short term impacts to the adjacent Dutch Slough Tidal Marsh Restoration Project due to construction related noise, dust, and potential to displace wildlife onto the neighboring site. Also, the long-term impacts of increased human population size that could lead to both direct and indirect impacts on the wildlife habitat should be evaluated. These

Letter 3
Cont'd

impacts include but are not limited to vandalism, illegal hunting, trash or illegal dumping, traffic, noise, light, and hazardous materials. Please include an evaluation of the project's potential to impact the adjacent habitat project and proposed avoidance and mitigation measures to lessen any affects.

Closing Comments

Please provide DWR with a copy of any project documents when available by e-mail to:

Mary Xiong
Environmental Compliance and Evaluations Branch
Division of Environmental Services
Department of Water Resources
mary.xiong@water.ca.gov

Sincerely,

Casey Pancaro
Staff Attorney

Response to Comment 3-1

The Application and Planning Survey Report prepared for the proposed project identified potential special-status species to comply with the East Contra Costa Habitat Conservation Plan and Natural Community Conservation Plan (ECC HCP/NCCP). Within the Application and Planning Survey Report, seven special special-status species were identified to have potentially suitable habitat on the project site. The seven covered special-status species included the Western Burrowing Owl, Giant Garter Snake, California Tiger Salamander, California Red-Legged Frog, Covered Shrimp, Swainson's Hawk, and Golden Eagle. Within the IS/MND, the four species discussed included the Western Burrowing Owl, Giant Gartner Snake, Swainson's Hawk, and the Golden Eagle, which were those confirmed by the biologist that suitable habitat exists within the project site. The remaining species: California Tiger Salamander, California Red-Legged Frog, and the Covered Shrimp were not discussed in the IS/MND as the biologists confirmed that potentially suitable habitats for the covered species did not exist.

Thus, for clarification purposes, page 37 of the IS/MND is hereby revised as follows:

> ### Special-Status Wildlife
>
> ~~According to the~~ The ECCC HCP/NCCP Application and Planning Survey Report conducted by Zentner Planning and Ecology identified~~,~~ seven special-status animals covered under the ECCC HCP/NCCP, three of which were determined to not have sufficient habitat on site. The California tiger salamander, California red-legged frog, and covered shrimp species require aquatic habitats such as wetlands. The project site contains one 0.148 acre seasonal wetland but does not hold water at the surface. Therefore, the wetland would be unable to support these three species. Additionally, the project site was monitored throughout the 2019 through 2020 winter to determine if any areas on the project site could hold water at the surface for any period of time. According to the Application and Planning Survey Report, areas that held water for a period of time sufficient to support covered shrimp species were not identified. Therefore, only the following four covered species have the potential to occur on the project site and will be discussed in further detail in this IS/MND: Western burrowing owl (WBO), Swainson's Hawk, Golden Eagle, and the Giant Garter Snake (GGS). ~~The following discussion provides additional details on each of these species.~~ In addition, the project site has the potential for nesting birds protected under the MBTA and the CFGC Sections 3505, 3503.5 and 3513 to occur on site.

The above revisions are for clarification purposes and do not change the conclusions of the IS/MND.

Response to Comment 3-2

In February 2015, the East Contra Costa County Habitat Conservancy prepared an ECCC HCP/NCCP Assessment of Plan Effects on CEQA Species.[1] The purpose of the assessment was to provide a programmatic, cumulative CEQA effects analysis for CEQA species not covered by the HCP/NCCP. According to the species assessment, for all but two of the potential special-status species addressed, impacts would be less than significant under CEQA. Because of uncertainty regarding the distribution of the Lime Ridge navarretia (*Navarretia* gowenii) and the Lime Ridge eriastrum (*Eriastrum ertterae*) the species assessment concluded a potentially significant impact for those two species. A California Natural Diversity Database (CNDDB) search was conducted by the Zentner Planning and Ecology as part of their application preparation. The

[1] H.T. Harvey & Associates. East Contra Costa County Habitat Conservation Plan – Natural Community Conservation Plan Assessment of Plan Effects on CEQA Species. February 17, 2015.

CNDDB search and did not identify any known occurrences of Lime Ridge navarretia or Lime Ridge eriastrum.

The comment specifically mentions legless lizard, western pond turtle and vernal pool invertebrates, all of which generally are covered species of the HCP/NCCP. Therefore, the Planning Survey Report included consideration of these species and determined them to not have the potential to occur on site.

Migratory birds are addressed through the mitigation provided for the species identified; however, for clarification purposes, page 37 of the IS/MND is revised as shown above, and page 38 of the IS/MND is hereby revised as follows:

> Swainson's Hawk and other Migratory Birds
> Swainson's hawk is a summer resident and migrant in California's Central Valley and scattered portions of the southern California interior. Areas typically used for nesting include the edge of narrow bands of riparian vegetation, isolated patches of oak woodland, lone trees, and also planted and natural trees associated with roads, farmyards and sometimes adjacent residential areas. Foraging occurs in open habitats, including grasslands, open woodlands, and agricultural areas. The project plans on removing all trees within the project site. According to the Application and Planning Survey Report, all trees within 1,000 feet of the project site that have the potential to support nesting Swainson's hawks been mapped Nesting Swainson's hawks within this area during project planning were not identified. However, the CNDDB has two records of Swainson's hawks nesting within 0.5 miles of the project site, though one of these records describes a nest in a tree that has been removed and the other record indicates that the nest is not active. Potential nesting tees would be removed as part of the proposed project. In addition, tree and ground disturbances associated with project construction could result in the direct loss or destruction of active nests of birds protected under the MBTA or CFGC. Project construction could also result in disturbance of breeding birds, causing nest abandonment by the adults and subsequent mortality of chicks and eggs. While loss of some nests of common migratory bird species (e.g., northern mockingbird, house sparrow) would not be considered a significant impact under CEQA because it would not result in a substantial effect on their populations locally or regionally, destruction of any migratory bird or raptor nest is a violation of the MBTA and Section 3503 of the California Fish and Game Code However, a pre-construction survey would be completed prior to the start of construction to ensure that nesting Swainson's hawks and protected birds under the MBTA are not impacted by the project.

In addition, page 38 of the IS/MND is further revised as follows:

> Other Special-Status Species
> In addition to the above covered species, the following special-status species exist in the project vicinity: western pond turtle and California legless lizard. However as described above, a biological survey and data review was conducted and concluded that these species are not likely to occur on site.
>
> **Conclusion**
> Based on the above, the proposed project would not result in impacts to special-status plant species. Although the field survey did not identify any special-status wildlife species within the project site, implementation of the proposed project could potentially result in adverse effects to WBO, Swainson's hawk, golden eagle, ~~and~~ GGS, and protected nesting birds under the MBTA. Thus, the proposed project could have an adverse effect, either direct or through habitat modification, on species identified as special-status species in

local or regional plans, policies, or regulations, or by the CDFW or the USFWS, and a ***potentially significant*** impact could result.

In response to the comment, page 40 of the IS/MND is hereby revised as follows.

Swainson's Hawk and other Migratory Birds

IV-3. Preconstruction Survey

Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15 – September 15), a qualified biologist shall conduct a preconstruction survey not more than one month prior to construction to establish whether Swainson's hawk and migratory birds nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk and migratory bird activity (e.g., foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are required (see below).

In addition, page 41 of the IS/MND is hereby revised as follows.

IV-5. Mitigation for Loss of Nest Trees

Should the proposed project result in the loss of non-riparian Swainson's hawk or migratory bird nest trees, the proposed applicant shall implement the following measures:

The above revisions provide additional information and detail regarding the special-status species and birds protected under the MBTA. While the revisions amplify the analysis and mitigation measures, they do not change the conclusions of the IS/MND.

Response to Comment 3-3

As noted in Response to Comment 3-2, a CNDDB search was conducted as part of the Application and Planning Survey Report preparation. In addition, as noted further below in Response to Comment 3-6, a site survey was conducted by an approved United States Fish and Wildlife/California Department of Fish and Wildlife qualified biologist to inspect trees for the presence of nest sites and to determine the location, quantity, and quality of suitable habitat for covered wildlife species. The Application and Planning Survey Report and relevant appendices were provided as an attachment to the IS/MND.

Response to Comment 3-4

Zentner Planning and Ecology has completed two years of surveys, from winter 2019 through spring 2021, and has not identified any potentially suitable habitat. Though the last two years have been drought years, evidence that the site would contain suitable habitat for covered shrimp species during non-drought years does not exist; the site contains one seasonal wetland that does not hold surface water even following heavy rainfall. In addition to this recent monitoring, Zentner Planning and Ecology completed protocol-level surveys for covered shrimp species in 2006 and did not identify any covered shrimp on the property.

Response to Comment 3-5

The Western Burrowing Owl is a covered species under the ECCC HCP/NCCP. Mitigation Measure IV-1 and IV-2 include preconstruction surveys, avoidance and minimization, and construction monitoring in accordance with the requirements set forth in Section 6.4.3, Species-Level Measures, and Table 6-1 of the ECCC HCP/NCCP. The ECCC HCP/NCCP is designed to protect covered species from the cumulative loss of habitats due to on-going projects in the region. Therefore, through compliance and participation in the ECCC HCP/NCCP by the City, cumulative impacts regarding the Western Burrowing Owl are addressed through the ECCC HCP/NCCP.

Response to Comment 3-6

A Planning Survey Report was conducted by an approved United States Fish and Wildlife/California Department of Fish and Wildlife qualified biologist to inspect trees for the presence of nest sites and to determine the location, quantity, and quality of suitable habitat for covered wildlife species. Therefore, sufficient survey data was acquired to determine suitable habitat for the Swainson's Hawk in the project site. Additionally, Mitigation Measure IV-3, IV-4, and IV-5 include preconstruction surveys, avoidance and minimization, construction monitoring, and mitigation for loss of nest trees in accordance with the requirements set forth in Section 6.4.3, Species-Level Measures, and Table 6-1 of the ECCC HCP/NCCP. The ECCC HCP/NCCP is designed to protect covered species from the loss of foraging habitat due to projects within the region. Therefore, nesting impacts and loss of foraging habitat regarding the Swainson's Hawk are addressed through compliance with the ECCC HCP/NCCP.

Response to Comment 3-7

Please refer to Response to Comment 3-2.

Response to Comment 3-8

The burrowing owl working group guidelines (1993) have been superseded by Fish and Game Guidelines developed in 2012. The mitigation required in the IS/MND will be completed following the Fish and Game Guidelines.

Response to Comment 3-9

Short-term impacts of concern include construction noise, dust, and the potential to displace wildlife. The Dutch Slough Tidal Marsh Restoration project is directly north of the project site beyond Contra Costa Canal. As stated in Section XIII, Noise, of the IS/MND, noise during construction would be limited to specific hours forth in the City of Oakley Municipal Code Section 4.2.208 and would implement construction best management practices (BMPs) that would minimize noise annoyances. Accordingly, short-term noise impacts would be temporary and would not displace wildlife species. With respect to dust, State guidelines and Section 6.11 of the Oakley Municipal Code require the proposed project to implement BMPs including erosion and sediment control. Erosion control BMPs include applying water or dust suppressants to minimize impacts related to dust. In addition, the proposed project would not displace wildlife species to the on-going Dutch Slough Tidal Restoration Project as the project is in a relatively urbanized area and is bordered by single-family residential development. Such development is a barrier for wildlife species. In addition, the proposed project would implement Mitigation Measure IV-1 through IV-11 to reduce impacts to special-status species. Furthermore, construction activities associated with the adjacent development have been ongoing and the proposed project would be consistent with these previous activities.

With respect to long-term impacts, vandalism, illegal hunting, trash, and illegal dumping are outside the purview of CEQA as CEQA does not require consideration of illegal activities. Impacts to special-status wildlife are address and would be reduced with implementation of Mitigation Measure IV-1 through IV-11 to a less-than-significant level.

Burroughs Project
Initial Study/Mitigated Negative Declaration

Errata Sheet
May 17, 2021

This errata sheet presents, in ~~strike-through~~ and double-underline format, the revisions to the Initial Study/Mitigated Negative Declaration (IS/MND) for the Burroughs Project (proposed project). The revisions to the IS/MND reflected in this errata sheet do not affect the adequacy of the previous environmental analysis contained in the IS/MND. Because the changes presented below would not result in any new significant impacts or a substantial increase in the severity of an environmental impact identified in the IS/MND, recirculation of the IS/MND is not required.

Page 37 of the IS/MND is hereby revised as follows.

Special-Status Wildlife

~~According to the~~ The ECCC HCP/NCCP Application and Planning Survey Report conducted by Zentner Planning and Ecology identified~~,~~ seven special-status animals covered under the ECCC HCP/NCCP, three of which were determined to not have sufficient habitat on site. The California tiger salamander, California red-legged frog, and covered shrimp species require aquatic habitats such as wetlands. The project site contains one 0.148 acre seasonal wetland but does not hold water at the surface. Therefore, the wetland would be unable to support these three species. Additionally, the project site was monitored throughout the 2019 through 2020 winter to determine if any areas on the project site could hold water at the surface for any period of time. According to the Application and Planning Survey Report, areas that held water for a period of time sufficient to support covered shrimp species were not identified. Therefore, only the following four covered species have the potential to occur on the project site and will be discussed in further detail in this IS/MND: Western burrowing owl (WBO), Swainson's Hawk, Golden Eagle, and the Giant Garter Snake (GGS). ~~The following discussion provides additional details on each of these species.~~ In addition, the project site has the potential for nesting birds protected under the MBTA and the CFGC Sections 3505, 3503.5 and 3513 to occur on site.

Page 38 of the IS/MND is hereby revised as follows:

Swainson's Hawk and other Migratory Birds

Swainson's hawk is a summer resident and migrant in California's Central Valley and scattered portions of the southern California interior. Areas typically used for nesting include the edge of narrow bands of riparian vegetation, isolated patches of oak woodland, lone trees, and also planted and natural trees associated with roads, farmyards and sometimes adjacent residential areas. Foraging occurs in open habitats, including grasslands, open woodlands, and agricultural areas. The project plans on removing all trees within the project site. According to the Application and Planning Survey Report, all trees within 1,000 feet of the project site that have the potential to support nesting Swainson's hawks been mapped Nesting Swainson's hawks within this area during project planning were not identified. However, the CNDDB has two records of Swainson's hawks nesting within 0.5 miles of the project site, though one of these records describes a nest in a tree that has been removed and the other record indicates that the nest is not active. Potential nesting tees would be removed as part of the proposed project. In addition, tree and ground disturbances associated with project construction could result in the direct loss

or destruction of active nests of birds protected under the MBTA or CFGC. Project construction could also result in disturbance of breeding birds, causing nest abandonment by the adults and subsequent mortality of chicks and eggs. While loss of some nests of common migratory bird species (e.g., northern mockingbird, house sparrow) would not be considered a significant impact under CEQA because it would not result in a substantial effect on their populations locally or regionally, destruction of any migratory bird or raptor nest is a violation of the MBTA and Section 3503 of the California Fish and Game Code However, a pre-construction survey would be completed prior to the start of construction to ensure that nesting Swainson's hawks and protected birds under the MBTA are not impacted by the project.

In addition, page 38 of the IS/MND is further revised as follows:

Other Special-Status Species

In addition to the above covered species, the following special-status species exist in the project vicinity: western pond turtle and California legless lizard. However as described above, a biological survey and data review was conducted and concluded that these species are not likely to occur on site.

Conclusion

Based on the above, the proposed project would not result in impacts to special-status plant species. Although the field survey did not identify any special-status wildlife species within the project site, implementation of the proposed project could potentially result in adverse effects to WBO, Swainson's hawk, golden eagle, ~~and~~ GGS, and protected nesting birds under the MBTA. Thus, the proposed project could have an adverse effect, either direct or through habitat modification, on species identified as special-status species in local or regional plans, policies, or regulations, or by the CDFW or the USFWS, and a ***potentially significant*** impact could result.

Page 40 of the IS/MND is hereby revised as follows.

Swainson's Hawk and other Migratory Birds

IV-3. Preconstruction Survey

Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15 – September 15), a qualified biologist shall conduct a preconstruction survey not more than one month prior to construction to establish whether Swainson's hawk and migratory birds nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk and migratory bird activity (e.g., foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are required (see below).

In addition, page 41 of the IS/MND is hereby revised as follows.

IV-5. Mitigation for Loss of Nest Trees

Should the proposed project result in the loss of non-riparian Swainson's hawk or migratory bird nest trees, the proposed applicant shall implement the following measures:

The above revisions provide additional information and detail regarding the special-status species and birds protected under the MBTA. While the revisions amplify the analysis and mitigation measures, they do not change the conclusions of the IS/MND.

Page 89 of the IS/MND is revised as follows:

> Fire protection is currently provided to the City of Oakley by the East Contra Costa Fire Protection District. A new fire station was built to accommodate increased demand, staffing and equipment in 2010, known as Station 55 located at 3200 East Cypress Road and is anticipated to be staffed as of March of 2022. With the completion of the new fire station the City of Oakley General Plan anticipates fire service to be adequate for buildout of the City. Station ~~9~~5 3 is located 2.5 miles northwest of the project site at 530 O'Hara Avenue. The proposed project would be subject to the fire facilities impact fees set forth in the City of Oakley Municipal Code Section 9.2.504. Payment of the required impact fee would ~~mitigate any~~ contribute towards increased operating costs ~~potential impacts~~ caused by increased demands on fire services that may result from the proposed project, as well as ensure that the project conforms to the City of Oakley's General Plan Policy 4.4.2. Additionally, the proposed project does not include any alterations to the circulation system of the surrounding area, which could conflict with the City of Oakley's General Plan Policy 4.4.4, or lead to a degradation in response times. Given the payment of fees in accordance with City of Oakley Municipal Code, the proposed project is not expected to cause significant degradation to response times or service ratios, which would induce the need for physically altered or expanded governmental facilities, the construction of which could cause significant environmental impacts, and the project would, therefore, result in a less-than-significant impact.

The above revision is for clarification purposes and does not change the analysis or conclusions of the IS/MND.

Based on a staff-initiated change, Page 102 of the IS/MND is hereby revised as follows:

> Under Baseline Conditions, the home based VMT per capita for the City of Oakley is 26.76 ~~36.06~~. For the project to have a less-than-significant impact, the project must produce VMT within the 85 percent threshold, which equates to 22.75 ~~30.65~~ (0.85 x 36.06). The 22.75 ~~30.65~~ value is the less stringent home-based VMT per capita number as mentioned in the CCTA VMT methodology guidelines above.
>
> Under Baseline plus Project Conditions, the project adds 208 Single Family Dwelling Units into Travel Analysis Zone (TAZ) #30302. The VMT per capita for the project TAZ is 21.36 ~~28.80~~. The project generated VMT falls under the 85 percent threshold established above, thus, the proposed project has a less-than-significant impact on the City of Oakley VMT.

The aforementioned revision is due to an inadvertent error made in calculating Vehicle Miles Traveled for the proposed project. The revisions do not change the results of the analysis and the conclusion presented in the IS/MND would remain unchanged.

CITY OF OAKLEY

ORDINANCE NO. XX-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY REZONING 2 PARCELS COMPRISED OF 43.24-ACRES LOCATED AT THE NORTHEAST CORNER OF EAST CYPRESS ROAD AND KNIGHTSEN AVENUE, APNS 032-081-026 AND 032-081-025, FROM THE A-3 (HEAVY AGRICULTURE) DISTRICT TO THE P-1 (PLANNED UNIT DEVELOPMENT) DISTRICT

WHEREAS, on January 14, 2021, Westgate Ventures filed an application requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District and to subdivide the approximately 43.24-acre project site into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and zoned A-3 (Heavy Agriculture). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025) ("Project"); and

WHEREAS, the proposal complies with the requirements of the rezoning application requirements of Section 2.4.012 (a) of the Oakley Municipal Code; and

WHEREAS, the Applicant has initiated a project to change the zoning for the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District; and

WHEREAS, the City prepared an Initial Study/Mitigated Negative Declaration dated April 2021, which was circulated for public review and comment from April 9, 2021 to May 10, 2021. The Notice of Intent to Adopt a Negative Declaration and Initial Study/Mitigated Negative Declaration were filed with the Governor's Office of Planning and Research State Clearinghouse on April 9, 2021 and the County Clerk on April 12, 2021; and

WHEREAS, on May 13, 2021 the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution. On May 14, 2021 the Notice of Public Hearing was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property's boundaries, to parties requesting such notice, and to outside agencies; and

WHEREAS, on May 25, 2021, the City Council adopted Resolution XX-21 adopting the Mitigated Negative Declaration; and

The City Council of the City of Oakley does ordain as follows:

SECTION 1. FINDINGS. Pursuant to Chapter 2.4.012 of the Oakley Municipal Code, the City Council of the City of Oakley hereby finds and determines as follows:

a. The change proposed will substantially comply with the general plan:

The proposed rezone to the Planned Development (P-1) will provide for residentially zoned land adjacent to existing residentially zoned land with lot sizes of similar ranges. The project site is designated for residential development and the proposed density of 4.8 dwelling units per acre is within the density range of the Single-Family High (SH) land use designation.

b. The uses authorized or proposed in the land use district are compatible within the district and to uses authorized in adjacent districts:

The proposed change in the Zoning from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District is in line with the existing General Plan land use designation of Single-Family High (SH). Furthermore, the project site has long been envisioned to contain residential uses and the rezone application will clean up the zoning inconsistency in that the project will change the zoning from an old Contra Costa County zone that existed at incorporation to a zone district that is compatible with the current land use designation. The proposed land use will be compatible with the surrounding land uses.

c. Community need, but not necessarily future financial success, has been demonstrated for the use proposed:

A community need has been demonstrated for the proposed use. The Project will result in the construction of additional housing units, which is necessary to meet demand in the community in that: The City of Oakley falls under the jurisdiction of the Association of Bay Area Governments (ABAG). ABAG uses a predominately demographic formula to allocate the regional housing needs among the incorporated cities and unincorporated county. This process results in a Regional Housing Needs Assessment (RHNA) and the number reflected in that assessment becomes part the City of Oakley's estimated housing needs. The development of this project will help the city meet its regional fair share housing goal.

SECTION 2. Property Defined and Rezoned.

Pursuant to Section 2.4.012 of the Oakley Municipal Code, the Oakley Zoning Map is amended to rezone the following property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District:

A. Approximately -acres of real property located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025), as shown on the "Exhibit A" attached to this ordinance.

SECTION 3. Applicable Regulations and Standards.

A. Planned Unit Development (P-1) District – The P-1 District shall allow for Single-Family Residential development consistent with the Burroughs project application consisting of 208 single family lots at a density of 4.8 dwelling units per gross acre. The Development Standards of the P-1 District are contained within the Zoning Requirements Plan of the Plan Set approved with the project on May 25, 2021.

SECTION 4. California Environmental Quality Act (CEQA) Finding.

Pursuant to California State Law, an Initial Study was conducted by the Planning Division to evaluate the potential effects of this project upon the environment. The Initial Study analysis found there were no potentially significant impacts, and therefore a Mitigated Negative Declaration was prepared. Based upon the findings contained in the Initial Study it has been determined that this project will not have a significant impact upon the environment.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases may be held unconstitutional, invalid or unenforceable.

SECTION 6. Effective Date and Posting.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed office in

the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2019 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

_____
Sue Higgins, Mayor Date

ATTEST:

_____
Libby Vreonis, City Clerk Date

Exhibit A to Ordinance No. XX-21

Burroughs Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21)

The project is located at the northeast corner of East Cypress Rd. and Knightsen Ave.

APNs. 032-081-026 and 032-081-025

Existing

Proposed

RESOLUTION NO. XX-21

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING SUBDIVISION 9557 VESTING TENTATIVE MAP (TM 01-21) SUBDIVIDING 43.24 ACRES INTO 208 RESIDENTIAL LOTS AND OTHER IMPROVEMENTS AT A PROPERTY LOCATED AT THE NORTHEAST CORNER OF EAST CYPRESS ROAD AND KNIGHTSEN AVENUE APNS 032-081-026 AND 032-081-025

FINDINGS

WHEREAS, on December 10, 2019, the City of Oakley entered into a Cooperative Agreement with WestGate Services, Inc. for the entitlement and preparation for sale of the Burroughs property; and

WHEREAS, on January 14, 2021, Westgate Ventures filed an application requesting approval of a Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21) to rezone the property from the A-3 (Heavy Agriculture) District to the Planned Development (P-1) District and to subdivide the approximately 43.24-acre project site into 208 single-family residential lots with associated site improvements and amenities. The project site is designated Single-Family High (SH) in the Oakley 2020 General Plan and zoned A-3 (Heavy Agriculture). The Project is located at the northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025) ("Project"); and

WHEREAS, the City prepared an Initial Study/Mitigated Negative Declaration dated April 2021, which was circulated for public review and comment from April 9, 2021 to May 10, 2021. The Notice of Intent to Adopt a Negative Declaration and Initial Study/Mitigated Negative Declaration were filed with the Governor's Office of Planning and Research State Clearinghouse on April 9, 2021 and the County Clerk on April 12, 2021; and

WHEREAS, on May 13, 2021 the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution. On May 14, 2021 the Notice of Public Hearing was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property's boundaries, to parties requesting such notice, and to outside agencies; and

WHEREAS, on May 25, 2021, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as revised by the City Council during its deliberations; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based on the City's General Plan, the City's Zoning and Subdivision Ordinances and the information submitted to the City Council at its May 25, 2021 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the Subdivision (hereafter the "Record").

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above Findings and the entire Record, the City Council makes the following additional findings in support of the recommended approvals:

A. Regarding the application requesting approval of Vesting Tentative Map (TM 03-21) to subdivide the 43.24-acre site consisting of 2 parcels into 208 single family lots, the City Council finds that:

1. The proposed Vesting Tentative Map, together with the provisions of its design and improvements, is consistent with the Zoning Ordinance, and applicable portions of the Single Family Low General Plan Land Use Designations, as approved by City Council for the Project, in that it allows for orderly residential development in a residential area that meets the General Plan density allowance (maximum 5.5 dwelling units per acre) and complies with the minimum lot size, lot width, and lot depth and all other applicable regulations set forth in the project's Planned Development (P-1) District;

2. The site is physically suitable for the type of development in that the proposed Vesting Tentative Map meets all of the applicable development standards in the project's Planned Development (P-1) District and is compatible with surrounding residential and commercial land uses;

3. The site is physically suitable for the proposed density and number of dwelling units;

4. The Project Initial Study and Mitigated Negative Declaration were prepared in accordance with CEQA Guidelines. The Mitigation and Monitoring Plan is attached hereto as Exhibit "A";

5. The design of the subdivision and type of improvements are not likely to cause serious public health problems in that the proposed subdivision consists of 208 single-family residential lots. Construction and grading of the project are subject to building or grading permits, and violations of any such permits are subject to appropriate enforcement;

6. The design of the subdivision includes the construction of improvements within public right-of-way that are consistent with major subdivisions and the City's design standards. The improvements consist of widening East Cypress Road, with additional roadway, sidewalks, curbs and gutters, and landscaping adjacent to the projects frontage; and

7. The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision. The Vesting Tentative Map does not conflict with easements acquired by the public for access and utilities.

B. The Project complies with Measure J Growth Management requirements.

C. The Initial Study/Mitigated Negative Declaration has been prepared and made available for public comment, pursuant to the California Environmental Quality Act (CEQA) Guidelines, and mitigation measures contained therein will reduce all potentially significant impacts of the project to a less than significant level.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves of the Applicant's request for **a Vesting Tentative Map (TM 01-21)** subject to the following Conditions of Approval:

Conditions of Approval

Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application received by the Planning Division dated **May 25, 2021**, as well as additional information acquired since that time and made part of the project file.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE CONSTRUCTION OF THE HOMES UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. This Vesting Tentative Map is approved, as shown on the plans, date stamped by the City of Oakley Planning Division on April 12, 2021, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.

2. This approval for the **Vesting Tentative Map (TM 01-21)** shall be effectuated within a period of three (3) years from the effective date of this resolution by pulling a building permit and if not effectuated shall expire on **May 25, 2024**. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.

3. All construction drawings submitted for plan check shall be in substantial compliance with the plans presented to and approved by the City Council on May 25, 2021.

4. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.

5. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday, and shall be prohibited on City, State and Federal Holidays. The restrictions on allowed working days and times may be modified on prior written approval by the Community Development Director.

6. Should archaeological materials be uncovered during grading, trenching or other on- site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.

7. The applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court).

8. If project construction changes such that any aspect will require any temporary access onto the Contra Costa Water District's (CCWD) right of way (e.g., staging, operated equipment, or temporary facilities), an encroachment permit shall be obtained from CCWD.

Parks and Landscaping:

9. The applicant will be required to pay in-lieu fees for the projects park requirement of 3.39-acres. There may be a credit for the trail component of the subdivision.

10. A mix of evergreen and deciduous trees as well as shrubs and ground cover shall be planted along the street frontage as specified in the Residential Design Guidelines per the review and approval of the Community Development Director.

11. A landscaping and irrigation plan for all front yard, right-of-way, parks, open space, and trail landscaping shall conform to the Oakley Water Efficient Landscape Ordinance and the Guidelines for Implementation of the City of Oakley Water Efficient Landscape Ordinance and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance.

12. California native drought tolerant plants shall be used as much as possible. All trees shall be a mix of fifteen-gallon and 24" box; all shrubs shall be a minimum five-gallon size, except as otherwise noted.

13. All landscaped areas not covered by shrubs or groundcover shall be covered with bark or acceptable alternative as reviewed and approved by the Community Development Director. On slopes greater than 3 to 1, the applicant shall use an alternative to bark per the review and approval of the Community Development Director. Areas covered with bark shall use a weed barrier.

14. Each residential lot shall have a minimum of one 24 inch box tree along the street frontage, with the exception of corner lots, which shall have up to three 24 inch box trees. Where feasible, smaller accent trees shall be provided on the frontage and street-side corner lots.

15. The applicant shall maintain all private landscaping until occupancy.

16. A street tree plan shall be submitted for review prior to issuance of Building Permits. The street trees shall be inter-mixed throughout the subdivision, so there are a variety of trees on every street, per review of the Community Development Department.

17. Any trees that are to be removed and require mitigation per Oakley Municipal Code section 9.1.1112, shall satisfy the mitigation prior to the removal of the trees.

Fences and Walls:

18. Within the subdivision good neighbor fences shall be constructed of six-foot high wood fences with metal posts or acceptable alternative as reviewed and approved by the Community Development Director. Corner lots or any good neighbor fence facing a street shall provide a fence or wall constructed of a durable material such as, but not limited to, masonry, vinyl, enhanced wood, composite or other durable material as approved by the Community Development Director. All wood fencing visible from the street shall be stained or painted on both sides to prevent water damage to the satisfaction of the Community Development Director.

19. Sound walls shall attenuate, not just deflect sound. The use of sound absorbing material should be used for the construction of sound walls per the review and approval of the Community Development Director.

20. Anti-graffiti techniques shall be used on sound walls.

21. The fencing along the northern property line shall be reviewed and approved by the Contra Costa Water District (CCWD).

Subdivision Design:

22. The neighborhood entry shall be identified by accent paving, project monument signage and accent planting per the review and approval of the Community Development Director.

23. Driveway openings shall be a maximum 18’ in width or up to 25% of a lot’s frontage (except on cul de sacs).

24. The street names shall be approved by the Community Development Department and the East Contra Costa Fire Protection District.

Subdivision Disclosures:

25. The model home complex shall have a copy of the City of Oakley’s General Plan land use map posted within the sales office or included with the informational material provided to prospective home buyers.

26. The model home complex shall also provide each buyer with the City regulations regarding driveway expansions. The regulations shall also be made part of the disclosure package that has to be signed by the home buyer.

Design Review:

27. A future design review application will be required and shall include details of all home designs, and any landscaping in front yards and rights of way. All design

elements shall be analyzed for consistency with the Oakley Residential Design Guidelines and applicable sections of the zoning ordinance.

Energy Efficiency:

28. Water heaters shall provide an energy efficiency factor of 0.62 or better.

29. Dual zone air conditioning shall be provided on all two-story residential units.

30. Air conditioning condenser units shall be located to take advantage of natural shade. Condensers should not be placed on the west or south elevation of a home, unless shade is provided. The location of the condenser shall be added to all plot plans for review and approval of the Community Development Director.

31. Design and site units so as to take advantage of natural heating and cooling, sin and wind exposure, and solar energy opportunities.

Mitigation Measures

32. All mitigation measures addressed in the Mitigated Negative Declaration dated **April 2021** shall be complied with and addressed as outlined in the Mitigation Monitoring and Reporting Plan, per the review and approval of the Community Development Director.

33. All mitigation measures contained within the HCP Planning Survey Report dated **April 19, 2021** shall be complied with, per the review and approval of the Community Development Director.

Waste Management Plan:

34. The applicant shall submit a Waste Management Plan that complies with the City of Oakley Construction and Demolition Debris Recycling Ordinance.

Building Division Conditions

35. Plans shall meet the currently adopted Uniform Codes as well as the newest T-24 Energy Requirements per the State of California Energy Commission. To confirm the most recent adopted codes please contact the Building Division at (925) 625 – 7005.

36. An Automatic Life Safety Sprinkler System shall be required in all new construction pursuant to Ordinance 22-06. The Automatic Life Safety Sprinkler Systems in commercial and industrial buildings shall be designed and installed to the standards and requirements found in the most recent version of the NFPA (National Fire Protection Association). Automatic Life Safety Sprinkler Systems in hotels and apartments shall be installed to the stands and requirements found in the most recent version of the NFPA, Standard 13R

37. Prior to requesting a Certificate of Occupancy from the Building Division all Conditions of Approval required to occupancy must be completed.

Public Works and Engineering Conditions

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF AN ENCROACHMENT AND/OR GRADING PERMIT:

38. GENERAL. All public improvements shall be made according to the latest adopted City Standard Drawings and Specifications. All work shall conform to the applicable City ordinances. The adjacent public right-of-way shall be kept clear of all job-related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the City performing the required maintenance at the developer's expense.

39. ENCROACHMENT PERMIT. All work in the public right-of-way, including any blockage or partial closure of sidewalks will require an Encroachment Permit. Special provisions such as limitations on works hours, protective enclosures, or other means to facilitate public access in a safe manner may be required.

40. GRADING PERMIT. All earthwork must comply with the City's Grading Ordinance. A Grading Permit must be issued by the public works department prior to site disturbance.

41. PUBLIC WORKS INSPECTIONS. The developer or their representative shall notify the Engineering Inspector at least forty-eight (48) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all improvements in approved plans. Failure to do so will result in rejection of work that was completed without inspection.

42. PRECONSTRUCTION MEETING. Prior to issuance of any permit or the commencement of any site work, the general contractor shall:

a) Along with the project applicant, attend a pre-construction meeting with the City Engineer to discuss the project conditions of approval, working hours, site maintenance and other construction matters;

b) Acknowledge in writing that they have read and understand the project conditions of approval and will make certain that all project sub-contractors have read and understand them prior to commencing work and that a copy of the project conditions of approval will be posted on site at all times during construction.

43. CONSTRUCTION STREET PARKING. No vehicle having a manufacturer's rated gross vehicle weight exceeding ten thousand (10,000) pounds shall be allowed to park on the portion of a street which abuts property in a residential zone without prior approval from the City Engineer.

44. EROSION CONTROL. Interim and final erosion control plans shall be prepared and submitted to the Public Works Department. A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the State SMARTS system for projects disturbing more than one acre and obtain a WDID number. A maximum of two weeks is allowed between clearing of an area and stabilizing/building on an area if grading is allowed during the rainy season. Interim erosion control measures, to be carried out during construction and before installation of the final landscaping shall be included. Interim erosion control method shall include, but are not limited to: silt fences, fiber rolls (with locations and details), erosion control blankets, City standard seeding specification, filter berms, check dams, retention basins, etc. Provide erosion control measures as needed to protect downstream water quality during winter months. The grading, drainage, erosion control plans and SWPPP shall be in compliance with applicable measures contained in the City of Oakley's NPDES Permit.

45. DUST CONTROL. Blowing dust shall be reduced by timing construction activities so that paving and building construction begin as soon as possible after completion of grading, and by landscaping disturbed soils as soon as possible. Further, water trucks shall be present and in use at the construction site. All portions of the site subject to blowing dust shall be watered as often as deemed necessary by the City, or a minimum of three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites in order to insure proper control of blowing dust for the duration of the project. Watering on public streets shall not occur. Streets will be cleaned by street sweepers or by hand as often as deemed necessary by the City Engineer, or at least once a day. Watering associated with on-site construction activity shall take place between the hours of 8 a.m. and 5 p.m. and shall include at least one late-afternoon watering to minimize the effects of blowing dust. All public streets soiled or littered due to this construction activity shall be cleaned and swept daily during the workweek to the satisfaction of the City. Demolition or earthwork activities shall be halted when wind speeds (instantaneous gusts) exceed 25 MPH. All trucks hauling soil, sand, or other loose debris shall be covered.

46. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and homeowner to make sure that all dirt tracked into the public right-of-way is cleaned up daily. Mud, silt, concrete and other construction debris SHALL NOT be washed into the City's storm drains. Construction entrances must be in place per the Erosion Control Plan.

47. TRAFFIC CONTROL PLAN. The project sponsor will be required to work with the Public Works Department to develop a traffic control plan per the current California MUTCD. This plan will include, but not be limited to, the following measures:

a) Construction activities shall be strategically timed and coordinated to minimize traffic disruption for schools, residents, businesses, and special events. The schools located on the haul route shall be contacted to help with the coordination of the trucking operation to minimize traffic disruption.

b) Flag persons shall be placed at locations necessary to control one-way traffic flow, if required. All flag persons shall have the capability of communicating with each other to coordinate the operation.

c) Prior to construction, advance notification of all affected residents and emergency services shall be made regarding one-way operation, specifying dates and hours of operation and lane closures on main arterial and collector streets and will be permitted only between the hours of 8:30AM to 2:30PM on M, T, TH & F. 8:30AM to 12:00PM on W.

d) The traffic control plan shall be reviewed for compliance to the project's Haul Route, approved by the City of Oakley.

e) A full road closure will require a detour plan and a road closure permit issued by the Public Works Department.

48. CONSTRUCTION MANAGEMENT PLAN. The Applicant shall submit a construction management plan that shall incorporate at a minimum the Earth Movement Plan, Traffic Control Plan, Project Schedule, site security fencing, employee parking, construction staging area, construction trailer, and proposed outhouse locations. The public street shall not be used for any construction related activities, including parking for workers and storage of vehicles.

49. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Public Works & Engineering Inspector and shall comply with all Title 24 Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.

50. SIDEWALK REPAIR. The developer shall repair and replace to existing City standards any sidewalk damaged now or during construction of this project. Sidewalk repair shall match existing color, texture and design, and shall be constructed per City Standard Details. The limits of sidewalk repair will be determined by the Public Works Inspector during the construction phase of the project.

51. CURB AND GUTTER. The developer shall repair and replace to existing City standards any curb and gutter damaged now or during construction of this project. New curb and gutter shall be constructed per City Standard Details. The limits of curb and gutter repair will be determined by the Public Works Inspector during the construction phase of the project.

52. CONSTRUCTION NOISE. Between the hours of 7:30 a.m. to 5:30 p.m., weekdays and 9:00 a.m. to 5:30 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA. Pickup and delivery of materials and equipment is restricted to the hours listed above unless prior written approval is obtained by the Public Works Department.

53. GOOD HOUSEKEEPING. Good housekeeping practices shall be observed at all times during the course of construction. Superintendence of construction shall be diligently performed by a person or persons authorized to do so at all times during working hours. The storing of goods and/or materials on the sidewalk and/or the street will not be allowed unless a special permit is issued by the Engineering Division. The adjacent public right-of-way shall be kept clear of all job-related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the City performing the required maintenance at the developer's expense.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE GRADING PLAN:

54. EXISTING WELLS. Provide documentation that all the gas wells located onsite have been abandon per regulations.

55. FLOOD PLAIN. Submit a Letter of Map Revision application or appropriate application to FEMA to remove building pads that are currently with the

Special Flood Hazard Area Zone AE from the flood zone. A Conditional Letter of Map Revision is required prior to issuance of building permits.

56. GEOLOGY AND SOIL MITIGATION MEASURES. A geotechnical investigation shall be conducted for the project to determine the surface and sub-surface conditions at the site and to determine the potential for surface fault rupture on the site. The geotechnical study shall provide recommendations for site grading as well as the design of foundations, retaining walls, concrete slab-on-grade construction, excavation, drainage, on-site utility trenching and pavement sections. The soils report shall include specific criteria and standards governing site grading, drainage, pavement design, retaining wall design, and erosion control. All recommendations of the investigation shall be incorporated into project plans. One copy of the geologic report shall be submitted with the grading permit and public improvement application. Prior to issuance of any permit, the applicant's soils engineer shall review the final grading and drainage plans to ensure that designs for foundations, retaining walls, site grading, and site drainage are in accordance with their recommendations. The applicant's soils engineer's approval shall then be conveyed to the City either by letter or by signing the plans.

57. GRADING.

a) Grade any slopes with a vertical height of four (4) feet or more at a slope of 3H to 1V. Retaining walls that may be installed to reduce the slope must be masonry and comply with the City's building code.

b) Retaining wall or other suitable option acceptable by the City Engineer is required where the grade differential between property or adjacent lots are greater than 6". Retaining walls are required to be identified on the grading plans and shall have a note stating a separate building permit is required for retaining wall greater than four (4) feet in height.

c) At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 300 feet to the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with the name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall always be kept current and shall consist of persons with authority to indicate and implement corrective action in their area of responsibility. The names of the individual responsible for noise and litter control shall be expressly identified in the notice. The notice shall be reissued with each phase of major grading activity. A copy of the notice shall be concurrently transmitted to the City Engineer. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.

d) Submit a Haul Route Plan to the City Engineer for review and approval prior to importing or exporting any material from the site. The plan shall include the location of the borrow or fill area, the proposed haul routes, the estimated number and frequency of trips, and the proposed schedule of hauling. Based on this plan, the City Engineering shall determine whether pavement condition surveys must be conducted along the proposed haul routes to determine what impacts the trucking activities may have. The project proponents shall be responsible to repair to their pre-construction condition any roads along the utilized routes.

e) Prior to commencement of any site work that will be result in a land disturbance of one acre or more, the applicant shall provide evidence to the City Engineer that the requirements for obtaining a State General Construction Permit have been met. Such evidence may be a copy of the Notice of Intent Letter sent by the State Water Resources Control Board. The WDID Number shall be shown on the grading plan prior to approval by the City Engineer.

f) The burying of any construction debris is prohibited on construction sites

58. NPDES – NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM. Comply with all rules, regulations and procedures of the NPDES for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, the Regional Water Quality Control Board (Central Valley – Region IV), including the Stormwater C.3 requirements as detailed in the Guidebook available at www.cccleanwater.org

Compliance shall include developing long-term best management practices (BMP's) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMP's in accordance with the Contra Costa Clean Water Program for the site's storm water drainage.

- Offer pavers for household driveways and/or walkways as an option to buyers.
- Minimize the amount of directly connected impervious surface area.

- Delineate all storm drains with "No Dumping, Drains to the Delta" permanent metal markers per City Standards.

- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.

- Distribute public information items regarding the Clean Water Program to buyers.

- Other alternatives as approved by the City Engineer.

- Prepare an Operations and Maintenance Manual for the project's storm water control measures.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE IMPROVEMENT PLAN:

59. PUBLIC IMPROVEMENTS. Construct the project streets within public right of way to City public road standards and as shown on the Tentative Map with the following exceptions:

a. The minimum street grade may be lowered from the standard 1% to 0.75% provided that the project proponent demonstrates that the City's drainage standards can be achieved.

b. Submit a turning radius exhibit to the City Engineer for review and approval to illustrate that the ninety-degree turns of project streets can accommodate the largest expected vehicle to use the streets without the inclusion of City standard elbows. If the exhibit illustrates that elbows are necessary to accommodate the expected traffic, then they shall be included in the improvement plans.

60. ROADWAY IMPROVEMENTS. The following improvements shall be installed by the developer as shown on the Tentative Map. Plans for those improvements shall be prepared by a California registered civil engineer, reviewed and approved by the City.

a. Frontage Improvements. East Cypress Road shall be constructed with curb, gutter, sidewalk, street lights, pavement widening, signing, striping, and storm drainage as required and shown in the Tentative Map. Developer is responsible for constructing all frontage improvements back of curb along East Cypress Road. Developer shall enter into a cost sharing agreement with the City of Oakley for the frontage improvements based on the exhibit prepared by Bellecci & Associates dated April 28, 2021.

b. Offsite Improvements – The following improvements shall be installed consistent with the mitigation measures outlined in the Traffic Impact Report for the project to the satisfaction of the City Engineer:

i. East Cypress Road and Project Entrance Traffic Signal. Developer shall fully fund, design, and construct the traffic signal required at the project entrance per City of Oakley standards. Developer shall coordinate with City staff and pay for the necessary conduits to be installed in advance with the City's Capital Improvement Project to widen East Cypress Road.

61. DRAINAGE IMPROVEMENTS.

a. Collect and convey all stormwater entering and /or originating on this property, without diversion and within an adequate storm drainage facility, to

an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage facility that conveys the storm waters to an adequate natural watercourse.

b. Submit a final hydrology and hydraulic report including 10-year and 100-year frequency event calculations for the proposed drainage system and stormwater pond to the city Engineer for review and approval. The report shall includes study of the downstream stormdrain facilities to confirm its adequacy and mitigate on-site so that the peak flows of post-project conditions do not exceed the pre-project peak flows.

c. Design and construct all storm drainage facilities in compliance with the Municipal Code and City design standards.

d. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

e. Dedicate a public drainage easement over the drainage system that conveys storm water run-off from public streets.

f. On-site parking area and driveways shall not surface drain across public sidewalk or driveway aprons.

62. SIGHT DISTANCE EXHIBIT. For the project driveways' ingress and egress, provide an exhibit that will analyze the sight distance required for the appropriate speed limit identified with this project as required by the City Engineer.

63. DESIGN CHANGES. The Applicant's registered Engineer shall notify the City Engineer, in writing, at least 72 hours in advance of all differences between the proposed work and the design indicated on the plans. Any proposed changes shall be subject to the approval of the City before altered work is started. A plan revision must be submitted for approval by the City Engineer.

64. JOINT TRENCH PLANS. The applicant shall submit Joint Trench Composite Plans to the City for review prior to approval of improvement plans or recordation of the final map. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer. The joint trench plans shall include street and/or site lighting and associated photometrics. A letter shall be provided by PG&E stating that public streetlight billing will be per Rule LS2A, and that private lights shall be metered with

billing to the owner. Pole numbers, assigned by PG&E, shall be clearly delineated on the plans.

65. UTILITIES & UNDERGROUNDING.

a) Underground all new and existing utility distribution facilities per City of Oakley code section Title 6 Chapter 8 Underground Utility Districts.

b) All utility boxes shall be installed underground, and all wires and cables must be installed in conduits. Compliance with this condition shall be at the discretion of the City Engineer.

c) Above ground utility boxes shall be camouflaged per the review and approval of the City Engineer.

d) A written approval from Diablo Water District and Iron House Sanitary District must be provided that all underground utility improvements have passed all testing requirements prior to commencement of paving a street.

66. STREET LIGHTS. Install streetlights along all public streets as required by the City Engineer. The City Engineer shall determine the final number and location of the lights, and the lights shall be on an LS2-A rate service. Street lights shall be spun aluminum “cobra head” style as required by the City of Oakley Standard Plans.

67. LANDSCAPING IN PUBLIC RIGHT OF WAY.

a) Prepare landscape plans for landscape improvements within the public right of way and trail corridors. Landscape plans shall be prepared by a licensed landscape architect. Coordinate with City staff to complement the proposed landscaping for the Capital Improvement Project along the East Cypress Road Frontage.

b) Install public right-of-way landscaping along the project’s frontages as required by the City Engineer and Community Development Director.

c) Maintain all landscaping within the public right-of-way until such time that the adjacent roadway improvements have been accepted for maintenance. Frontage landscaping shall be maintained by the owner.

d) Prior to the issuance of certificate of occupancy, an inspection will be performed to verify the health and location of the street trees. Trees in poor health or those without adequate clearance from utilities will require replacement or relocation.

68. FENCING. Any proposed fencing and walls shall be located on private property and maintained by the property owner or owner.

69. SOUNDWALL. A 6’ masonry wall shall be located along the rear of all the lots adjacent to East Cypress Road, per the recommendation in the Noise and Vibration Assessment report provided by Illingworth& Rodkin, Inc dated January 20, 2021

THE FOLLOWING PUBLIC WORKS AND ENGINEERING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE FINAL MAP:

70. BONDS. The applicant shall supply suitable securities for all improvements that are a part of the development in a form acceptable to the City in the amount of 100% (performance), 50% (labor and material) prior to issuance of any permit.

71. FINAL MAP. Submit a Final Map prepared by a Licensed Land Surveyor. The parcel map shall be recorded, and the Subdivision Agreement must be executed before any building permits are issued. Insurance shall be provided per the terms of the Subdivision Agreement. Exception may be granted if the applicant wishes to file for a lot line adjustment prior to the recordation of the Final Map prior to the release of the building permit or secure a letter from the owner that no lots can be sold until the Final Map is recorded.

72. DEDICATIONS. The following shall be dedicated on the final map. The dedication shall be recorded before any permits are issued and under specific timelines listed below:

a) Dedicate the required right-of-way along the project frontage as shown in the typical sections of the Tentative Map. The roadway dedication for the ultimate width of East Cypress Road per the adopted precise alignment shall be processed for recordation by July 1, 2021 or as required by the City Engineer. Developer shall be responsible for preparing the necessary plat and legal to process the Offer of Dedication.

b) Public Utility Easement (PUE): 5’ PUE beyond Parcel A, B, C, D and public right of way as required.

c) Ingress-egress, storm drainage easements, emergency access easements as required.

Any necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road, utility and drainage improvements shall be furnished to the City. Prior to the issuance of the first building permit, the applicant must provide the necessary documentation that all existing easement no longer necessary have been quitclaimed.

73. PRIVATE EASEMENTS. Agreements detailing rights, limitations, and responsibilities of involved parties shall accompany each private easement. The easements and associated agreements shall be recorded simultaneously with the final map.

74. UTILITY SETBACKS. Building foundations shall be set back from utility lines a sufficient distance to allow excavation of the utility without undermining the house foundation. The City Engineer shall determine the appropriate setback based on the depth of the utility, input from the project soils engineer, and the type of foundation.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF THE BUILDING PERMIT:

75. PAD CERTIFICATION. A letter from a licensed land surveyor stating that the building pad was constructed in accordance with the approved plans shall be provided prior to the issuance of the building permit.

76. SOILS ENGINEER CONSTRUCTION OBSERVATION. During construction, all excavations and grading shall be inspected by the applicant's soils engineer prior to placement of concrete and/or backfill so they can verify that the actual conditions are as anticipated in the design-level geotechnical report and recommend appropriate changes in the recommendations contained in the report, if necessary. The results of the construction observation and testing should be documented in an "as-built" letter/report prepared by the applicants' soils engineer and submitted to the City before any building permit is granted.

77. AGREEMENT FOR STORMWATER BEST MANAGEMENT PRACTICES INSPECTION AND MAINTENANCE OBLIGATIONS. The property owner shall enter into an agreement with the City for maintenance of the stormwater filtration devices required to be installed on this project. The agreement will specify that certain routine maintenance shall be performed by the property owner and will specify device maintenance reporting requirements. The agreement will also specify routine inspection requirements, permits and payment of fees. The agreement shall be recorded prior to release of any occupancy permits.

78. AS-BUILT PLANS. After completion of the construction of all work, the original plans shall have all changes (change orders and field changes) clearly marked. The "as-built" plans shall again be signed and "wet-stamped" by the civil engineer who prepared the plans, attesting to the changes. The original "as-built" plans shall be review and approved the Engineering Inspector. A Mylar and AutoCAD disk of the approved "as-built" plans shall be provided to the City before acceptance of improvements.

79. IMPACT FEES

Comply with the requirements of the development impact fees listed below, in addition to those noticed by the City Council in Resolution 85-00 and 08-03. The applicant shall pay the fees in the amounts in effect at the time each building permit is issued.

A. Traffic Impact Fee (authorized by Ordinance No. 14-00, adopted by Resolution 49-03);

B. Regional Transportation Development Impact Mitigation Fee or any future alternative regional fee adopted by the City (authorized by Ordinance No. 14-00, adopted by Resolution No. 73-05);

C. Park Land Dedication In-Lieu Fee (adopted by Ordinance No. 03-03);

D. Park Impact Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 19-03);

E. Public Facilities Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 18-03);

F. Fire Facilities Impact Fee (adopted by Resolution No. 24-21);

G. General Plan Fee (adopted by Resolution No. 53-03);

The applicant should contact the City Engineer prior to constructing any public improvements to determine if any of the required improvements are eligible for credits or reimbursements against the applicable traffic benefit fees or from future developments.

80. ANNEXATIONS

a) Annex the property to the City of Oakley Community Facilities District No. 2018-1 Fire Protection Services (CFD) for funding certain services within the boundaries of the City of Oakley including fire protection services. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of the annexations shall be paid by the applicant. The assessment shall be the per parcel annual amount set by CFD at the time of the annexation. Annexation shall be completed prior to filing of the final map.

b) Participate in the provision of funding to maintain police services by voting to approve a special tax for the parcels created by the subdivision approval. The tax shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. The election to provide for the tax shall be completed prior to filing of the final

map. If the homes are occupied prior to the City receiving the first disbursement from the tax bill, the project proponent shall be responsible for paying the pro-rate share for the remainder of the tax year prior to the City conducting a final inspection.

c) Annex the property to the City of Oakley Community Facilities District No. 2015-2 (CFD) for funding the maintenance and operation costs associated with regional, community and neighborhood parks, public area landscaping, street lights and storm water facilities. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of the annexations shall be paid by Applicant. The assessment shall be the per parcel annual amount set by CFD at the time of annexation. Annexation shall be completed prior to filing of the final map.

ADVISORY NOTES

The following Advisory Notes are provided to the applicant as a courtesy but are not a part of the conditions of approval. Advisory Notes are provided for the purpose of informing the applicant of additional ordinance requirements that must be met in order to proceed with development.

A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building or grading permits.

B. The project will require a grading permit pursuant to the Ordinance Code.

C. Applicant shall comply with the requirements of Iron House Sanitary District.

D. The applicant shall comply with the requirements of the Diablo Water District.

E. Comply with the requirements of the East Contra Costa Fire Protection District.

F. Comply with the requirements of the Building Inspection Division. Building permits are required prior to the construction of most structures.

H. The applicant shall be responsible for paying the County Recorder's Fee for the Notice of Determination as well as the State Department of Fish and Game's Filing Fee.

I. East Contra Costa County Habitat Conservation Plan Fee (adopted by Resolution No. 112-07 & 124-07).

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th of May, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

_____

S, Mayor Date

ATTEST:

_____ _____

Libby Vreonis, City Clerk Date

Exhibit “A”

Burroughs Project
Mitigation Monitoring Program

Burroughs Project
Mitigation Monitoring Program

– May 2021

The California Environmental Quality Act (CEQA) and CEQA Guidelines require Lead Agencies to adopt a program for monitoring the mitigation measures required to avoid significant environmental impacts of a project. The Mitigation Monitoring Program ensures that mitigation measures imposed by the City are completed at the appropriate time in the development process.

The mitigation measures identified in the Initial Study / Mitigated Negative Declaration for the Burroughs Project are listed below along with the party responsible for implementation of the mitigation measure, the party responsible for monitoring implementation of the mitigation measure, the milestones for implementation and monitoring, and a sign off that the mitigation measure has been implemented.

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
I. Aesthetics					
I-1.	*I-1. Prior to issuance of building permits, the applicant shall prepare and submit a detailed lighting plan for review and approval by the Community Development Department. The plan shall show conformance with City performance standards for street lighting and glare, including shielding of all on-site lighting so that light is directed within the project site and does not illuminate adjacent properties, and indicate the location and design of proposed lighting and lighted signs. The applicant shall implement the final plan as approved by the City.*	Project Applicant	City of Oakley Community Development Department	Prior to issuance of building permits	
III. Air Quality					
III(a,b)	*III-1. Prior to approval of any grading plans, the project applicant shall show on the plans via notation that the contractor shall ensure that the heavy-duty off-road vehicles (50 horsepower or more) to be used during construction activities associated with the project, including owned, leased, and subcontractor vehicles, shall be California Air Resources Board (CARB) Tier 4 Final.*	Project Applicant	City of Oakley Community Development Department	Prior to approval of any grading plans	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	In addition, all off-road equipment operating at the project site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to five minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB. Clear signage regarding idling restrictions should be placed at the entrances to the construction site. *Portable equipment over 50 horsepower must have either a valid District Permit to Operate (PTO) or a valid statewide Portable Equipment Registration Program (PERP) placard and sticker issued by CARB.* *Conformance with the foregoing requirements shall be included as notes and be confirmed through review and approval of grading plans by the City of Oakley Community Development Department.*				
IV. Biological Resources					
IV(a)	*Western Burrowing Owl*	Project	Qualified Biologist	Prior to any	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	IV-1. Preconstruction Surveys *Prior to any ground disturbance related to covered activities, a qualified biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having potential burrowing owl habitat. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 1995).* *On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place not more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will*	Applicant	CDFW City of Oakley Community Development Department	ground disturbances Surveys no more than 30 days prior to construction	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.				
	IV-2. Avoidance and Minimization and Construction Monitoring *If burrowing owls are found during the breeding season (February 1 – August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the*	Project Applicant	Qualified Biologist	If burrowing owls are found during breeding season (February 1 – August 31)	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1 – January 31), the project proponent shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below). *During the breeding season, buffer zones of at least 250 feet in which construction activities cannot occur will be established around each occupied burrow (nest site). Buffer zones of 160 feet will be established around each burrow being used during the nonbreeding season. The buffers will be delineated by highly visible, temporary construction fencing.* *If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. The doors should be in place for 48 hours prior to excavation. The project area should be*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	monitored daily for one week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.				
	IV-3. *Preconstruction Survey* *Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15 – September 15), a qualified biologist shall conduct a preconstruction survey not more than one month prior to construction to establish whether Swainson's hawk and migratory birds nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk and migratory bird activity (e.g.,*	Project Applicant	A Qualified Biologist City of Oakley Community Development Department	Prior to any ground disturbances related to covered activities that occurs during the nesting season (March 15-Septeber 15)	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are required (see below).				
	IV-4. Avoidance and Minimization and Construction Monitoring *During the nesting season (March 15 – September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.* *If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project applicant can apply to the Implementing Entity for a waiver of this*	Project Applicant	Qualified Biologist CDFW/USFWS City of Oakley Community Development Department	During the nesting season (March 15-Septemver 15)	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	avoidance measure. The waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place. *All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the project proponent according to the requirements of Mitigation Measure IV-5.* *IV-5. Mitigation for Loss of Nest Trees* *Should the proposed project result in the loss of non-riparian Swainson's hawk or migratory bird nest trees, the proposed applicant shall implement the following measures:* *• If determined feasible by the City of Oakley Planning Division, the project applicant shall provide for the planting of 15 saplings for every tree lost with the objective of having at least five mature trees established for every tree lost according to the requirements listed below;*	Project Applicant	City of Oakley Planning Division Contra Costa County Conservancy	Prior to the issuance of tree removal permits for the project site	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	and either of the following: *1. Pay the Implementing Entity an additional fee to purchase, plant, maintain, and monitor 15 saplings on the ECCC HCP/NCCP Preserve System for every tree lost according to the requirements listed below, OR* *2. The project proponent will plant, maintain, and monitor 15 saplings for every tree lost at a site to be approved by the Implementing Entity (e.g., within an HCP/NCCP Preserve or existing open space linked to HCP/NCCP preserves), according to the requirements listed below.* *The following requirements will be met for all planting options:* • *Tree survival shall be monitored at least annually for five years, then every other year until year 12. All trees lost during the first five years will be replaced. Success will be reached at the end of 12 years if at least five trees per tree lost survive without*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	supplemental irrigation or protection from herbivory. Trees must also survive for at least three years without irrigation. • *Irrigation and fencing to protect from deer and other herbivores may be needed for the first several years to ensure maximum tree survival.* • *Native trees suitable for this site should be planted. When site conditions permit, a variety of native trees will be planted for each tree lost to provide trees with different growth rates, maturation, and life span, and to provide a variety of tree canopy structures for Swainson's hawk. This variety will help to ensure that nest trees will be available in the short term (five-10 years for cottonwoods and willows) and in the long term (e.g., Valley oak, sycamore). This will also minimize the temporal loss of nest trees.*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	• *Riparian woodland restoration conducted as a result of covered activities (i.e., loss of riparian woodland) can be used to offset the nest tree planting requirement above, if the nest trees are riparian species.* • *Whenever feasible and when site conditions permit, trees should be planted in clumps together or with existing trees to provide larger areas of suitable nesting habitat and to create a natural buffer between nest trees and adjacent development (if plantings occur on the development site).* *Prior to the issuance of tree removal permits for the project site, the City of Oakley Planning Division shall be notified whether the proposed project would include removal of nesting trees. Such removal be required for implementation of the proposed project, the Contra Costa County Conservancy shall be notified and the*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	foregoing measures shall be implemented as applicable, through the tree removal permit granted by the City of Oakley.				
	Golden Eagle *IV-6. Preconstruction Survey* *Prior to implementation of covered activities, a qualified biologist shall conduct a preconstruction survey to establish whether nests of golden eagles are occupied (see Section 6.3.1, Planning Surveys). If nests are occupied, minimization requirements and construction monitoring shall be required.*	The Project applicant	Qualified Biologist City of Oakley Community Development Department	Prior to implementation of covered activities	
	IV-7. Avoidance and Minimization *Covered activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate*	Project Applicant	City of Oakley Community Development Department CDFW/USFS	During construction and grading activities	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.				
	IV-8. Construction Monitoring *Construction monitoring shall focus on ensuring that covered activities do not occur within the buffer zone established around an active nest. Although golden eagle nest sites do not occur within or near the Urban Limit Line (ULL), covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring shall ensure that direct effects to golden eagles are minimized.*	Project Applicant	City of Oakley Community Development Department	During construction and grading activities	
	Giant Garter Snake *IV-9. Preconstruction Surveys* *Prior to any ground disturbance related to covered activities, a qualified biologist shall conduct a preconstruction survey in areas identified in the planning surveys as having suitable GGS habitat and 200 feet of adjacent uplands, measured from the outer edge of each*	Project Applicant	Qualified Biologist City of Oakley Community Development Department	Prior to any ground disturbances related to covered activities	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	bank. The surveys shall delineate suitable habitat and document any sightings of GGS. *IV-10. Avoidance and Minimization Requirements* *To the maximum extent practicable, impacts on GGS habitat as a result of covered activities shall be avoided. If feasible, in areas near construction activities, a buffer of 200 feet from suitable habitat shall be delineated within which vegetation disturbance or use of heavy equipment is prohibited.* *If impacts on GGS habitat as a result of covered activities are not avoided, the following measures shall be implemented. The measures are based on USFWS's Standard Avoidance and Minimization Measures during Construction Activities in GGS Habitat (U.S. Fish and Wildlife Service 1999).* • *Limit construction activity that disturbs habitat to the period between May 1 and September 30. May 1 through September 30 is the active period for GGS, and direct mortality is minimized because snakes are more likely to independently move away from*	Project Applicant	USFWS City of Oakley Community Development Department	During construction and grading activities	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	disturbed area. If activities are necessary in GGS habitat between October 1 and April 30, the USFWS Sacramento Field Office shall be contacted to determine if additional measures beyond those described below are necessary to minimize and avoid take. • *In areas where construction is to take place, dewater all irrigation ditches, canals or other aquatic habitat between April 15 and September 30 to remove habitat of GGS. Dewatered areas must remain dry, without puddled water remaining, for at least 15 consecutive days prior to the excavation or filling of that habitat. If a site cannot be completely dewatered, netting and salvage of prey items may be necessary.* *IV-11. Construction Monitoring* *If suitable habitat for GGS cannot be avoided between October 1 and April 30 the USFWS Sacramento Field Office shall be contacted to determine if additional measures beyond those*	Project Applicant	USFWS USFWS Approved Biologist	Between October 1 and April 30, preconstruction survey no more than 24 hours	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	described below are necessary, and the following actions shall be performed. A USFWS-approved biologist shall conduct a construction survey no more than 24 hours before construction in suitable habitat and will be on site during construction activities in potential aquatic and upland habitat to ensure that individuals of giant garter snake encountered during construction will be avoided. The biologist shall provide USFWS with a field report form documenting the monitoring efforts within 24 hours of commencement of construction activities. The monitor shall be available thereafter. If a snake is encountered during construction activities, the monitor shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake will not be harmed. GGS encountered during construction activities should be allowed to move away from the construction area on their own. Only personnel with a USFWS recovery permit pursuant to Section 10(a)(1)(A) of the ESA will have the authority to capture and/or relocate GGS that are encountered in the construction		City of Oakley Community Development Department	before construction, and during construction activities	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	area. The project area will be reinspected whenever a lapse in construction activity of two weeks or more has occurred. *To ensure that construction equipment and personnel do not affect nearby aquatic habitat for GGS outside construction areas, silt fencing shall be erected to clearly define the aquatic habitat to be avoided; restrict working areas, spoils, and equipment storage and other project activities to areas outside of aquatic or wetland habitat; and maintain water quality and limit construction runoff into wetland areas through the use of fiber bales, filter fences, vegetation buffer strips, or other appropriate methods.* *Fill or construction debris may be used by GGS as over-wintering sites. Therefore, upon completion of construction activities, any temporary fill or construction debris must be removed from the site.* *Construction personnel shall be trained to avoid harming GGS. A qualified biologist approved by USFWS shall inform all construction personnel about the life history of*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	GGS; the importance of irrigation canals, marshes/wetlands, and seasonally flooded areas such as rice fields to giant garter snakes; and the terms and conditions of the Plan related to avoiding and minimizing impacts on giant garter snake.				
IV (b,c)	*IV-12. Prior to the issuance of grading or construction permits for development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Wetland Mitigation Fee in compliance with Article 7, Habitat Conservation Plan/Natural Community Conservation Plan Implementing Program, of the Oakley Municipal Code. Payment of the Wetland Mitigation Fee would address the loss of wetland habitat within the project site covered by the ECCC HCP/NCCP. The fees would be used in part to restore or create compensatory wetlands.* *Alternately, the project applicant may, in accordance with the terms of Oakley Municipal Code Article 7, create and restore wetlands in lieu of some or all of the mitigation fees. All applicable mitigation fees shall be paid, or an "in□lieu□of fee" agreement executed, prior to*	Project Applicant	The Oakley Planning Division Contra Costa County Conservancy	Prior to the issuance of grading or construction permits	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	the issuance of a grading permit for the project. *The Oakley Planning Division and the Contra Costa County Conservancy shall approve the final method of compliance with the ECCC HCP/NCCP provisions.* *IV-13. Prior to the issuance of grading and construction permits, the project applicant shall obtain a CWA Section 404 permit, CWA Section 401 Water Quality Certification permit, and a Lake and Streambed Alteration Agreement from the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the California Department of Fish and Wildlife.*	Project Applicant	U.S. Army Corps of Engineers Regional Water Quality Control Board CDFW	Prior to the issuance of grading and construction permits	
IV(e)	*IV-14. Prior to project-related tree removal, the project applicant shall be required to comply with the standards included in Section 9.1.1112 of the City's Municipal Code by implementing one of the options provided in Section 9.1.1112(g)(11)(a), to the satisfaction of the Director of the Community Development Department or the Planning Commission, as applicable.*	Project Applicant	Director of the Community Development Department or the Planning Commission	Prior to project-related tree removal	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
V. Cultural Resources					
V (a-c)	*V-1. If buried archaeological, paleontological, and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the discovery and the developer shall immediately notify the City of Oakley Planning Division of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery, as appropriate. The archaeologist shall be required to submit to the City of Oakley Planning Division for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the area of discovery would not be allowed until the preceding work has occurred.*	Project Developer	City of Oakley Planning Division Qualified Archaeologist	During site grading or other site work	
	V-2. Pursuant to State Health and Safety Code §7050.5 (c) State Public Resources Code §5097.98, if human bone or bone of unknown	Project Contractor	Contra Costa County Coroner	During construction	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	origin is found during construction, all work shall stop within 100 feet of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person believed to be the most likely descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. Additional work is not to take place within 100 feet of the find until the identified appropriate actions have been implemented.		Native American Heritage Commission		
VII. Geology and Soils					
VII.(ai-ii)	*VII-1. All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by the Director of Public Works/City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations*	Project Applicant	Director of Public Works/Civil Engineer, Chief Building Official, and a qualified Geotechnical Engineer	Prior to issuance of a grading permit	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	specified in the geotechnical report prepared for the proposed project by ENGEO are properly incorporated and utilized in the project design.				
VII(aiii,iv)	*VII-2. Implement Mitigation Measure VII-1.*	See mitigation measure VII-1.	See mitigation measure VII-1.	See mitigation measure VII-1.	
VII(b)	*VII-3. Prior to the issuance of a grading permit, the project applicant shall prepare to the satisfaction of the Community Development Department, an erosion control plan that utilizes standard construction practices to limit the erosion effects during construction of the proposed project. Actions should include, but are not limited to, the following:* • *Placement of new fill during the dry season, April 15 to October 15;* • *Hydro-seeding;* • *Placement of erosion control measures within drainage ways and ahead of drop inlets;* • *The temporary lining (during construction activities) of drop inlets with "filter fabric";*	Project Applicant	Community Development Department	Prior to the issuance of a grading permit	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	• *The placement of straw wattles along slope contours;* • *Use of a designated equipment and vehicle "wash-out" location;* • *Use of siltation fences;* • *Use of on-site rock/gravel road at construction access points; and* • *Use of sediment basins and dust palliatives.*				
VII (d)	*VII-4. Implement Mitigation Measure VII-1.*	See mitigation measure VII-1	See mitigation measure VII-1	See mitigation measure VII-1	
VII (f)	*VII-5. Implement Mitigation Measures V-1 and V-2.*	See mitigation measure V-1 and V-2	See mitigation measure V-1 and V-2	See mitigation measure V-1 and V-2	
VIII. Greenhouse Gas Emissions					
VIII(a-b)	*VIII-1 Prior to the issuance of building permits, the applicant shall prepare and submit to the City a GHG Reduction Plan to quantifiably reduce GHG emissions such that the project, by the year 2030, would result in an efficiency ratio of 2.6 $MTCO_2e/SP/yr$ either through the implementation of the following on-site measures, through off-site measures such as purchasing carbon offsets that use CARB-*	Project Applicant	City of Oakley Community Development Department	Prior to the issuance of building permits	

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	consistent protocols or through other off-site mitigation measures as described in this mitigation measure, or a combination of on-site, carbon offsets, and other off-site mitigation measures. Proof of implementation of the GHG Reduction Plan shall be submitted to the City of Oakley Community Development Department. *Examples of measures that may be used to reduce GHG emissions include, but are not limited to, the following:* • *Orient buildings to maximize passive solar heating;* • *Use renewable diesel to fuel construction fleets;* • *Provide fully operational charging stations and preferential parking spots for electric vehicles;* • *Install energy star or equivalent appliances in all residences;* • *Limit installation of natural gas fueled appliances;* • *Install solar water heating;* • *Provide outdoor electrical outlets to*				

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	allow for use of electrically-powered landscaping equipment at all residences within the project site; • *Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and* • *Purchase carbon credits to offset project annual emissions. Off-site credits shall be real, quantifiable, permanent, verifiable, enforceable, and additional, consistent with the standards set forth in California Health and Safety Code Section 38562, subdivisions (d)(1) and (d)(2). Such credits shall be based on protocols that are consistent with the criteria set forth in subdivision (a) of Section 95972 of Title 17 of the California Code of Regulations. Such credits must be purchased through one of the following:* *(i) A California Air Resources Board (CARB)-approved*				

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	registry, such as the Climate Action Reserve, the American Carbon Registry, and the Verified Carbon Standard; *(ii) Any registry approved by CARB to act as a registry under the California Cap and Trade program; or* *(iii) Through the California Air Pollution Control Officers Association (CAPCOA) GHG Rx and the Bay Area Air Quality Management District (BAAQMD);* *(iv) In the event that no credits meeting these criteria are available within California, the applicant may purchase credits elsewhere so long as: (a) the Governor or the Governor's designee has made the findings set forth in Government Code Section 12894; (b) and these findings have been submitted to the Legislature; and (c) California has accepted the*				

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	credits as meeting the linkage standards contained in Government Code Section 12894 or its successor statute. *If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by the City of Oakley Community Development Department. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the*				

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	agreement.				
IX. Hazards and Hazardous Materials					
IX(b)	*IX-.1. Prior to final map approval, the project applicant shall submit to the City of Oakley Engineering Department, for review and approval, plans which show that future inhabited structures will not be located over the abandoned gas well. The plans should be completed in compliance with the DOGGR Construction Site Review Program, which includes guidelines and recommendations for setbacks and mitigation measures for venting systems. Prior to construction, the specific location of the former dry gas well should be determined and surveyed in the field.*	Project Applicant	City of Oakley Engineering Department	Prior to final map approval and construction	
	IX-2. Prior to construction, because grading is proposed proximate to the abandoned well location, DOGGR should be consulted to determine if the wells would require modification in casing height.	Project Applicant	DOGGR	Prior to construction	
	IX-3. Prior to the issuance of grading permit, the	Project Applicant	City Engineer	Prior to the issuance of	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	existing septic systems and domestic/irrigation wells shall be removed/abandoned in accordance with County and State regulations.			grading permit	
IX. Hydrology and Water Quality					
X(a, ci-iii)	*X-1. Prior to any grading activities, the applicant shall provide a Stormwater Pollution Prevention Plan (SWPPP) for the entire project site which shall include construction and post construction BMPs (including both physical and programs BMPs) to the satisfaction of the City Engineer. The SWPPP shall include the following:* • *Utilize on-site sediment control BMPs to retain sediment on the project site, such as: straw wattle; silt fences, storm drain inlet protection, erosion control blankets, and concrete washouts;* • *Stabilized construction entrances and/or Wheel washing racks;* • *Cover soil, equipment and supplies that could contribute pollution prior to rainfall events or monitoring runoff;*	Project Applicant	City Engineer	Prior to any grading activities	

Burroughs
Mitigation Monitoring Program

Impact	Mitigation Measures	Implementing Party	Monitoring Agency	Implementation Schedule	Sign-Off
	• *Perform monitoring of discharges to the stormwater system; and* • *Provide permanent cover to stabilize the disturbed surfaces after construction has been completed, as the project is a phased development.*				
XVIII. Tribal and Cultural Resources					
XVIII(a,b)	*XVIII-1. Implement Mitigation Measures V-1 and V-2.*	See Mitigation Measure V-1 and V-2	See Mitigation Measure V-1 and V-2	See Mitigation Measure V-1 and V-2	

Recording Requested by and
After Recordation Mail to:

Stephen P. Welch, General Manager
Contra Costa Water District
1331 Concord Avenue
Concord, CA 94524

Space above this line for Recorder's use

ABSTRACT OF MEMORANDUM OF AGREEMENT

THIS ABSTRACT OF MEMORANDUM OF AGREEMENT ("Abstract") is executed as of _____, 2021 by and between Contra Costa Water District, a California Independent Special District ("the District") and the City of Oakley, a California municipal corporation ("Oakley").

1. The District entered into that certain North Dutch Slough Properties Memorandum of Agreement dated April 10, 2006 (the "MOA") with Western Pacific Housing, Inc., a Delaware corporation ("WPH"), CP Oakley Developers, LLC, a Delaware limited liability company ("CP Oakley"), Dutch Slough, Inc., a California corporation ("DSI"), and the City of Oakley, a California municipal corporation ("Oakley") (collectively, the NDSP Developers Group or the "Group," and individually, a "Group Member"). The Group Members are residential developers that are or were pursuing approval and construction of five Projects in the City of Oakley, County of Contra Costa, State of California.

2. Oakley now owns that certain real property described in Exhibit One attached hereto and incorporated herein by this reference (the "Oakley portion of the Burroughs property"), on which a portion of NDSP is proposed to be built. The District and Oakley have entered into a Supplement to the MOA effective as of **April ___, 2021** ("Supplement") with respect to the Oakley portion of the Burroughs property, pursuant to which Oakley is pursuing development thereof as a Group Member under the MOA as a successor to WPH.

3. The sole purpose of this Abstract is to give Official Record public notice of the MOA and the Supplement thereto (by recording this abstract in the official records of Contra Costa County) and thereby provide inquiry notice of the terms thereof. This Abstract does not provide a complete summary of the MOA or the Supplement, and in no way modifies the provisions of the MOA or the Supplement, all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein. Capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the MOA or the Supplement.

4. This Abstract shall be binding on and inure to the benefit of the District and its successors and assigns and the City of Oakley and any and all of City of Oakley's successors in interest to the Property.

5. Upon the closing of any sale to an individual or entity who purchases one or more constructed residential units within the Oakley portion of the Burroughs property for which proof of the payment(s) required by the MOA and the Supplement have been made to the District, the MOA and the Supplement shall automatically terminate as to the residential units and the parcel(s) upon which such units are located, whereupon

such purchasing individual(s) or entity(ies) shall not be regarded as a successor, assignee, or transferee for purposes of the MOA and the Supplement, and this Abstract shall be deemed to be removed from record title with respect to the parcel(s) acquired by such purchasers. **Proof of such payment must be obtained from the District.**

IN WITNESS WHEREOF, the parties have executed this Abstract on the day and year first above written.

DISTRICT: CONTRA COSTA WATER DISTRICT
a California Independent Special District

By: _____
Stephen P. Welch,

Its: General Manager

OWNER/DEVELOPER: CITY OF OAKLEY

By: _____
Bryant Montgomery,

Its: City Manager

LEGAL DESCRIPTION

Real property in the City of Oakley , County of Contra Costa, State of California, described as follows:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND GRANTED TO BRUCE R. BURROUGHS AND BARBARA M. BURROUGHS, TRUSTEES OF THE B & B BURROUGHS REVOCABLE TRUST UNDER INSTRUMENT DATED JUNE 16, 1994, BY DEED RECORDED JANUARY 26, 1995, IN SERIES NO. 95-13407 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 3 EAST, MOUNT DIABLO MERIDIAN;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE MID-SECTION LINE OF SAID SECTION 29, NORTH 89°15'39" WEST 210.32 FEET;

THENCE, LEAVING SAID MID-SECTION LINE, NORTH 00°44'21" EAST 30.00 FEET TO A POINT ON THE NORTHERN LINE OF CYPRESS ROAD AND TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID NORTHERN LINE, NORTH 89°15'39" WEST 1856.90 FEET;

THENCE, LEAVING SAID NORTHERN LINE, NORTH 00°44'21" EAST 1124.07 FEET TO A POINT ON THE SOUTHWESTERN LINE OF THAT CERTAIN PARCEL LAND GRANTED TO CONTRA COSTA WATER DISTRICT BY DEED RECORDED MARCH 9, 1940, IN BOOK 539 OF OFFICIAL RECORDS AT PAGE 218, IN SAID OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY;

THENCE, ALONG SAID SOUTHWESTERN LINE, THE FOLLOWING THREE (3) COURSES:

1) SOUTH 62°13'01" EAST 1616.42 FEET,
2) ALONG THE ARC OF A TANGENT 470.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18°22'00", AN ARC DISTANCE OF 150.66 FEET, AND
3) SOUTH 43°51'01" EAST 421.92 FEET TO SAID POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. AN UNDIVIDED 16/33 INTEREST IN ALL OIL, GAS, MINERALS, AND HYDROCARBONS AS RESERVED IN THE DEED FROM ERNEST C. BURROUGHS AND MARY LOO BURROUGHS RECORDED MAY 21, 1984, BOOK 11798, PAGE 982, SUBJECT TO THE INTEREST DESCRIBED IN THE MINERAL POOLING AGREEMENT RECORDED APRIL 27, 1964, BOOK 4604, PAGE 338.

THE INTEREST IN AND TO THE SURFACE OF THE LAND AND TO A DEPTH OF 500 FEET THEREUNDER HAS BEEN RELINQUISHED BY GRANT DEED (SURFACE RIGHTS) RECORDED OCTOBER 31, 2003 AS INSTRUMENT NO. 2003-540677 OF OFFICIAL RECORDS.

2. RIGHTS GRANTED IN THE DEED TO ERNEST C. AND MARY LOO BURROUGHS, TRUSTEES OF THE BURROUGHS REVOCABLE TRUST, UNDER AGREEMENT DATED NOVEMBER 16, 1982 RECORDED AUGUST 22, 2003 AS INSTRUMENT NO. 2003-418732 OF OFFICIAL RECORDS AS FOLLOWS:

AN UNDIVIDED 16/33 INTEREST IN ALL OIL, GAS, MINERALS AND HYDROCARBONS, SUBJECT TO THE INTEREST DESCRIBED IN THE MINERAL POOLING AGREEMENT RECORDED SEPTEMBER 28, 1962, BOOK 4212, PAGE 144 AND AMENDED MINERAL POOLING AGREEMENT RECORDED APRIL 27, 1964, BOOK 4604, PAGE 338, OFFICIAL RECORDS.

(Legal description continues on the next page.)

THE INTEREST IN AND TO THE SURFACE OF THE LAND AND TO A DEPTH OF 500 FEET THEREUNDER HAS BEEN RELINQUISHED BY GRANT DEED (SURFACE RIGHTS) RECORDED OCTOBER 31, 2003 AS INSTRUMENT NO. 2003-540677 OF OFFICIAL RECORDS.

3. MINERAL RIGHTS AS DESCRIBED AND GRANTED IN THE GRANT DEED EXECUTED BY ERNEST C. BURROUGHS, ET AL, TO ERNEST C. BURROUGHS, ET AL RECORDED OCTOBER 31, 2003 AS INSTRUMENT NO. 2003-0540678 OFFICIAL RECORDS.

APN: 032-081-025-2

SUPPLEMENT TO NORTH DUTCH SLOUGH PROPERTIES MEMORANDUM OF AGREEMENT AS BETWEEN CITY OF OAKLEY and CONTRA COSTA WATER DISTRICT

This Supplement to the North Dutch Slough Properties Memorandum of Agreement (" Supplement") is made and entered into on this day of April ___, 2021 by and between the City of Oakley, a California municipality ("Oakley") and Contra Costa Water District, a California Independent Special District ("District"), who agree as follows:

RECITALS

A. The North Dutch Slough Properties Memorandum of Agreement ("MOA"), a true copy of which is attached hereto as Exhibit A and incorporated herein, was entered into as of April 10, 2006, by and between District, Western Pacific Housing, Inc., a Delaware corporation ("WPH"), CP Oakley Developers, LLC, a Delaware limited liability company ("CP Oakley"), Dutch Slough, Inc, a California corporation ("DSI"), and the City of Oakley, a California municipality ("Oakley") (collectively, the "NDSP Developers Group" or the "Group," and individually, a "Group Member"). Each Group Member is a residential developer pursuing approval and construction of five Projects in the City of Oakley, County of Contra Costa, State of California. The Projects are together referred to as the North Dutch Slough Project ("NDSP").

B. WPH and Oakley have been pursuing approval of projects on two separate portions of a 45-acre parcel known as the Burroughs property, which constitute two of the five projects within the NDSP. The portion of the Burroughs property to be developed by Oakley, is hereby referred to as "the Oakley portion of the Burroughs property," consists of 27 acres and is identified as APN 032-081-025.

C. In accordance with what was contemplated in Paragraph 5 of the MOA, the District constructed the Sellers Avenue Siphon Improvements (hereinafter referred to as the "Sellers Road Crossing") in early 2015.

E. The purpose of this Supplement to the MOA as between the District and Oakley is to: 1) provide precise payment terms for the fees related to the Sellers Road Crossing; and 2) provide the timing of fees to be paid for each Single-Family Unit or Multi-Family Unit that is developed on the Burroughs property project by Oakley.

AGREEMENT

NOW, THEREFORE, in light of the foregoing, and the mutual covenants and consideration as set forth below, the parties agree as follows:

1. Pursuant to Paragraph 1 of the MOA, as of October 1, 2020 the payment amount for each Single-Family Unit is $3,804.70 and the payment amount for each Multi-Family Unit is $2,282.53. These amounts will be increased each subsequent October 1 by 2.5%.

2. In lieu of the timing of payment specified in Paragraphs 2.A and 2.B of the MOA, Oakley shall pay to District, at the time that Oakley pays District's facility reserve charges pursuant to section 5.20.010.F.1 of the District's Code of Regulations, the respective amount specified or calculated as set forth in Paragraph 1 of this Supplement for each Single-Family Unit or Multi-Family Unit for which the City of Oakley has issued a building permit.

3. The portion of the costs for the Sellers Road Crossing allocated to the Oakley portion of the Burroughs property is $51,602.09 as of October 1, 2020. This cost will be increased by 2.5% each subsequent October 1 until the total amount allocated to the Oakley portion of the Burroughs property is paid. In lieu of the timing of payment specified in Paragraph 5 of the MOA, Oakley shall pay the entire amount allocated to it for the Sellers Road Crossing prior to and as a condition of approval of (1) the Central Valley Project (CVP) Inclusion review and (2) issuance by the District of the confirmatory letter that all of its requirements and regulations are satisfied.

4. The parties shall record Abstracts of this Supplement in the general form of Exhibit E to the MOA in the official records of Contra Costa County on and against title to each individual property within the Oakley portion of the Burroughs property (APN 032-081-026) within ten (10) business days after the City approves a tentative subdivision map for the Oakley portion of the Burroughs property. Each such Abstract shall be duly signed and notarized by the District and Oakley.

5. This Supplement shall be effective as between the District and Oakley. Except as expressly modified by this Supplement, the MOA shall continue in full force and effect according to its terms, and the District and the Oakley hereby ratify and affirm their respective rights and obligations under the MOA.

6. In the event of any conflict between provisions contained in this Supplement and the MOA as between the District and Oakley, the Supplement shall govern.

7. This Supplement shall be binding and shall inure to the benefit of District and Oakley and their respective successors and assigns.

8. This Supplement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have executed this Supplement as of the day and year first above written.

CONTRA COSTA WATER DISTRICT,
a California Independent Special District

By:_____
Stephen P.Welch
General Manager

City of Oakley
A California municipality

By:

By: _____
Bryant Montgomery
City Manager

NORTH DUTCH SLOUGH PROPERTIES MEMORANDUM OF AGREEMENT (MOA)

This North Dutch Slough Properties Memorandum of Agreement (this "MOA") is entered into as of April 10, 2006 by and between the Contra Costa Water District, a California Independent Special District ("the District"), CP Oakley Developers, LLC, a Delaware limited liability company ("CP Oakley"), Dutch Slough, Inc., a California corporation ("DSI"), Western Pacific Housing, Inc., a Delaware corporation, North Bay/Sacramento Division ("WPH") and the City of Oakley, a California municipal corporation ("Oakley" or "City").

Recitals

A. CP Oakley, DSI, WPH and Oakley are acting as residential developers who are pursuing approval of five projects in the City of Oakley, California, identified as: (1) The Emerson Property project by CP Oakley, proposed to contain approximately 560 single-family detached residential units; (2) The Gilbert Property project by DSI, proposed to contain 440[1] single-family detached residential units; (3) The Burroughs Property project by WPH, proposed to contain 74 single-family detached residential units; (4) The Burroughs Property project by Oakley, proposed to contain 100 single-family detached residential units; and (5) The Baldocchi Property project by WPH, proposed to contain 73 single-family detached residential units and 24 multi-family attached residential units (i.e., residential units with at least one shared wall with another residential unit). For purposes of this MOA: These five projects (each a "Project") are referred to together as the North Dutch Slough Project ("NDSP"); the four properties upon which they are proposed to be built are referred to together as the North Dutch Slough Project Area ("NDSP Area"); CP Oakley, DSI, WPH and Oakley are referred to together as the NDSP Developers Group (the "Group") and individually as an NDSP Developer Group Member ("Group Member"). **Exhibit A** to this MOA shows the location of the five Projects constituting NDSP within what is called herein the NDSP Area. One or more Group Member(s) hold options to acquire the respective portions of what is called herein the NDSP Area upon which each of the Projects is proposed to be constructed.

B. The District operates and maintains the Contra Costa Canal (the "Canal") as part of the federal Central Valley Project, which is owned by the U.S. Bureau of Reclamation ("Bureau"). The Canal was constructed for the purpose of conveying water that the District distributes to its customers for beneficial use within the District, including but not limited to domestic, residential, irrigation, agricultural, commercial and industrial uses. The Canal is adjacent, or in close proximity, to each of the Projects, as shown in **Exhibit A**.

[1] DSI has tentatively agreed to locate a school site on the Gilbert Property, but this has not yet been finally determined. For purposes of this MOU, it is assumed that the school site will be located on the Gilbert Property and that there will be 440 single-family detached residential units located on the Gilbert Property. If it is ultimately determined that the school site will not be located on the Gilbert Property, the estimated number of single-family detached residential units on the Gilbert Property would increase from 440 to 460.

C. Approximately four miles of the Canal consist of an earthen ditch that does not have any protective lining, including the portion adjacent to the NDSP Area. The District has expressed concern to the Group that urban development near the unlined portion of the Canal might adversely affect water quality, public safety, and levee integrity along the Canal.

D. The District has identified a capital improvement project to protect and enhance the Canal adjacent to the NDSP Area as shown in **Exhibit A**, as part of a larger project to deal with the approximately four miles of unlined Canal (the " Canal Improvement Project" or "CIP"). A portion of that Canal Improvement Project may include replacement or removal of the existing siphon underlying the Sellers Avenue right-of-way.

E. The Group desires to assist the District in financing the Canal Improvement Project, including the replacement or removal of the existing siphon underlying the Sellers Avenue right-of-way, by arranging for payments that the District can use to obtain matching funds from other sources, which will include Federal, State and other local funds. To ensure timely receipt of these matching funds and to assist the District's project planning, the parties desire to identify the Group's anticipated funding commitments at this time.

Agreement

NOW, THEREFORE, in light of the mutual covenants and consideration set forth below, the parties agree as follows.

1. Subject to the provisions of this Paragraph, Paragraph 2 and Paragraph 4, the Group Members will individually and separately make the following payments to the District for each dwelling unit actually built within the Member's respective Project area in the NDSP: Two Thousand Six Hundred Twenty Seven Dollars ($2,627) per single-family detached residential unit ("Single-Family Unit"), and One Thousand Five Hundred Seventy Six Dollars ($1,576) per multi-family attached residential unit, as defined in Recital A above ("Multi-Family Unit"), together the "CIP Payment." These per-unit amounts or any unpaid balance thereof shall be escalated each year by two and one-half percent (2.5%), beginning on October 1, 2006.

2. The payment for each Single-Family Unit and Multi-Family Unit shall be made as follows:

   A. Fifty percent (50%) of the total payments for each subdivision shall be paid within thirty (30) days after the funding of public finance authority revenue bonds or similar land-secured infrastructure financing for the NDSP ("Initial Payment"). If for any reason the Group does not rely on public finance authority revenue bonds or similar land-secured infrastructure financing for the NDSP, each Group Member shall pay its portion of the Initial Payment within thirty (30) days after filing for recordation of the small-lot final subdivision map for such Group

Member's subdivision (i.e., the final subdivision map that creates individual legal parcels not intended for further subdivision, but rather intended for development and sale to the home-buying public as single-family detached residential units or multi-family attached residential units, as applicable) (the "Final Subdivision Map"). The portion of the Initial Payment to be paid by each respective subdivision will be determined by calculating the total payments expected for all Single-Family Units and Multi-Family Units shown on the Final Subdivision Map, and dividing that amount by two. By way of example only, if at the time of land-secured financing Final Subdivision Maps are approved for the five Projects in the numbers and types of units identified in Paragraph 4, below (24 Multi-Family Units and 1,247[2] Single-Family Units), the total Initial Payment for all projects would be $1,656,846.50 (total payment of $3,313,693 divided by 2), due and payable within thirty (30) days after the funding of land-secured infrastructure financing. For Final Subdivision Maps that do not receive final approval until after the Initial Payment, fifty percent (50%) of the total payments for those respective subdivisions shall be made within thirty (30) days after the filing for recordation of the Final Subdivision Map.

B. The remaining fifty percent (50%) of the payments for each individual subdivision shall be made on a per unit basis at the sooner of: (a) City's approval for home occupancy, which shall be evidenced by a final signature on the building permit or the issuance of a certificate of occupancy (or in some other manner); or (b) District's demand for payment of the balance or any portion thereof necessary to complete a particular phase of the Canal improvements immediately adjacent to the NDSP Area, which shall occur only after: (i) the District provides one (1) years' written notice that such a demand will be necessary; (ii) all Federal, State, and local funds allocated by the District as part of its Canal Improvement Project for that particular phase of the Canal improvements, have been exhausted; (iii) the Initial Payment and any subsequent payments or credits by Group Members have been exhausted; (iv) a Final Subdivision Map has been filed for each respective subdivision subject to the call; (v) at least thirty percent (30%) of residential units within each Group Member's particular Project has received building permits for construction; and (vi) the Group receives an invoice, or similar documentation from the contractor that payment is due and owing on the construction contract for the Canal improvements immediately adjacent to the NDSP Area.

3. For informational purposes to assist the District in planning for the receipt of payments under this MOA, **Exhibit B** shows the estimated number of units by type and by Group Member, and **Exhibit C** shows an estimated build-out schedule based on today's market conditions. Notwithstanding the foregoing, nothing in this MOA shall be interpreted as binding the Group to the numbers or schedules in **Exhibit B** or **Exhibit C**, or be interpreted as guaranteeing to the District that any or all of the units will be approved by the City, or if approved will be built within any particular time period, or will be built at all. To assist the District in its construction and finance planning, the Group agrees to

[2] Estimate for Gilbert Property subject to increase by 20 single-family detached residential units if school site not located on Gilbert Property, as noted in footnote 1 on page 1.

consult with the District on at least a semi-annual basis for the purpose of updating information concerning any changes in the estimated build-out schedule, entitlements, and on-site construction activities.

4. Payment Amounts.

A. Based on the number and type of units proposed for NDSP as described in Recital A above, the Group anticipates paying the District approximately Three Million Two Hundred Seventy Five Thousand Eight Hundred Sixty Nine Dollars ($3,275,869 = $2,627 per Single-Family Unit multiplied by 1,247[3] units) plus Thirty Seven Thousand Eight Hundred Twenty Four Dollars ($37,824 = $1,576 per Multi-Family Unit multiplied by 24 units) for a total of Three Million Three Hundred Thirteen Thousand Six Hundred Ninety Three Dollars ($3,313,693) under this MOA, which amount shall be escalated annually in accordance with Paragraph 1, and assuming all units are approved and actually built. The parties agree that the Single-Family and Multi-Family per-unit payments described above constitute a fair share contribution by the NDSP for the Canal Improvement Project.

B. The parties anticipate that one thousand two hundred and forty-seven (1,247)[4] Single-Family Units may be approved and built within the NDSP Area as described in Recital A and **Exhibit B**, and that under the terms of this MOA the District will receive Two Thousand Six Hundred Twenty Seven Dollars ($2,627.00) per Single-Family Unit for a total of Three Million Two Hundred Seventy Five Thousand Eight Hundred Sixty Nine Dollars ($3,275,869) (the "Single-Family Unit Total Payment"). In the event that the number of Single-Family Units that actually receive Final Subdivision Map approval by the City of Oakley is reduced below the total anticipated for each individual Project, each Group Member separately and individually agrees that the per-unit payment for each Single-Family Unit in each respective Project will be increased to compensate for the actual reduction in Single-Family Units within that particular Project (up to a reduction of ten percent (10%) of such Single-Family Units), so that the number of Single-Family Units actually approved times the adjusted Single-Family per-unit payment will equal the portion of the Single-Family Unit Total Payment anticipated in this MOA for that Project if the reduction of such Single-Family Units is ten percent (10%) or less, and will be adjusted up to, but not to exceed the ten percent (10%) factor if the reduction of such Single-Family Units is more than ten percent (10%). For illustration purposes only and by way of example, a 10% reduction in Single-Family Units within the Emerson Property to 504 (560 – 56) would result in an adjusted Single-Family Unit per-unit payment by CP Oakley for the Emerson Property of $2,918.89 ($1,471,120 / 504); if the reduction exceeded 10%, for illustration purposes only and by way of example, the adjusted Single-Family Unit per-unit payment by CP Oakley for the Emerson Property would also be $2,918.89. In this illustration, if there were no reductions in the number of Single-Family Units within the other four Projects, the per unit

[3] and [4] Estimate for Gilbert Property subject to increase by 20 single-family detached residential units if school site not located on Gilbert Property, as noted in footnote 1 on page 1.

payments of $2,627 would remain the same for the other four Projects.

C. The parties anticipate that twenty-four (24) Multi-Family Units will be approved and built in the NDSP Area, as described in Recital A and **Exhibit B**, and that under the terms of this MOA the District will receive One Thousand and Five Hundred Dollars ($1,576) per Multi-Family Unit for a total of Thirty Seven Thousand Eight Hundred Twenty Four Dollars ($37,824) (the "Multi-Family Unit Total Payment"). In the event that the number of Multi-Family Units that actually receive Final Subdivision Map approval by the City of Oakley is reduced below the total anticipated for each individual Project, each Group Member separately and individually agrees that the per-unit payment for each Multi-Family Unit in each respective Project will be increased to compensate for the actual reduction in Multi-Family Units (up to a reduction of ten percent (10%) of such Multi-Family Units), so that the number of Multi-Family Units actually approved times the adjusted Multi-Family per-unit payment will equal the portion of the Multi-Family Unit Total Payment anticipated in this MOA for that Project if the reduction of such Multi-Family Units is ten percent (10%) or less, and will be adjusted up to, but not to exceed the ten percent (10%) factor if the reduction of such Multi-Family Units is more than ten percent (10%). For illustration purposes only and by way of example, an 8.33% reduction in Multi-Family Units within the Baldocchi Property to 22 (24 – 2) would result in an adjusted Multi-Family per-unit payment by WPH of $1,719.27 ($37,824 / 22); if the reduction exceeded 10%, for illustration purposes only and by way of example, the adjusted Multi-Family Unit per-unit payment by WPH would be $1,751.11 ($37,824 / (24 x 0.9)). In this illustration, if there were no reductions in the number of Multi-Family Units within the other four Projects, the per unit payments of $1,576 would remain the same for the other four Projects.

5. The District seeks initial funding to determine whether the existing siphon under Sellers Avenue requires modification (in connection with the CIP) or replacement to accommodate anticipated road improvements to Sellers Avenue for access purposes to the proposed regional park located to the north of the NDSP (such road improvements to Sellers Avenue, not including any improvements to the Canal or the existing siphon under Sellers Avenue, are referred to herein as the "Sellers Avenue Road Improvements"). The District estimates the siphon inspection costs at approximately $20,000 (the "Siphon Inspection Payment") and that such inspection would be completed in calendar year 2006. The Group agrees to reimburse the District for the siphon inspection costs in an amount not to exceed $20,000 for the entire Group, within thirty (30) days after receipt of an invoice therefor from the District to each Group Member (which invoice shall reflect the amount to be paid by the Group), and reasonable back-up documentation confirming the amount of actual costs incurred by the District in connection therewith. Additionally, the Group proposes to advance to the District, on a *pro rata* basis, the reasonable costs of the Canal improvements (the "Sellers Avenue Canal Improvements") that would be needed to accommodate the future Sellers Avenue Road Improvements. The District's current reasonable estimate of the payment for the Sellers Avenue Siphon Improvements (the "Sellers Avenue Payment") is approximately Four Hundred Fifty Thousand Dollars ($450,000.00). This cost is based on a culvert

design with a length of 150 feet to accommodate the future Sellers Avenue Road Improvements. The reimbursement maximum of $450,000 shall be escalated each year by two and one-half percent (2.5%), beginning on October 1, 2006. This amount, not to exceed $450,000 total (subject to escalation in accordance with the immediately preceding sentence), will be advanced by each Group Member according to the *pro rata* shares below within forty-five (45) days after the later to occur of (a) recordation of the first Final Subdivision Map within any Project within the NDSP Area (other than the Baldocchi Property project) by a Group Member, and (b) receipt of an invoice therefor from the District to each Group Member (which invoice shall reflect the amount to be paid by each Group Member), and reasonable back-up documentation confirming the amount of actual costs to be incurred by the District in connection therewith. With respect to the Sellers Avenue Payment, each Group Member's pro rata share shall be as follows: (a) Gilbert Property $156,769.60; (b) Emerson Property $199,524.94; (c) Burroughs (WPH) $26,365.80; (c) Burroughs (City) $35,629.45; and (d) Baldocchi $31,710.22.

6. The parties acknowledge that, before constructing any NDSP improvements that encroach on the Canal right-of-way or Bureau easements, each Group Member constructing any such NDSP improvements must obtain approval from the Bureau and/or the District, which approval may take the form of a Right-of-Entry, Encroachment Permit, License, or similar instrument memorializing approval from the District and/or Bureau. As soon as practicable, and in no event later than the date such Group Member's application for that approval is submitted, each Group Member constructing any such NDSP improvements agrees to consult with the District and submit for the District's review, geotechnical studies along the Canal berm to help ensure that any design and construction activities related to such NDSP improvements, including any deep-dynamic compaction, or other specialized compaction methods that have the potential to have similar adverse impacts on the integrity of the Canal, that any Group Member may use for low density/liquefiable soils (hereinafter "Deep Dynamic Compaction"), as opposed to traditional compaction methods in connection with the construction of improvements within the Group Member's Project, are designed and performed in a manner that adequately protects the Canal's integrity, stability, and water quality. Such specific design, construction monitoring, and other measures that are developed based on those geotechnical studies may be incorporated in the Right-of-Entry, Encroachment Permit, License, or similar instrument to ensure the Canal's integrity, stability, and water quality. The Group agrees to reimburse the District for its inspection and engineering review costs with respect thereto in an aggregate amount not to exceed $10,000. If and only if Deep Dynamic Compaction is employed by a Group Member within such Group Member's Project, the following provisions shall apply:

No Deep-Dynamic Compaction may proceed within the NDSP Area until:

A. The City has incorporated the provisions of Paragraphs 6A.(i), 6.A.(ii) and 6.A.(iii) as mitigation measures in the environmental impact report prepared by the City for the NDSP (and into the associated mitigation monitoring program), said report and program each specify that the City shall be responsible for enforcing these provisions,

and the DDC Member proceeds in accordance with the provisions of Paragraphs 6.A.(i), 6.A.(ii) and 6.A.(iii).

(i) Geotechnical engineers for the District and the Group Member performing Deep Dynamic Compaction (the "DDC Member") shall mutually agree upon acceptable threshold limits for peak particle velocities measured at the toe of the Canal berm (the "Threshold Limits") along the DDC Member's Project. The sole purpose of the Threshold Limits is to attempt to avoid damage to the Canal. The parties acknowledge that in determining the Threshold Limits, the parties are not warranting that peak particle velocities at the toe of the Canal berm along the DDC Member's Project less than said Threshold Limits is safe or would not cause or contribute to Canal damage. In determining the Threshold Limits, in addition to general safety and engineering factors, the District and DDC Member engineers may also consider the types and amounts of comprehensive general liability insurance coverage provided by the DDC Member and its contractors or sub-contractors, as well as the specific design, construction monitoring, and other measures that are developed to protect the Canal's integrity, stability, and water quality as set forth above. (For example, if the District believes the amounts of comprehensive general liability insurance coverage provided by the DDC Member and its contractors or sub-contractors is insufficient, the Threshold Limits should be reduced accordingly to reflect this fact.) An independent licensed engineer selected by the District (with the concurrence of the DDC Member) shall, at the DDC Member's sole cost and expense, monitor measurements of peak particle velocities at the toe of the Canal berm along the DDC Member's Project during the period that Deep Dynamic Compaction is being performed, and shall submit to the District logs reflecting such measurements on a daily basis during such period.

(ii) To help ensure that the Threshold Limits are not exceeded, the DDC Member shall commence Deep Dynamic Compaction on those portions of its Project located farthest from the Canal, and thereafter shall proceed with Deep Dynamic Compaction from those portions of the Project toward the Canal. That is, the DDC Member shall always conduct Deep Dynamic Compaction on its Project in a manner that the progression is in a direction toward the Canal.

(iii) If the Threshold Limits are exceeded while Deep Dynamic Compaction is being performed, then the DDC Member shall immediately cease performing Deep Dynamic Compaction within its Project and promptly notify the District. Deep Dynamic Compaction shall not resume unless and until (i) measures are developed and implemented by the DDC Member to ensure that the Threshold Limits are not exceeded, and (ii) the DDC Member notifies the District in writing of such measures.

B. The DDC Member has provided financial security to the District pursuant to and in accordance with the provisions of Paragraphs 6.B.(i), 6.B.(ii), 6.B.(iii), and 6.B.(iv).

(i) The District, at its discretion, may require that the DDC Member provide financial security to the District in the amount of 1.4 Million Dollars ($1,400,000.00) (the "Security"), which Security shall be provided in a form (e.g., a performance bond, assurance bond, letter of credit, escrow account funded with cash, or other similar financial assurance mechanism) selected by the Group Member and approved by the District, which approval shall not be unreasonably withheld, delayed or conditioned. The Security is being provided to remedy any actual damage caused by the Deep Dynamic Compaction that interferes with or threatens to interfere with the ability of the Canal to contain and/or deliver water, whether or not the Threshold Limits have been reached or exceeded.

(ii) The Security provided by each DDC Member shall remain in effect for the period that Deep Dynamic Compaction occurs on such DDC Member's Project, and the District's rights under the Security shall automatically terminate and the Security shall be released within thirty (30) calendar days after the District's receipt of written notice that Deep Dynamic Compaction within the DDC Member's Project has been completed, unless the District "calls" the Security in accordance with this Paragraph 6.B.(iii), below.

(iii) Whether or not the Threshold Limits have been maintained or exceeded, the District may "call" on the Security, but only in the event that the District reasonably and in good faith determines that actual damage caused by the DDC Member's Deep Dynamic Compaction has occurred that interferes with or threatens to interfere with the ability of the Canal to contain and/or deliver water, and only after the DDC Member receives twenty-four (24) hours' prior written notice (except in the event of an emergency, in which case only such advance notice as is reasonable under the circumstances shall be required) and the DDC Member has failed to commence cure of such failure within such notice period or thereafter fails to diligently prosecute such cure to completion. On or before the commencement of the DDC Member's Deep Dynamic Compaction activities, the District and the DDC Member agree to prepare a form of right-of-use or encroachment permit regarding the DDC Member's need to access the Canal right-of-way as reasonably necessary to perform such cure.

(iv) If the District "calls" the Security in accordance with Paragraph 6.B.(iii), the District shall call the Security only to the extent, and in the amount, reasonably necessary under the circumstances to repair the Canal, restore water conveyance, or secure alternative interim water conveyance required by the damage caused by the DDC Member's Deep Dynamic Compaction, and shall use such funds only for such purposes. The Threshold Limits are not themselves relevant to whether the "call" of the Security under Paragraph 6.B.(iii) was made in good faith or was reasonably necessary under the circumstances. Any remaining Security shall be retained by or returned to the DDC Member or, at the discretion of the DDC Member, the issuer of the Security.

7. The District has identified two options for the Canal Improvement Project, as described

in **Exhibit D**. The District intends to improve the portion of the Canal adjacent to the NDSP Area using one or more of the two options, however, nothing in this MOA shall be construed to limit the District's discretion to select and use another option provided that the costs to be paid by the Group shall not be increased, that the amount of interference with construction or occupancy of the NDSP shall not be materially increased, or that the option selected may not be less effective in protecting the integrity of the Canal and the quality of the water it carries. The District agrees that the funds paid under this MOA shall not be used for any purpose other than to protect and enhance the unlined Canal immediately adjacent to the NDSP Area except as may otherwise be agreed to by the parties. The District commits to pursue all available sources of funding to complete this work as soon as reasonably possible. To the extent technical, institutional, environmental, and financial requirements permit, the District and the Group agree to coordinate, to the extent practicable, the scheduling of the Canal Improvement Project and construction of the NDSP, including but not limited to infrastructure improvements constructed by the Group as part of the NDSP that are adjacent to the Canal.

8. The District and each Group Member acknowledge and agree that each Group Member shall be solely responsible for the collection and disbursement of payments on units built by that Member, and shall have no liability to the District or any other Group Member for the obligations under this MOA of any other Group Member.

9. The District affirms that it will impose no new fees, charges, taxes or other type of levy on any Group Member or on construction of any improvements in the NDSP, or arrange for or induce the City or any other agency to impose such new levy relating to the provision of water, other than:

   A. Those in effect as of the date of this MOA;

   B. Any fees, charges, taxes or other type of levy applying to the District's service area and generally applicable to similarly situated customers or water users, as may be approved or adjusted from time to time by the District's Board of Directors subsequent to executing this MOA (other than additional levies for the purpose of funding work on protecting and enhancing any unlined portions of the Canal); and

   C. The payments referenced in this MOA.

10. Each Group Member, its builders, and successors and assigns, will permit the District reasonable temporary access to the portion of the NDSP Area that it owns, without charge, for the purpose of undertaking construction and inspection activities related to the Canal Improvement Project on the permitting Group Member's portion of the Canal adjacent to the NDSP Area, subject to the following conditions:

   A. The District shall provide thirty (30) days' prior written notice to: (a) all property owners and residents in the NDSP Area within 300 feet of the planned construction; (b) the City of Oakley; and (c) any and all homeowners'

associations in the NDSP Area with members within 300 feet of the planned construction;

B. The Group and each Group Member will use reasonable efforts to cooperate and facilitate the District's and District consultants' and contractors' temporary access of each and every paved road installed within the NDSP Area, without notice as required in Paragraph 10.A, above, including without limitation paved roads or trails located on top of the levee(s) installed by one or more Group Members within the NDSP Area adjacent to the Canal;

C. The right of temporary access will be limited to District staff, its consultants, and contractors employed to perform the work; in no event shall this temporary access be interpreted to allow any right of entry to the general public;

D. The right of temporary access shall not include the right to access private residences or private yard areas once those residences are occupied without prior written consent of the occupant and/or owner;

E. To the extent reasonably practicable, the District shall design and schedule its improvement work to minimize interference with construction activities within the NDSP Area and/or the day-to-day activities of future residents of the NDSP Area;

F. The District shall carry all reasonable insurance customarily required for such construction projects, including without limitation general liability, automobile and workers compensation, and shall require all consultants, contractors and other parties entering the NDSP Area on behalf of the District to have such insurance in effect; and

G. The District shall agree to hold harmless and indemnify the Group Members, their builders, homeowners, and successors and assigns from any and all injury or damage to the extent resulting from the District's temporary access to the NDSP Area for purposes of undertaking its Canal Improvement Project.

11. The Group agrees to request that the City of Oakley include the payment amounts and payment schedules set forth in Paragraphs 1 and 2, above, as conditions of approval issued by the City for each tentative subdivision map. If the City declines to include such conditions of approval, the parties agree to seek other means by which the City may help ensure that timely payments are made under this MOA.

12. Each Group Member shall record Abstracts of this MOA in the form of **Exhibit E** in the official records of Contra Costa County on and against title to each individual property which is the subject of the five pending Projects in the NDSP within ten (10) business days after both of the following occur as to the property against which the Abstract is to be recorded: (a) the City approves a tentative subdivision map, parcel map, development plan, or similar entitlement; and (b) such Group Member (or its successor in interest)

closes escrow for the purchase of the property covered by those approvals. Each Abstract shall be signed by the District and the individual party who has taken title to all or any portion of the subject property upon which is located the subdivision tentatively approved. Upon the closing of any sale to an individual or entity who, singly or in a group purchases one or more constructed residential units within the property described on **Exhibit A** for which the required payment(s) in Paragraphs 1 and 4 have been made, this MOA shall automatically terminate as to the residential units and the parcel(s) upon which such units are located, whereupon such purchasing individual(s) or entity(ies) shall not be regarded as a successor, assignee or transferee of any Group Member for purposes of this MOA. The District agrees to promptly cooperate with such individual(s) or entity(ies) and, if requested, execute, acknowledge and deliver within ten (10) business days after such request any documents as may be reasonably necessary to remove the Abstract of this MOA from record title with respect to property acquired by such purchasers.

13. The parties represent that legal counsel for each of them has reviewed this MOA and are satisfied that this MOA is suitable for its purposes.

14. The parties will fully cooperate and facilitate the application for and receipt of any permits, licenses, or other approvals for the five Projects within the NDSP, including but not limited to: (a) inclusions and annexations within the respective service areas of the Contra Costa Water District, Los Vaqueros Project, and the Central Valley Project; and (b) encroachment, license, or right-of-entry permits for construction activities along or across the Canal. The District agrees that it will undertake reasonable efforts to expedite any approvals within the District's control.

15. The parties will use reasonable efforts to cooperate and facilitate, at no cost to the Group Members, NDSP, or the District, the connection between storm drainage collection facilities now existing or to be installed on the Canal right-of-way to drain the Canal right-of-way and the storm drainage system(s) which the Group or the Group Members are required to install to drain the NDSP.

16. Each of the Group Members individually and separately agree to maintain shallow groundwater monitoring wells within the portion of the NDSP Area adjacent to the Canal (i.e., other than on the Baldocchi Property) during and after project construction, and allow access to them and use of the data generated thereby by the District for the purpose of analyzing: (a) the water quality effects of area utility facilities; and (b) the effect, if any, of adjacent urban development on the Canal. Well locations shall be located where optimal for data collection purposes, but not at the risk of obstructing or complicating development plans for the NDSP or in locations that might reduce property values or interfere with use and enjoyment of the property by future residents. After construction, the Group will provide access for data collection at those wells located within common public areas (and not individual private lots) by the District on a schedule agreed to among the parties. The Group also will provide prior groundwater monitoring data on the project property in electronic format, to the extent such data may be available. The

District will provide the Group, or its designated consultants, its Canal monitoring data adjacent to the NDSP Area in electronic format. The Group's obligation to maintain the wells and provide monitoring data shall expire upon five (5) years after the date of this MOA. After such date the wells may be closed at the Group's or their successors' sole discretion and the District's right of access to the wells for data collection shall terminate. The parties may, at that time, negotiate a further agreement concerning longer-term well maintenance and monitoring, which may be carried out by the District for as long as the District assumes responsibility for operation and maintenance of the wells.

17. Each Group Member agrees to install, at its expense, a Canal property line fence and a Canal berm fence along the south side of the Canal adjacent to such Group Member's Project within the NDSP Area prior to completion of construction of any residential units within the Group Member's Project adjacent to the Canal, subject to the following provisions with respect to the Sellers Avenue and Dutch Slough crossings. At the Sellers Avenue crossing, said fences shall connect either to (a) the existing gate across Sellers Avenue on the north side of the Canal, or (b) a new gate across Sellers Avenue on the south side of the Canal, as determined by mutual agreement of the District and the Group, and the fencing and gates at the Sellers Avenue Crossing shall be constructed by either (i) CP Oakley, if commencement of construction of the Emerson Project precedes commencement of construction of the Gilbert Project, or (ii) DSI, if commencement of construction of the Gilbert Project precedes commencement of construction of the Emerson Project. At the Little Dutch Slough crossing, said fences shall extend no more than 100 feet (100') across the Canal and beyond (in a generally northerly direction) along each bank of Little Dutch Slough, and the fencing and gates at the Little Dutch Slough crossing shall be constructed by either (i) WPH, if commencement of construction of the WPH portion of the Burroughs Project precedes commencement of construction of the City portion of the Burroughs Project, or (ii) the City (or its successor with respect to the Burroughs Project), if commencement of construction of the City portion of the Burroughs Project precedes commencement of construction of the WPH portion of the Burroughs Project. All fencing material and installation shall meet District requirements.

18. All exhibits attached to this MOA and referenced herein are deemed incorporated in and made a part of this MOA.

19. Any notice, demand, or other written instrument required or permitted to be given pursuant to this MOA shall be in writing signed by the party giving such notice and shall be sent to each party at the following addresses. Notices may be given by hand delivery, by overnight courier, by registered or certified mail, or by facsimile (if the facsimile transmission is followed by a copy sent by hand delivery, courier or regular mail). Each party may change its address from time to time by written notice to all the other parties in accordance with this Paragraph.

To District:

Contra Costa Water District
1331 Concord Avenue
P.O. Box H20
Concord, California 94524
Attn: General Manager
Phone: 925.688.8000
Facsimile: 925.688.8122

To WPH:

Western Pacific Housing, Inc.
North Bay/Sacramento Division
1210 Central Boulevard
Brentwood, California 94513
Attn: Division President
Phone: 925.634.6023
Facsimile: 925.634.6166

To CP Oakley:

CP Oakley Developers, LLC
c/o Centex Homes Northern California
2527 Camino Ramon, Suite 100
San Ramon, California 94583
Attn: David Dolter
Vice President, Planning and Entitlements
Phone: 925.415.1600
Facsimile: 925.415.1601

With a copy to:

CP Oakley Developers, LLC
c/o Ponderosa Homes
6671 Owens Drive
Pleasanton, California 94588-3398
Attn: Jeffrey C. Schroeder
Senior Vice President, Land Acquisition and Planning
Phone: 925.460.8910
Facsimile: 925.734.9141

To DSI:

Dutch Slough, Inc.
c/o Castle Companies
12885 Alcosta Boulevard, Suite A
San Ramon, California 94583
Attn: Steve Garrett
Vice President
Phone: 925.328.1000
Facsimile: 925.242.8100

With a copy to: Dutch Slough, Inc.
c/o Ryder Communities
1425 Treat Boulevard
Walnut Creek, California 94596
Attn: Timothy Saunders
Vice President
Phone: 925. 937.4373
Facsimile: 925. 935.9195

To Oakley: City of Oakley
3231 Main Street
Oakley, California 94561
Attn: City Manager
Phone: 925.625.7000
Facsimile:

20. This instrument and the attached Exhibits constitute the entire agreement among the parties relating to the subject matter of this MOA. Any prior agreements, promises, negotiations, or representations not expressly set forth in this MOA are of no force and effect. Any amendment to this MOA will be of no force and effect unless it is in writing and signed by all parties.

21. This MOA shall be construed and governed in accordance with the laws of the State of California. Any litigation arising under this MOA shall be prosecuted in the Superior Court of California, County of Contra Costa, and all parties waive their respective rights to change venue pursuant to Section 394 of the Code of Civil Procedure. All parties further agree that only those parties actually involved in a dispute under this MOA shall be deemed to be indispensable parties for purposes of Section 389 of the Code of Civil Procedure.

22. The provisions of this MOA are not binding upon the current owners of the real property within the NDSP Area (it being understood that none of the signatories hereto currently own the real property within the NDSP Area), nor the real property within the NDSP Area unless and until such property is acquired by a Group Member; provided, however, that the provisions of this MOA shall be binding on and inure to the benefit of the parties hereto and their successors or assigns. Notwithstanding the preceding sentence, if for any reason a particular Group Member abandons its option or other property interest and does not proceed with its project, then such Group Member shall have the right, but not the obligation, to terminate this MOA as it relates to that particular Group Member (and the property owned by such Group Member described in Recital A and **Exhibit A**) by providing at least thirty (30) days' advanced written notice thereof to the other parties, and thereafter that Group Member shall have no further rights or obligations hereunder, and the District shall have no further rights or obligations hereunder relating to the terminating Group Member (or any property owned by such Group Member as described in Recital A and **Exhibit A**), except for any rights or obligations that expressly

survive termination as provided herein.

23. In the event any provision of this MOA is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such judicial authority determines and the remainder of this MOA shall be construed to be in full force and effect.

24. This MOA may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument. Notwithstanding any other provision of this MOA to the contrary, this MOA shall not be deemed to be entered into by any party unless and until it is duly executed and delivered by all of the parties hereto.

25. Each person signing this MOA on behalf of a party represents and warrants that said person has full and complete authority from that party to bind said party to perform and comply with each and every term, obligation, condition and covenant set forth in this MOA.

26. The Group makes no representations or warranties to the District regarding the condition of the NDSP Area or its suitability for the District to perform any work on the Canal adjacent to the NDSP Area, and the District affirms that it is entering into this MOA treating the NDSP Area in its "AS-IS" condition. The District makes no representations or warranties to the Group regarding the condition of the Canal adjacent to the NDSP Area or the suitability of the NDSP Area for the development contemplated in Recital A, above, and the Group affirms that it is entering into this MOA treating the Canal in its "AS-IS" condition.

27. The District shall indemnify, defend and hold the Group Members and their successors harmless from and against all demands, claims, losses, liabilities, damages, injuries or expenses (including without limitation attorney's fees) to the extent arising from entry on the NDSP Area by the District or its agents, consultants, and contractors, or to the extent arising from the District's construction of the Canal Improvement Project. Each Group Member shall indemnify, defend and hold the other Group Members and their successors harmless from and against all demands, claims, losses, liabilities, damages, injuries or expenses (including without limitation attorney's fees) arising from the indemnifying party's breach of this MOA. Each Group Member shall indemnify, defend, and hold the District harmless from and against all demands, claims, losses, liabilities, damages, injuries or expenses (including without limitation attorney's fees) arising from: (a) construction activities by the indemnifying Group Member within the NDSP Area; and (b) any claims that the Canal has adversely affected the indemnifying Group Member's construction activities within the NDSP Area, until such time as that Group Member or its successor has paid the District in full all amounts due from that Group Member under this MOA.

28. In consideration for the anticipated receipt of payments from the Group pursuant to this MOA, the District releases each Group Member from and waives the right to claim or

pursue all rights, claims, liabilities, costs, attorneys fees, or other obligations, that District may have against any Group Member arising from the proximity of the NDSP to the Canal, including: (a) claims arising from construction or future occupancy of the NDSP; (b) any claims that such construction or occupancy in any way adversely affects the quality of water carried by the Canal; and (c) any claims arising from the fact that the Canal Improvement Project might not be completed for some time so that the NDSP is built and occupied while the District continues operating the Canal adjacent to the NDSP Area without any lining of the Canal. The scope of this waiver specifically excludes negligent acts or omissions or willful misconduct by each Group Member, its agents, consultants, or contractors. The scope of this waiver also specifically excludes such rights, claims, liabilities, costs, attorneys' fees, or other obligations that District may have against any Group Member arising: (a) under this MOA (including without limitation the enforcement of each Group Member's respective obligation to indemnify, defend, and hold the District harmless under Paragraph 27), (b) the design and construction of a FEMA approved levee along and adjacent to the Canal, and (c) the use of Deep Dynamic Compaction within a Group Member's Project. The exclusions set forth in the preceding sentence shall remain in effect as to each Group Member until said Group Member has paid the District in full all amounts due from that Group Member under this MOA.

29. Dispute Resolution.

A. Mediation. The parties agree to first submit any dispute arising out of or in connection with this MOA to a mutually acceptable professional mediator and to negotiate in good faith toward reaching an agreement with respect to the dispute. In such event, neither party shall proceed with arbitration until the completion of the mediation, the mediation being an express condition precedent to further remedies, or until sixty (60) days after the submission of the dispute to a professional mediator, whichever occurs first. The parties may, however, agree in writing to proceed directly to arbitration.

B. Binding Arbitration. Should the parties be unable or unwilling to resolve their dispute through the mediation process provided in Paragraph 29.A above, either party may give written notice to the other party and elect to have the matter resolved by final and binding arbitration in accordance with the rules and procedures of the arbitrator selected in accordance with this Paragraph 29.B (the "Arbitrator"). The party seeking arbitration shall set forth in its notice the particulars of its claims and shall state with specificity the issue(s) to be submitted to arbitration and the relief sought. Within thirty- (30) days of the date of the election to arbitrate, the parties shall select a single, mutually agreeable arbitrator. If the parties are unable to agree, they shall request that the Judicial Arbitration and Mediation Service, Inc. ("JAMS") if such entity is then in existence, appoint an Arbitrator in accordance with then-current procedures. The arbitrator shall be a retired judge of the Superior Court of California, or the Court of Appeal of California, or a retired judge of the United States District Court sitting in California. If JAMS is not in existence, the Presiding Judge of the Contra Costa Consolidated Court of Unlimited Jurisdiction shall appoint an Arbitrator in

accordance with its then-current procedures.

The rules and procedures for arbitration shall be as follows:

i. The Arbitrator shall be selected and arbitration shall be conducted within a reasonable time, but in no event later than ninety- (90) days after the date upon which the demand for arbitration is filed.

ii. The arbitration proceedings shall be conducted in Contra Costa County, California, at a time and location as agreed to in writing by the parties, or in absence of an agreement, as designated by the Arbitrator.

iii. Subject to the same rules pertaining to privileged communications and attorney work product that would apply if the proceeding was filed in the courts of the State of California, the Arbitrator shall have the authority to make all decisions regarding the relevance, materiality, and admissibility of all evidence offered at the arbitration.

iv. The Arbitrator may issue any remedy or relief, whether provisional or permanent, including but not limited to a default judgment, which the parties could have obtained under the law applicable in courts of the State of California under the same factual circumstances, and the Arbitrator shall follow and otherwise employ the standards for issuing such relief as defined by California law; provided, however, that the Arbitrator shall have no authority or jurisdiction to enter an award for consequential, special, exemplary or punitive damages. The Arbitrator may also grant such ancillary relief as is necessary to make effective the award.

v. Each party may conduct discovery as if the matter were pending before a Superior Court of the State of California and the Arbitrator shall have the full power of the State of California to issue and enforce subpoenas and to award sanctions. Each party shall have the right to demand in writing that the other party provide a list of witnesses it intends to call at the hearing, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at hearing. The responding party's list(s) shall be served on the requesting party using one of the same manners as authorized for delivery of notices under Paragraph 19, with a copy to the Arbitrator, at least thirty- (30) days before the hearing.

vi. Each party shall have the right to be represented by counsel.

vii. No later than sixty (60) days following closing of the arbitration hearing, the Arbitrator shall make an award and issue a written opinion consisting of findings of fact and conclusions of law and setting forth the bases of the award. The Arbitrator may include in his or her award pre-award interest and post-award interest at the legal rate where authorized by law. Notwithstanding any contrary

provision of law that might set a shorter time period due to the District's status as a public entity, the party against whom the award is made or remedy or relief ordered shall have sixty (60) days after receipt of the award or order to commence and thereafter diligently pursue to completion any action or proceeding in any court of the State of California of appropriate jurisdiction located in the County of Contra Costa to obtain judicial review of the award or order. The Arbitrator shall deliver the award or order to all parties to the arbitration only by hand delivery, by overnight courier, or by registered or certified mail. If the award or order is sent by mail, it shall be deemed to be received upon the earlier of actual receipt as evidenced by a signed receipt or five (5) days after deposit in the mail.

viii. If no such action or proceeding is timely commenced, the award or order shall thereupon immediately become final. The party against whom the award is made or remedy or relief ordered shall within thirty (30) days after the award or order becomes final make full payment and/or commence and thereafter diligently pursue to completion any other action required by the award or order. The party in whose favor the award is made may request and obtain from any court of the State of California of appropriate jurisdiction located in the County of Contra Costa a Judgment upon the award rendered by the Arbitrator, which may thereafter be entered in the records of said court.

ix. If an action or proceeding is timely filed in any court of the State of California of appropriate jurisdiction located in the County of Contra Costa to obtain judicial review of the award or order, the parties shall have the right to seek vacation or modification of any portion of the award that is based in whole, or in part, on an incorrect or erroneous ruling of law, in addition to the limited statutory right to seek vacation or modification of an award pursuant to the law applicable to non-judicial arbitration. The findings of fact of the Arbitrator shall be binding on all parties and shall not be subject to further review except as otherwise allowed by the law applicable to non-judicial arbitration.

x. The Arbitrator shall be paid a per diem or hourly charge as established at the time of appointment. Each party shall bear its own attorneys' fees and costs in presenting its case. All other actual costs of conducting the arbitration, including without limitation the administrative fee and the Arbitrator's compensation, shall be shared equally; provided, in any arbitration of a dispute between the District on one side and more than one Group Member or their successors on the other side, the District shall be responsible for one-half of such arbitration costs with the other half shared equally among the other parties.

xi. This arbitration clause shall be interpreted under the arbitration laws of the State of California and not the Federal Arbitration Act, 9 U.S.C.§ 1. Except as otherwise provided in this MOA, any motion, application, complaint or proceeding arising out of or relating to this arbitration clause shall be determined in accordance with the law of the State of California.

xii. Unless otherwise provided in this MOA or otherwise agreed in writing, the parties shall continue to perform their respective obligations under this MOA during the pendency of arbitration proceedings.

xiii. Except as modified or stated to the contrary in this Paragraph 29, the rules and procedures of the Arbitrator in effect at the time of the arbitration shall apply to the arbitration procedure.

30. Nothing in this MOA shall be deemed to constitute an agency, partnership or joint venture between any Group Member and any other Group Member, or between any Group Member and the District.

31. In the event that any Group Member transfers its interest in a portion of the NDSP Area before an Abstract is recorded pursuant to Paragraph 12 against title to that portion, said Member shall be relieved of all obligations under this MOA owed from and after the date of transfer so long as all such obligations are assumed by the transferee by a written assumption agreement delivered to the District. As of the date that an Abstract is recorded against a portion of the NDSP Area, only the then owner of that portion shall be bound by the obligations of this MOA allocated to that portion, as such owner may change from time to time, and subsequent transfer of that portion shall automatically relieve the transferor of any obligations owed from and after the date of transfer and by such record notice of the MOA the transferee shall automatically be bound to all such obligations so long as notice thereof is given to the District in the form of a written assumption agreement delivered to the District. Nothing in the preceding sentence shall be construed to affect the third sentence of Paragraph 12 above, pertaining to the automatic termination of this MOA as to the residential units and parcels for which the required payments have been made.

Executed as of the date first indicated above.

CONTRA COSTA WATER DISTRICT,
a California Independent Special District

By: Walter J. Bishop
Walter J. Bishop

Its: General Manager

APPROVED AS TO FORM

Carl P.A. Nelson
DISTRICT COUNSEL

WESTERN PACIFIC HOUSING, INC.,
a Delaware corporation,
North Bay/Sacramento Division

By: _____
Name: _____
Its: _____

CP OAKLEY DEVELOPERS, LLC,
a Delaware limited liability company

By: Ponderosa Homes II, Inc.,
a California corporation
Its: Member

By: _____
Name: Jeffrey C. Schroeder
Its: Sr. V.P. Land Acquisition & Planning

By: Centex Homes,
a Nevada general partnership
Its: Member

By: Centex Real Estate Corporation,
a Nevada corporation
Its: Managing Partner

By: _____
Name: David Ciabattari
Its: Division President

[signatures continued on next page]

DUTCH SLOUGH, INC.,
a California corporation

By: _____
Name: _____
Its: _____

THE CITY OF OAKLEY, a California municipal corporation

By: _____
Its: _____

EXHIBITS:
- A: Map of NDSP Properties (Including Canal Proximity)
- B: Estimated Number of Units by Project
- C: Estimated Unit Construction Schedule
- D: Canal Improvement Options
- E: Form of Abstract to Record

EXHIBIT A

MAP OF NDSP PROPERTIES (INCLUDING CANAL PROXIMITY)

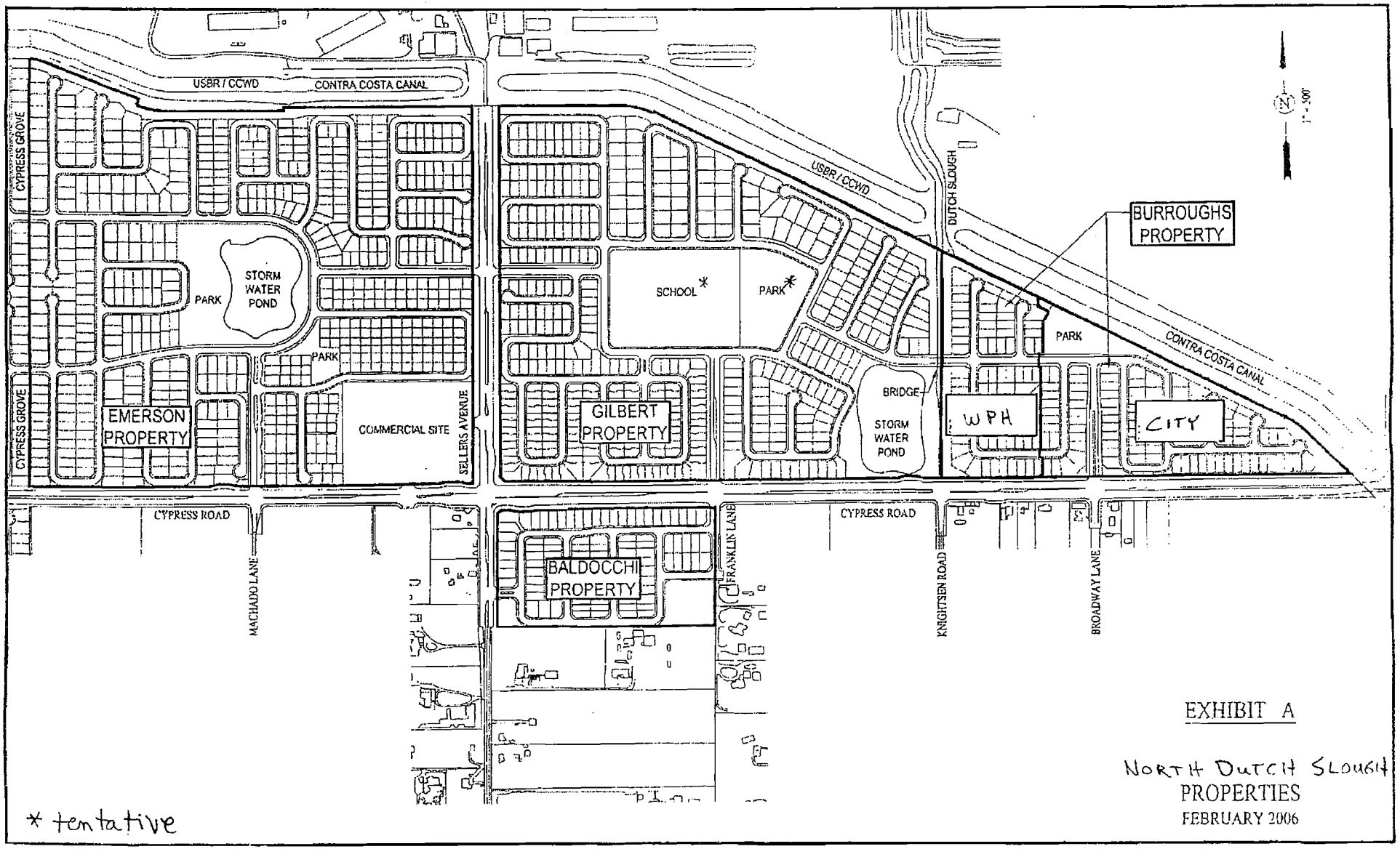

USBR / CCWD
CONTRA COSTA CANAL
CYPRESS GROVE
PARK
STORM WATER POND
PARK
EMERSON PROPERTY
COMMERCIAL SITE
SELLERS AVENUE
SCHOOL
PARK
GILBERT PROPERTY
USBR / CCWD
DUTCH SLOUGH
BURROUGHS PROPERTY
PARK
CONTRA COSTA CANAL
BRIDGE
STORM WATER POND
WPH
CITY
CYPRESS ROAD
MACHADO LANE
BALDOCCHI PROPERTY
FRANKLIN LANE
CYPRESS ROAD
KNIGHTSEN ROAD
BROADWAY LANE
* tentative
EXHIBIT A
NORTH DUTCH SLOUGH
PROPERTIES
FEBRUARY 2006

EXHIBIT B

ESTIMATED NUMBER OF UNITS BY PROJECT

	Single-Family Units	Multi-Family Units	Total
Emerson Property	560	0	560
Gilbert Property	440[5]	0	440
Burroughs Property (WPH)	74	0	74
Burroughs Property (City)	100	0	100
Baldocchi Property	73	24	97
Total	1,247	24	1,271

[5] Estimate for Gilbert Property subject to increase by 20 single-family detached residential units if school site not located on Gilbert Property, as noted in footnote 1 on page 1.

EXHIBIT C

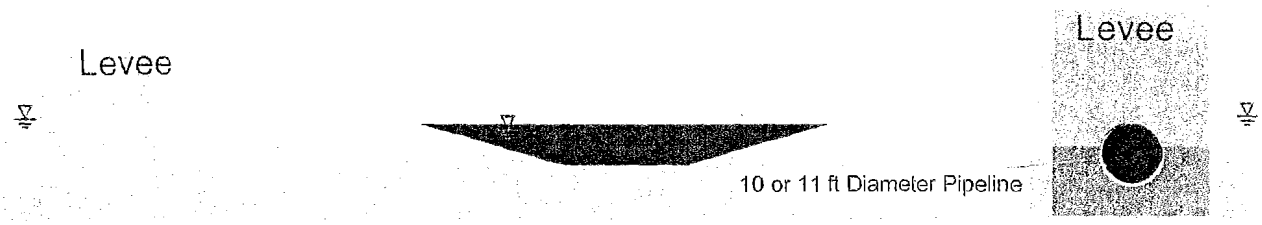
ESTIMATED UNIT CONSTRUCTION SCHEDULE

	Final - Map	Approval for Occupancy
Emerson Property	March, 2007 to March, 2009	December, 2007 to March, 2012
Gilbert Property	December, 2006	August, 2008
Burroughs Property (WPH)	March, 2007	December, 2007
Burroughs Property (City)	March, 2007	June, 2008
Baldocchi Property	December, 2006	December, 2007

EXHIBIT D

Two Canal Improvement Options

1. New Pipeline Outside Canal



2. New Pipeline Inside Canal

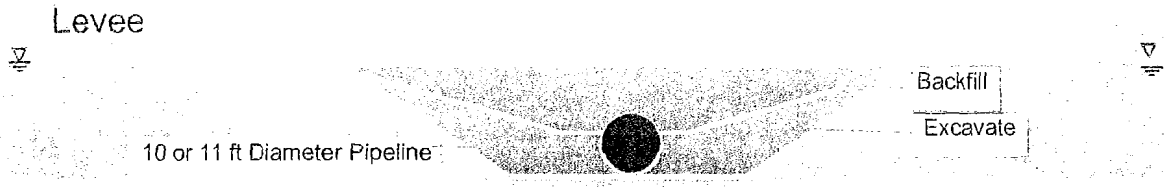


EXHIBIT E

FORM OF ABSTRACT TO RECORD

Recording Requested by and)
After Recordation Mail to:)
General Manager)
Contra Costa Water District)
1331 Concord Avenue)
Concord, CA 94524)

Space above this line for recorder's use

ABSTRACT OF MEMORANDUM OF AGREEMENT

THIS ABSTRACT OF MEMORANDUM OF AGREEMENT ("Abstract") is executed as of _____, by and between Contra Costa Water District, a California Independent Special District ("the District") and _____ ("Developer"). **[enter names of Group Members– or their successor who actually acquires one of the properties]**

1. The District entered into that certain North Dutch Slough Properties Memorandum of Agreement dated _____ ___, 2005 (the "MOA") with Western Pacific Housing, Inc., a Delaware corporation ("WPH"), CP Oakley Developers, LLC, a Delaware limited liability company ("CP Oakley"), Dutch Slough, Inc., a California corporation ("DSI"), and the City of Oakley, a California municipal corporation ("Oakley") (collectively, the NDSP Developers Group or the "Group," and individually, a "Group Member"). The Group Members are residential developers pursuing approval and construction of five Projects in the City of Oakley, County of Contra Costa, State of California. The Projects are together referred to as the North Dutch Slough Project ("NDSP"). The undersigned Developer, being a Group Member or its successor, owns that certain real property described in Exhibit One attached hereto and incorporated herein by this reference (the "Property"), on which a portion of NDSP is proposed to be built.

2. The sole purpose of this Abstract is to give record notice of the MOA (by filing this abstract in the public records) and thereby provide inquiry notice of the terms of the MOA. This Abstract does not provide a complete summary of the MOA and in no way modifies the provisions of the MOA, all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein. Capitalized terms used and not otherwise defined herein have the meaning ascribed to the in the MOA.

3. This Abstract shall be binding on and inure to the benefit of the District and its successors and assigns and the Developer and any and all of Developer's successors in interest to the Property.

4. Upon the closing of any sale to an individual or entity who purchases one or more

constructed residential units within the Property for which the payment(s) required by the MOA have been made, the MOA shall automatically terminate as to the residential units and the parcel(s) upon which such units are located, whereupon such purchasing individual(s) or entity(ies) shall not be regarded as a successor, assignee, or transferee for purposes of the MOA, and this Abstract shall be deemed to be removed from record title with respect to the parcel(s) acquired by such purchasers.

IN WITNESS WHEREOF, the parties have executed this Abstract on the day and year first above written.

DISTRICT: **CONTRA COSTA WATER DISTRICT**
a California Independent Special District

By:_____
_____ **[print name]**
Its:_____

DEVELOPER: **[NAME OF ENTITY]**,
a _____

By:_____
_____ **[print name]**
Its:_____

[ATTACH LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY AS EXHIBIT ONE]

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS WITH THE CONTRA COSTA WATER DISTRICT REGARDING THE ABSTRACT OF MEMORANDUM OF AGREEMENT AND THE SUPPLEMENT TO THE NORTH DUTCH SLOUGH PROPERTIES MEMORANDUM OF AGREEMENT

BE IT RESOLVED by the City Council of the City of Oakley does hereby approve the agreements with the Contra Costa Water District relating to the Abstract of Memorandum of Agreement and the Supplement to the North Dutch Slough Properties Memorandum of Agreement and authorizes the City Manager to execute the agreements.

The foregoing resolution was introduced at a regular meeting of the Oakley City held on the 25th day of May, 2021 by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:

_____
Sue Higgins, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

OAKLEY
CALIFORNIA

Burroughs - Rezone (RZ 01-21) and Vesting Tentative Map (TM 01-21)

City Council

May 25, 2021

Application Summary

- Rezone (RZ 01-21)
  - A-3 (Heavy Agriculture) District → P-1 (Planned Development) District
- Vesting Tentative Map (TM 01-21)
  - Subdivide the 43.24-acre site consisting of 2 parcels into 208 single family lots
- No Design Review proposed at this time

Project Location

- Northeast corner of E. Cypress Rd. and Knightsen Ave. (APN's: 032-081-026 and 032-081-025)

Surrounding Uses

- West: single-family homes (Delaney Park and Emerson Ranch)
- East: Jersey Island Road and properties within the East Cypress Corridor Specific Plan
- South: commercial and residential uses within the unincorporated area of the County
- North: Contra Costa Canal and DWR land

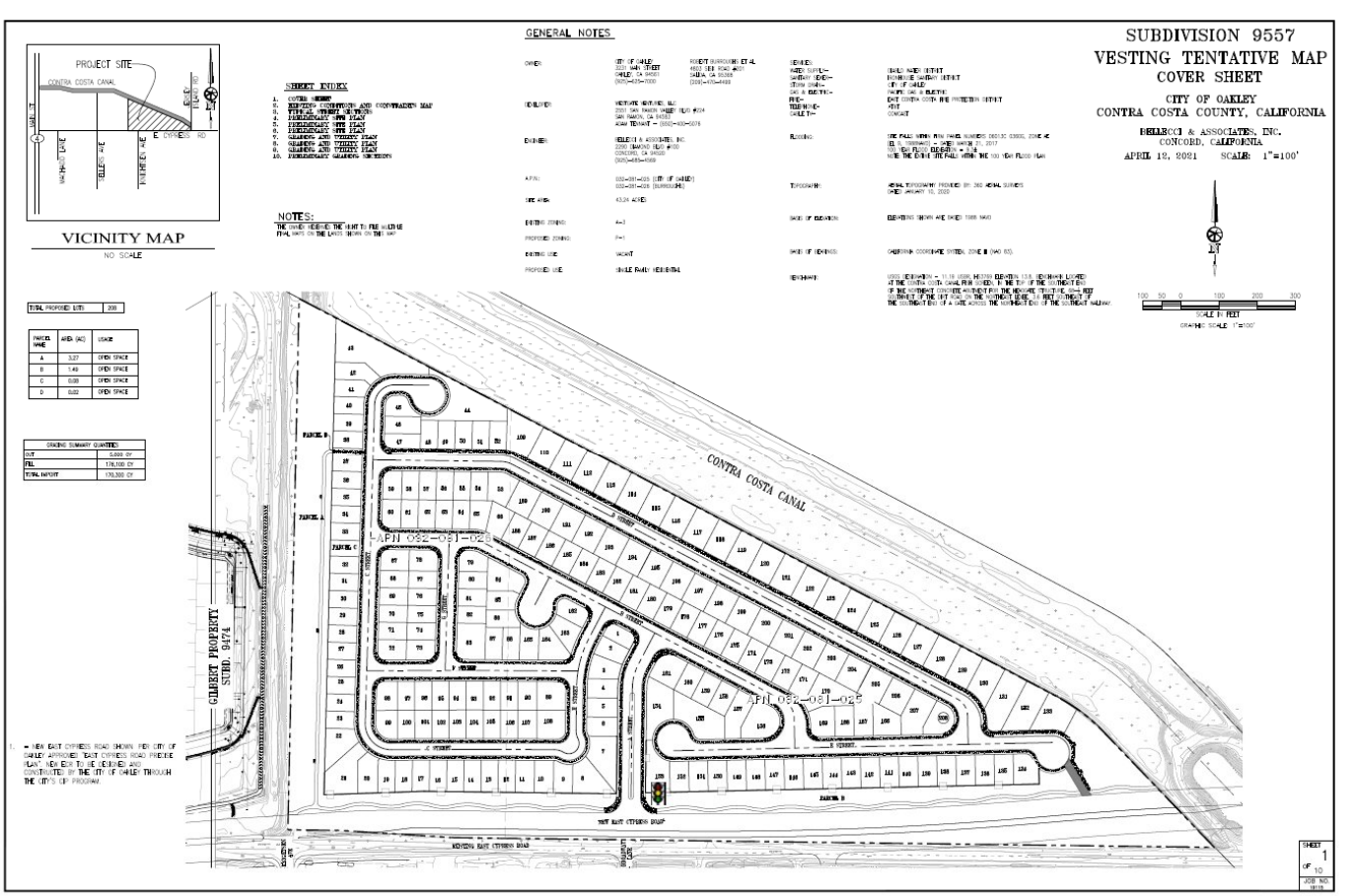
Rezone

- The Planned Unit Development (P-1) District would allow for the residential project

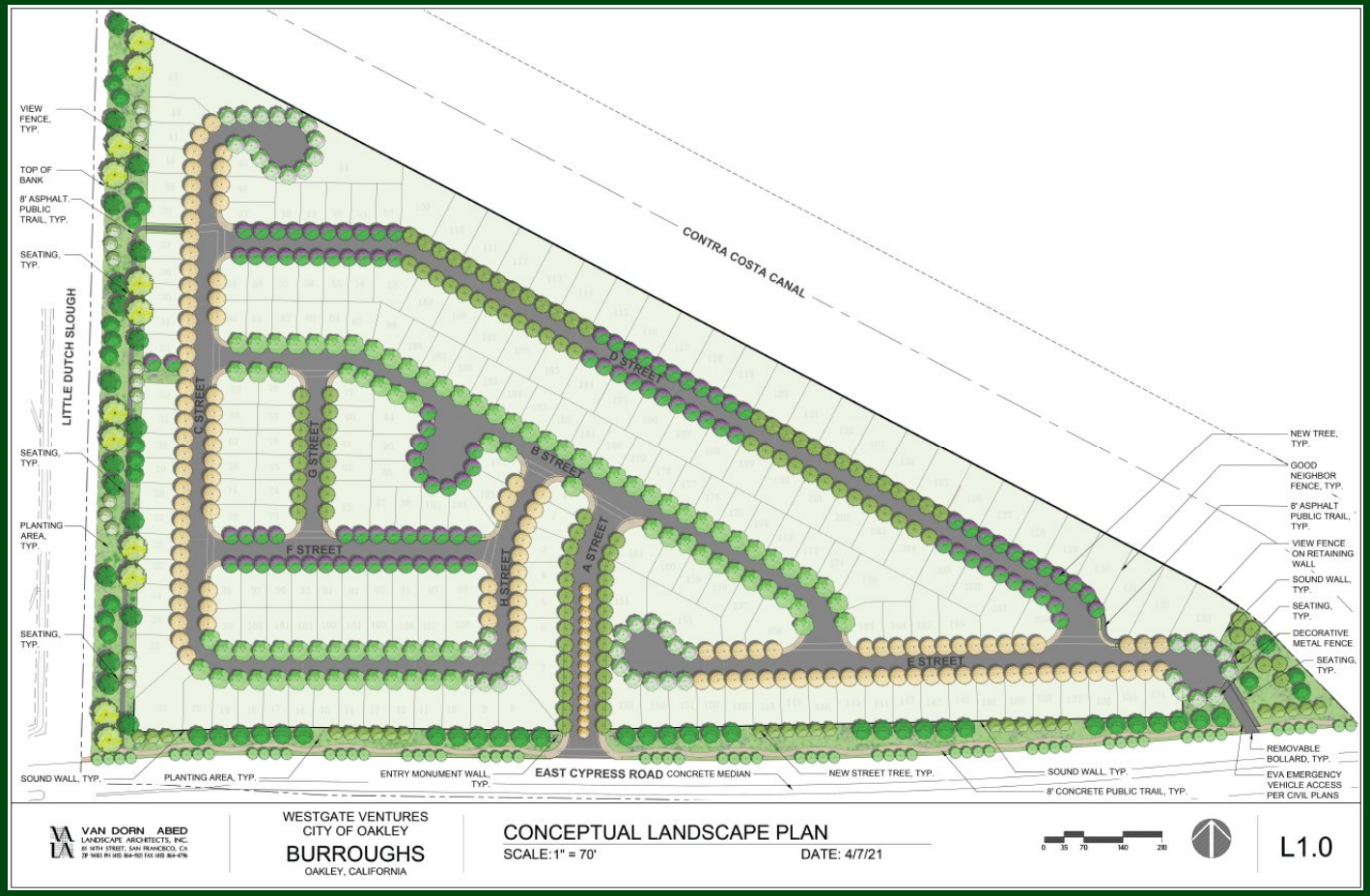
- Staff was careful to craft the Applicable Regulations and Standards, within the Rezone Ordinance, to only allow the project being presented tonight

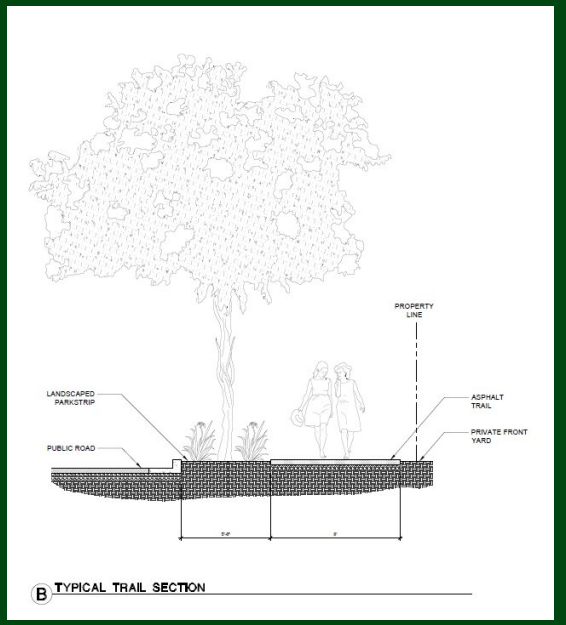
Tentative Map

- Subdivide the 43.24-acre site consisting of 2 parcels into 208 single family lots



Landscape Plan





CEQA

- California Environmental Quality Act (CEQA) analysis found that the project will not have a significant impact on the environment
- A Notice of Intent to adopt a Mitigated Negative Declaration was duly posted and filed
- Adoption of the Mitigated Negative Declaration is written into the General Plan resolution and referenced in the Rezoning Ordinance and Tentative Parcel Map Resolution

CEQA Continued

- Comment letters were received from:
  - California Department of Transportation
  - East Contra Costa Fire Protection District
  - Central Valley Water Quality Control Board

- An official response has been prepared and has been attached to the Staff Report

RZ Analysis

- The Planned Unit Development (P-1) District is compatible with the Single-Family Residential, High Density (SH) Land Use Designation

- The proposed subdivision layout and lot sizes will offer a variety of housing options and larger 6,000 square foot lots along the north side of the subdivision

Tentative Map Analysis

- The applicant has proposed the Planned Unit Development (P-1) District which allows the project to develop its own unique development standards

- Adequate ingress and egress, subdivision design and street layout

Recommendation

- Adopt the Mitigated Negative Declaration (included as a finding in the proposed Rezone Ordinance and Vesting Tentative Map Resolution);
- Waive the first reading and introduce an Ordinance approving the Rezone, as conditioned;
- Adopt a resolution approving the Vesting Tentative Map and Design Review, as conditioned; and
- Adopt a resolution authorizing the City Manager to enter into the Contra Costa Water District Abstract of Memorandum of Agreement and Supplement to the North Dutch Slough Properties Memorandum of Agreement.

Minutes of the Regular Joint Meeting of the Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority held May 11, 2021

1) OPENING MATTERS

1.1 Call to Order and Roll Call of the Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority

Mayor Sue Higgins called the meeting to order at 6:30 p.m. in the Oakley City Council Chambers located at 3231 Main Street, Oakley, California. Vice Mayor Randy Pope and Councilmembers Aaron Meadows, Anissa Williams and George Fuller were also present.

1.2 Pledge of Allegiance to the Flag (Mayor Higgins)

Mayor Higgins led the Pledge of Allegiance to the Flag.

1.3 Proclamation Recognizing May 9 - 16, 2021 as National Police Week

On behalf of the City Council, Mayor Higgins presented the proclamation to Police Chief Capelletti along with other Police employees.

Mayor Higgins mentioned the meeting will be closed this evening in memory of 2 fallen officers.

Chief Capelletti mentioned it is a tragedy for the nationwide police community to lose 2 officers within the past 24 hours and his heart goes out to their families. He thanked Oakley Police for their work and the Council for recognition.

1.4 Proclamation Recognizing May 16-22, 2021 as National Public Works Week

On behalf of the City Council, Mayor Higgins presented the proclamation to Kevin Rohani, Public Works Director/City Engineer.

Mr. Rohani thanked the Council for recognition.

1.5 Proclamation Recognizing May 2021 as Building Safety Month

On behalf of the City Council, Mayor Higgins presented the proclamation to Interim City Manager Joshua McMurray.

Mr. McMurray accepted the proclamation and thanked the City Council.

2) PUBLIC COMMENTS

Mayor Higgins called for public comments via phone and announced one online comment was received. She read the online comment into the record as requested by Anna Warren who submitted the comment. Her comment indicated Councilmember Fuller uses Nextdoor as a personal sounding board to get people worked up without credence to what he is saying and yesterday he again insisted there was missing money.

3) CONSENT CALENDAR

3.1 Approve Minutes from the Special City Council Meeting held April 19, 2021 (Libby Vreonis, City Clerk)

3.2 Approve Minutes from the Regular Joint City Council/City Council Acting as the Successor Agency to the Redevelopment Agency and Special Public Financing Authority Meeting held April 27, 2021 (Libby Vreonis, City Clerk)

3.3 Accept Report Out of Closed Session Memo (Derek P. Cole, City Attorney)

3.4 City of Oakley Quarterly Investment Report (3rd Quarter FY 2020/21) (Tim Przybyla, Finance Director)

3.5 City of Oakley as Successor Agency to the Oakley Redevelopment Agency - Quarterly Investment Report (3rd Quarter FY 2020/21) (Tim Przybyla, Finance Director)

3.6 Annexation No. 28 (Baldocchi Property) to the City of Oakley Community Facilities District No. 2015-2 (Parks, Street Light, Landscape and Stormwater Services) (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.7 Two Resolutions Initiating the Fiscal Year 2021-22 Oakley Street Lighting and Landscape Assessment District No. 1 proceedings; initiating the process and declaring the intention to levy and collect assessments, and setting June 8, 2021 as the date for the Public Hearing (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.8 Approval of Agreement with Restoration Design Group for services related to the Creekside Park Restoration Grant Project (Joshua McMurray, Interim City Manager)

3.9 Approving the Agreement with Meritage Homes of California for "Stormwater Management Facility Operations and Maintenance Agreement, and Right of Entry" for Subdivision 9507 The Vines and authorizing the City Manager to execute the agreement (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.10 Approving the Agreement with Forecast Land Investment, LLC for "Stormwater Management Facility Operations and Maintenance Agreement, and Right of Entry" for Cypress Estates Subdivision 8728 and authorizing the City Manager to execute the agreement (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.11 Resolution Naming the Parcel of Land, Accessor Parcel Number (APN) 034-570-062 and Parcel A of Subdivision 8760 Stonewood 1B as "Enrico Cinquini Park" (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.12 Acceptance of Subdivision Improvements Associated with the Gilbert Property Subdivision 9033 for the Levee Improvements and East Cypress Road Phase 2 Frontage Improvements (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.13 Resolution Approving a Network Management Services Agreement between the City of Oakley and OTI, a Buildings IOT Company (OTI) and Authorizing the Interim City Manager to Execute the Agreement (Tim Przybyla, Finance Director)

3.14 Award of Contract for Professional Services Agreement for On-Call Planning Services with Raney Planning & Management, Inc. for FY 2020/21 and FY 2021/22 (Joshua McMurray, Interim City Manager)

Items 3.2 and 3.11 were pulled.

Item 3.2

City Clerk Libby Vreonis provided a correction to the minutes as requested by Councilmember Fuller.

It was moved by Vice Mayor Pope and seconded by Councilmember Fuller to approve item 3.2 as amended. Motion was unanimous and so ordered. (5-0)

Item 3.11

Councilmember Meadows expressed he is glad to see the park named after Enrico Cinquini as Mr. Cinquini owned the property many years ago and served the Oakley community for many years in real estate, in operating a pharmacy, serving on the fire board, and he served his country in the military.

Councilmember Fuller requested staff provide more background information when names for parks come through.

Public Works Director/City Engineer Kevin Rohani suggested staff can provide initial information and then bring forth items formally at a following meeting.

It was moved by Councilmember Meadows and seconded by Councilmember Fuller to approve item 3.11. Motion was unanimous and so ordered. (5-0)

4) PUBLIC HEARINGS

None.

5) REGULAR CALENDAR

5.1 Adopt a Resolution Regarding 2021-2022 Salary Ranges and Compensation and Benefits Program for Employees (Nancy Marquez-Suarez, Assistant to the City Manager/HR Director)

Mayor Higgins mentioned the item will be continued.

City Attorney Derek Cole confirmed the item will be continued. He confirmed with the City Clerk that no comments were received.

5.2 A Resolution of the City Council of the City of Oakley Authorizing the Issuance of a Request for Proposals for a Qualified Executive Search Firm to Assist the City Council in the Selection of a New City Manager (Derek P. Cole, City Attorney)

City Attorney Derek Cole presented the staff report. He mentioned staff will provide copy of the request for proposals (RFP) to firms by email and also by mail to those listed as California and Nationwide, post on the City's website as a news and events item, and blast via social media. He stated the action tonight is to authorize the issuance of the RFP and direct how the Council wants staff to bring back responses. He mentioned there is only one meeting in June and staff needs to allow time for submittals so the Council won't be able to consider it until July. He suggested the Council could direct staff to bring back all proposals in open session in July and if the Council wants to appoint a screening team, the team can screen applications and then present finalist(s).

Mayor Higgins commented this is just a search for an executive firm.

Mr. Cole confirmed it is.

Councilmember Fuller suggested defining "stakeholders", requested all RFPs to go directly to Mr. Cole, and requested that everyone can apply and be held to the same esteem, including City employees.

Mr. Cole confirmed that everyone can apply. He mentioned one of the things the RFP search firm will do will be to develop a job description and criteria and it will be made clear everyone can apply. He commented it is up to the City Council if it wants proposals to come to his law office in Roseville or if it comes to City Hall, Paralegal Libby Vreonis can accept applications and direct them to him; confidentiality can occur at either office. He shared that the RFP indicates that a pdf version is to go to the City Attorney's email address. He commented that "stakeholders" usually means the community and is a broad definition, but when an executive search firm is hired, it can set parameters. He suggested the Council could put a panel together to hire the search firm.

Councilmember Fuller commented he is comfortable with all Councilmembers reviewing all RFPs. He mentioned if a team were to screen them, he would welcome recommendations and he anticipates firms responding are professional.

Mr. Cole commented that if staff brings it to Council, staff can provide a summary and present it to the Council. He explained that there should be no discussion among Councilmember prior to the meeting because that could be considered a serial meeting in violation of the Brown Act. He

suggested if the Council wants to have a screening in advance, staff can do that and present questions and send them to applicants, for example. He mentioned staff serves the Council so it is the Council's preference.

Councilmember Fuller commented he has confidence in Mr. Cole and he understands that if the Council gets them for review, there must be trust and integrity trust so as not to have a Brown Act violation.

Councilmember Williams commented she has been the recipient of many RFPs and the document responses can be voluminous. She shared that every process she has been part of has involved a reviewing committee that can ask questions. She mentioned she is leaning toward a process to have a screening committee as she is uncertain whether the Council can accomplish review of all proposals during one meeting.

Vice Mayor Pope commented it might be confusing to submit proposals to Roseville when it is for Oakley. He mentioned he is fine with the Paralegal keeping them sealed until the City Attorney reviews. He mentioned if it less than a dozen, he is fine with prior review, but would like an all in one packet for review and then Council can make final decision. He requested the RFP include that panels will include members of Council, staff, the business community and residents, and have a number of panels. He commented he wants to make sure citizen involvement is called for at that level early on.

Mr. Cole commented that he structured this to get applications by June 3. He mentioned he can report back June 8 how many applications were received and can recommend screening or no screening at that time depending on how many applications were received. He shared he has typically seen four or so proposals for these recruitments. He mentioned he can add that stakeholder panels will include Council, staff, business community, residents and community organizations.

Mayor Higgins inquired if a vote needs to be taken to decide which address to send the proposals.

Mr. Cole responded that if direction is clear from the majority of the Council, he can take that direction; however, if there are diverging views, then a vote should be taken.

Mayor Higgins asked the Council who would like proposals submitted to Roseville.

Councilmember Fuller wanted proposals submitted to Roseville.

Mr. Cole indicated that hearing four members of Council want proposals to come to City Hall, he will work with Paralegal Libby Vreonis; she will accept them and provide them to him, and only they will have access to them.

Mayor Higgins called for public comments; being none, she moved on.

Mayor Higgins inquired if the resolution needs modification.

Mr. Cole responded that he is hearing all members of the Council prefer he makes a change to the RFP to include panels.

Mayor Higgins commented this is for a company to help the City Council pick a new City Manager.

Vice Mayor Pope commented the Council is recommending to include panels in the scope of work to be performed.

Mr. Cole commented that if panels will be part of the process, it will require more work and more hours; therefore, it is probably best to specify it now so it can be included in the cost proposal.

Councilmember Fuller commented that he likes the idea of seeing how many proposals are submitted and having that number specified at the June 8 meeting.

Mr. Cole commented it sounds like the Council is okay with specifying a panel in the RFP.

Mayor Higgins commented when the last hiring process for Chief of Police occurred, there were members of the school district, other agencies within the City, and business owners as part of the panels.

Mr. Cole commented that the Council can specify who should be on stakeholder panels so it can be included when costs are presented; the more specific it can be, a specific cost proposal can be submitted.

Councilmember Fuller proposed that the Council wait for an RFP panel that would fit in best. He mentioned there are large church communities, Little League teams, service clubs, etc., and it would be good to hear what they think is best for panels.

Mr. Cole responded the RFP can speak broadly about panels from people outside the organization.

It was moved by Councilmember Williams and seconded by Councilmember Fuller to approve item 5.2 as discussed. Motion was unanimous and so ordered. (5-0)

Mr. Cole confirmed he will bring back proposals on June 8 and the Council can decide whether or not to have them screened.

6) REPORTS

6.1 CITY MANAGER
(a) City Manager

Interim City Manager Joshua McMurray had no reports.

6.2 OAKLEY CITY COUNCIL/OAKLEY CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY

(a) Reports from Council Liaisons to Regional Committees, Commissions and Boards AND Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency

Vice Mayor Pope announced the next Habitat Conservancy meeting will be held May 24 at 11am. He mentioned the meeting may be accessed by a link for the Habitat Conservancy through the County's website and he invited everyone to attend.

Councilmember Fuller commented he appreciated the proclamation being presented for Police Week. He shared a personal experience and commented he appreciates what officers do here.

Councilmember Meadows reported the Transplan, ECCRFA and HWY 4 Bypass meetings were cancelled this month; the next meetings will be held in June.

Councilmember Williams reported she attended the OUESD Board meeting where the RFP for Superintendent was discussed and will be presented at its May 25 meeting. She shared she recently used Tri-Delta's mobility on demand for her mom and she believes it is an outstanding program; Tri-Delta was very responsive and it was a great introduction to paratransit.

Mayor Higgins reported she attended the Contra Costa Mayors Conference where the Contra Costa County Library presented. She announced she will attend the California Coalition of Mayors meeting this Friday where the topic of discussion will be SB 9 and 10.

(b) Requests for Future Agendas

None.

7) WORK SESSIONS

7.1 Work Session Discussion regarding the Street and Bicycle Lane Design (Kevin Rohani, P.E., Public Works Director/City Engineer)

Director of Public Works/City Engineer Kevin Rohani provided a presentation. He discussed Class 1, 2, 3 and 4 bikes lanes and shared photo and rendering examples of each.

Mayor Higgins inquired if the center median needs to be 14 feet because of irrigation and utilities or if it can be smaller.

Mr. Rohani responded it can vary in size, but 14 feet is needed here for a left turn for the Brown Road intersection so not in line of oncoming traffic. He mentioned part of it is landscaping and beautification, but functionality is it is needed for turn lanes.

Vice Mayor Pope commented there is expense associated with all of this and he would like to see when the City is building new roads or reconstructing roads, it examines where bike lanes can be moved in and he would like to see that as standard as soon as possible so the City does not have to worry about the expense to change them. He mentioned Laurel is a resurfacing project, not reconstruction so it would be expensive to change, but something more than paint is needed so the bicycle lane is not being used as a passing lane by vehicles. He suggested bumpers, delineators, or something more as a form of protection to buffer cyclists more where there cannot be a separate bike road. He mentioned more protection is needed for bicyclists on arterial roads. He also mentioned on roads the City has inherited, there still needs to be a safety measure, a buffer zone. He mentioned when there is new curb, gutter, and sidewalk, there

should also be a bike lane on the other side of the curb. He shared that he spoke with a developer and it is actually a cost savings to do it that way.

Mr. Rohani commented it is true there would be a cost savings as it would make the curb more narrow which requires less asphalt. He mentioned there are various features that can be installed to physically separate bicyclists from vehicles and safety of all parties must be considered. He shared that on Laurel Road, if a vehicle does not abide by the speed limit and there are heavy duty barriers, a car hitting them can overturn; therefore, barriers sometimes come with issues. He mentioned 520 delineators would be required for Laurel Road at a cost of $20k; it would look like a tunnel and replacements would be needed. He mentioned implementing class 4 bike lanes would be a balance that is practical and staff can work with Police on safety issues.

Vice Mayor Pope commented that delineators are not an end solution. He mentioned Laurel Elementary had some and now many are missing or discolored.

Mr. Rohani commented that they have been taken out. He mentioned plastic armadillos get a driver's attention, but a vehicle can become airborne on a high speed street if hit so it becomes a safety issue for everyone.

Vice Mayor Pope commented something is needed. He added that the City can hire more cops for traffic enforcement, but there cannot be a cop on every corner.

Mr. Rohani commented that staff will come up with solution.

Councilmember Fuller shared the bicycle lane layout in San Francisco requires education of drivers and bicyclists how to share the road. He mentioned he doesn't want to provide a false sense of security and it bothers him that bike lanes stop without warning. He mentioned with infrastructure money coming in, perhaps it can be looked at.

Councilmember Meadows commented he is okay with painting a 2-foot separation. He mentioned delineators are in his opinion a waste of money as they might be in place for 2 weeks, then gone. He requested if staff looks at separation of bike and traffic lanes, to look at the ongoing costs of maintenance.

Mr. Rohani mentioned San Francisco and Oakley are different realities; San Francisco has lots of bike riders whereas Oakley doesn't have the same. He mentioned 3 years ago Oakley received a federal grant to resurface W. Cypress from Main to Empire. He mentioned class 2 bike lanes were installed and staff received a number of calls for striping a bike lane in a parking lane. He shared there is an educational process and as time goes by and more people want to ride, staff wants to ensure the infrastructure is provided. He mentioned in other cities, green bike lanes are used as notification a bike lane exists. He shared that Oakley will have its first green bike lane near the Laurel and Empire intersection at Mercedes Lane. He mentioned this measure has been proven to add safety.

Mayor Higgins called for public comments.

A caller commented it is a great idea to pay attention to bike lanes and agrees that bike lanes sometimes suddenly stop without warning. She mentioned she has bicycled in San Francisco and in Oakley and they are two different cities. She expressed that she does not believe Oakley needs to go as far to include what San Francisco has as it would be waste of tax payer money,

but the City should address bike lanes for families and safety, to protect both riders and cars. She mentioned it would be great if the City can share what it plans and get community input as she believes a lot of families would like to have say in it.

7.2 Cosetti Property on Machado Lane Preliminary General Plan Amendment (PA 02-21) – Work Session on a Potential Land Use Change from Single Family Residential, Medium Density (SM) to Single Family Residential, High Density (SH) (Ken Strelo, Principal Planner)

Interim City Manager Joshua McMurray provided a presentation on the proposed amendment and potential land use change. He mentioned a General Plan Amendment can take a lot of time and cost a lot of money so a preliminary discussion and direction from the Council can assist the applicant to know whether or not to file a formal application.

Applicant Kevin Freyer with MLC Holdings participated via teleconference.

Mr. Freyer shared that MLC is a subsidiary of Meritage Homes and is proposing an increase in density because the site requires significant infrastructure work. He mentioned the full width of Machado Lane would be constructed including pedestrian landscape, curb and gutter. He added that they are proposing to build the entirety of the road now rather than wait for future development and to clean up the Cypress frontage. He explained the increase in density would help facilitate that work and they believe the lot and home sizes are beneficial, therefore, they hope the Council will see it as a reasonable request. He shared they will include 30% of homes as single story homes and they are happy to continue their relationship with the City and hope they can advance the project tonight.

Mayor Higgins called for public comments.

Elsa Santiago commented she lives in the Emerson Ranch community and the proposed 106 homes will have an impact on commuters on East Cypress. She inquired what is proposed to help remedy traffic.

Mr. McMurray commented it would be helpful at this time to receive comments from the Council for direction to the applicant so the applicant may decide whether to move forward or not.

Vice Mayor Pope inquired if the property is not eligible to connect with the detention basin.

Mr. McMurray inquired if he means for it to connect to Emerson Ranch. He mentioned Delaney Park is a master community and this is not eligible to connect to Emerson Ranch.

Councilmember Meadows inquired if all storm water would be drained to this basin.

Mr. Freyer shared that CBG worked on the Emerson and Delaney developments and is also working on this project and they are pretty confident storm water would have to be detained onsite. He explained that the basin acts as a temporary detention until it goes to the storm drain system.

Mayor Higgins inquired if it would be like a lake.

Mr. Freyer responded it would have water for a period of time but there would not usually be standing water. He explained it would be fenced and maintained by the HOA to try and limit some of the costs to the City and it wouldn't be wet standing water as it drains out.

Mr. McMurray commented that this basin would be very similar to Duarte Ranch.

Councilmember Meadows inquired if Machado Lane improvements will be the full width and whole length of the project.

Mr. Freyer confirmed it would be the full width and whole length of the project.

Councilmember Meadows inquired if there will be reimbursement agreements when properties on the east side of Machado Lane are developed.

Mr. McMurray responded that they have not discussed that yet, but it is common.

Councilmember Meadows inquired if the streets will be maintained by the HOA.

Mr. McMurray responded that the streets are intended to be private and maintained by the HOA along with front yard landscaping.

Councilmember Meadows inquired what the maximum density per acre allowed.

Mr. McMurray responded it is 5.5.

Councilmember Meadows commented 5.3 is close to 5.5.

Councilmember Williams inquired if road improvements will be made in the first phase before houses.

Mr. McMurray responded that typically road improvements do happen first.

Councilmember Williams inquired if approving this item would set precedence for the Council being obligated to approve another General Plan Amendment that may be requested in the future.

Mr. McMurray responded not necessarily because sometimes there is give and take with the applicant and they are evaluated on a case-by-case basis.

Councilmember Fuller inquired if the streets in the complex will be private.

Mr. McMurray responded that streets will be HOA maintained, but the community will not be gated.

Councilmember Fuller commented that Cypress Road traffic mitigation is needed. He inquired if Cypress and other developments will be providing more lanes.

Mr. McMurray responded that as every project comes through, traffic impacts are evaluated and staff makes sure impacts are mitigated.

Councilmember Meadows inquired what the benefits are to the City if the General Plan Amendment is approved.

Mr. McMurray commented that development on the property has been sitting entitled for a while because it doesn't pencil as is. He mentioned the median home price in the County is very high and a smaller lot might be more attainable for first-time home buyers or simply for a more affordable home. He added that the applicant is offering to complete the road, provide frontage landscaping, and the HOA takes some of the burden off of the City.

Councilmember Meadows commented he likes private roads for maintenance purposes.

Mr. Freyer shared that Meritage Homes targets first-time buyers by offering smaller homes and lots at a reasonable price. He mentioned the struggle on this property is the cost of the infrastructure to develop it. He mentioned Machado Lane improvements are neighborhood serving with a portion subject to reimbursement agreements hopefully available down the road, but completing the frontage on Cypress and Machado Lane road improvements are what the City receives as a benefit.

Councilmember Meadows inquired if the improvements along Cypress will be from west of the development all the way to Machado Lane or if they are just along the frontage to this project.

Mr. McMurray responded the improvements are just in front of this project which is standard.

Councilmember Meadows commented he understands there will still be a gap.

Vice Mayor Pope commented he likes HOA private roads. He expressed concern with how the road works if the project to the west develops as he is uncertain how the logistics work. He expressed his preference would be for the neighborhood to be gated. He commented that adding density is undesirable. He explained that the City has done a good job of providing high density lately and he feels there needs to be a good balance; move-up homes are needed for larger families. He shared he is generally opposed to increasing density when moving east and south on Cypress. He mentioned it doesn't create precedence to approve this item, but it does create a pattern that the Council is open to higher density. He expressed he doesn't mind considering a sacrifice if it creates a benefit for the community, but he does not see that with this project. He commented there is increasing importance of a Laurel Road connection as more is built on Cypress. He added there is already a lot of traffic under the current zoning and he does not think the Council needs to increase the density until the Laurel Road connection is there. He suggested maybe some of the Federal funding could go toward it.

Councilmember Fuller commented he does not like gated communities as they cause more problems than they solve without a 24/7 security guard. He mentioned he has no opposition to density as he understands developers look for the maximum return for their capital investment on land, but the Council has sense of order when evaluating these things. He mentioned they need to mitigate traffic and take responsibility when it goes forward.

Mayor Higgins inquired if a traffic study has been conducted.

Mr. McMurray responded it is too early for it to be conducted.

Mayor Higgins suggested that the City could conduct it independently.

Mr. McMurray commented Cypress has long been planned to handle traffic for the housing load, the City requires traffic studies to confirm assumptions and require mitigation, and the City updates traffic studies regularly through Engineering.

Mayor Higgins inquired how many homes are being added than at the lower density.

Mr. McMurray responded it adds about 30 more homes at the maximum density.

Councilmember Williams commented she agrees with Vice Mayor Pope because it does not provide more options for larger families. She mentioned she moved to Oakley for a larger lot size. She mentioned she is not sure there is enough benefit and mitigation to this project to approve and it will add more kids which will impact schools.

Mr. Freyer commented that the costs of development are why the density makes it feasible and they can try to have more mitigation to provide more benefit for the community such as more improvements on Cypress to perhaps eliminate any gap. He mentioned with reimbursement agreements, they have to assume they will never happen so maybe a fee program or reducing density can be considered to get closer, but they probably will not be able to keep the original density. He mentioned they can work together to try to recover some of costs and look at additional benefits to City. He mentioned it is a little bit narrow to serve the entire community, but it is expensive to improve Machado and Cypress and they believe it can be a great addition to the City. He mentioned they are not proposing a gated community, but the HOA will maintain a public access easement. He shared they have done gated communities in other areas but here the vehicular connections are awkward.

Councilmember Meadows inquired if Machado Lane is planned to connect to Laurel.

Mr. McMurray responded he is not aware that is the plan.

Councilmember Fuller inquired if Machado Lane is east of Sellers.

Councilmember Meadows commented Machado Lane is west of Sellers and it looks like there will be a gap of 500-700 feet from Machado to Laurel.

Mr. McMurray thanked the Council for its direction and mentioned staff can continue discussion with the applicant.

7.3 Work Session on Implementing Senate Bill 1383 and update from Mt. Diablo Resource Recovery (Joshua McMurray, Interim City Manager)

Mr. McMurray introduced the work session. He indicated SB 1382 is a state mandate for organic waste recycling; therefore it is unfunded.

Sal Evola with Mt. Diablo Resource Recovery (MDRR) provided a presentation overview and mentioned he and Kish Rajan will provide information on COVID-19 impacts, their SB 1383 work plan, the recycling and commodities market, and major upgrades at MDRR.

Mr. Rajan provided a COVID-19 update, indicating with Oakley's customer base there has been an account delinquency increase in both residential and commercial service. He mentioned MDRR has been providing service even if accounts are delinquent and 2020 rates were not raised.

Mr. Evola indicated AB 1826 was their goal for mandatory organic collection service and SB 1383 takes it from a goal to a mandate for both commercial and residential service. He mentioned pursuant to the regulations, the City's solid waste ordinance must be updated. He shared that MDRR's community outreach will ramp up as regulations are in effect now, but the roll out proposed would be preferred by January 2022. He mentioned in Oakley they propose to roll out commercial requirements by January 1, 2022 and residential requirements by January 1, 2023. He indicated the biggest service change will be the weekly collection of green waste and then food waste later.

Mayor Higgins inquired if garbage disposals will still be allowed to capture some of the organic waste.

Mr. Evola responded they would from their viewpoint; however, the sewer district may have a different view on that. He mentioned when these mandates occur, higher use of garbage disposals will happen. He indicated MDRR wants to help educate residents to compost or place items in an appropriate cart.

Mr. Rajan shared that with recycling markets there has been a drop in the global commodities market for recycling and the market has not recovered since China became more restrictive in 2018-19 with what it will accept; in result, MDRR is examining how to finance its recycling operations. He shared that in 2019, the City instituted a recycling surcharge to help bridge the gap. He mentioned MDRR is looking to improve performance and productivity and how to process recyclables in the most cost effective way to minimize impact to rate payers, and do their best job to keep material out of the landfill. He shared that MDRR is undergoing a single-stream system retrofit which is a major equipment upgrade; they went through an extensive RFP process and picked a new system which should be ready in the next 60-90 days. He invited the Council to see it when it is complete. He explained the new equipment will allow material to go over a machine to be thread and be sorted robotically and will provide the community with a high performing facility.

Councilmember Fuller commented that the U.S. is producing a greater supply of recyclables than demand and he is impressed with the research and development to design and implement the system. He mentioned he appreciates the work Sarah Davis with MDRR is doing in the community and appreciates their investment.

Mr. Evola shared a rendering of the newly proposed MDRR Park, a plan MDRR is putting forth to the City of Pittsburg which will include renaming and rebranding of their facility in Pittsburg. He mentioned all cities have a tremendous amount of growth in the future and MDRR needs to plan for that growth. He pointed out a building that will be used to bring in organics in compliance with SB 1383. He mentioned the Bay Area Air District requires indoor processing to capture greenhouse gas emissions.

Mr. Rajan shared that rates have remained flat since 2019 and in 2021, MDRR will propose a 3.74% increase of regular annual RRI driven by recycling markets, SB 1383 and COVID-19. He mentioned they need to adjust rates as part of a comprehensive base rate review and a permanent solution must be identified in place of a surcharge. He shared that the last base year review was in 2017 and the next base year review will be submitted in June 2021 and would optimally be effective in January 2022. He mentioned Concord decided to keep a surcharge in place.

Mayor Higgins commented that this is just a work session so they cannot decide on a rate.

Mr. McMurray confirmed that is correct; MDRR is only looking for direction this evening how to proceed and is asking for the surcharge to be extended which is set to expire end of this month. He mentioned Mr.Kish pointed to the last RRI which would have been over 8% over last 2 years. He mentioned if the surcharge remains the same, rates stay the same, and they have been keeping rates low for residents because the pandemic has created hardship. He mentioned if the Council decides not to keep the same rates, rate payers could see a small reduction, but keeping a steady surcharge through the end of year seems to be the best recommendation. He shared that staff would bring the item forth to the Council and provide proper notice.

Mr. Evola mentioned with the feedback and direction of the City Council, they request for the matter to come back on the May 25 agenda for consideration to keep the surcharge in place until review of the next base rate which they can bring back in the fall.

Councilmember Fuller inquired if MDRR will compute an extra-long surcharge in with the rate increase assessment if the rate remains flat now.

Mr. Evola confirmed it would be calculated in. He mentioned as the surcharge expires, it becomes a short term dip for a higher climb.

Councilmember Fuller commented he prefers a flat rate through the end of the year and to come back with the RRI at the end of the year.

Vice Mayor Pope recalled a similar problem years ago where there were skipped increases then it hit heavier later and the Council advised not to do that again. He mentioned the City has a mandate by the state and skipping an annual RRI is bad practice and he wishes the City would stop doing it and if it had, they wouldn't be having this discussion today. He indicated it is best to maintain the status quo because of the situation they have been placed in. He mentioned it is cheaper to maintain the status quo and they can discuss the base rate review in the future. He made clear this is not the City doing this; it is a state mandate and it now places MDRR and Code Enforcement in a position to have to monitor it, and elected officials at the local level are made to carry out the mandate. He requested when looking at the base rate to look at ways to reduce costs such as frequency of pick-up of dry recycling every two weeks. He inquired what MDRR's highest cost factor is.

Mr. Evola indicated it is hard to answer as there are a number of factors. He explained when they do a base rate review, they must identify all costs. He ensured him they want to keep costs down and when they get into base rate conversations, they will be fully transparent with information and will work to minimize costs.

Vice Mayor Pope commented he appreciates MDRR's compassion on past due accounts, but it is time to get them current before looking at the base rate review.

Councilmember Meadows commented he agrees with Vice Mayor Pope regarding past due accounts and does not believe those amounts should be passed on to other rate payers. He mentioned he also prefers to keep the rate flat through the end of the year.

Councilmember Williams commented she prefers to keep the rate flat and doesn't want to see a high increase. She shared she agrees with SB1383 for environmental reasons.

Mayor Higgins commented that it appears to be the consensus to keep the rates flat.

Mr. Rajan commented he appreciates the Council's guidance and will follow up with staff.

Mayor Higgins announced a 5 minute recess at 9:22 p.m.

7.4 Fiscal Year 2021/2022 Budget Workshop (Joshua McMurray, Interim City Manager, Tim Przybyla, Finance Director & Kevin Rohani, P.E., Public Works Director/City Engineer)
(a) General Fund Overview
(b) CIP Overview

The Council reconvened at 9:27p.m.

Mr. McMurray commented staff is still working on the budget and does not expect any changes unless the Council instructs staff to make changes. He mentioned staff applied the Strategic Plan discussion direction to the budget. He shared there has been a dramatic increase of development which has provided a very large surplus of revenue that staff had not anticipated and staff plans to apply some reserves to capital projects. He mentioned there has been an increase in impact fees due to the Logistics Center and other projects, staff anticipates $7mil per year in expenditures to maintain current conditions for roads, they are proposing some staff positions, and staff will be proposing a consultant to handle ARPA Federal funding.

Finance Director Tim Przybyla indicated there are 86 funds, but the General Fund is what he will talk most about. He mentioned capital improvement projects (CIP) are another large component of the budget. He shared staff is still working on the budget, but is very close and ahead of schedule this year. He indicated the total budget projected for the next fiscal year is $69 million; in comparison, it was in the $40 million range this year. He mentioned most of the increase is from CIP projects. He provided an overview of the budget. He mentioned during a previous Council meeting, it was mentioned that some of the reserves should be used on streets which staff has incorporated.

Councilmember Fuller commented that $69 million is the total money, but $64 million is operational; the rest is restricted. He mentioned Police is 41% of budget but with P-6, it sounds more like 20% of the General Fund.

Public Works Director/City Engineer Kevin Rohani mentioned there will be a public hearing at the June 8 Council meeting to provide an opportunity for more discussion on LLDs. He shared that the City has a robust and active CIP program and staff is spreading funding to all aspects of the community. He mentioned the Laurel Road to Empire to O'Hara project is in final design and construction is expected to begin in the summer, the Police parking lot expansion project is underway and major improvements are expected to allow Police to have all equipment in one spot, the Holly Creek restroom project will be under construction in the fall with park impact fees and developer contribution, improvements to the intersection of O'Hara and Carpenter will provide a major east/west corridor out of town, the roof of the Civic Center campus will be replaced; the Cypress Grove subdivision pump station and generator building will be fully enclosed to protect equipment, and staff will apply again for a grant for a generator for the Recreation Center.

Councilmember Fuller commented there are some CIPs he disagrees with and suggested reallocating resources. He mentioned Laurel is becoming one of top priorities because of traffic and a bridge is needed to connect to Cypress. He suggested moving projects until that is prioritized.

Councilmember Williams inquired how many more projects are proposed compared to a normal project year.

Mr. Rohani responded it will be the largest the City has ever had, some possible by added revenues and some of it services that are needed. He explained the City must grow services as the City grows, the projects are diverse, and the Council decides on prioritization of projects. He added that staff recommends priorities based on the needs of the community.

Mr. Przybyla shared that CIPs were $4.9 million of the budget this year and $20.3 million is proposed for the next fiscal year, not including APRA funding.

Councilmember Williams inquired if all of the projects will be completed by the end of 2022.

Mr. Rohani responded it will probably take two years to complete larger projects for quality product, but smaller projects should be completed within the fiscal year.

8) CLOSED SESSION

8.1 CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
Pursuant to Government Code Section 54956.9(b)
One potential case.

Mayor Higgins announced the closed session item. She mentioned the meeting will be adjourned after closed session in memory of recently fallen officers.

8.2 Report Out of Closed Session (Derek Cole, City Attorney)

The Council gave direction to the City Attorney. There was no other reportable action.

9) ADJOURN

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectively Submitted,

Libby Vreonis
City Clerk

OAKLEY
CALIFORNIA

MEMORANDUM

Office of the City Attorney

Date:	May 14, 2021
To:	Mayor and Members of City Council
Cc:	Joshua McMurray, Interim City Manager
From:	Derek P. Cole, City Attorney
Subject:	Closed Session Report Out Memo

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF MAY 25, 2021

Background and Analysis

The City Council considered the following closed session item during its meeting held May 11, 2021:

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
Pursuant to Government Code Section 54956.9(b)
One potential case.

The City Council gave direction to the City Attorney. There was no other reportable action.

Fiscal Impact

None.

Recommendation

Receive and file this report.

Attachments

None.

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 25, 2021

TO: Josh McMurray, Interim City Manager *Approved and Forwarded to the City Council*

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Acceptance of work associated with the Laurel Road Widening Project (Mellowood Drive to Main Street) – Capital Improvement Project Number 208

Background and Analysis

Laurel Road is a major arterial roadway in Oakley and a key component of the City's transportation network with a direct connection to Highway 4. The project widened Laurel Road to four lanes, in accordance with the City's Long Range Roadway Plan and General Plan Circulation Element.

The section of Laurel Road between Mellowood Drive and Main Street was a narrow two lane road that did not accommodate the traffic demands of the community. The construction of this roadway widening project was successfully completed on time and under budget.

The scope of the Laurel Road Widening project was to widen the roadway to a four lane divided arterial roadway with landscaped medians and bike lanes from Mellowood Drive to Main Street. Along with the road widening, the project included major base repairs, curb, gutter, and sidewalk, as well as the installation of irrigation and landscaping in the median and planter areas. The underground utility construction included the installation of water laterals and storm drainage improvements. L.E.D. street lights were installed in the median, which has vastly improved the visibility along this stretch of Laurel Road. In addition, traffic signal modifications and two left turn lanes were incorporated at the intersection of Main Street and Laurel Road to accommodate the traffic demands with the increasing new development along the E. Cypress Road corridor. Lastly, new paving, striping, and signage were installed as well. This project was a much needed improvement to this corridor and will benefit the community by providing a safer roadway with improvements to the traffic flow along Laurel Road.

Fiscal Impact

The authorized budget for the construction of this project was $2,995,469. This project was completed on time and under the authorized budget for a total of $2,966,569.

Pursuant to the contract documents, 5% of the accrued costs were withheld from the amount paid to the contractor. These funds are called “retention”, and are held until the end of the project to ensure that the contractor completes the project in a timely manner. Approval of this item will authorize the release of the retention payment to the contractor. The retention was already budgeted as part of the contract and change order approvals, so there is no additional fiscal impact associated with this action.

Staff Recommendation

Staff recommends that the City Council Adopt the Resolution accepting CIP Project No. 208 – Laurel Road Widening Project (Mellowood Drive to Main Street) as constructed by Knife River Construction, to be complete, and to direct the City Clerk to file a Notice of Completion for the project with the County Recorder

Attachments

1. Resolution
2. Notice of Completion

RESOLUTION NO. __-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY ACCEPTING THE WORK AS COMPLETE WITH KNIFE RIVER CONSTRUCTION, FOR CIP 208 - LAUREL ROAD WIDENING PROJECT (MELLOWOOD DRIVE TO MAIN STREET)

WHEREAS, Staff and the Design Team prepared the plans, specifications, and estimates for the Laurel Road Widening (Mellowood Drive to Main Street) Project; and

WHEREAS, on June 9, 2020 by adopting Resolution No. 68-20, the City Council awarded a construction contract to Knife River Construction, for the construction of the Laurel Road Widening Project (Mellowood Drive to Main Street) - CIP No. 208; and

WHEREAS, Knife River Construction, has satisfied the contractual requirements necessary for the acceptance of the Laurel Road Widening Project (Mellowood Drive to Main Street) - CIP No. 208 to be deemed complete.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oakley that the Laurel Road Widening Project (Mellowood Drive to Main Street) - CIP No. 208 is hereby accepted as complete.

BE IT FURTHER RESOLVED AND ORDERED, that the City Clerk is hereby directed to file a Notice of Completion for the Laurel Road Widening Project (Mellowood Drive to Main Street) - CIP No. 208 with the County Recorder.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th of May, 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

_____
Sue Higgins, Mayor

ATTEST:

_____ _____
Libby Vreonis, City Clerk Date

PURSUANT TO GOVERNMENT CODE §6103 NO FEE IS REQUIRED FOR THE RECORDATION OF THIS DOCUMENT

WHEN RECORDED MAIL TO:
City Clerk
City Of Oakley
3231 Main Street
Oakley, CA 94561

RECORDING REQUESTED BY:
City Of Oakley
3231 Main Street
Oakley, CA 94561

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

NOTICE OF COMPLETION
CIP 208 – Laurel Road Widening Project (Mellowood Drive to Main Street)

NOTICE IS HEREBY GIVEN THAT:

The CITY OF OAKLEY, a political subdivision of the State of California, did, on June 9th, 2020 enter into an agreement with Knife River Construction, for the construction of Capital Improvement Program Project Number 208 – Laurel Road Widening Project (Mellowood Drive to Main Street).

The Owner's nature of interest or estate in the property described below is in fee.

The work described in the contract documents was to furnish all material, labor, and equipment necessary to complete CIP No. 208 – Laurel Road Widening Project (Mellowood Drive to Main Street).

On May 25, 2021 said contract, as a whole was completed and the work was accepted by the City Council of the City of Oakley.

VERIFICATION

I have read the foregoing NOTICE OF COMPLETION and know the contents thereof; the same is true of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 25th day of May 2021 at Oakley, California.

Date: _____

By: _____
Libby Vreonis, City Clerk
City of Oakley, California

Agenda Date: _____

Agenda Item: _____

OAKLEY
CALIFORNIA

STAFF REPORT

Date: May 25, 2021

To: City Council

From: Joshua McMurray, Interim City Manager

Subject: **Approval of Agreement with American Rivers for services related to the Creekside Park Restoration Grant Project.**

Summary and Background

Proceeding from the experience of the Marsh Creek Restoration project alongside Creekside Park, American Rivers has assisted the City in obtaining a grant from the Sacramento-San Joaquin Delta Conservancy for additional restoration work south of Creekside Park and along Marsh Creek. The area to be studied is the area highlighted in red in the project site map below, and also its relationship with Marsh Creek and the private property highlighted in yellow. Attached is the grant agreement.

The COVID-19 Pandemic slowed down the actual processing of the grant agreement and the eventual work to be done, but the agreement was executed in December of last year and some work has commenced.

American Rivers https://www.americanrivers.org/ is a highly-qualified environmental consultant that was selected as and included as part of the grant application and will provide some key services, as explained in the attached agreement.

As a summary, American Rivers scope of work is to help the City of Oakley manage the Sacramento San Joaquin Delta Conservancy Oakley Creekside Park Restoration Project grant, including drafting quarterly, annual, and final reports and submitting them to the Delta Conservancy on behalf of the City. American Rivers will review quarterly invoices prepared by the City and submit them to the Delta Conservancy on behalf of the City. The project is located on the Marsh Creek Flood Control Channel between Honey Lane and the upstream end of Creekside Park.

Fiscal Impact

All costs associated with this agreement will be covered by Grant Prop1-1814 from the Sacramento-San Joaquin Delta Conservancy.

Recommendation

Adopt the resolution.

Attachments

1. Grant Agreement for Prop1-1814
2. American Rivers Agreement
3. Resolution

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SACRAMENTO - SAN JOAQUIN
DELTA CONSERVANCY
A California State Agency

ECOSYSTEM RESTORATION AND WATER QUALITY GRANT PROGRAM

GRANT AGREEMENT NUMBER
Prop 1-1814

1. This Grant Agreement is entered into between the State Agency and the Grantee named below:

STATE AGENCY'S NAME/GRANTOR
Sacramento-San Joaquin Delta Conservancy

GRANTEE'S NAME
City of Oakley

2. The performance term of this Grant Agreement is:

Effective Start Date: Upon Grant Agreement Execution

Funding End Date: December 15, 2023

3. The maximum amount of this Grant Agreement is: **$436,465.00**
(Four hundred thirty-six thousand, four hundred and sixty-five dollars and zero cents)

4. Pursuant to California Water Code 79738, Grantor is authorized to enter into a Grant Agreement (Agreement) and to make an award to the Grantee for the purposes set forth herein. The Grantor and Grantee (Parties) accept the grant on the terms and conditions of the Agreement and the following Sections and Exhibits which are by this reference made a part of the Agreement.

Section I – Scope of Work	Pages 2-16
Section II – Budget Detail and Payment Provisions	Pages 17-22
Section III – General Terms and Conditions	Pages 23-28
Exhibit A – Project Map	Page 29
Exhibit B – Adaptive Management and Performance Monitoring and Assessment	Page 30
Exhibit C – Long-Term Management and Maintenance	Page 30
Exhibit D – Grantor Responsible Agency Findings Board Resolution	Page 30
Exhibit E – Delta Plan Covered Actions Checklist	Page 31
Exhibit F – Grantee's Release	Page 32
Exhibit G – Postconsumer-Content Certification	Pages 33-35
Exhibit H – Grantee Certification Clauses	Pages 36-39

IN WITNESS WHEREOF, this Grant Agreement has been executed by the parties hereto.

GRANTEE

GRANTEE'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*
City of Oakley

BY *(Authorized Signature)* Bryan Montgomery
DATE SIGNED *(Do not type)* 12/11/2020

PRINTED NAME AND TITLE OF PERSON SIGNING
Bryan Montgomery, City Manager

ADDRESS
3231 Main Street Oakley, CA 94561

STATE OF CALIFORNIA/GRANTOR

AGENCY NAME
Sacramento-San Joaquin Delta Conservancy

BY *(Authorized Signature)* Campbell Ingram
DATE SIGNED *(Do not type)* 12/11/2020

PRINTED NAME AND TITLE OF PERSON SIGNING
Campbell Ingram, Executive Officer

ADDRESS
1450 Halyard Drive, Suite 6, West Sacramento, CA 95691

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SECTION I
SCOPE OF WORK
Oakley Creekside Park Restoration

1. **AUTHORITY**
The Ecosystem Restoration and Water Quality Grant Program was developed in response to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). Proposition 1 amended the California Water Code (CWC) to add, among other articles, section 79738, authorizing the Legislature to appropriate funds to the Sacramento-San Joaquin Delta Conservancy (Grantor) to fund multi-benefit ecosystem and watershed protection and restoration projects that benefit the Delta. Public Resources Code 32320 et. seq. establishes the Grantor and gives it the authority to enter into Grant Agreements. To further the goals of Proposition 1, the Grantor is entering into this planning project Grant Agreement (Agreement) with City of Oakley (Grantee) to provide funding for the completion of the activities set forth in this Agreement.

2. **GRANTEE'S AUTHORITY**
The Grantee is a California Public Agency validly existing, and in good standing under the laws of California. The Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder. Pursuant to State law, provisions applying to contractors apply equally to the Grantee for the purposes of this Agreement. By signing this Agreement, Grantee certifies that it is the Grantee's responsibility to comply with all federal, state and local laws that apply to the project. Unless otherwise specified in this Agreement, the Grantee will complete Oakley Creekside Park Restoration project as stated in and using the information specified by the Grantee's proposal approved in the Cycle 4 Proposition 1 Grant Program solicitation process.

3. **TERM OF AGREEMENT**
This Agreement shall run from its Effective Start Date through December 15, 2023.

4. **PROJECT STATEMENT**
   A. Overview:
   - **i.** The purpose of this project is to develop plans for a Proposition 1 eligible implementation project to restore 775 linear feet of Marsh Creek to provide habitat for native fish and wildlife.
   - **ii.** This project is necessary because the historic processes that formed Marsh Creek have been altered, leading to a loss of appropriate habitat for native and sensitive species.
   - **iii.** The Project Team is comprised of the Grantee, in partnership with Sarah Puckett Water Resources Consulting, and American Rivers, Inc.
   - **iv.** This project is a result of modeling performed by the Grantee to determine where the most useful restoration projects near Marsh Creek should be built. This project is covered by a programmatic California Environmental Quality Act (CEQA) document that was a result of a previous Proposition 1 grant. A subsequent phase will be project implementation.
   - **v.** The goal of this project is to expand the area of habitat along Marsh Creek to provide a more contiguous corridor for Chinook salmon, and other species as they make their way through these urban environments.

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B. Project Location: The upstream end of the project is located at 37°58'46.96"N, 121°41'13.08"W, at the intersection of Honey Lane and Marsh Creek. The downstream end of the project is located at 37°58'52.01"N, 121°41'19.61"W, at the intersection of Marsh Creek and the southeastern border of Creekside Park, Oakley. The property is in private ownership. See Project Map (Exhibit A).

5. **PROJECT IMPLEMENTATION**

Although the Grantee as authorized by the Agreement may utilize other entities to complete certain tasks identified within this Scope of Work, the Grantee is ultimately responsible for the completion of all activities set forth herein. The Grantee's use of the grant funds is limited to those expenditures necessary to implement the project and that are eligible under applicable State of California law. Furthermore, the Grantee's expenditure of grant funds must be in accordance with the Budget Detail and Payment Provisions in Section II.

The Grantee will complete the tasks listed below.

A. Task 1) Grant Management, Administration and Reporting

This task will be completed by the Grantee, American Rivers, Inc., and Sarah Puckett Water Resources Consulting. The costs of completing this task will be covered by Grantor funds.

Task 1a – Site Access/Land Tenure. See Section I, Item 5. Project Implementation (G).

Task 1b – Delta Plan Consistency. See Section I, Item 5. Project Implementation (I). If the project is a Covered Action, the Grantor will not disburse construction, improvement, or acquisition funds until the project is certified as consistent with the Delta Plan.

Task 1c – Quarterly Invoices. The Grantee shall refer to Budget Detail and Payment Provisions in Section II, to prepare and submit quarterly invoices to the Grantor.

Task 1d – Quarterly and Annual Progress Reports. The Grantee shall refer to Section I, Item 7. Reports (B) to prepare and submit Quarterly and Annual Progress Reports to the Grantor.

Task 1e and Task 1f – Draft Final Report and Final Report. The Grantee shall refer to Section I, Item 7. Reports (C) to prepare and submit Draft and Final Reports to the Grantor.

Task 1g – Submission of Project Data. The Grantee shall refer to Section I, Item 5. Project Implementation (E) below to prepare and submit all project data to the Grantor. The Grantee shall create a new project record in EcoAtlas and upload any relevant project data (e.g., Project Map) to EcoAtlas prior to submitting the First Quarterly Report.

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Task 2) Agency Coordination

The goal of this task is to coordinate local agencies to expedite implementation of a restoration project, which will involve working with landowners and future developers of the site to prepare draft documents to secure land tenure of the site. The Grantee will retain a real estate attorney to assist in working with landowners. The Grantee will provide the Contra Costa Mosquito and Vector Control District with safe, ready access for surveillance and control measures. The Grantee will work with the Delta Stewardship Council to solicit feedback on the project design and its consistency with Delta Plan policies.

Deliverables:

- **i.** Signed contract with real estate attorney
- **ii.** Draft conservation easement or deed restriction documents
- **iii.** Identification of an easement holder or agency to provide a deed restriction

This task will be completed by the Grantee, American Rivers. Inc., and Sarah Puckett Water Resources Consulting. The costs of completing this task will be covered by Grantor funds.

Task 3) Permitting, Surveys, and Reports

The Grantee will retain a consultant to develop and conduct the surveys, assessments, and models necessary to restore the property, including biological, geotechnical, and cultural surveys; site assessments' hydraulic models; and other due diligence approved by the Grantor. The Grantee or a consultant will prepare a Baseline Documentation Report to serve as a benchmark of the property's current condition. The Grantee will work with the Contra Costa County Flood Control and Water Conservation District (Flood Control District) to obtain any necessary project approvals at a Contra Costa County Board of Supervisors meeting. The Grantee will retain a consultant to assist in developing permit applications including a Clean Water Act (Section 404) permit from the U.S. Army Corps of Engineers (USACE), a Lake or Streambed Alternation Agreement (Section 1600) from the California Department of Fish and Wildlife (CDFW), a General Water Quality Certification for Small Habitat Restoration Projects (Section 401) permit from the Regional Water Quality Control Board, a Planning Survey Report (PSR) from the East Contra Costa County Habitat Conservancy (ECCCHC), and a floodway and hydrological analysis from the Flood Control District.

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Deliverables:

- **i.** Signed contract with consultant
- **ii.** Completed surveys, site assessments, models, and other products of approved due diligence
- **iii.** Completed Existing Conditions Report
- **iv.** Clean Water Act Section 404 permit application (USACE)
- **v.** Lake and Streambed Alteration Agreement (Section 1600) permit application (CDFW)
- **vi.** 401 Water Quality Certification permit application (Regional Water Quality Control Board)
- **vii.** PSR from the ECCCHC
- **viii.** Floodway and Hydrological Analysis from the Flood Control District

This task will be completed by the Grantee and American Rivers, Inc. The costs of completing this task will be covered by Grantor funds.

Task 4) Modeling and Design

The Grantee will work with local partners and retain a consultant to develop detailed 35 Percent Conceptual Design Plans and 65 Percent Design Plans. The 35 Percent and 65 Percent Plans will include sheets for demolition, layout, grading, and revegetation. The 65 Percent Plans will also include sheets for irrigation and project details. The consultant will conduct and document hydraulic modeling necessary to ensure the channel maintains or has increased required channel capacity, and to secure Contra Costa County Water Conservation and Flood Control District (Flood Control District) encroachment permits. The Hydrologic Engineering Center-River Analysis Software (HEC-RAS) modeling results will be documented in a Design Basis Memo for submittal to permit agencies and project partners.

Deliverables:

- **i.** Signed contract with consultant
- **ii.** 35 Percent Conceptual Design Plans
- **iii.** 65 Percent Design Plans
- **iv.** HEC-RAS model and Design Basis Memo

This task will be completed by the Grantee, American Rivers, Inc., and Restoration Design Group. The costs of completing this task will be covered by Grantor funds.

Task 5) Monitoring and Adaptive Management

The Grantee and project partners will work together to develop a draft Operations and Maintenance Plan, which will address ongoing site maintenance, management of invasive species, and other issues related to the property and site restoration. The Grantee will also develop a draft Adaptive Management and Monitoring Plan to ensure the project performs as intended and complies with the Delta Plan. The Grantee will monitor baseline water quality data along Marsh Creek, where Friends of Marsh Creek

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Watershed have historically collected data, conduct annual benthic macroinvertebrate bioassessment and habitat assessment, and collect annual data on presence of salmon in partnership with the East Bay Regional Park District and CDFW.

Deliverables:

- **i.** Draft Operations and Maintenance plan
- **ii.** Draft Adaptive Management and Monitoring plan
- **iii.** Quarterly submission of a summary of the monthly water quality sampling and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management
- **iv.** Annual submissions of salmon count data, photo documentation, and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management
- **v.** Annual submission of benthic macroinvertebrate bioassessment data, habitat assessment data, and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management

This task will be completed by the Grantee, American Rivers, Inc., and Sarah Puckett Water Resources Consulting. The costs of completing this task will be covered by Grantor funds.

Task 6) Public Engagement

The goal of this task is to engage local residents and agency partners to expedite implementation of a restoration project. The project team will reach out to the local community and government agencies to inform them about the project, obtain input on project design, and solicit volunteers for water quality monitoring, salmon monitoring, and vegetation maintenance.

Deliverables:

- **i.** Agenda and meeting notes from six meetings with local or agency partners
- **ii.** Agenda and meeting notes from two presentations about the project to the local community to solicit project volunteers

This task will be completed by the Grantee, American Rivers, Inc., and Sarah Puckett Water Resources Consulting. The costs of completing this task will be covered by Grantor funds.

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Task 7) Implementation Funding

The Grantee and project partners will work together to seek implementation funding for the project.

Deliverables:

i. Submission of implementation grant proposal

This task will be completed by the Grantee, American Rivers, Inc., and Sarah Puckett Water Resources Consulting. The costs of completing this task will be covered by Grantor funds.

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Schedule and List of Deliverables:

Task	Task Title	Deliverables and Key Project Milestones	Estimated Completion Dates	Conditions
1	Grant Management, Administration and Reporting	**i.** Site Access/Land Tenure **ii.** Delta Plan Consistency **iii.** Quarterly Invoices **iv.** Progress Reports **v.** Draft Final Report **vi.** Final Report **vii.** Submission of Project Data	**i.** N/A **ii.** N/A **iii.** Between the first and the fifth of the second month following the end of the quarter (see Section II) **iv.** Between the first and the fifth of the second month following the end of the quarter (see Section I, Item 7. Reports (A)) **v.** 30 days prior to Funding End Date **vi.** 60 days post Funding End Date **vii.** EcoAtlas record creation due at time of first invoice. Final submission of data due 60 days post Funding End Date	**Site Access/Land Tenure Agreement** Where relevant, site access or land tenure agreement required prior to disbursement of funds. **Covered Action** For a project that is a Covered Action, Certification of Consistency with Delta Plan is required prior to disbursement of construction, improvement, or acquisition funds **Permits** For implementation projects, receipt of all permits is required prior to payment of construction, improvement, or acquisition funds **Signage** For implementation projects, required signage must be in place prior to final distribution of grant funds. **Data** For projects that generate data, all project data must be submitted and EcoAtlas must be updated prior to final distribution of grant funds.

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Task	Task Title	Deliverables and Key Project Milestones	Estimated Completion Dates	Conditions
2	Agency Coordination	**i.** Signed contract with real estate attorney **ii.** Draft conservation easement or deed restriction documents **iii.** Identification of an easement holder or agency to provide a deed restriction	**i.** October 31, 2021 **ii.** December 31, 2021 **iii.** December 21, 2021	
3	Permitting, Surveys, and Reports	**i.** Signed contract with consultant **ii.** Completed surveys, site assessments, models, and other products of approved due diligence **iii.** Existing Conditions Report **iv.** Clean Water Act Section 404 permit application (USACE) **v.** Lake and Streambed Alteration Agreement (Section 1600) permit application (CDFW) **vi.** 401 Water Quality Certification permit application (Regional Water Quality Control Board) **vii.** PSR from the ECCCHC **viii.** Floodway and Hydrological Analysis from the Flood Control District	**i.** October 31, 2021 **ii.** December 31, 2022 **iii.** March 31, 2023 **iv.** June 30, 2023 **v.** June 30, 2023 **vi.** June 30, 2023 **vii.** June 30, 2023 **viii.** June 30, 2023	
4	Modeling and Design	**i.** Signed contract with consultant **ii.** 35 Percent Conceptual Design Plans **iii.** 65 Percent Design Plans **iv.** HEC-RAS model and Design Basis Memo	**i.** October 31, 2021 **ii.** January 31, 2022 **iii.** December 31, 2022 **iv.** March 31, 2023	

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5	Monitoring and Adaptive Management	**i.** Draft Operations and Maintenance Plan **ii.** Draft Adaptive Management and Monitoring Plan **iii.** Quarterly submission of a summary of the monthly water quality sampling and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management **iv.** Annual submissions of salmon count data, photo documentation, and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management **v.** Annual submission of benthic macroinvertebrate bioassessment data, habitat assessment data, and demonstration of compliance with data management requirements in Section I, Item 5. Project Implementation (E). Data Rights and Management	**i.** March 31, 2023 **ii.** March 31, 2023 **iii.** Quarterly: 2021, 2022, 2023 **iv.** March 31, 2021, March 31, 2022, March 31, 2023 **v.** June 30, 2021, June 30, 2022, June 30, 2023	

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6	Public Engagement	**i.** Agenda and meeting notes from six meetings with local or agency partners **ii.** Agenda and meeting notes from two presentations about the project to the local community to solicit project volunteers	**i.** June 30, 2023 **ii.** June 30, 2023	
7	Implementation Funding	**i.** Submission of implementation grant proposal	**i.** June 30, 2023	

B. Performance Measures: Performance measures are not required for this planning project.

C. Adaptive Management and Performance Monitoring and Assessment: Adaptive Management and Performance Monitoring and Assessment is not required for this planning project.

D. Data Rights and Management: The Grantor will retain rights to all final products produced as a result of this Agreement. The Grantee will have full rights to reproducing the product(s) as long as they are not used for commercial purposes. The Grantor has the right to: (1) obtain, reproduce, publish, or otherwise use the data first produced in performing this grant; and (2) authorize others to receive, reproduce, publish, or otherwise use such data by or on behalf of the Grantor.

All data must be made publicly available. The Grantee is responsible for ensuring that data are collected using peer-approved methods, undergo a quality control and accuracy assessment process and include documentation of the methods and quality assessments utilized, and are properly stored and protected until the project has been submitted as specified below.

The Grantee shall upload project information to Project Tracker (http://ptrack.ecoatlas.org/) in EcoAtlas (www.ecoatlas.org/) following the guidance provided in the EcoAtlas Project Tracker Guidance document. The first data upload shall include the creation of a project record and will be completed and reported on in the First Quarterly Report submitted to the Grant Manager. The Project Tracker record in EcoAtlas will be kept up to date during the Funding Term, and must be updated prior to final distribution of grant funds.

Wetland and riparian monitoring data shall be uploaded to statewide data systems, as applicable, in a manner that is compatible and consistent with the Wetland and Riparian Area Monitoring Plan (WRAMP) framework.

Water quality data generated by the project will be collected in a manner that is compatible and consistent with the California Environmental Data Exchange Network (CEDEN, www.ceden.org/) (CWC, § 79704). The Grantee shall upload relevant data to CEDEN and

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provide a receipt of successful data submission, generated by CEDEN, to the Grant Manager prior to submitting a final invoice.

Groundwater monitoring data generated by the project will be collected and reported in a manner that is compatible and consistent with the groundwater data systems administered by the State Water Resources Control Board (CWC, § 79704). The Grantee shall upload relevant data to GeoTracker GAMA (www.waterboards.ca.gov/gama/) and provide proof of successful data submission to the Grant Manager prior to submitting a final invoice.

E. **Long-Term Management and Maintenance:** The State General Obligation Bond Law limits the use of bond funds to the construction, acquisition, and long-term improvement of capital assets that have an expected useful life of at least 15 years (Gov. Code, § 16727(a)). For implementation projects, the Grantee is required to ensure that the project is maintained in conformance with the terms of this Grant Agreement for at least 15 years and preferably for 25 years beyond the end of the Funding Term, and as provided in the grant proposal and attached here in Exhibit C.

F. **Site Access/Land Tenure:** If, to complete this Agreement, the Grantee proposes to use a project site not owned by the Grantee, proof of permission to access the site must be provided to the Grantor prior to the start of work on the site.

G. **California Environmental Quality Act (CEQA):** This planning project does not trigger CEQA.

H. **Delta Plan Consistency:** If the project is a covered action pursuant to the Delta Plan, the Grantor will not disburse construction, improvement, or acquisition funds until the project is certified as consistent with the Delta Plan. The certification filed with the Council must allow 30 days from filing the certification with no valid appeals in order to be consistent with the Delta Plan.

I. **Other Regulatory Compliance:** The Grantee will ensure that all permits, licenses, and certifications necessary to implement the project have been secured prior to construction, improvement, or acquisition of a capital asset. As may be necessary, the Grantee shall be responsible for obtaining the services of appropriately licensed professionals to comply with the applicable requirements of the Business and Professions Code including but not limited to section 6700 et seq. (Professional Engineers Act) or section 7800 et seq. (Geologists and Geophysicists Act). The Grantee is solely responsible for ensuring that the project meets all legal requirements. The Grantor will not issue construction, improvement, or acquisition funds until all permits are in place.

J. **Equipment Purchases:** The Grantor may purchase equipment under this Agreement only if specified in the budget tables in Section II and equipment will only be considered for purchase approval if no other equipment owned by the applicant is available and suitable for the project. Equipment includes nonexpendable, tangible personal property having a useful life of more than one (1) year and an approximate unit price of $5,000 or more, as well as theft-sensitive items of equipment costing less than $5,000 (such as electronics). All equipment purchased or built by the Grantee is owned by the Grantee during the Funding Term. The Grantee is required to maintain accountability for all property purchased and to keep, and make available to the Grantor, adequate and appropriate records of all equipment purchased with grant funds.

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The Grantor may, at its option, repair any damage or replace any lost or stolen items and deduct the cost thereof from the Grantee's invoice to the Grantor, or require the Grantee to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Grantor with no expense to the Grantor. In the event of theft, a report must be filed immediately with the California Highway Patrol (SAM, § 8643).

i. Equipment Records

The Grantee shall maintain an inventory record for each piece of equipment purchased with funds provided under the terms of this Agreement. At a minimum, the inventory record of each piece of equipment shall include:

a. The date acquired.
b. The cost of the equipment, including the cost of any necessary accessories and all incidental costs incurred to put the asset into place and ready for its intended use.
c. A serial number.
d. The model identification number (on purchased equipment).
e. Any other information or description of the equipment.
f. Identification of the grant program and Grant Agreement number under which the equipment is acquired.
g. The location use and condition of the equipment.
h. Any ultimate disposition information including date of disposal and sale price of the equipment.

ii. Disposition of Equipment

If the fair market value of equipment purchased with grant funds is $5,000 or more per item at the Funding End Date of this Grant Agreement or if the equipment is theft-sensitive, the use and management of the equipment after the funding term is subject to approval by the Grantor. Title may be retained by the Grantee or Grantor upon end of the Funding Term; final disposition will be determined and approved by the Grantor. The Grantee agrees to promptly initiate arrangements to account for and return said equipment if required by Grantor.

a. A request for disposition of equipment shall be submitted in writing to the Grantor for approval, not less than 90 calendar days prior to the Funding End Date. The request shall include:
- The current fair market value of each piece of equipment purchased with grant funds.
- A description of the proposed disposition.

b. Requests shall be approved or denied, or an alternate disposition offered, by the Grantor no later than 60 business days from the date the request for disposition is received.

Should this Agreement be cancelled for any reason, any equipment purchased with grant funds may be retained by the Grantee or Grantor, at the Grantor's sole discretion. The Grantee agrees to promptly initiate arrangements to account for and return said equipment if required by Grantor.

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K. Equipment Rental: The Grantor funds may be used to rent equipment. All rental equipment expenses shall be identified in the budget tables in Section II. Equipment may be rented for this project's use only, and equipment rental agreement(s) shall be provided to the Grantor upon any reimbursement requests submitted. The Grantor is not responsible for loss or damage to rented equipment.

L. Recognition and Signage: The Grantee shall inform the public that the project received funds through the Sacramento-San Joaquin Delta Conservancy and from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (CWC, § 79707(g)). The Grantee shall include appropriate acknowledgement of credit when using any data and/or information developed under this Agreement (e.g., on signs, websites, press or promotional materials, advertisements, publications, exhibits, posters, reports, or presentations prepared or approved by the Grantee). The Grantee shall notify the Grantor at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by Grantor representatives.

For implementation projects, the Grantee shall post signs at the project site informing the public that the project received funds through the Sacramento-San Joaquin Delta Conservancy from the Water Quality, Supply, and Infrastructure Improvement Act of 2014. The size, location, number of signs, and draft design shall be approved by the Grantor. Required signage must be in place prior to final distribution of grant funds.

M. California Conservation Corps: Per California Water Code section 79734, "the services of the California Conservation Corps or a local conservation corps certified by the California Conservation Corps shall be used whenever feasible" in the implementation of this Agreement. If the Grantee has determined that the California Conservation Corps and/or the California Association of Local Conservation Corps (Corps) services can be used in the implementation of this Agreement, Grantee must work with the Corps to develop a Statement of Work and enter into a contract with the appropriate Corps.

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6. **KEY CONTACTS**

The Project Officials during the term of this Agreement are:

Sacramento-San Joaquin Delta Conservancy:	**City of Oakley:**
Name: Chelle Temple-King, Grant Manager **Address:** 1450 Halyard Drive, Suite 6 West Sacramento, CA 95691 **Phone:** (916) 376-4024 **Email:** Prop1grants@deltaconservancy.ca.gov	**Name:** Bryan Montgomery, City Manager **Address:** 3231 Main Street, Oakley, CA, 94561 **Phone:** (925) 625-7007 **Email:** montgomery@ci.oakley.ca.us

Direct all administrative inquiries to:

Sacramento-San Joaquin Delta Conservancy:	**City of Oakley**
Name: Martha Ozonoff, Grant Analyst **Address:** 1450 Halyard Drive, Suite 6 West Sacramento, CA 95691 **Phone:** (916) 375-2071 **Email:** contact@deltaconservancy.ca.gov	**Name:** Bryan Montgomery, City Manager **Address:** 3231 Main Street, Oakley, CA 94561 **Phone:** (925) 625-7007 **Email:** montgomery@ci.oakley.ca.us

Either party may change the point of contact at any time by providing a ten (10) days' advance written notice to the other party.

7. **REPORTS**

A. Report Schedule: The following reports must be submitted to the Grant Manager in accordance with the Scope of Work and all other terms and conditions of this Agreement.

Report Description	**Period Covered**	**Date Due**
First Quarter Progress Report	January 1 - March 31	Between May 1-5
Second Quarter Progress Report	April 1 - June 30	Between August 1-5
Third Quarter Progress Report	July 1 - September 30	Between November 1-5
Fourth Quarter Progress Report	October 1 - December 31	Between February 1-5
Annual Report	January 1 - December 31	Between February 1-5
Draft Final Report	Effective Start Date - Funding End Date	30 days prior to Funding End Date
Final Report and Final Progress Report	Effective Start Date - Funding End Date	60 days post Funding End Date

B. Progress Reports: The Grantee ensures that the Agreement requirements are met by submitting Quarterly and Annual Progress Reports to the Grant Manager. Reporting shall be required even if no grant-related activities occurred during the reporting period. The Grantee shall document all activities and expenditures in Progress Reports, including work performed by subcontractors. Reports must use the template provided by the Grantor. The most current Progress Report template can be found on the Grantor's website: http://deltaconservancy.ca.gov/proposition-1-resources/. Reports must be submitted electronically to the Grant Manager and to the following emails: Prop1grants@deltaconservancy.ca.gov and contact@deltaconservancy.ca.gov. Grantor will not accept reports submitted through the mail.

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i. Quarterly Progress Report

The Quarterly Progress Report shall directly address tasks, timelines, deliverables, and associated costs as scheduled in Scope of Work in Section I and Budget Detail and Payment Provisions in Section II; deliverables should be included as attachments to the report. The Grantee must document steps taken in soliciting and awarding subcontracts and submit them to the Grantor for review, and document all subcontractor activities in the Quarterly Progress Report. The description of activities shall be in sufficient detail to provide a basis for payment of invoices. The Grantor reserves the right to require reports more frequently than on a quarterly basis if necessary, but no more than once a month.

ii. Annual Progress Report

At the end of each calendar year of the Funding Term of this Agreement, the Grantee shall submit a supplement to the Fourth Quarter Progress Report in the template provided by the Grantor. The Annual Progress Report will include information on progress made during that calendar year and plans for the next calendar year.

C. Draft and Final Report: The Grantee must submit a Draft Final Report to the Grant Manager for review and approval no less than 30 days prior to the Funding End Date. The Draft Final Report shall use the Grantor's report template and will summarize the life of the Grant Agreement and describe the results of the work and of the project. Following any comments from the Grant Manager, the Grantee shall submit the revised Final Report for review and approval within 60 days after the Funding End Date. A final Progress Report will also be due at the time of the Final Report. The most current Final Report template can be found on the Grantor's website: http://deltaconservancy.ca.gov/proposition-1-resources/.

D. Ongoing Reporting Requirements: For implementation projects, the Grantee will be required to submit annual reports, using the template provided by the Grantor, until the Grant End Date. Annual reports must provide updates regarding site ownership and condition; ongoing management, maintenance, and monitoring activities; monitoring data; progress toward achieving outcomes and objectives; communication of challenges, findings, conclusions, and/or lessons learned.

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SECTION II
BUDGET DETAIL AND PAYMENT PROVISIONS

1. **BUDGET DETAIL**

A. Budget: The Grantee agrees to perform and complete the work described in Section I, Scope of Work (SOW) within the budget specified below for a total budget not to exceed **$436,465.00.**

The Grantee's indirect rate is 53 percent.

Indirect Costs must be charged as a percentage of direct expenses and claimed at the same time as the applicable direct expenses. Indirect Costs must benefit the project, are subject to audit, and must be documented by the Grantee. If Indirect Costs are included in the Line Item Budget by Budget Category table, the Grantor will reimburse the Grantee for allowable indirect expenses up to the amount equal to the Grantee's actual indirect rate as stated above, or 20 percent of the Personnel Services and Operating Expenses (General) cost categories, whichever is lesser. If Grantee's indirect rate changes, the Grantee shall notify Grantor of the change. Changes to the Grantee's approved Cost Allocation Plan must be submitted to the Grantor and are subject to Grantor approval.

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Line Item Budget by Budget Category	
A. Personnel Services and Travel	**Total**
Subtotal A. Personnel Services	**$ 12,229**
B. Operating Expenses (General)	
Supplies	$ -
Permits & Fees	$-
Subtotal B. Operating Expenses (General)	**$-**
C. Operating Expenses (Subcontractor)	
American Rivers, Inc.	$ 82,314
Restoration Design Group	$ 206,500
Sarah Puckett Water Resources Consulting	$ 80,400
Nicolini Water Quality Consultants	$ 6,100
Applied Marine Sciences	$ 28,976
Real Estate Attorney	$ 17,500
Subtotal C. Operating Expenses (Subcontractor)	**$421,790**
D. Operating Expenses (Equipment)	
See General Grant Provisions for definitions of electronic and purchased equipment definitions.	
Equipment 1	$ -
Equipment 2	$ -
Subtotal D. Operating Expenses (Equipment)	**$ -**
E. Acquisition Costs	
Acquisition	$ -
Subtotal E. Acquisitions	**$ -**
F. TOTAL DIRECT COSTS	
F. TOTAL DIRECT COSTS (Sum of A-E)	**$ -**
G. INDIRECT COSTS	
Indirect Cost A. Personnel Services	$ 2,446
Indirect Cost B. Operating Expenses (General)	$ -
G. TOTAL INDIRECT COSTS	**$ 2,446**
GRAND TOTAL (Sum of F and G):	**$ 436,465**

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Cost Share and State Leveraged Funds by Source			
Source of Funds - Non-State	**Cash**	**In-Kind**	**Total**
Grantee	$5,714 -	$ -	$5,714 -
Subtotal Cost Share	**$5,714 -**	**$ -**	**$5,714 -**
Source of Funds - Non-State	**Cash**	**In-Kind**	**Total**
Source 1	$ -	$ -	$ -
Source 2	$ -	$ -	$ -
Subtotal State Leveraged Funds	$ -	$ -	$ -
Total Cost Share & State Leveraged Funds	**$5,714 -**	**$ -**	**$5,714 -**

The Grantee may not transfer grant funds between or among budget line items without written approval from the Grantor as specified in Budget Modifications (see Section II, Item 1. Budget Detail (B)).

B. Budget Modifications: Budget revisions that modify line items but remain within the grant amount and do not alter the SOW are permitted in certain circumstances. Any budget modifications must meet requirements of the Grant Guidelines for the grant solicitation cycle in which funds were awarded. Subject to the prior review and approval of the Grant Manager, line item shifts of up to $25,000 or 10 percent of the Agreement total, whichever is less, are permitted. The process to make such a change is as follows.

i. The Grantee submits a written request for budget modification to the Grant Manager, explains the need for change(s), and specifically identifies item(s) to be reduced or increased.

ii. The Grant Manager approves or denies such changes in writing prior to implementation. The Grantor shall have 30 calendar days from receipt of the request to approve or deny the request for the exchange of funds between line items.

Any budget change not meeting the above conditions, including the addition of new line items, shall be by formal Agreement Amendment pursuant to Section III, Item 2. Amendment. Notwithstanding the above provision, the Grantor may, within its discretion, proceed with a formal Amendment to this Agreement for any budget revisions.

2. INVOICING AND PAYMENT

For tasks satisfactorily rendered, in accordance with the terms and conditions of this Agreement, and upon receipt and approval of itemized invoice(s), the Grantor agrees to reimburse Grantee for actual expenditures, no more frequently than quarterly in arrears, in accordance with the rates specified in the Budget Detail above. The Grantor will only reimburse for expenses incurred from Agreement execution through the Funding End Date of the Agreement. The Grantee will use the invoice template provided by the Grantor. The invoice template is provided on the Grantor's website: http://deltaconservancy.ca.gov/proposition-1-resources/.

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A. Invoice Submission Process:

i. All invoices except final invoices must be submitted for payment between the first and the fifth of the second month following the end of the calendar quarter in which the costs were incurred, as specified in the schedule below. For submission of final invoices, see Item C below (Timely Submission of Final Invoice).

Invoice	Period Covered	Date Due
First Quarter Invoice	January 1 - March 31	Between May 1 - 5
Second Quarter Invoice	April 1 - June 30	Between August 1 - 5
Third Quarter Invoice	July 1 - September 30	Between November 1 - 5
Fourth Quarter Invoice	October 1 - December 31	Between February 1 - 5

ii. In addition to the information provided in the invoice template, invoices must also include the following information.
- **a.** Grantee's logo imbedded in the invoice template.
- **b.** Original receipts and supporting documentation of actual out-of-pocket expenses.
- **c.** Subcontractor invoices for any subcontractor expenses being billed to the grant and documentation that provides proof of payment to subcontractor(s).

iii. Before equipment purchases made by the Grantee are reimbursed by the Grantor, the Grantee shall submit receipts showing payment by the Grantee and a copy of the Grantee's inventory record, as specified in Section I, Item 5, K. Equipment Purchases. Said paid receipts shall be attached to the Grantee's invoice(s).

iv. Invoices must be submitted electronically to the Grant Manager and to the following emails: Prop1grants@deltaconservancy.ca.gov and contact@deltaconservancy.ca.gov. The Grantor will not accept invoices submitted through the mail.

v. Invoices will only be approved for payment after the Grant Manager has reviewed the Progress Report submitted by the Grantee and determined that the work was completed satisfactorily for payment. Invoices that are not approved will be returned as disputed to the Grantee and will not be paid.

vi. If there is cost share involved with the project, the Grantee must provide a budget summary of cost share expenditures by fund source. Cost share expenditure information must be provided annually. Cost share funds must be spent between the close of the full proposal submission period on December 18, 2018 and the end of the Funding Term to qualify as fulfilling the Grantee's cost share obligations.

vii. Grantee will not be reimbursed if any of the following conditions occur.
- **a.** The Grantee has been non-responsive or does not meet the conditions outlined in the Grant Agreement.
- **b.** The project has received alternative funding from other sources that duplicates the portion of work or costs funded by a Conservancy grant.
- **c.** The project has changed and is no longer eligible for funding.
- **d.** The Grantee requests to end the project. However, any costs incurred up to the requested end date may be reimbursed.

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B. Travel Expenses: Reimbursement rates for travel shall not exceed the amounts identified by CalHR current state rates, see www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx. No travel outside the State of California by Grantee shall be reimbursed unless there is prior written authorization obtained from the Grantor.

C. Timely Submission of Final Invoice: A final undisputed invoice shall be submitted for payment no more than 60 calendar days following the Funding End Date or termination date of this Agreement, unless the Grant Manager agrees to a later or alternate deadline in writing. The final invoice must be clearly marked "FINAL INVOICE" and "Grantee's Release" (Exhibit F) must be attached, thus indicating that all payment obligations of the Grantor under this Agreement have ceased and that no further payments are due or outstanding.

The Grantor may, at its discretion, choose not to honor any delinquent final invoice if the Grantee fails to obtain prior written Grantor approval of an alternate final invoice submission deadline. Such written Grantor approval shall be obtained from the Grant Manager prior to the Funding End Date of this Agreement.

3. REVIEWS

The Grantor reserves the right to review service levels and billing procedures such as timesheets or other supporting documentation as these impact charges against this Agreement. It is the responsibility of the Grantee to comply with all internal organizational protocols and to maintain financial records related to all expenses related to this Agreement (noted in Section III, Item 3. Audit).

4. RECOVERY OF OVERPAYMENT

The Grantee agrees that claims based upon findings from an audit of the Agreement (see Section III, Item 3. Audit) and/or audit findings that are appealed and upheld will be recovered by the State government by one of the following options.

A. Grantee's remittance to the State of the full amount of the overpayment within 30 days following the State's request for repayment.

B. A repayment schedule, which is agreeable in writing to both the Grantor and the Grantee.

The State reserves the right to select which option will be enforced and the Grantee will be notified by the State in writing of the option to be utilized.

If the Grantee has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached.

5. BUDGET CONTINGENCY CLAUSE

A. It is mutually-agreed that if the California State Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.

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B. If funding for any fiscal year is reduced or deleted by the California State Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Grantee to reflect the reduced amount.

C. If funding for any fiscal year is not obligated by the Grantor, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to the Grantee to reflect the reduced amount.

6. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927. An incomplete/disputed invoice will be returned to Grantee per Government Code Chapter 4.5, section 927.6. Time specified for prompt payment in Government Code Chapter 4.5, section 927.4 commences upon submittal of a completed/undisputed invoice.

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SECTION III
GENERAL TERMS AND CONDITIONS APPROVAL

This Agreement is of no force or effect until signed by both parties and approved by the Grantor. The Grantee may not commence performance until such approval has been obtained.

1. AMENDMENT

No Amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties. To request an Amendment, the Grantee must submit a formal, justified Amendment request in writing to the Grant Manager.

2. ASSIGNMENT

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the Grantor in the form of a formal written Amendment.

3. AUDIT

The Grantee agrees that the awarding department, the Department of General Services, the Department of Finance, the California State Auditor, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement (Gov. Code, § 8546.7; Pub. Contract Code, § 10115 et seq.; Cal. Code Regs. tit. 2, § 1896).

4. INDEMNIFICATION

The Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all Grantees, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee, its subcontractors, supplies laborers, and any other person, film or corporation furnishing services on behalf of the Grantee in the performance of this Agreement.

5. DISPUTES

Any claim that the Grantee may have regarding the performance of this Agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Grant Manager in writing within ten (10) days of discovery of the problem. The Grantee and the Grantor Executive Officer or Executive Officer's designee will then attempt to negotiate a resolution of the claim, if appropriate, and process an Amendment to this Agreement to implement the terms of any such resolution. If the Grantee and the Grantor are unable to resolve the dispute, the decision of the Executive Officer or Executive Officer's designee will be final, unless appealed to a court of competent jurisdiction. The Grantee will continue with the responsibilities under this

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Agreement during any dispute. In the event of a dispute, the language contained within this Agreement will prevail over any other language.

All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County, California. The parties hereby waive any right to any other venue.

6. TERMINATION FOR CAUSE

The Grantor may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. If the Grantee fails to complete the project on time in accordance with this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to the Grantor of all amounts disbursed by the Grantor under this Agreement, plus accrued interest. The Grantor may, in its sole discretion, consider extenuating circumstances and not require repayment for work partially completed. This paragraph shall not be deemed to limit any other remedies the Grantor may have for breach of this Agreement.

7. TERMINATION WITHOUT CAUSE

The Grantor may terminate this Agreement without cause upon 30 days' advance written notice. The Grantee will be reimbursed, in accordance with Section II of the Agreement for all reasonable and eligible expenses incurred up to the date of termination.

8. INDEPENDENT GRANTEE

The Grantee, and the agents and employees of the Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Grantor.

9. RECYCLING CERTIFICATION

The Grantee shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material, as defined in Public Contract Code section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code section 12209. With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code, § 12205). See Exhibit G.

10. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Grantee and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Grantee shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1,

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Part 1, Division 3, title 2 of the Government Code (Gov. Code, §§ 11135-11139.5). Grantee shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement (Cal. Code Regs., tit. 2, § 11105). Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. GRANTEE CERTIFICATION CLAUSES

The Grantee Certification Clauses is incorporated in this Agreement (See Exhibit H). The Grantee will renew the Grantee Certification Clauses or successor documents as changes occur.

12. TIMELINESS

Time is of the essence in this Agreement.

13. STANDARD OF PROFESSIONALISM

The Grantee will conduct all work consistent with the professional standards of the industry and type of work being performed under the Agreement.

14. GOVERNING LAW

This grant is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS

The Grantee by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Grantee shall comply with the requirements of the Government Codes Sections set out below.

A. The Government Code Chapter on Antitrust claims contains the following definitions.

i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of section 16750 of the Business and Professions Code.

ii. "Public purchasing body" means the State or the subdivision or agency making a public purchase (Gov. Code, § 4550).

B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder (Gov. Code, § 4552).

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C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Gov. Code, § 4553).

D. Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Gov. Code, § 4554).

16. CHILD SUPPORT COMPLIANCE ACT

For any Agreement in excess of $100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:

A. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.

B. The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS

If this grant includes services in excess of $200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the grant to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS

A. If for this Grant Agreement Grantee made a commitment to achieve small business participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding department the actual percentage of small business participation that was achieved (Gov. Code, § 14841).

B. If for this Agreement Grantee made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this

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Agreement) certify in a report to the awarding department: (1) the total amount the prime Grantee received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Grantee; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation (Mil. & Vet. Code, § 999.5(d); Gov. Code, § 14841).

20. LOSS LEADER

If this Agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in section 17030 of the Business and Professions Code (PCC, § 10344(e)).

21. COMPUTER SOFTWARE

Grant funds are not authorized for the procurement of software.

22. **COPYRIGHT**

All rights in copyright works created by Grantee in the performance of work under this Agreement are the property of the Grantor. The Grantor will extend Grantee a royalty-free, nonexclusive, nontransferable, irrevocable license to reproduce, prepare derivative works, and distribute copies of deliverables so long as such deliverables are not used for commercial purposes.

23. INTELLECTUAL PROPERTY

Grantee represents that it is the owner or authorized user of any third-party Intellectual Property used in association with this Agreement and that the Grantor is authorized to use any such third-party Intellectual Property for purposes of the project and this Agreement.

24. SUBCONTRACTING

Nothing contained in this Agreement or otherwise shall create any contractual relation between the Grantor and any subcontractor, and no subcontract shall relieve the Grantee of its responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the Grantor for the acts and omissions of its subcontractor and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its subcontractors is an independent obligation from the Grantor’s obligation to make payments to the Grantee. As a result, the Grantor shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.

The Grantee is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Should Grantor determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the Agreement terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, the Grantor may request substitution of the subcontractor.

The Grantee is responsible for adhering to their organization’s policies for soliciting and awarding contracts, and providing to the Grantor a copy of any subcontract agreements. Grantee must provide Grantor an explanation of the basis for determining the subcontracting costs to be fair and reasonable and disclose any relationship between the Grantee and any proposed subcontractor

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prior to using the subcontractor to provide goods or services for which the Grantee will claim cost share or reimbursement from Grantor.

25. LABOR CODE COMPLIANCE

Grants awarded through the Conservancy's Ecosystem Restoration and Water Quality Grant Program may be subject to prevailing wage provisions of Part 7 of Division 2 of the California Labor Code (CLC), commencing with section 1720. Prevailing wages are generally required for construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. Any work performed by volunteers is not subject to prevailing wage provisions (CLC, § 1720.4). The Grantee shall pay prevailing wage to all persons employed in the performance of any part of the project if required by law to do so. Any questions of interpretation regarding the CLC should be directed to the Director of the Department of Industrial Relations (DIR), the state department having jurisdiction in these matters. For more details, please refer to the DIR website at www.dir.ca.gov.

26. FORCE MAJEURE

Neither party will be liable to the other for any delay in or failure of performance, nor will any such delay in or failure of performance constitute a default, if such delay or failure is caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of nature such as earthquakes, floods, and other natural disasters such that performance is impossible.

27. INSURANCE REQUIREMENTS

When Grantee submits a signed Agreement to the Grantor, the Grantee shall furnish to the Grantor a certificate of insurance, stating that there is liability insurance presently in effect for the Grantee of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined.

The certificate of insurance will include provisions A, B, and C, in their entirety.

A. That the insurer will not cancel the insured's coverage without 30 days' prior written notice to the Grantor.

B. That the Grantor, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this Agreement are concerned.

C. That the Grantor will not be responsible for any premiums or assessment on the policy.

The Grantee agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Agreement from the Effective Start Date through the Funding End Date. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Grantee agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Department of General Services, and Grantee agrees that no work or services shall be performed prior to the giving of such approval.

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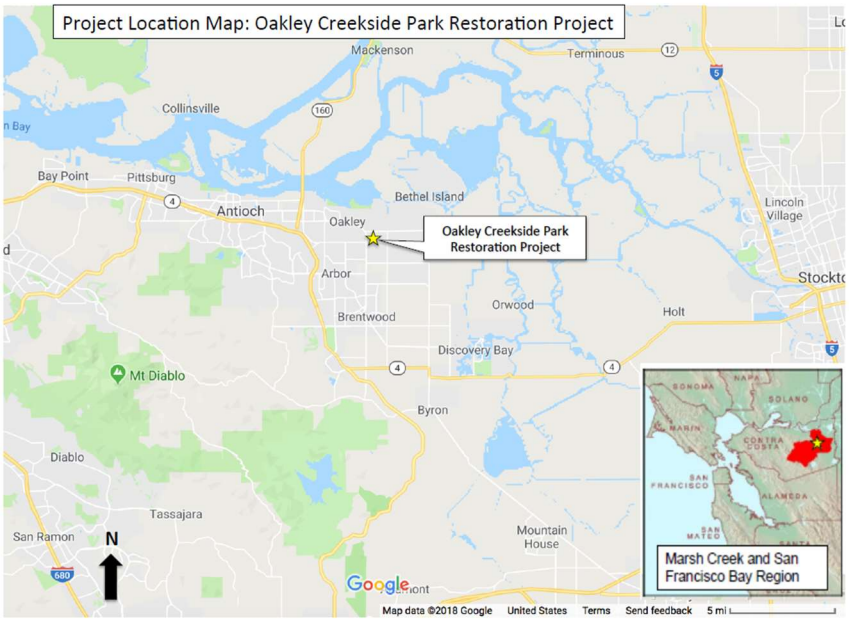
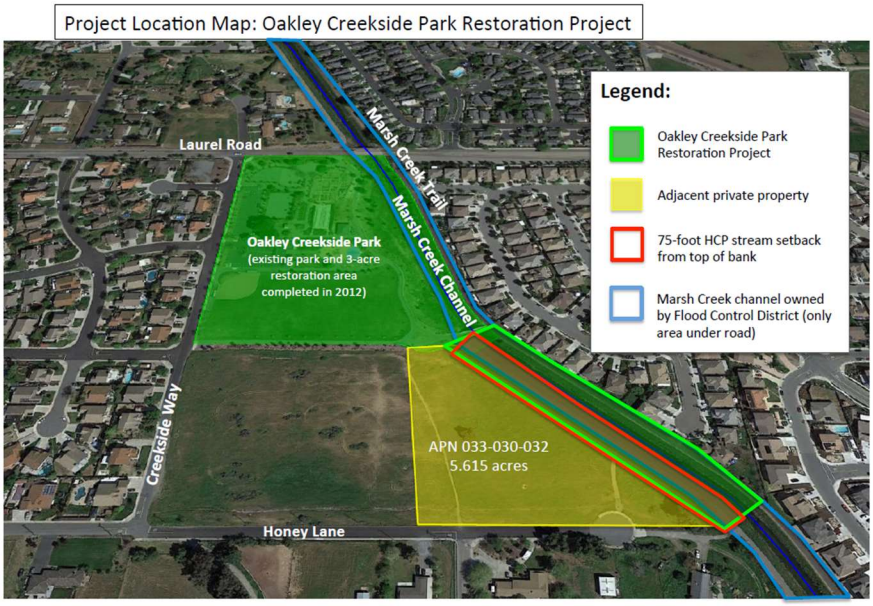
EXHIBIT A
PROJECT MAP



Applicant: City of Oakley



Applicant: City of Oakley

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EXHIBIT B
ADAPTIVE MANAGEMENT AND PERFORMANCE MONITORING AND ASSESSMENT

This Exhibit is not relevant to this Grant Agreement.

EXHIBIT C
LONG-TERM MANAGEMENT AND MAINTENANCE

This Exhibit is not relevant to this Grant Agreement.

EXHIBIT D
GRANTOR RESPONSIBLE AGENCY FINDINGS BOARD RESOLUTION

This Exhibit is not relevant to this Grant Agreement.

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EXHIBIT E
DELTA PLAN COVERED ACTIONS CHECKLIST

Covered Actions Checklist

This checklist is a discretionary tool for state and local agencies to use in determining whether a plan, program, or project is a "Covered Action" (Delta Plan Chapter 2), as defined in the Delta Reform Act (Water Code section 85057.5(a)).

Note: the responsibility for making this determination rests with the State and local agencies, subject to judicial review.

Covered Action Title:

STEP 1: Determine if the plan, program, or project is exempt from the definition of a "covered action".

THE PLAN, PROGRAM OR PROJECT:

1. Is the plan, project, or program exempt from the definition of a covered action?

For specific details on what is statutorily exempt from regulation as a "covered action" refer to:

(Water Code section 85057.5 (b.)), included in (Appendix F of the Delta Plan) and (Chapter 2 of the Delta Plan)

☑ Yes ☐ No

If "YES", the plan, program, or project is exempt from the Council's regulatory authority – NO FURTHER STEPS REQUIRED.

If "NO", the plan, program or project is not exempt from the definition of a covered action – PROCEED TO STEP 2.

STEP 2: Determine if the plan, program, or project meets all four "Screening Criteria" listed below.

THE PLAN, PROGRAM OR PROJECT:

1. Is this a plan, program, or project as defined pursuant to Public Resources Code section 21065;

This criteria would be met if the plan, program, or project meets the definition of a project under the California Environmental Quality Act (CEQA) Public Resources Code section 21065 that defines the term "project" for purposes of potential CEQA review.

☐ Yes ☐ No

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EXHIBIT F
GRANTEE'S RELEASE

Submission of Final Invoice

Pursuant to **Grant Agreement number Prop 1 – 1814** entered into between the Grantor and the Grantee (identified below) the Grantee does acknowledge that final payment has been requested **via invoice number(s) _____ in the amount(s) of $_____ and dated _____.** If necessary enter "See Attached" in the appropriate blocks and attach a list of invoice numbers dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Grantee does hereby release and discharge the Conservancy, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced Agreement.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, the Grantee acknowledges that expenses authorized for reimbursement does not guarantee final allowance of said expenses. The Grantee agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the Conservancy.

All expense and accounting records related to the above referenced Agreement must be maintained for audit purposes for no less than three (3) years beyond the date of final payment, unless a longer term is stated in said Agreement.

State Equipment/Property *(Applies only if equipment was purchased with or reimbursed by Agreement funds)*

Title or ownership to all equipment purchased with grant funds with a fair market value of $5,000 or more per item at the Fund End Date of this Grant Agreement, or if the equipment is theft-sensitive, may be retained by the Grantee or Grantor upon end of the Funding Term; final disposition will be determined and approved by the Grantor. The Grantee agrees to promptly initiate arrangements to account for and return said equipment if required by Grantor as defined in the above referenced Agreement.

Patents / Other Issues

By signing this form, the Grantee further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced Agreement, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

SIGN AND DATE THIS DOCUMENT ONLY WHEN ATTACHING TO FINAL INVOICE

Grantee's Legal Name (as on Agreement):			
Signature of Grantee or Official Designee:		Date:	
Printed Name/Title of Person Signing:			

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EXHIBIT G
POSTCONSUMER-CONTENT CERTIFICATION

STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC)

The State of California is required to purchase recycled-content products rather than non-recycled products whenever price, quality, and availability are comparable. Furthermore, each State agency is required to purchase recycled-content products in sufficient quantities to ensure that mandated recycled-content product procurement goals are attained within 11 product categories. These 11 product categories and their respective minimum recycled-content requirements are outlined below.

In order to help State agencies identify all reportable purchases and all reportable recycled-content product purchases, product suppliers are mandated by the California Public Contract Codes to certify the minimum, if not the exact recycled content, both secondary and post-consumer material, of all the products, materials, goods, and supplies offered or sold to the State. State agencies are also required to obtain this information from all Contractors. Collectively, these mandates are referred to as the State Agency Buy Recycled Campaign (SABRC).

Please note, only materials purchased with funds from this Agreement are reportable.

Regardless of the recycled content, or even if the product has no recycled content, the supplier must indicate that on the certification form or through some other form of written certification.

The 11 reportable product categories are described on the next page.

For further information regarding the specific details on these categories, go to the following webpage www.calrecycle.ca.gov/BuyRecycled/StateAgency/Requires.

FOOTNOTE:

1. "Postconsumer recycled-content material" is defined as products that were bought, used, and recycled by consumers. For example, a newspaper that has been purchased, recycled, and used to make another product would be considered postconsumer material.

2. "Product category" refers to one of the categories listed below, into which the reportable purchase is best placed.

3. If the product does not belong in any of the product categories, enter "N/A." Common "N/A" products include wood products, natural textiles, aggregate, concrete, and electronics such as computers, TV, software on a disk or CD, and telephones.

4. Reused or refurbished products, there is no minimum content requirement. (PCC, § 12209 (l)).

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Code	Product Categories	Product Examples ***Examples are inclusive but are not limited to the individual product.***	Minimum Postconsumer Content Requirement
1	Paper Products	Paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, tissue, and toweling.	30 percent by fiber weight postconsumer fiber.
2	Printing and Writing Papers	Copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.	30 percent by fiber weight postconsumer fiber.
3	Mulch, Compost, and Co-compost Products	Soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation; yard trimmings and wood byproducts that are separated from the municipal solid waste stream or other source of organic materials such as biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues or fish processing byproducts; mechanical breakdown of materials.	80 percent recovered material that would otherwise be normally disposed of in a landfill.
4	Glass Products	Windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.	10 percent postconsumer, by weight.
5	Lubricating Oils	Intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric, fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.	70 percent re-refined base oil.
6a	Plastic Products	Printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, and trays.	10 percent postconsumer, by weight.
6b	Printer or Duplication Cartridges		a. Have 10 percent postconsumer material, or b. Are purchased as remanufactured, or c. Are backed by a vendor-offered program that will take back the printer cartridge after their useful life and ensure that the cartridge is recycled and comply with the definition of recycled as set forth in Public Contract Code section 12156.
7	Paint	Water-based paint, graffiti abatement, interior and exterior, and maintenance.	50 percent postconsumer paint (exceptions when 50 percent postconsumer content is not available or is restricted by a local air quality management district, then 10 percent postconsumer content may be substituted).
8	Antifreeze	Recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar non-toxic substance.	70 percent postconsumer material.
9	Tires	Truck and bus tires, and those used on fleet vehicles and passenger cars.	Retreaded: Must use an existing casing that has undergone retreading or recapping process in accordance with Public Resource Code (commencing with section 42400).
10	Tire- Derived Products	Flooring, mats, wheelchair ramps, playground cover, parking bumpers, bullet traps, hoses, bumpers, truck bed liners, pads, walkways, tree ties, road surfacing, wheel chocks, rollers, traffic control products, mud flaps, and posts.	50 percent recycled used tires.
11	Metal	Staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.	10 percent postconsumer material, by weight.
For additional information, please visit www.calrecycle.ca.gov/BuyRecycled/StateAgency/.			

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RECYCLED CONTENT CERTIFICATION FORM

This form must be completed, signed, and returned by vendor, bidder, Contractor and/or the Grantee. **State law requires** any and all recycled content of a product to be disclosed to the State by the manufacturer or supplier of the product. If a product contains no recycled content, either post-consumer or secondary material, the vendor/bidder/Contractor/Grantee shall so certify.

BRAND	DESCRIPTION	PERCENT RECYCLED BY WEIGHT (See below)		PRODUCT CODE (See previous page)	TOTAL DOLLAR AMOUNT
		POST CONSUMER (1)	TOTAL RECYCLED CONTENT (2)		
N/A					

POST CONSUMER (1) materials are defined as only those materials that have been disposed of as a solid waste at the completion of their life cycle. Secondary material (i.e., manufacturing waste) **should not** be counted in this percentage. The post-consumer content is usually the second percentage in the description of the item's recycled content. (See example below.)

TOTAL RECYCLED CONTENT (2) is the sum total of **ALL** recycled content in the item including both secondary and post-consumer materials. Usually this percentage is shown as the first percentage in a recycled content description such as "Carton contains 100 percent recycled fiber, and 40 percent post-consumer fiber." In this example, the "100 percent" is the TOTAL recycled content and the "40 percent" is the POST CONSUMER recycled content.

Pursuant to Public Contract Code 12205(a)(1), I certify under penalty of perjury under the laws of the State of California that the above information is true and correct.

Grantee Signature:	Bryan Montgomery
Printed Name:	Bryan Montgomery
Date:	12/11/2020
Agreement Number:	Prop 1-1814
Reporting Period:	Agreement Term

To be completed by the Grantee and returned to:
Sacramento-San Joaquin Delta Conservancy
ATTN: Contract/Grant Analyst
1450 Halyard Drive, Suite 6
West Sacramento, CA 95691

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EXHIBIT H
GRANTEE CERTIFICATION CLAUSES

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Grantee to the clause(s) listed below. This certification is made under the laws of the State of California.

Grantee Name (Printed):	City of Oakley, CA	Federal ID Number:	680425948
By (Authorized Signature):	Bryan Montgomery		
Printed Name and Title of Person Signing:	Bryan Montgomery City Manager		
Date Executed:	12/11/2020	Executed in the County of:	Contra Costa

GRANTEE CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE
Grantee has, unless exempted, complied with the nondiscrimination program requirements (Gov. Code, § 12990 (a-f); CCR, tit. 2, § 11102). (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS
Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions.

A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

B. Establish a Drug-Free Awareness Program to inform employees about:
- **i.** The dangers of drug abuse in the workplace.
- **ii.** The person's or organization's policy of maintaining a drug-free workplace.
- **iii.** Any available counseling, rehabilitation and employee assistance programs.
- **iv.** Penalties that may be imposed upon employees for drug abuse violations.

C. Provide that every employee who works on the proposed Agreement will:
- **i.** Receive a copy of the company's drug-free workplace policy statement.
- **ii.** Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

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Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State Agreements if the department determines that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to carry out the requirements as noted above (Gov. Code, § 8350 et seq.).

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Grantee certifies that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against Grantee within the immediately preceding two (2)-year period because of Grantee's failure to comply with an order of a Federal court, which orders Grantee to comply with an order of the National Labor Relations Board (Pub. Contract Code, § 10296). (Not applicable to public entities.)

4. EXPATRIATE CORPORATIONS

Grantee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code sections 10286 and 10286.1, and is eligible to contract with the State of California.

5. SWEATFREE CODE OF CONDUCT

A. All Grantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code section 6108.

B. The Grantee agrees to cooperate fully in providing reasonable access to the Grantee's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Grantee's compliance with the requirements under paragraph (A).

6. DOMESTIC PARTNERS

For contracts of $100,000 or more, Grantee certifies that Grantee is in compliance with Public Contract Code section 10295.3.

7. GENDER IDENTITY

For contracts of $100,000 or more, Grantee certifies that Grantee is in compliance with Public Contract Code section 10295.35.

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DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST

Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Pub. Contract Code, § 10410):

i. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

ii. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

B. Former State Employees (Pub. Contract Code, § 10411):

i. For the two (2)-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

ii. For the 12-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Agreement void (Pub. Contract Code, § 10420).

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem (Pub. Contract Code, § 10430 (e)).

2. LABOR CODE/WORKERS' COMPENSATION

Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement (CLC, § 3700).

3. AMERICANS WITH DISABILITIES ACT

Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. § 12101 et seq.).

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4. CONTRACTOR NAME CHANGE

An Amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the Amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said Amendment.

5. CORPORATE QUALIFICAITONS TO DO BUSINESS IN CALIFORNIA

A. When Agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

B. "Doing business" is defined in Revenue and Taxation Code section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

C. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an Agreement, authorizing execution of the Agreement.

7. AIR OR WATER POLLUTION VIOLATION

Under the State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to section 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD 204

This form must be completed by all Grantees that are not another state agency or other governmental entity.

Certificate Of Completion

Envelope Id: 6664C9E022F44568B35A61DE192E5194
Status: Completed
Subject: Please DocuSign: Prop 1-1814 Grant Agreement_12-7-20.pdf
Source Envelope:
Document Pages: 39
Signatures: 4
Certificate Pages: 5
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Martha Ozonoff
1416 9th St
Sacramento, CA 95814
Martha.Ozonoff@deltaconservancy.ca.gov
IP Address: 136.200.53.18

Record Tracking

Status: Original
12/11/2020 2:38:25 PM
Holder: Martha Ozonoff
Martha.Ozonoff@deltaconservancy.ca.gov
Location: DocuSign

Signer Events	Signature	Timestamp
Bryan Montgomery montgomery@ci.oakley.ca.us City Manager Security Level: Email, Account Authentication (None)	Bryan Montgomery Signature Adoption: Pre-selected Style Using IP Address: 71.6.33.4	Sent: 12/11/2020 2:48:13 PM Viewed: 12/11/2020 2:49:17 PM Signed: 12/11/2020 2:52:00 PM
Electronic Record and Signature Disclosure: Accepted: 12/11/2020 2:49:17 PM ID: 9cc59daa-2f46-4f97-b6ab-8251b0279ccf		
Campbell Ingram Campbell.Ingram@deltaconservancy.ca.gov Executive Officer Delta Conservancy Security Level: Email, Account Authentication (None)	Campbell Ingram Signature Adoption: Pre-selected Style Using IP Address: 136.200.53.18	Sent: 12/11/2020 2:52:01 PM Viewed: 12/11/2020 3:27:55 PM Signed: 12/11/2020 3:28:29 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/11/2020 2:48:13 PM
Certified Delivered	Security Checked	12/11/2020 3:27:55 PM

Envelope Summary Events	Status	Timestamps
Signing Complete	Security Checked	12/11/2020 3:28:29 PM
Completed	Security Checked	12/11/2020 3:28:29 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, California Natural Resources Agency (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact California Natural Resources Agency:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by paper mail, please send correspondence to:
California Natural Resources Agency
1416 9th St, Room 1311
Sacramento, CA 95814

To advise California Natural Resources Agency of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at dldavis@water.ca.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from California Natural Resources Agency
To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to don.davis@resources.ca.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.
To withdraw your consent with California Natural Resources Agency

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an e-mail to dldavis@water.ca.gov and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	• Allow per session cookies • Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify California Natural Resources Agency as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by California Natural Resources Agency during the course of my relationship with you.

OAKLEY
CALIFORNIA

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF OAKLEY AND American Rivers FOR Environmental Consulting SERVICES ASSOCIATED WITH Ecosystem Restoration and Water Quality Grant Program for Oakley Creekside Park

THIS AGREEMENT for consulting services is entered into by and between the City of Oakley, a municipal corporation in the State of California (hereinafter referred to as "City") and American Rivers (hereinafter referred to as "Consultant"), collectively sometimes referred to hereinafter as the "Parties", as of _____ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work or proposal letter attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on December 15, 2023, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. Should this Agreement be amended to include additional tasks as contemplated in Section 1, the term of services shall be extended as mutually agreed upon by City and Consultant.

1.2 Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.

1.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

1.4 Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

1.5 Public Works Requirement. Notice is hereby given that "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section

1720(a)(1) of the California Labor Code, requiring the payment of prevailing wages and the provisions set out in Exhibit B.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed One hundred and fifty seven thousand, three hundred and thirteen Dollars and 84 Cents ($157,313.84), notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment approved by the City Manager, which shall not exceed the maximum amount allowed by the Oakley Municipal Code.

2.5 Hourly Fees. Fees for work performed by Consultant shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit A.

2.6 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit A, and expenses not listed in Exhibit A are not chargeable to the City.

2.7 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8 of this Agreement, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and

in Exhibit C against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Verification of the required insurance is attached hereto and incorporated herein as Exhibit D.

4.1 Variation. The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise sufficiently protected.

4.2 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.3 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to the City, and indemnify and hold the City and its officials, officers, employees, agents, and volunteers harmless from and against any and all losses that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant ("Claims").Consultant will bear all loses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liability is caused by the sole negligence, active negligence, or willful misconduct of the City or any third party.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the indemnitees.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Consultant, Not Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder, including but not limited to, the California Building Code, the Americans with Disabilities Act, and any copyright, patent or trademark law. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

7.5 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 30 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. This Agreement may be extended at the option of the City. Should City decide to exercise its option to extend this Agreement, City shall provide written notice to Consultant at least sixty (60) days prior to the end date of this Agreement. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement, unless City agrees to do so by written amendment to this Agreement. Similarly, Consultant understands and agrees that, City shall

have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period, unless City agrees to do so by written amendment to this Agreement.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 of this Agreement if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that

the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 Use of Recycled Products. Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

10.7 Conflict of Interest. Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by Kevin Rohani, P.E., Public Works Director/City Engineer ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices.
Any written notice to Consultant shall be sent to:

American Rivers
Attn: Sarah Puckett, Director of River Conservation in Central Valley
17 Monticello Avenue
Piedmont, CA 94611

Cc: contracts@americanrivers.org ATTN: General Counsel

Any written notice to City shall be sent to:

City of Oakley
Attn: Kevin Rohani, Public Works Director/City Engineer
3231 Main Street
Oakley, CA 94561

10.11 Professional Seal. Where applicable in the determination of the Contract Administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

_____ Seal and Signature of Registered Professional with report/design responsibility.

10.12 Integration. This Agreement, including the Scope of Work and Compensation Schedule, Provisions Required for Public Works Contracts, Insurance Requirements, and Verification of Required Insurance, attached hereto and incorporated herein as Exhibit A, B, C and D respectively, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A	Scope of Services and Compensation Schedule
Exhibit B	Provisions Required for Public Works Contracts
Exhibit C	Insurance Requirements
Exhibit D	Verification of Required Insurance

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.14 Authorized Signature. Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

City of Oakley, a municipal corporation
in the State of California

By: _____
Joshua McMurray, Interim City Manager

CONSULTANT

American Rivers, Inc.

By: _____
Printed Name: Kristin May
Title: Chief Financial Officer

Attest:

_____
Libby Vreonis, City Clerk

Approved as to Form:

_____
Derek P. Cole, City Attorney

EXHIBIT A

SCOPE OF SERVICES AND COMPENSATION SCHEDULE

American Rivers will support the City of Oakley in implementing the tasks and lists of deliverables in the Sacramento San Joaquin Delta Conservancy Oakley Creekside Park Restoration project.

Term of Services: December 11, 2020 to December 15, 2023

Total Amount: $157,313.84

Task 1. GRANT MANAGEMENT, ADMINISTRATION, and REPORTING

American Rivers will help the City of Oakley manage the Sacramento San Joaquin Delta Conservancy Oakley Creekside Park Restoration Project grant, including drafting quarterly, annual, and final reports and submitting them to the Delta Conservancy on behalf of the City. American Rivers will review quarterly invoices prepared by the City and submit them to the Delta Conservancy on behalf of the City.

American Rivers Deliverables:

- Review quarterly invoices and submit them to the Delta Conservancy between the first and the fifth of the second month following the end of the quarter
- Draft quarterly and annual reports and submit them to the Delta Conservancy between the first and the fifth of the second month following the end of the quarter
- Draft and submit draft final report to the Delta Conservancy 30 days prior to Finding End Date
- Draft and submit final report to the Delta Conservancy 60 days post Funding End Date
- Upload project information to Project Tracker (http://ptrack.ecoatlas.org/) in EcoAtlas (www.ecoatlas.org/)

City Responsibilities:

- Prepare and sign invoices before the last week of the first month following the end of the quarter, so American Rivers can review before submitting to Delta Conservancy between the first and the fifth of the second month following the end of the quarter
- Review and sign quarterly and annual reports so American Rivers can review before submitting to Delta Conservancy between the first and the fifth of the second month following the end of the quarter
- Review draft final report so American Rivers can review before submitting to Delta Conservancy 30 days prior to Funding End Date
- Review and sign final report so American Rivers can review before submitting to Delta Conservancy 60 days post Funding End Date

Task 2. AGENCY COORDINATION

From grant agreement: The goal of this task is to coordinate local agencies to expedite implementation of a restoration project, which will include working with landowners and future developers of the site to prepare

draft documents to secure land tenure of the site. The Grantee will retain a real estate attorney to assist in working with landowners. The Grantee will provide the Contra Costa Mosquito and Vector Control District with safe, ready access for surveillance and control measures. The Grantee will work with the Delta Stewardship Council to solicit feedback on the project design and its consistency with Delta Plan policies.

American Rivers Deliverables:

- Work with City to draft scope of work for real estate attorney
- Coordinate with City to identify potential easement holder or agency to provide a deed restriction

City Responsibilities:

- Review and sign contract with real estate attorney
- Review and approve draft conservation easement or deed restriction documents
- Review and approve easement holder or agency to provide a deed restriction
- Coordinate with the landowner and the Contra Costa County Flood Control and Water Conservation District to provide the Contra Costa Mosquito and Vector Control District with safe, ready access for surveillance and control measures

Task 3. PERMITTING, SURVEYS, and REPORTS

American Rivers will work with the Contra Costa County Flood Control and Water Conservation District to determine if any necessary project approvals are needed at Contra Costa County Board of Supervisor's meeting. American Rivers will provide one review of surveys, models, and permit applications. All surveys, models, and permit applications will be prepared by Restoration Design Group.

American Rivers Deliverables:

- One set of review comments on surveys, models, and permit applications.

City Responsibilities:

- Coordinate with the landowner and the Contra Costa County Flood Control and Water Conservation District to obtain landowner access and encroachment permit for permitting, surveys, and reports
- Work with project partners to secure CEQA for restoration project

Task 4. MODELING AND DESIGN

American Rivers will provide one review of 35% and 65% conceptual designs plans and the HEC-RAS model and Design Basis Memo. 35% and 65% conceptual designs plans, HEC-RAS model, and Design Basis Memo will be prepared by Restoration Design Group.

American Rivers Deliverables:

- One set of review comments on 35% and 65% conceptual designs plans and the HEC-RAS model and Design Basis Memo.

Task 5. MONITORING AND ADAPTIVE MANAGEMENT

From grant agreement: The Grantee and project partners will work together to develop a draft Operations and Maintenance Plan, which will address ongoing site maintenance, management of invasive species, and other issues related to the property and site restoration. The Grantee will also develop a draft Adaptive Management and Monitoring Plan to ensure the project performs as intended and complies with the Delta Plan.

American Rivers Deliverables:

- Draft Operations and Maintenance Plan
- Draft Adaptive Management and Monitoring Plan
- Quarterly submission to Delta Conservancy of a summary of the monthly water quality sampling collected by Mary Helen Nicolini
- Annual submission to Delta Conservancy of salmon count data, photo documentation collected by Mary Helen Nicolini
- Annual submission to Delta Conservancy of benthic macroinvertebrate bioassessment data, habitat assessment data collected by Mary Helen Nicolini and AMS

City Responsibilities:

- One review of Draft Operations and Maintenance Plan
- One review of Draft Adaptive Management and Monitoring Plan

Task 6. PUBLIC ENGAGEMENT

From grant agreement: The goal of this task, led by American Rivers, is to engage local residents and agency partners to expedite implementation of a restoration project. American Rivers will lead the project team in reaching out to the local community and government agencies to inform them about the project, obtain input on project design, and solicit volunteers for water quality monitoring, salmon monitoring, and vegetation maintenance.

Deliverables:

- Agenda and meeting notes from six meetings with local or agency partners
- Agenda and meeting notes from two presentations about the project to the local community to solicit project volunteers.

City Responsibilities:

- Participation in meetings with local or agency partners, as necessary

Task 7. IMPLEMENTATION FUNDING

From grant agreement: The Grantee and project partners will work together to seek implementation funding for the project.

Deliverables:

- Submission of implementation grant proposal

City Responsibilities:

- Assist with implementation grant proposal including obtaining all necessary approvals from the City Council

Budget*

AMERICAN RIVERS		
Task 1	Grant Management, Administration, and Reporting	$ 21,479.49
Task 1	Travel	$ 1,000.00
Task 2	Agency Coordination	$ 46,094.62
Task 2	Travel	$ 1,500.00
Task 3	Permitting, Surveys, and Reports	$ 2,239.74
Task 4	Modeling and Design	$ 1,791.79
Task 5	Monitoring and Adaptive Management	$ 29,022.05
Task 5	Travel	$ 250.00
Task 5	Water Quality Lab Fees (nutrients)	$ 14,400.00
Task 5	Bioassessment Lab Fees (BMI)	$ 8,400.00
Task 6	Public Engagement	$ 17,167.18
Task 6	Travel	$ 250.00
Task 7	Implementation Funding	
Indirect Cost	Personnel Services (ICR 20%)	$ 8,958.97
Indirect Cost	Operating Expenses (ICR 20%)	$ 4,760.00
Total		$ 157,313.84

This is an estimate of how funding will be allocated by task. American Rivers will not exceed the total contract amount, but funding allocated within each task may change. The Delta Conservancy has approved a total line item budget amount for American Rivers of $157,313.84; any change to this amount will require an informal or formal amendment from the Delta Conservancy.

Mileage will be reimbursed at the IRS Standard Mileage Rates. For 2021, the rate is $0.56/mile. All mileage and other expenses will be included in the total contracted amount.

EXHIBIT B

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS
PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25.00 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to $50.00 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake,

inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT C

INSURANCE REQUIREMENTS

PROFESSIONAL SERVICE CONTRACTS:

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Offer Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
   (not required if consultant provides written verification it has no employees)
4. Professional Liability (Errors and Omissions) Insurance appropriates to the Consultant's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status
The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage should be provided in the form of an endorsement to

the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage
For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation
American Rivers shall maintain insurance during the term of the Agreement and is required to notify the City before cancellation.

Waiver of Subrogation
Consultant hereby grants to City a waiver of any right to subrogation which Consultant or any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies
If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of contract work.

Verification of Coverage
Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's

obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors
Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances
City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT D

VERIFICATION OF REQUIRED INSURANCE

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY RESOLUTION APPROVING A CERTAIN AGREEMENT WITH AMERICAN RIVERS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

BE IT RESOLVED by the City Council of the City of Oakley does hereby approve a certain agreement with American Rivers (an exact copy of which is attached hereto) for services related the Creekside Park Restoration Grant and authorizes the City Manager to execute the agreement.

The foregoing resolution was introduced at a regular meeting of the Oakley City held on the 25th day of May, 2021 by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:

_____
Sue Higgins, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 25, 2021

Approved and Forwarded to the City Council

TO: Joshua McMurray, Interim City Manager

FROM: Kevin Rohani, P.E., Public Works Director/City Engineer

SUBJECT: Award of Contract for Professional Services Agreement for On-Call Development Engineering Support Services with HMH Engineers, Inc.

Background and Analysis

The City of Oakley utilizes a wide range of consultants and contractors across all departments to augment City staff as needed to accommodate the workload activities. One of the areas that this approach is used is in private development services. Since the volume of private development activity fluctuates with the overall economic climate of the region, the Community Development and Public Works Departments use staff augmentation as needed to process and manage the development project workloads.

The Public Works Department uses the services of a contract engineer to augment current staffing to provide expeditious service for private development projects. This approach gives the City flexibility and agility to adjust to the level of service needed by private developers.

TNT Dev Services, Inc. was selected in 2019 to provide development engineering support services to the City and have done exemplary work and have been very responsive to staff needs related to support services for the private development projects review and processing. Due to the workloads for this firm they have informed the City that they can no longer continue to provide the services in the high standards that is expected. As a result, staff investigated other firms that could provide the development engineering support services, and identified HMH Engineers, Inc. as the best suited firm to continue to provide development engineering support services.

There has been a sharp increase in the volume of both residential and commercial development activity in Oakley. This includes some of the largest private development projects along the East Cypress Road corridor. These are large complex projects and are on a fast track for review and processing to get them to the start of the construction phase.

HMH Engineers, Inc. has a specialized focus in the areas of residential and commercial private development engineering services. This firm has the proper staffing whom will be able to provide the Public Works staff with timely and professional service in a cost effective way. In addition, this firm is totally independent and has no affiliations with any of the development organizations and consultants who work in the City.

The services that HMH Engineers, Inc. will provide will include: Development Plan review; Subdivision Improvement Agreement review, Review of Tentative and Final Maps and City Survey services; as well as the review of calculations and estimates for the development projects.

The award of the Agreement is exempt from competitive bidding under Section 3.6.010 of the Oakley Municipal Code paragraph 1) which provides an exception for competitive bidding on "Contracts involving the acquisition of professional or specialized services, such as, but not limited to, services rendered by architects, attorneys, engineers, and other specialized consultants".

Fiscal Impact

Approval of the resolution will authorize the Interim City Manager to execute a professional services agreement with HMH Engineers, Inc. with a not to exceed amount of $150,000 through June 30, 2022. Private Development projects will fully fund the engineering support services cost on an as needed basis. This contract will not require funding from the City's General Fund.

Staff Recommendation

Staff recommends that the City Council adopt the resolution authorizing the Interim City Manager to execute an agreement with HMH Engineers, Inc. for private development engineering support services through June 30, 2022.

Attachments

1. HMH Engineers, Inc. Proposal
2. Resolution

May 14, 2021 | City of Oakley Statement of Qualifications

Kevin Rohani, P.E.
Public Works Director/City Engineer
Public Works and Engineering Department
3231 Main Street, Oakley, California 94510

Dear Mr. Rohani,

HMH is pleased to provide our Statement of Qualifications (SOQ) to the City of Oakley for on-call civil engineering review, survey & mapping review, stormwater control plan review, landscape architecture review, and staff augmentation services. HMH has a successful history of providing services to municipal clients throughout both the Bay Area and the Contra Costa County region since 1976.

Award-Winning Projects & Efficient Multi-Disciplinary Teams:

Approximately half of our Bay Area projects belong to public agencies. HMH currently holds on-call contracts with several cities, counties, and transportation agencies including the City of Milpitas, the City of Santa Clara, VTA, Midpeninsula Open Space District, and County of Napa.

With a permanent staff of approximately 80 engineers, surveyors, and landscape architects, HMH has the **staff availability and multi-disciplinary resources** to handle projects with aggressive schedules and budgets. Our in-house staff will approach the projects with a strong commitment to meet each milestone as planned efficiently and expediently. The numbers prove it. Our approach has resulted over 3,500+ projects completed to date with multiple public and private projects winning awards. Our success is best reflected from 85% of our client base being returning clients.

Our staff has extensive experience and knowledge of municipal codes, the subdivision map act, master plan implementation, civil engineering design, construction document preparation and the permitting processing with public agencies. We have a thorough understanding of the local conditions, gained through research and coordination with local stakeholders. Our long-term relationships with local agency staff provide an advantage in navigating the complex permitting process.

Local Project Management Expertise:

A strong dedicated Project Manager (PM) is a prerequisite to coordinate effectively with the many stakeholders affected by the project and manage the team to deliver all phases of complex projects. **Principal Stephan Kuehn, PE** will serve as HMH's PM and is authorized to negotiate and execute a contract with the City on HMH's behalf. Stephan has over 25 years of experience as the lead engineer and project manager for large master-planned residential communities, retail centers, industrial and institutional developments throughout the Bay Area. His detail-oriented approach provides practical solutions for project design from concept to construction. Stephan currently manages the Land Development Engineering group at HMH and is responsible for engineering design, client and governmental agency coordination, quality control, scheduling, and budgeting. Recently, Stephan has worked with the City of Oakley to provide staff augmentation and plan review services and has become familiar with the City's application and review process which makes him ideally positioned to provide continued support. Through his work on other agency projects, Stephan has demonstrated his **ability to implement complex projects** and lead engineering teams in dynamic environments. Stephan's style of Project Management is rooted in trust. He trusts his partners, his team and his staff to give their best and to be honest and pragmatic.

The additional members of HMH staff augmentation team consists of Landscape Architecture Principal and Vice President, Bill Sowa, RLA/ISA Certified Arborist, Senior Land Surveyor, Tracy Giorgetti, LS/PE, Civil Engineering Manager and Stormwater Professional, Alan Le PE, QSD/P, CPSWQ, CPESC, Senior Land Development Manager, Mike Sheehy PE, and Senior Engineer, Stephen Sherman PE.

Project Scope and Delivery:

We anticipate performing the required services primarily from our office in San Jose. HMH Staff will be available to meet with City of Oakley Staff as needed on a project-by-project basis, or for important stakeholder meetings. Field meetings and visits will be accommodated as requested.

In general, the following scope of services are anticipated:

1. Review of Planning Applications, including Tentative Maps, for Engineering compliance.
2. Prepare project Conditions of Approval for Engineering.
3. Subdivision Development Grading and Improvement Plan Review.
4. Onsite and off-site public improvement plan review.
5. Review of calculations and other documents provided by applicants for submitted projects.
6. Review project Engineering Estimate for Bonding and Fee calculations purposes.
7. Assist in the preparation of project Subdivision Improvement Agreements.
8. Assist in the review of project material submittals for conformance with City of Oakley Standard Details and Specifications.
9. Participate in project meetings as request by City staff.

Our HMH team is truly excited to be considered by the City of Oakley for this contract. Should you have any questions about our qualifications, please do not hesitate to contact me. Thank you for the opportunity to present our statement of qualifications.

Stephan Kuehn, PE | Project Manager

408-487-2200 x5656 | SKuehn@hmhca.com

RESUME

Stephan has extensive experience as the principal engineer for multiple large master planned residential communities, retail centers, industrial and institutional developments throughout the bay area. His detail oriented approach provides practical solutions for project design and management from concept to construction. Much of Stephan's design and project management experience is in high density and urban infill developments. Keenly aware of the inherent competition for space among the project elements, Stephan emphasizes collaboration among consultants during design and coordination with agency staff to gain approvals. His interface and participation with local building officials and public works staff enable effective negotiation and timely processing. Stephan currently manages HMH's land development engineering department working on both public and private projects and is responsible for design oversight, quality control, scheduling and budgeting.

EXPERIENCE 25 years

EDUCATION B.S. Civil Engineering - California Polytechnic State University San Luis Obispo

Stephan Kuehn, PE
Principal

Civil Engineer California #57808

Building Industry Association

American Council of Engineering Companies

United States Green Building Council

Bay Area Certified Green Business

American Society of Civil Engineers

Homeland Security, FEMA Inspector

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RELEVANT PROJECT INVOLVEMENT

237 Industrial Center, *North San Jose, CA*
50 MW Data Center and Light Industrial Project on 65 acres in North San Jose/Alviso. This new facility, to be built in phases, is adjacent to Coyote Creek, Highway 237, and the San Jose Regional Wastewater Facility.

Communications Hill Residential Project Specific Plan, *San Jose, CA*
400 acre, mixed-use, pedestrian oriented project on Communications Hill, a well known promontory in Central San Jose.

Tesla, *Palo Alto, CA*
Facility upgrades including parking lots, outbound logistics facility, and Free Trade Zone improvements in support of upcoming Tesla Model 3 production and delivery.

Oakland Unified School District - Downtown Educational Complex, *Oakland, CA*
Stephan managed the civil engineering design of this new facility which replaced an existing preschool, elementary school, high school, and child development center. The Complex includes a multi-purpose great room, a small TV studio and a health clinic. This project was designed according to the State's high performance school standards (CHPS).

ACE Charter School, *San Jose, CA*
As the managing civil engineer for this middle school campus project (1.94 acre site), Stephan led the site design's engineering services for the construction and operation of a 22,000 square foot campus including 18 classrooms, an administration building, and associated parking.

August Boeger Middle School, *San Jose, CA*
Stephan managed the site expansion and site improvement project, which provided design features that addressed on-site ADA Compliance characteristics to accommodate children with physical disabilities and incorporated appropriate materials & construction specifications for safety and aethetics.

With a background in Land Surveying, and over 40 years of civil engineering project design and management experience, David provides the insight to balance technical design precision with the practical aspects of construction. David provides the leadership in developing and maintaining HMH's team approach to project design and construction support and provides a system of strong project management for all HMH projects. He provides design oversight on complex projects and reviews HMH business and professional engineering documents for technical accuracy, practicality and contractibility.

EXPERIENCE 40 years
EDUCATION B.S. Civil Engineering - San Jose State University

David Wilson, PE
Principal

Civil Engineer California #49883

Building Industry Association

American Council of Engineering Companies

United States Green Building Council

RELEVANT PROJECT INVOLVEMENT

Market Park Mixed Use Project (formerly San Jose Flea Market Site) Berryessa Road & Mercado Way, *San Jose, CA*

David is HMH's Project Manager for the multiphase build out of the City of San Jose's Communication Hill. Being involved since project inception, David led preliminary studies of infrastructure capacity and required improvements to accommodate this major project. David has worked closely with the city's Public Works and Development Services staff to establish cost estimates, conceptual designs and occupancy triggers to mitigate project impacts and comply with the Area Development Policy. He has also led major coordination efforts with both public and private project stakeholders including the City of San Jose, VTA, Caltrans, UPRR and local utility owners.

David led the over 2,000 unit mixed use development project from the early stages of master planning to the civil engineering plan preparation for significant on-site and off-site infrastructure. Some of these improvements include the widening Berryessa Road to 6-lanes, the widening of the vehicular bridge over Penitencia Creek, a storm drain system with a regional stormwater runoff mitigation solution, a major sanitary sewer diversion pipeline, undergrounding of existing overhead utilities and contributions to nearby major freeway interchange improvements.

Communications Hill, *San Jose, CA*

David is overseeing the Communications Hill project. HMH is providing complete services that include conceptual site and grading plans; land use entitlement management and processing; preliminary and final design for roadway and utility infrastructure; analysis and coordination with the City of San Jose for multi-modal transportation improvements; feasibility studies, and design for required off-site improvements; design and integration of regional stormwater mitigation facilities; Landscape Architectural design for residential neighborhoods; topographic surveys, mapping, and construction staking; and coordination between owner, agencies and developers.

Crescent Village, *San Jose, CA*

David oversaw the Crescent Village project. This Mixed Use project is within the North San Jose Area Development Policy area and is important in providing residential uses and retail space to support future industrial growth in this region of the city. This 38.7 acre project includes 1,750 single-family attached residential units with 15,000 s.f. of ground floor retail space and a new 5 acre turnkey park. The five podium style buildings contain studio, one, and two bedroom stacked flats, some with lofts, over partial subterranean parking garages. Project amenities include swimming pools, clubhouses, fitness centers, a conference center and an internet cafe.

Rivermark Village - Mixed-Use Development Montague Expressway and Rivermark Parkway, *Santa Clara, CA*

David was the Civil Engineering Manager for this major development project which consisted of over 2,700 residential units, a commercial/retail center, Police Substation, Fire Station, and a Public Park.

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Bill's professional experience of 26 years has involved him in a vast range of public and private land development projects. Areas of expertise include project management, resource allocation, quality control, quality assurance, plan implementation and construction observation. Completed projects under his guidance include public projects, commercial and retail development, single & multi-family residential, senior communities, parks & recreation improvements as well as streetscapes and other urban improvement projects. His oversight of HMH's Landscape Architecture team allows for integration of important theories, methods, and techniques for quality projects.

EXPERIENCE 26 years

EDUCATION Masters in Urban Planning - San Jose State University

B.S. Landscape Architecture - California Polytechnic State University Pomona

Bill Sowa, RLA, ISA Certified Arborist Principal

Registered Landscape Architect #4466

ISA Certified Arborist #WE-12270A

American Society of Landscape Architects Member

USGBC - Silicon Valley Branch US Green Building Council

International Society of Aboriculture

RELEVANT PROJECT INVOLVEMENT

US 101 / De La Cruz / Trimble Interchange Improvements, *San Jose, CA*
Bill supervised the design concepts, community presentation, quality control and quality assurance while providing project management and coordination with VTA. HMH will reconfigure the existing ¾ cloverleaf interchange into a partial cloverleaf and adds a grade separated Class I trail under the high-volume southbound ramps. The project includes two protected intersections to connect the Class I facility to existing city streets.

US 101 / Blossom Hill Road Interchange Improvements, *San Jose, CA*
Bill supervised the design concepts, community presentation, quality control and quality assurance while providing project management and coordination with The City of San Jose. The project will widen the existing Blossom Hill Road Over-crossing from four lanes to six and will install a completely grade separated Class I bicycle and pedestrian path and will provide a smooth and continuous path for bicycles and pedestrians to cross over vehicles reducing user stress and connecting the existing Xanders Pedestrian Over-crossing across the freeway to the heavily traveled Coyote Creek Trail.

Stevens Creek / 880 / 280 Landscape Improvements, *San Jose, CA*
Bill supervised the design concepts, community presentation, quality control and quality assurance while providing project management and coordination with VTA. The project called for new landscaping for the recently completed interchange improvements.

Montague Expressway Widening, *Milpitas, CA*
Bill supervised quality control, quality assurance, design concepts, and community presentation while providing project management to meet all project milestones. The project widened Montague Expressway to provide for eight through lanes (three through plus one HOV lane in each direction), with bike use shoulders and improved pedestrian sidewalks from Falcon Drive to Pecten Court.

Montague Expressway Pedestrian Over Crossing, *Milpitas, CA*
Bill supervised quality control, quality assurance, design concepts, and community presentation while providing project management to meet all project milestones. The goal is to allow pedestrians and those using bikes, scooters, or other means of mobility to cross Montague Expressway safely and efficiently as they go to or from the Milpitas Transit Center.

Berryessa Road Widening and Median Island, *San Jose, CA*
Bill supervised quality control, quality assurance, design concepts, and community presentation while providing project management to meet all project milestones. The project spanned 2,000 feet which included new curbs, gutters, and sidewalks on both sides of the roadway. In order to further enhance traffic flow and to accommodate the demands of the proposed Market Park site, the improvements included six travel lanes, a median island, and two traffic signals as well as new storm drain facilities.

Coyote Creek Trail (Flea Market), *San Jose, CA*
Bill managed and oversaw HMH's efforts in the implementation of the trail while closely monitoring the status and quality of all tasks completed. Consistent with The City's Coyote Creek Trail Master Plan, this quarter-mile link will serve as an access point to more than 600 residences when the north side of Berryessa Road (formerly Flea Market parking area) is fully developed.

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RESUME

Tracy has broad experience in civil engineering and land surveying with HMH for twenty-one years. She is a Civil Engineering graduate who gained surveying experience early in her professional career and earned professional licenses in both disciplines to develop a unique and highly valued set of skills. As Senior Land Surveyor, her current responsibilities include the oversight of all survey mapping including preparation of tract maps, ALTA/ASCM surveys, corner records, record of surveys, condominium plans and plat maps and legal descriptions.

EXPERIENCE 21 years

EDUCATION B.S. Civil Engineering - Santa Clara University

Tracy Giorgetti, LS/PE

Senior Land Surveyor

Land Surveyor
California #8720

Civil Engineer
California #63214

California Land Surveyors Association

RELEVANT PROJECT INVOLVEMENT

Montague Expressway Roadway Widening, *Milpitas, CA*
As the Project Land Surveyor, Tracy reviewed title reports, provided easement plotting for 24 parcels; prepared a record boundary survey and prepared 70 plat maps and legal descriptions for right-of-way and public/private easement acquisitions.

Valley Transportation Authority (VTA) - Santa Clara County, California Santa Clara-Alum Rock and El Camino Bus Rapid Transit (BRT) Projects, *San Jose, Santa Clara, and Mountain View, CA*
Tracy prepared plat maps and legal descriptions, in VTA format, for the Santa Clara Alum Rock BRT project and prepared record right-of-way mapping for the El Camino BRT project that extended from Santa Clara to Palo Alto.

Bay Area Rapid Transit (BART), *San Jose, CA*
Tracy supervised topographic field surveys and coordinated pothole and as-built utility surveys for the Bay Area Rapid Transit (BART) Silicon Valley Berryessa Extension (SVBX). This project was administrated by VTA.

Caltrans Projects, *Bay Area, CA*
Tracy's experience also included: record mapping of Caltrans right-of-way, processing field topographic and 3D laser scanning data to produce a pavement survey exhibit for the I-880 Southbound High Occupancy Vehicle (HOV) project; Caltrans appraisal mapping with related legal descriptions for the I-880/Marina Boulevard Interchange; record of survey for US 101/ Bailey Avenue Interchange Improvements; and provided title report review and easement plotting, Caltrans appraisal/right-of-way/hard copy mapping, and prepared associated plat maps and legal descriptions for the I-880/Dixon Landing Interchange.

Various Survey Projects, *Bay Area, CA*

Alberta Ave, Sunnyvale
"Trellis" tract map

615 Tasman Drive, Sunnyvale
Tract map

1313 S. Wolfe Road, Sunnyvale
Parcel map

Washington Ave, Sunnyvale
Topographic survey for HydroScience for a water main replacement

Sunnyvale Downtown Streetscape Improvements, Sunnyvale
Topographic survey for the City of Sunnyvale

1190 Borregas Drive and 215 Moffett Park Drive, Sunnyvale
ALTA survey

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Alan has over 17 years experience in the civil engineering field. He has been the senior designer on a variety of projects including single and multi-family residential, roadway improvement, traffic calming, storm drainage systems, domestic water systems, sanitary sewer systems and public park grading and drainage. He is both a designer and engineer and prepares the SWPPP for many of the same projects.

EXPERIENCE 17 years
EDUCATION B.S. Civil Engineering - San Jose State University

Alan Le, PE
Civil Engineer
Manager

Civil Engineer California #72243

Certified Professional in Erosion and Sediment Control (CPESC) #5177

Qualified SWPPP Developer (QSD) & Qualified SWPPP Practitioner #20397

PROFESSIONAL AFFILIATIONS
California Stormwater Quality Association (CASQA)

CASQA BMP Subcommittee
Envirocert International Inc. (EIC)

RELEVANT PROJECT INVOLVEMENT

Westfield Valley Fair Mall, *San Jose/Santa Clara, CA*
Alan is currently the design manager for the Lawrence Station project. This 29-acre project is a part of the 65 acres Lawrence Station Area Plan that consists of 988 residential units with 35,000 square feet of retail space and 3.3 acres of public parks and open spaces. The public parks and open spaces area was maximized with the use of over 21,000 square feet of Silva Cell as the stormwater treatment facility to treat both public and private stormwater.

The Pruneyard Shopping Center, *Campbell, CA*
Alan worked as the lead civil engineer for the Pruneyard Shopping Center project. Located in Campbell, this project is a major makeover of the Pruneyard Shopping Center to renovate the existing buildings and to add 184,600 square feet of new retail, parking garage and office space to the existing 26.2 acres site. HMH provided civil engineering and survey services for the design of the onsite improvements including curb, gutter, sidewalk, accessible ramps, stormwater treatment facilities and utility connections. HMH also performed design for the offsite improvements along Bascom Ave, Campbell Ave and Campisi Way to bring existing driveway, sidewalk, and accessible ramps to current City standards.

Bay 101 Card Club, *San Jose, CA*
Alan worked as the lead civil engineer for the Bay 101 Card Club project. Bay 101 Card Club is a destination place where guests can "work, stay and play". The Card Club is the first completed project on this multi phased site. It has a new restaurant, roof deck, exterior patio and incorporates the latest gaming technology. Future projects on this 16.7 acre site includes an office tower, two hotels and a parking garage.

HMHCA.COM
408.487.2200
1570 oakland road
san jose ca 95131

CIVIL ENGINEERING
land use entitlements
land planning
land development
public works
landscape architecture
land surveying
stormwater compliance

Mike brings over 40-years of experience to his role as Land Development Manager at HMH. He is familiar with all phases of a land development project, from inception and master planning, through construction documents to project close-out. His resume includes site improvement design for all types of projects, including large commercial retail centers, industrial campuses, data centers, institutional, residential, and public infrastructure. He also serves as the primary contact between the client, public agencies, and the design team.

Prior to joining HMH, Mike was the Vice President and Principal Engineer at Ruth & Going.

EXPERIENCE 40 years

EDUCATION M.S. Civil Engineering - San Jose State University

B.S. Civil Engineering - Santa Clara University

Mike Sheehy, PE

Senior Land Development Manager

Civil Engineer California #029693

ACEC California, Past Chapter President & Member of State Board of Directors

American Society of Civil Engineers, Life Member

American Public Works Association

Building Industry Association, Member of the South Bay Policy Committee Member

Civil Engineering Department Advisory Board, Santa Clara University

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RELEVANT PROJECT INVOLVEMENT

Evergreen, *San Jose, CA*

Land use entitlements for an 80-acre mixed use greenfield development of 250 single family residential units and up to 350,000 square feet of retail. Construction documents for approximately 6,500 lineal feet of new in-tract public street infrastructure and 1,800 lineal foot widening of the existing Capitol Expressway and Quimby Road. In-tract infrastructure design included relocation of 1,100 lineal feet of 72-inch storm drain pipe.

Western Digital Campus/Cottle Transit Village, *San Jose, CA*

Entitlements, land surveys and construction documents for site improvements for redevelopment of the former approximately 300-acre IBM Campus in South San Jose into a mixed-use development of retail, residential and industrial uses. The project required preparation and processing of construction documents for 9 separate traffic mitigation projects on city streets totaling approximately $6.1 million in construction costs. Subsequent projects on the Camus include site improvement design for a new 130,000 square foot administrative building, a 104,000 square foot R&D building, new signalized Campus entrance drive, new internal streets and two new parking lots.

Diridon Station, *San Jose, CA*

Construction documents for grading and site improvements for this mixed-use development of 249 residential apartment units and approximately 26,500 square feet of ground level commercial space in a seven-story building over below ground parking. Design of off-site improvements for reconstruction of the curb, gutter, sidewalk, and utility facilities along the two fronting streets, including modifications to the existing traffic signal. Land surveying included boundary surveys and mapping to consolidate multiple existing parcels.

477 South Market, *San Jose, CA*

Construction documents for grading and site improvements for this downtown mixed-use development containing 130 apartment units, approximately 6,000 square feet of retail space at the ground level, with one level of subterranean parking. Off-site improvement design included reconstruction of the curb, gutter, sidewalk, and utility facilities along the two fronting streets, including modifications to the existing traffic signal. Land surveying included boundary surveys and mapping to consolidate multiple existing parcels.

Steve Sherman has forty years of experience in design, surveying, and construction of multi-disciplinary public works, institutional, and mixed-use projects. Recently, as a Senior Project Manager, Steve was responsible for the design of land development and infrastructure projects. Also, as Survey Coordinator, he organized office surveying operations as well as field survey crews. This work included boundary surveys, boundary resolutions, map preparation, ALTA surveys, and construction staking.

Prior to joining HMH Steve was Senior Civil Engineer and Project Manager at Ruth & Going.

EXPERIENCE 40 years
EDUCATION B.S. Civil Engineering - Stanford University

Steve Sherman, PE,
Senior Land Development Manager

Civil Engineer California #37191

American Society of Civil Engineers (President San Francisco Section 2004-05, President San Jose Branch 1996-97)

Silicon Valley Engineering Council (President 1999-2000)

Civil Engineering Department Advisory Board, Santa Clara University (past member)

American Public Works Association, Life Member

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RELEVANT PROJECT INVOLVEMENT

Route 87 HOV (N) widening project, *San Jose, CA*
Steve served as Deputy Project Manager/Project Engineer for this $24 million project involving the widening of a major freeway from 4 lanes to 6 lanes through downtown San Jose. The project required coordination of a team of 9 subconsultants in the widening of 5 bridge structures interfacing with existing light rail facilities and the Corp of Engineers Guadalupe River Flood Control Project.

Capitol Extension - Tasman Light Rail, *San Jose, CA*
Steve served as Project Engineer for this $14 million, one-mile segment of a major city arterial street widening to accommodate construction of new median light rail tracks. Significant potholing and surveying to facilitate utility relocation was required.

San Francisco International Airport, *San Mateo County, CA*
Steve served as Project Civil Engineer for site improvements on the International Parking Garages, Rental Car Facility, and United Express Remote Terminal. Site Improvements included locating and relocating a wide variety of underground utilities.

Diridon Station, *San Jose, CA*
Construction Support and Staking for grading, site improvements, and site horizontal control for mixed-use development of 249 for lease apartment units and approximately 26,500 square feet of ground level commercial space in a seven story building over below ground parking. Land surveying included boundary surveys, ALTA surveys, and a Parcel Map to consolidate multiple existing parcels.

Western Digital Campus/Cottle Transit Village, *San Jose, CA*
Boundary surveys, ALTA surveys and Tract Mapping for redevelopment of the former approximately 300-acre IBM Campus in South San Jose into a mixed-use development of retail, residential and industrial uses.

Professional & Office

	Per Hour
Principal	$195
Civil Engineering, Land Surveying or Landscape Architect Manager	$175
Senior Civil Engineer, Land Surveyor, or Landscape Architect	$160
Project Civil Engineer, Land Surveyor, or Landscape Architect	$150
Engineer, Planner, Surveyor, or Landscape Designer	$140

Printing, Reproductions & Materials at Cost, Plus 20%
Other Outside Services & Subconsultants at Cost, Plus 20%
Transportation at Cost, including mileage based upon IRS rates

RESOLUTION NO. __-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH HMH ENGINEERS, INC. FOR ON-CALL PRIVATE DEVELOPMENT ENGINEERING SUPPORT SERVICES AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT

WHEREAS, the City of Oakley utilizes the services of consultants to provide support services on a wide range of projects where the scope and magnitude for many of the tasks are larger than what City staff can perform; and

WHEREAS, HMH Engineers, Inc. has performed private development engineering support services for municipalities in the Bay Area in an exemplary way and can accommodate the City's service needs; and

WHEREAS, The award of the agreement is exempt from competitive bidding under Section 3.6.010 of the Oakley Municipal Code paragraph 1) which provides an exception for competitive bidding on "Contracts involving the acquisition of professional or specialized services, such as, but not limited to, services rendered by architects, attorneys, engineers, and other specialized consultants".

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that the On-Call Development Engineering Support Services proposal attached hereto as **Exhibit A** with HMH Engineers, Inc. for an amount not to exceed $150,000.00 through June 30, 2022 is hereby approved and the Interim City Manager is authorized to execute an agreement.

BE IT FURTHER RESOLVED AND ORDERED, if at the end of the term, the services have been performed satisfactorily, the City Manager has the discretion to approve an extension of the agreement to June 30, 2024 under the same terms as the original agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on May 25, 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

_____
Sue Higgins, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 25, 2021

TO: Joshua McMurray, Interim City Manager

Approved and Forwarded to the City Council

FROM: Tim Przybyla, Finance Director

SUBJECT: Resolution Approving an Agreement between Hinderliter de Llamas (HdL) and the City of Oakley for Consulting Services Related to the American Recovery Plan Act (ARPA) and Authorizing the Interim City Manager to Execute the Contract

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Background and Analysis

The City of Oakley has been notified that it will be receiving just over $8 million in funding from the American Recovery Plan Act (ARPA). Hinderliter de Llamas (HdL) provides consulting services for the City of Oakley related to Sales Tax, and they have the expertise and the familiarity with the City's Sales Tax revenues that will be beneficial in helping us to determine and claim the proper amount of revenue losses the City experienced as a result of the COVID-19 Pandemic.

Because the amount of funding that we will be receiving is so large, because we still have not received clear guidance from the Federal Government regarding all of the options that we have for the use of these funds, because any funds that are not spent before December of 2024 will have to be returned, and because the ARPA funding will cover the cost of HdL's consulting services, staff felt that it would be well worth the not-to-exceed amount of $52,800 to have HdL help us: 1) design and develop an Economic Recovery Strategy, 2) put forth outreach efforts with key stakeholders, 3) develop an ARPA program for Oakley restaurants to utilize the Restaurant Revitalization Fund, and 4) implement and manage the strategy, which includes managing compliance with the federal requirements contained in the American Recovery Act Plan.

Staff requested a proposal from HdL for them to provide these services, and HdL provided us with a proposal for an amount not to exceed $52,800.

Fiscal Impact

The proposed agreement amount will not impact the General Fund. The $52,800 amount of this contract will be covered by the roughly $8 million that will be included in a separate ARPA budget within the Proposed Fiscal Year 2021/2022 Budget.

Staff Recommendation

It is recommended that the City Council adopt the attached Resolution, Approving an Agreement between Hinderliter de Llamas (HdL) and the City of Oakley for Consulting Services Related to the American Recovery Plan Act (ARPA) and Authorizing the Interim City Manager to Execute the Contract.

Attachments

1. Resolution
2. Agreement

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT BETWEEN THE CITY OF OAKLEY AND HINDERLITER DE LLAMAS (HDL) FOR CONSULTING SERVICES RELATED TO THE AMERICAN RECOVERY ACT PLAN AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City will be receiving over $8 million of funding from the American Recover Plan Act; and

WHEREAS, the City will have to return any of those funds that are not properly expended by the end of December of 2024; and

WHEREAS, HdL provides Sales Tax consulting services for the City of Oakley, is familiar with the City's revenues and has the necessary expertise and experience to provide consulting services related to the American Recover Act Plan; and

WHEREAS, it is in the best interest of the City of Oakley to utilize the consulting services of HdL to properly expend, report and monitor the over $8 million of ARPA funding that the City of Oakley will receive between now and June 30, 2022; and

WHEREAS, staff did request a proposal for consulting services related to ARPA funding; and

WHEREAS, HdL did provide a proposal for an amount not to exceed $52,800 for the scope of services that are spelled out in the proposed agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley does approve the agreement between the City of Oakley and HdL and authorizes the Interim City Manager to execute the agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th of May, 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

_____

Sue Higgins, Mayor

ATTEST:

_____ _____

Libby Vreonis, City Clerk Date

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "Agreement") is entered into as of _____, 2021 (the "Agreement Date") by and between Hinderliter de Llamas and Associates ("Consultant"), and City of Oakley ("Client"), which is located within the state of California (the "State").

W I T N E S S E T H:

WHEREAS, Consultant is engaged in the business of providing consulting, software and other services that help public agencies understand and maximize their collection of sales, use and transactions taxes, business license taxes, property and lodging taxes, and other revenues, as well as their delivery of public services (collectively, "Consultant's Business"); and

WHEREAS, Client desires to contract with Consultant to obtain one or more of the services included within Consultant's Business (as provided for in Section 1) upon the terms and conditions contained in this Agreement;

WHEREAS, Consultant desires to contract with Client to render such services upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the covenants and promises contained herein, Client and Consultant mutually agree as follows:

1. Services.

1.1 Consultant will perform those services included within Consultant's Business that are described in any and all schedule(s) referencing this Agreement and signed by Client and Consultant as of the Agreement Date or hereafter (individually and collectively, the "Schedule(s)"), upon the terms and conditions contained in this Agreement (including the Schedules) (such services are, collectively, the "Services"). In performing the Services, Consultant is acting as an independent contractor (and not as an agent or employee of Client).

1.2 Client acknowledges and agrees that any other public agency (including, without limitation, any participating government agency) located within or outside of the State (e.g., city, municipality, county, district, public authority or other political subdivision) may procure services for fees and other terms and conditions that are substantially similar to any of the Services, Fees and other terms and conditions set forth in this Agreement, provided that such other public agency executes a separate agreement with Consultant wherein the services rendered to such other public agency, the fees payable by such other public agency, and the other terms and conditions of such separate agreement are the responsibility of Consultant and such other public agency and not Client.

1.3 This Agreement does not limit the right of Consultant to enter into additional contracts with Client or to contract with third parties to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services. During the Term of this Agreement, Client will not, directly or indirectly (except through Consultant), engage any third party to provide the Services or any services similar to the Services.

2. Fees. As compensation for performing the Services, Client will pay Consultant the fees, costs and expenses as described in the Schedules (individually and collectively these fees and costs are, the "Fees"). Consultant may perform the Services using professionals from its staff or Consultant's affiliated entities, and such Services will be invoiced to Client under the same terms applicable to Consultant's staff. Consultant may increase the Fees from time to time (including, without limitation, as may be described in any of the Schedules). Other than a Fee increase as described in the Schedules, Client may notify Consultant of a request that such Fee increase be modified or revoked and, if Consultant fails to do so to Client's satisfaction within thirty (30) days after the receipt of such request, Client may terminate this Agreement without cause pursuant to Section 7.3.

3. Invoices; Payment.

3.1 Consultant will invoice Client for the Fees earned and/or incurred by Consultant pursuant to this Agreement.

3.2 Invoices are due and payable upon receipt. Interest will begin to accrue on the thirty-first (31st) day following the invoice date on all unpaid balances at a rate of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. Payments will first be credited to interest and then to principal. In the event that Client disputes an invoice, only that portion so disputed in good faith will be withheld from payment, and the undisputed portion must be timely paid. Interest will accrue on any disputed portion of the invoice not timely paid and will be payable immediately if the disputed invoice is resolved in favor of Consultant.

3.3 If Client fails to fully pay an invoice within 30 days after the invoice date, Consultant may, after giving five (5) days' prior written notice to Client, suspend the rendering of Services under this Agreement until said invoice is paid in full, together with all interest that has accrued thereon. In the event of such a suspension of Services, Consultant will have no liability to Client for any delays or damages arising therefrom.

4. Insurance. Throughout the term of this Agreement, Consultant will maintain the following insurance in not less than the referenced amounts: (a) workers compensation and employers liability insurance as may be required by the State; (b) property damage liability of $1,000,000 per incident; (c) bodily injury liability of $1,000,000 per incident; and (d) professional liability for any errors or omissions of $1,000,000.

5. Client Support.

5.1 Client will promptly provide in writing to Consultant all data and other information relating to or which may be necessary for Consultant's performance of the Services. Without limiting the foregoing, Client will keep Consultant informed on a timely basis in writing as to the existence and amendments of the laws, ordinances and/or regulations under which Consultant is performing the Services (including any adopted by Client). Consultant will be permitted to rely on the accuracy, timeliness and completeness of the information provided by Client, and in no event will Consultant be liable to Client or others as a result of such reliance.

5.2 Client will examine all of Consultant's reports, specifications, notices, proposals and other documents. In the event that Consultant asks for a decision from Client in order for Consultant to perform the Services, Client will render such decision in writing in a timely manner.

5.3 Promptly following any request from Consultant, Client will adopt and maintain in full force and effect resolutions in forms acceptable to Client and in accordance with applicable law authorizing Consultant to examine the confidential sales tax and other relevant records of Client throughout the Term and, for so long as any Fees are still accruing pursuant to this Agreement, after the Term.

5.4 Client will assist Consultant in obtaining such licenses, permits and approvals as may be required by law for performing the Services, and Client will pay all fees, assessments and taxes related to the application, issuance and maintenance thereof.

5.5 The Services do not include services to support, prepare, document, bring, respond to subpoenas, act as a witness, defend or otherwise assist in litigation undertaken or defended by Client, which Consultant may be required by legal process or otherwise or requested by Client to provide (collectively, "Litigation Services"). In this regard, if Consultant agrees with Client or is otherwise required to perform Litigation Services, Client will promptly pay or reimburse Consultant for all of Consultant's costs and expenses related to Litigation Services (including, without limitation, Consultant's attorneys' fees and costs) at Consultant's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees).

6. Confidentiality; Software Use and Warranty; Records.

6.1 Consultant will comply with the requirements of the applicable laws, ordinances and/or regulations of which it has been informed by Client pursuant to Section 5.1 concerning the confidentiality of tax records. Consultant may publicly state that it performs Services for Client.

6.2 As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility for Consultant or in Consultant's Business, including without limitation, (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; (vi) materials, techniques and intellectual property used; and (vii) the Software and the Software's documentation. Except as otherwise required by law, Client must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by Client in connection with this Agreement. The terms of this Section 6.2 do not apply to information that is public information; provided, however, that proprietary information will not qualify as public information if it became public due to Client's (or its employees' or agents') disclosure.

6.3 If access to any software which Consultant owns is provided to Client as part of the Services under this Agreement (including, without limitation, if Client chooses to subscribe to such software and/or related reports as part of the Services pursuant to a Schedule to this Agreement) (such Consultant-owned software is, collectively, the "Software"), Consultant hereby provides a limited, non-exclusive, non-transferable license to Client (including such of Client's staff as may be

designated from time to time by Client and approved by Consultant in writing) to use the Software pursuant to and during the Term of this Agreement.

6.4 The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client's staff of the Software nor any rights of Client or any of Client's staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or the Software's documentation, nor modify (or allow the modification of) the Software or the Software's documentation without the prior written consent of Consultant. In the event of a breach of this provision (and without limiting Consultant's remedies), such modification, derivative work or product based on the Software or the Software's documentation is hereby deemed assigned to Consultant. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and Client must immediately deactivate, cease using and remove, delete and destroy all the Software (including, without limitation, from Client's computers and network). **Consultant warrants that the Software will perform in accordance with the Software's documentation**.

6.5 Notwithstanding anything to the contrary in this Agreement (including any Schedule hereto), if access to any software which Consultant does not own is provided to Client as part of the Services pursuant to this Agreement (including pursuant to any Schedule hereto), Client hereby agrees (i) to comply with all of the terms and conditions imposed on Client's access to such software (including, without limitation, by Consultant, such software's owner, and pursuant to applicable law), and (ii) Consultant has no obligation during the Term of this Agreement or thereafter to provide Client with access to such software.

6.6 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by Consultant to Client either in hard copy or electronically are the joint property of Client and Consultant. This does not include the Software or any other software, any programs, any methodologies or any systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to Client in either hardcopy or electronic form, all of which may be protected by Consultant or third party copyrights or other intellectual property and remain Consultant's or such third parties' exclusive property (as the case may be). It is possible that any documents, drafts, communications or other work product provided to Client may be alleged to be public records under applicable law and/or may be discoverable through litigation. Well in advance of when Client may disclose such information in response to any request for public records, Client must notify Consultant in writing about the request and, if Consultant requests it, Client must apply for any potential exemption from disclosure that may exist under applicable law.

6.7 Subject to applicable law, Consultant is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to Client. Retention of any other documents, preliminary drafts, communications and any and all other work product provided to Client by Consultant is the responsibility of Client. Consultant has no responsibility to retain any drafts, notes, communications, emails or other writings created or received by Client in the course of performing the Services (other

than the final documents and other final work product related to the Services and provided to Client for the term of years referenced above).

7. Term and Termination.

7.1 The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until twenty-four (24) months from such date (the "Term").

7.2 This Agreement may be terminated by either party for cause upon not less than forty-five (45) days' prior written notice given to and received by the other party, if the other party has materially breached this Agreement through no fault of the notifying party and fails to (i) commence correction of such material breach within thirty (30) days of receipt of the above-referenced written notice and (ii) diligently complete the correction thereafter.

7.3 In addition, either party may terminate this Agreement without cause upon not less than one hundred twenty (120) days' prior written notice to the other party.

7.4 On termination, Client will pay Consultant for all Fees and other compensation (including for Litigation Services) earned and/or incurred through the termination date and will thereafter timely pay Consultant for all other Fees and compensation to which Consultant may be entitled pursuant to this Agreement (including the Schedules hereto).

8. Indemnification.

8.1 Client agrees to fully and promptly protect, indemnify, reimburse and hold harmless Consultant, its directors, officers, employees, agents, direct and indirect equity holders, and affiliates (collectively, "Consultant Group") from and against any and all liabilities, losses, claims, damages, expenses, and costs (including, without limitation, for attorneys' fees and costs) (each, a "Liability", and collectively, "Liabilities") which are (a) the direct or indirect result of any breach of any representation, warranty or covenant made by or given on behalf of Client under this Agreement, or (b) related to any action or failure to act on the part of any one or more of Consultant Group where such action or failure to act was reasonably and in good faith believed by any of Consultant Group at the time to be in conformity with this Agreement, or (c) otherwise related to or arising out of any act or omission of Client or its directors, officers, employees, agents, direct or indirect equity holders, or affiliates (collectively, "Client Group"). In this regard, Client hereby acknowledges that it is responsible for instructing Consultant regarding Consultant's performance of Services under this Agreement, as well as the interpretation and meaning of the ordinances and/or regulations under which Consultant is performing Services under this Agreement.

8.2 Promptly after Consultant receives notice of the commencement of any proceeding for which it intends to make a claim for indemnification under this Agreement, it should notify Client, but the failure to so notify will not result in the loss of any rights of any of Consultant Group to indemnification hereunder except to the extent that Client does not otherwise become aware of such proceeding and is actually adversely affected thereby to a material extent. Client will assume the defense of Consultant Group (including the employment of legal counsel reasonably satisfactory to Consultant) and payment of such counsel's fees and disbursements (including retainers). Should Consultant reasonably determine that separate counsel is necessary (whether due to the existence of

different defenses, potential conflicts of interest or otherwise), or if Client has not assumed the defense, then any of Consultant Group may employ separate legal counsel, and Client will pay such counsel's reasonable fees and disbursements as incurred (including retainers). The obligations of defense and indemnification under this Agreement apply, without limitation, to those situations where someone brings a cross claim for indemnity or contribution against any one or more of Consultant Group.

8.3 Client will not, without Consultant's prior written consent, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, or proceeding or investigation in respect of which indemnification could be sought hereunder (whether or not any of Consultant Group is an actual or potential party to such claim, action or proceeding or investigation), unless such settlement, compromise or consent includes an unconditional release of each of Consultant Group from all liability arising out of such claim, action, proceeding or investigation and includes an explicit disclaimer of responsibility of any kind on the part of Consultant Group.

9. Liability Limitations; Governing Law; Dispute Resolution.

9.1 To the maximum extent permitted by law and notwithstanding anything to the contrary in this Agreement:

9.1.1 Except for Consultant's gross negligence or willful misconduct in connection with the performance of its obligations under this Agreement, Client's sole and exclusive remedies for any breaches of Consultant's obligations under this Agreement (including, without limitation, for any breaches relating to the Services or the Software, including any breaches of warranty, express or implied) (i) are limited to making reasonable and necessary repairs, replacements or corrections without additional cost to the Client, and (ii) will not exceed, under any circumstances, the amount of the Fees paid by Client to Consultant for the twelve-month period prior to the alleged breaches, calculated without reference to any payments constituting the payment of costs or expenses. All amounts paid to Consultant hereunder are deemed first to be for the reimbursement of costs or expenses and then any excess will be regarded as payments for other portions of the Fees under this Agreement. Any references to breaches of this Agreement will include any supplements, additions or amendments to this Agreement.

9.1.2 Except as may otherwise be expressly set forth in this Agreement, Consultant makes no warranty of any kind with respect to the Services or the Software, express or implied. Consultant hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. Consultant disclaims all warranties and responsibility for third party software.

9.1.3 In no event will any of Consultant Group be liable for any lost revenues or lost profits, or any special, incidental, or consequential damages of any nature whatsoever, even if such restrictions deprive one or more remedies of their essential purpose. This damage exclusion is independent of any remedies provided for herein.

9.1.4 None of Consultant Group will have any Liability (whether direct or indirect, in contract or tort or otherwise) related to, arising out of, or in connection with this Agreement or to any of Client Group acting on any advice given or opinion rendered by any of Consultant Group, except to the extent that such Liability is found by a court of competent jurisdiction in a judgment which has

become final and that it is no longer subject to appeal or review to have resulted solely from such Consultant Group's willful misconduct or gross negligence.

9.1.5 No claim may be brought by Client against any one or more of Consultant Group arising out of this Agreement (including, without limitation, in connection with the Services or the Software) more than one year after the date on which such claim arose (regardless of the date when Client may have discovered a basis for the claim).

9.1.6 Client acknowledges that this Agreement is with Consultant in its capacity as a corporation or a limited liability company, and Client agrees that in no event will it seek to hold any of the Consultant Group (other than Consultant) responsible for any Liabilities.

9.2 The law of the State will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it, without regard to the State's conflict of laws rules. Venue for any legal action arising out of this Agreement will be proper only in the State courts or the federal courts located within the State. The parties hereby submit to the exclusive jurisdiction of such courts and waive any other venue to which either party might be entitled by domicile or otherwise.

9.3 If either party is required to bring legal action to enforce its rights under this Agreement or as the result of a breach of this Agreement, the costs and expenses of the prevailing party, including reasonable attorneys' fees, will be paid by the non-prevailing party.

9.4 A breach of this Agreement by either party may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore such other party will have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any further breach and for such other relief as such other party may deem appropriate. Such right is in addition to the remedies otherwise available to such other party at law or in equity. The parties hereto expressly waive the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction hereunder for the posting of a bond.

10. <u>General Legal Provisions</u>.

10.1 <u>Authorization to Proceed</u>. Each Schedule must be signed by both Client and Consultant before such Schedule will be binding on the parties hereto.

10.2 <u>Force Majeure</u>. Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, epidemics, pandemics or other health emergencies, or other events beyond the control of Consultant.

10.3 <u>Amendment; Waiver</u>. Any provisions of this Agreement (including, without limitation, any Schedules or provisions within any Schedules) may be amended or terminated if in writing and signed by both Client and Consultant. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder,

whether intentional or not, will be deemed to be valid unless acknowledged by such party in writing, and such waiver will not extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.4 Severability and Survival. If any provision in this Agreement is held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Notwithstanding any other provisions of this Agreement (including, without limitation, Section 7), Sections 3, 5.5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement.

10.5 No Third-Party Beneficiaries; Services Limited to Agreement. Except as set forth in Section 8, this Agreement gives no rights or benefits to anyone other than Client and Consultant and has no third-party beneficiaries. The Services to be performed for Client by Consultant are defined solely by this Agreement (including the Schedules), and not by any other contract or agreement that may be associated with performing the Services.

10.6 Assignment. This is a bilateral personal services agreement. Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. This Agreement is binding on the successors and assigns of the parties hereto. Notwithstanding anything to the contrary, Consultant may, from time to time, utilize one or more third parties to provide certain of the Services (including, but not limited to, as may be set forth in one or more of the Schedules).

10.7 Notices. All notices under this Agreement must be in writing and will be deemed to have been given when such notice is received (i) from United States Postal Service First Class Certified Mail, Return Receipt Requested, (ii) by courier service, or (iii) by email; provided, however, that notices received on a weekend or holiday or on a business day after 4:00 p.m. local time will be deemed to have been received on the next business day. Notices will, unless another address is specified in writing, be sent to the addresses indicated below (each of which must include a street address and an email address): Consultant: Hinderliter de Llamas and Associates, Attn: Barry Foster, Email: bfoster@hdlcompanies.com; and Client: City of Oakley, Attn: Tim Przybyla, Finance Director, Email: przybyla@ci.oakley.ca.us.

10.8 Entire Agreement; Conflict. This Agreement (which includes any Schedules or amendments dated as of the Agreement Date or hereafter, including without limitation, amendments of the main body of this Agreement or the Schedules that may add to, subtract from, modify or clarify the Term, the scope of Services and/or the amount of Fees) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof. Should there

ever be a conflict between the terms and conditions of any Schedules and the remainder of this Agreement as set forth in the main body of this Agreement, the terms and conditions of the remainder of this Agreement as set forth in the main body of this Agreement will prevail and be controlling; provided, however, that should there ever be a conflict between the terms and conditions of this Agreement (including any Schedules) and (i) any amendments hereof, the terms and conditions of the amendments hereof will prevail and be controlling, and (ii) the terms and conditions of any Schedule that expressly provides for them to supersede any terms and conditions of the main body of this Agreement, such terms and conditions of such Schedule will prevail and be controlling.

10.9 Counterparts; Electronic Signatures; Authority. This Agreement may be signed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signed signature pages of this Agreement transmitted by email or other electronic means in a portable document format (PDF), or other clear and visible electronic format will have the same legal effect as an original. Each of the persons signing on behalf of a party hereto represents that he or she has the authority to sign this Agreement on such party's behalf.

10.10 No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

[Signatures are on the next page]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement through their duly authorized representatives as of the Agreement Date.

CONSULTANT:	**CLIENT**:
Hinderliter de Llamas and Associates	City of Oakley
_____	_____
By: Andrew Nickerson	By:_____
Its: President	Its:_____
	By:_____
	Its:_____

[Any Schedule or Schedules may (but is/are not required to) be attached hereto]

Schedule A

Oakley – Proposal & Qualifications for COVID-19 Relief & Economic Recovery Program Administration for the American Rescue Plan Act

Submitted By:
HdL ECONSolutions
120 S. State College Blvd., Suite 200
Brea, CA 92821
www.hdlcompanies.com

Contact:
Barry Foster, Principal/Managing Director
714.879.5000
bfoster@hdlcompanies.com

I. LETTER OF TRANSMITTAL

April 6, 2021

RE: Proposal/Qualifications for COVID-19 Relief & Economic Recovery Program Administration for American Rescue Plan Act

Tim Przybyla, Finance Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Tim:

Thank you for the opportunity to present a proposal, as well as our qualifications to the City of Oakley to assist with COVID-19 Relief and Economic Recovery Program Administration per the American Rescue Plan Act. Hinderliter de Llamas Associates (HdL) is a 37-year-old consulting firm with corporate offices in Brea California, along with offices in Pleasanton, Fresno, San Dimas, as well as offices outside of California in Texas, Colorado, Georgia and Alabama. HdL is a highly respected consulting firm working in sales tax, property tax, tax & fee administration, revenue analysis, economic development, and cannabis management. HdL ECONSolutions was formed by HdL in 2014 to provide a variety of economic development products, services and special projects in further serving local governments. HdL ECONSolutions has completed work for 120 local governments in California and is presently working for 22 California cities and a few private sector developers on a variety of economic development related services.

HdL ECONSolutions is well positioned to assist Oakley with developing an Action Strategy for COVID-19 relief and use of federal stimulus funding coming from the recently approved American Rescue Plan, along with administration of programs related to this program. During the past year, HdL ECONSolutions has worked with several cities to deal with the COVID-19 Pandemic and the negative economic impact it has delivered to cities, especially their business communities. HdL ECONSolutions has prepared Economic Recovery Action plans for the California cities of Eastvale, Menlo Park and Pacific Grove, as well as reopening plans for Calimesa and Cupertino. Additionally, we have assisted in several small business relief grant programs to deal with COVID-19 and the Pandemic.

Please feel free to call me if you have questions or require additional information. I can be reached at 951.233.0414 or by email at bfoster@hdlcompanies.com. If HdL ECONSolutions is selected to do the work in Oakley, I will serve as the Project Manager, with support from Angela Tsui, Senior Advisor (based in the Bay Area out of our office in Pleasanton, along with assistance from Fienna Cheng, Analyst.

Sincerely,

Barry Foster
Principal/Managing Director

II. KEY PERSONNEL

Team of Professionals for the Oakley Project

For the Oakley project, HdL ECONSolutions will use a team of four professionals that have more than 60 years of experience working in economic development and public administration.

HdL ECONSolutions Team

Barry Foster — Principal/Managing Director, HdL Companies
Barry Foster has more than 35 years of local government experience including nearly 30 years in Southern California working for the cities of Moreno Valley, Rancho Mirage, Monrovia, and Loma Linda, as well as nearly 7 years with the HdL Companies. Mr. Foster has more than 29 years of economic development experience. As a Principal & Managing Director with HdL, Barry Foster started the ECONSolutions Division for HdL and has worked with 120 local governments in a variety of economic development related services. Additionally, he worked as a Development Consultant with five developers and retail advisors in Southern California. Over the years, he has helped facilitate more than 32 million square feet of new development projects including logistics-distribution, shopping centers, commercial retail/office, medical-healthcare, hotels, and auto centers. Mr. Foster is member of the International Council of Shopping Centers, as well as being a past President of the Municipal Management Assistants of Southern California (MMSASC). He holds a Bachelor of Science degree from Minnesota State University-Mankato and a Master of Public Administration degree from the University of Kansas.

Angela Tsui — Senior Advisor, HdL Companies
Angela Tsui came to work for HdL in 2019 as a Senior Advisor working out the Pleasanton office. Before working for HdL, Ms. Tsui worked over 22 years in the public sector, including for the cities of Fremont and Cupertino, where she was the Economic Development Manager for 7 years. With HdL ECONSolutions, Angela has worked on numerous studies and is the primary economic development staffing person for the cities of Cupertino and Menlo Park. Additionally, Angela has recently worked on Economic Recovery Action Plans for the cities of Eastvale, Menlo Park and Pacific Grove, as well as numerous programs and issues related to the Pandemic and economic recovery efforts in Cupertino. Angela holds a Bachelor of Arts degree in Political Science from the University of California-Berkley.

Fienna Cheng — Analyst, HdL Companies
Fienna Cheng joined HdL early in 2020 and works on a variety of analytics and revenue analysis project, as well as supporting the divisions administration needs. Ms. Cheng has experience in the private sector in the healthcare and insurance industries. Fienna received a Bachelor of Arts degree in Economics from the University of California-Irvine.

Jason Moncayo — Analyst, HdL Companies
Jason Moncayo joined HdL in 2020. Jason recently received his Master of Public Administration degree from the University of Southern California and has his undergraduate degree from California State University at Fullerton.

III. QUALIFICATIONS AND SCOPE OF WORK

QUALIFICATIONS

HdL and the HdL ECONSolutions Team are uniquely qualified to assist the City of Oakley with work related to COVID-19 relief and formulating an economic recovery program, along with administration support with funding coming from the American Rescue Plan Act.

- HdL ECONSolutions has significant experience working with California cities to help deal with COVID-19 and the Pandemic and economic recovery efforts including working on Economic Recovery Action Plans (ERAP's) for the cities of Eastvale, Menlo Park and Pacific Grove, as well as numerous small business grant programs and focused economic recovery strategies.
- HdL ECONSolutions is recognized as one of the leading consultants in the economic development field in California, having worked with 120 local governments on a variety of programs and projects during the past 6 ½ years.
- The HdL ECONSolutions Team is highly experienced in economic development and brings over 60 years of experience in economic development, along with working for and with cities. Barry Foster, a Principal and Managing Director will serve as the Project Manager for the Oakley project.
- HdL is a premiere consulting firm in California and is presently working with over 400 local governments and is recognized as a leader in sales tax and property tax management, budgeting and revenue projections, tax & fee administration, economic development and cannabis management.

References

The following is a sampling of references appropriate for the Oakley project.

CITY OF CUPERTINO
Deb Feng, City Manager
10300 Torre Ave,
Cupertino, CA 95014
408.777.3250

CITY OF EASTVALE
Bryan Jones, City Manager
12363 Limonite Ave, Ste. 910
Eastvale, CA 91752
951.703.4411

CITY OF MENLO PARK
Starla Jerome- Robinson, City Manager
701 Laurel Street,
Menlo Park, CA 94025
650.330.6610

CITY OF PACIFIC GROVE
Ben Harvey, City Manager
300 Forest Avenue,
Pacific Grove, CA 93950
213.364.2699

SCOPE OF WORK

The following represents the scope of work for the project.

HdL ECONSolutions believes the most effective scope of work for the project for the City Oakley to expend approximately $8.01 million in Federal funding from the American Rescue Plan should focus on formulating a comprehensive COVID-19 Relief & Economic Recovery

Program for both near term and lasting economic recovery including the following components.

- **Task 1** - **Design and develop an Economic Recovery Strategy (the 'Strategy')** to effectively expend the approximately $8.01 million coming to the City of Oakley from the American Rescue Plan, including working with City Council and City staff on crafting the Strategy to incorporate their vision, goals and objectives.
- **Task 2** - **To properly develop the Strategy** an outreach effort must be put forth including surveys and meetings with key stakeholders such as City Council members, City staff, the Chamber of Commerce and local business representatives.
- **Task 3** – **Develop an ARPA program for Oakley restaurants** to utilize the Restaurant Revitalization Fund to potentially help them recover.
- **Task 4** -- The Program must also include the administrative effort to **Implement and Manage the Strategy**, along with managing compliance with the federal requirements contained in the American Rescue Plan Act.

IV. COMPENSATION

Understanding the effort and time commitment to undertake the three tasks identified above is somewhat challenging; therefore, HdL ECONSolutions is suggesting doing the work on an hourly basis, with a not-to-exceed amount, plus an 10% overall contingency.

Task 1
Not-to-exceed amount of $17,500

Task 2
Not-to-exceed amount of $12,000

Task 3
Not-to-exceed amount of $6,500

Task 4
Not-to-exceed amount of $12,000

Hourly Consulting Rates

Staff Position	Hourly Rate
Principal	$250
Sr. Advisor	$180
Analyst	$100

Total Estimated Cost=$48,000

10% Contingency=$4,800

Total Compensation – Not-to-Exceed $52,800

Agenda Date: _____

Agenda Item: _____

OAKLEY
CALIFORNIA

STAFF REPORT

Date: May 25, 2021

To: City Council

From: Joshua McMurray, Interim City Manager

Subject: **Adopt a Resolution continuing the existing recycling surcharge at its current rate until a Base Year rate review is completed with Mt. Diablo Resource Recovery**

Summary and Background

A national crisis in the recyclable market exists today, leading solid waste haulers to either implement surcharges or raise residential customer rates, in order to cover the loss of revenue that was previously generated by the sale of recyclables. In May 2019, the City Council granted Mt. Diablo Resource Recovery (MDRR) its request to apply a 24-month surcharge on residential customers to help cover the cost of processing the material that was once sold on the recyclable market.

When the surcharge was proposed by MDRR and adopted by the City Council, all parties agreed that it was a temporary solution to bridge the space to when a more permanent solution was identified. The surcharge is set to expire on June 1, 2021.

MDRR's residential solid waste rates have not changed since June 1, 2019. The company chose not to increase residential rates during summer 2020 at the height of the COVID-19 crisis. MDRR is again keeping residential rates flat in 2021; but to do so the City must consider allowing a continuation of the existing, and set to expire, 24-month surcharge. As mentioned previously the surcharge was necessary due to conditions in the recyclable commodities market. These conditions have not improved as expressed by MDRR at the May 10, 2021 City Council meeting were they presented the topic during a Work Session. Recycling, which was once a profitable industry for solid waste haulers, continues to cost more than it pays.

At the work session, the City Council provided direction to bring back a resolution that would extend the surcharge until a comprehensive base rate review was submitted and approved later this year. It is anticipated this surcharge will remain in place until January 1, 2022 or shortly thereafter.

Fiscal Impact

With the adoption of the attached resolution, the existing recycling surcharge would remain in effect and there is no changes in rates to the customers of MDRR.

Recommendation

Staff recommends the City Council consider and adopt the attached resolution.

Attachments

1. May 14, 2019 Staff Report
2. May 11, 2021 MDRR PowerPoint Presentation
3. Resolution

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: May 14, 2019

TO: City Council

Approved and Forwarded to the City Council

FROM: Bryan Montgomery, City Manager
Deborah Sultan, Finance Director

SUBJECT: **Consider Application to Increase Residential Solid Waste Collection Rates Pursuant to the Franchise Agreement between the City and Oakley Disposal Service, Inc.**

Background and Analysis

Garbage and recycling services are provided to Oakley residents and businesses through a franchise agreement with Oakley Disposal Service, Inc. dba Mt. Diablo Resource Recovery-Oakley ("MDRR") – see attachment #2.

The franchise agreement grants MDRR the ability to submit an application for an increase in the rates within the same calendar year as a Refuse Rate Index ("RRI") adjustment when MDRR experiences significant changes in costs or revenue not under its control. (Article 5, Section 5.01 a. and c. provide for fee increases by resolution due to circumstances beyond control of either party).

The City Council has been aware of the dramatic shifts in the recyclables market and MDRR made a presentation about the situation at the February 12, 2019 Council Meeting and also presented the same information to the Contra Costa Mayors Conference. MDRR explained that significant changes that have occurred in the recycling industry and marketplace over the past eighteen months have resulted in MDRR suffering significant ongoing financial losses due to a sharp decrease in revenue from the sale of recyclable materials in the global marketplace.

The driving force behind this recycling market downturn can be traced back to new highly restrictive policies and regulations enacted by China (sometimes referred to as the "China National Sword"), which greatly restrict the amount, types, and purity requirements of recyclable material that China will now accept from foreign consumers, including the United States. China has been the largest and most significant global end user of recycled material.

The China National Sword has received widespread media attention. Locally, the *East Bay Times* ran a front-page story on April 1st, providing further information regarding this ongoing crisis. In another local example, on March 19th, the *East Bay Times* also reported that the City of San Ramon is going to be increasing its garbage rates by approximately 29%. The article attributes this to *"increased recyclables processing costs and reduced revenues from the sale of recyclables."* An article was also recently published in *The Atlantic* (March 5, 2019), which gives additional background on the ongoing nationwide issue with the recycling markets and the grave economic consequences that are associated with it. These news articles are attached to this staff report.

MDRR has also provided supporting documentation which provides a concise summary of the issue, and its implications on the operations and revenue of MDRR, which is also attached to this staff report. The documentation contains excerpts from City Council staff reports from the City of Fremont and City of San Rafael that acknowledge this new reality and provide economic relief and contract modifications to their respective solid waste providers and their respective franchise agreements.

Further, an excerpt from a recycling surcharge analysis completed by R3 Consulting Group, Inc. on behalf of the City of Concord is attached, which further explains the fact that the policy enacted by China has real impacts on recycling revenue and R3 recommended a surcharge to offset the ongoing losses suffered by MDRR within the City of Concord.

The franchise agreement with the City of Oakley allows MDRR to adjust refuse rates annually by the RRI. (The RRI is defined in the agreement is the sum of the products of the weighted averages of the approved cost categories multiplied by the increase in the index or contractual price for each). The franchise agreement allows for a rate adjustment when MDRR experiences significant changes in costs or revenue not under its control. Attached is a spreadsheet which identifies the current rates for the various levels of services, the previously approved 2.42% RRI adjustment, the 2019 and 2020 recycling surcharges, and the respective impacts on the rates.

Fiscal Impact

The main impact is on residential refuse collection customers who would pay an additional $2.90 to $5.46 per month in collection fees, depending on the size garbage can they select. An increase in fees is necessary to comply with the franchise agreement allowing MDRR to recover its costs, earn a reasonable return on regulated activities, and provide economic relief from the significant loss of revenue caused by the ongoing impact of declining recycling marketplace.

As a reminder, the City previously approved a rate application submitted by MDRR for its annual RRI adjustment of 2.42% in 2018, which was scheduled to take effect as of January 1, 2019. However, in an effort to avoid multiple rate adjustments

within a short time period, MDRR elected to forgo implementation of the annual RRI adjustment while the current application was pending.

Staff Recommendation

Staff recommends the City Council consider and adopt the attached resolution approving the application for the rate adjustment as submitted.

Attachments

1. Resolution
2. Franchise Agreement and Amendment between the City of Oakley and Oakley Disposal
3. Rate Application Request due to Significant Changes of China National Sword
4. Rate Application background & supporting information
5. *East Bay Times* front-page article, dated April 1, 2019
6. *East Bay Times* article re: San Ramon, dated March 19, 2019
7. *The Atlantic* article, dated March 5, 2019
8. R3 Consulting Group, Inc. recycling surcharge analysis for the City of Concord
9. Presentation & examples of program & contract changes in other jurisdictions
10. Rate comparisons

Mt. Diablo Resource Recovery
reduce • reuse • recycle • respect • recover
A Garaventa Company

City Council Study Session

General Update, Workplan & Discussion of 2021 Rates

May 11, 2021

Mt. Diablo Resource Recovery
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Brief High-Level Update

- COVID-19
- SB 1383 Workplan
- Recycling Commodities Market & Major Upgrade at MDR
- Mt. Diablo Resource Recovery Park Vision & Long-term Master Plan
- Rates for 2021

COVID-19

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- Significant increase in account delinquency in both residential & commercial sectors
- Reduced commercial operations = reduced service levels / reduced revenue
- 35 commercial accounts either: reduced, canceled or suspended service
  - This represents 17% of the 204 total commercial accounts within the City
- As of May 10th , MDRR reports the following:
  - To date, 1,814 residential accounts, at one point were eligible to have their service stopped
    - This represents 15% of the total residential accounts vs a historical average of approximately 2% that would normally have their service stopped in pre COVID times
  - 1,158 customers were delinquent, but have brought their accounts current
    - (Residential = 1,125 / Commercial & Multi Family = 33)
  - MDRR has successfully collected approximately $570,925
  - Still outstanding: 695 accounts with a collective outstanding balance of $245,902
  - As a reminder, residential rates were not raised in 2020 to help minimize ratepayer impact

SB 1383 – Highlights of Workplan

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- Mandatory Organic collection service to all residential and commercial customers
- Establishment of an edible food recovery program
- MDRR will conduct education and outreach to community
- City to procure recovered organic products
- Per Regulations, City Solid Waste Ordinance must be updated
- Solid Waste Franchise Agreement and rates need to be amended
  - Current agreement / rates do not contain scope of work to carryout 1383
- Regulations take effect in January 2022
  - MDRR is proposing rollout: Commercial 1/1/22; Residential 1/1/23

Recycling Markets

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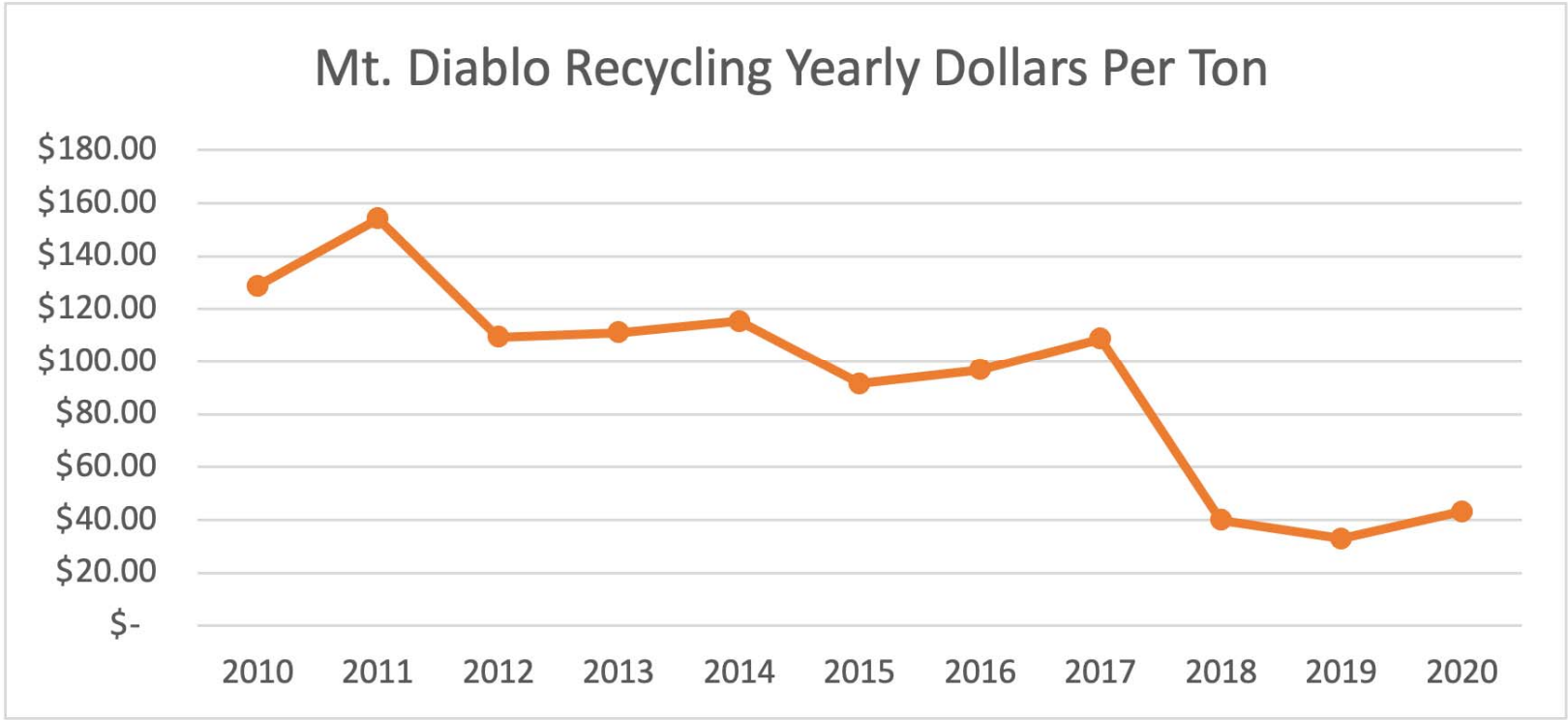
- While recycling markets have not recovered

Year	$/Ton
2010	$ 128.68
2011	$ 154.17
2012	$ 109.44
2013	$ 111.08
2014	$ 115.40
2015	$ 91.51
2016	$ 96.92
2017	$ 108.81
2018	$ 39.98
2019	$ 32.98
2020	$ 43.18



- MDRR is adjusting, preparing and re-investing for the new normal

Major equipment upgrade at Mt. Diablo Recycling

Mt. Diablo Resource Recovery Park

Mt. Diablo Resource Recovery
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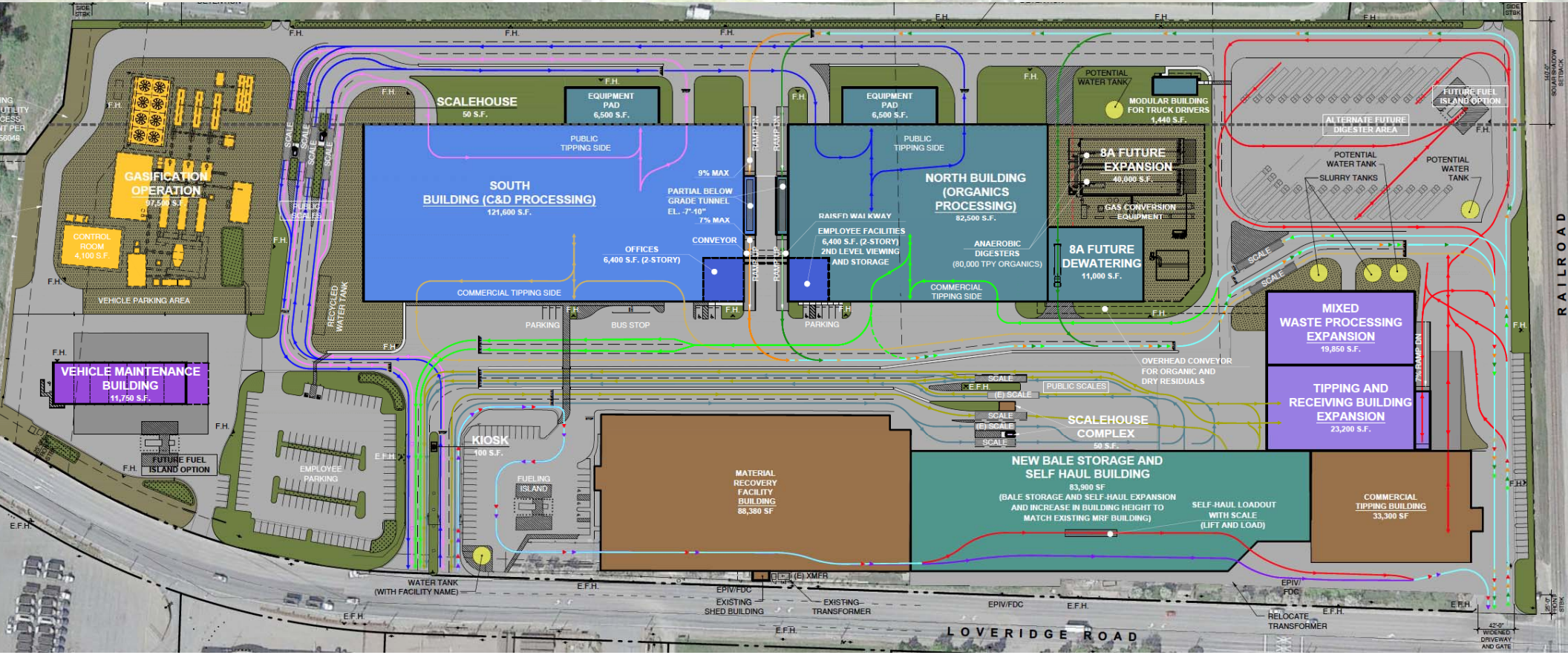

Rates & Recycling Surcharge

Mt. Diablo Resource Recovery
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- Rates have remained flat since 2019
  - 2019 – Approved an RRI (2.42%) & Recycling Surcharge (7.44%);
    Surcharge is set to expire June 1st, 2021 (-$494,828)
  - 2020 – No regular annual RRI – Would have been a 4.60% increase ($305,976)
  - 2021 – Regular annual RRI – Would be a 3.74% increase ($248,772)
- Recycling markets, SB 1383 & COVID-19 drive the need to adjust rates as part of a comprehensive base rate review
- Permanent solution must be identified in place of surcharge
  - Initially set for a 24-month period to bridge the gap to more permanent solution
- Last Base year was in 2017
- Next Base Year rate review will be submitted in June 2021 and would optimally become effective in January 2022

Action Items

Mt. Diablo Resource Recovery
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1. Provide direction & feedback to MDRR regarding 2021 Rates by either:

- Consider keeping rates flat and holding the existing surcharge in place until the next comprehensive base rate review is complete and becomes effective

-or-

- Consider a normal & customary RRI increase (3.74%) per the Franchise Agreement, which would result in rates sightly decreasing (-3.44%), prior to then increasing in January as a result of the comprehensive base rate review

- While this is only a study session, it is the intention that this matter would return to the Council for formal action on May 25th.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY CONTINUING THE EXISTING RECYCLING SURCHARGE AT ITS CURRENT RATE UNTIL A BASE YEAR RATE REVIEW IS COMPLETED WITH MT. DIABLO RESOURCE RECOVERY

WHEREAS, the City and Oakley Disposal Service, Inc. dba Mt. Diablo Resource Recovery-Oakley ("Franchisee") did, on May 25, 2010, enter into a Franchise Agreement for the collection of solid waste in the City; and

WHEREAS, that agreement was amended effective September 10, 2013; and

WHEREAS, that amended Agreement allows the Franchisee, to adjust rates annually by the Refuse Rate Index; and

WHEREAS, the City Council approved an RRI adjustment and approved a recycling surcharge on May 14, 2019; and

WHEREAS, that recycling surcharge is set to expire on June 1, 2021; and

WHEREAS, the Franchisee has requested the surcharge be extended until a new Base Year Rate Review has been completed and approved.

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes and approves the extension of the recycling surcharge until a Base Year Rate Review has been completed and approved.

The foregoing resolution was adopted at a regular meeting of the City Council, held on the ___ day of May, 2021, by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:_____
Sue Higgins, Mayor Date

ATTEST:

_____
Libby Vreonis, City Clerk