OAKLEY
CALIFORNIA

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, October 25, 2022
6:30 PM
Oakley City Council Chambers located at 3231 Main Street, Oakley, California 94561

MISSION STATEMENT: The City of Oakley will create a resilient future that fosters and attracts a vibrant and evolving community that welcomes and values all people.

VISION STATEMENT: The City of Oakley celebrates our unique Delta lifestyle and small-town feel where we ***Live*** in a safe, dynamic community, ***Work*** together to build the future, and ***Play*** in our own backyard.

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.

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If you have a physically challenging condition and require special accommodations, please call the City Clerk's office at (925) 625-7000.

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.

Information Regarding Public Comment

Members of the public may address the Council on items of interest that are within the City's jurisdiction. In compliance with State law, the council may not take actionor have discussion on any item that is not specifically listed on the agenda. Public comment on items not listed on the agenda will be heard under the Public Comments section of the agenda. Public comments on items listed on the agenda will be heard as the Mayor calls the items. 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 public speaker card available in the lobby and submit it to the City Clerk seated in the Council Chamber **prior to the agenda item being called.** The Mayor will call you by name to the podium to hear your comment. PUBLIC COMMENTS ARE LIMITED TO THREE (3) MINUTES. Online public comments are accepted until 5 p.m. the day of the meeting and can be submitted at https://www.ci.oakley.ca.us/online-public-comment-card/.

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 and Special Meeting of the Oakley Public Financing Authority

1.2 Pledge of Allegiance to the Flag (Allison DelPrado, Ironhouse Elementary School Student)

1.3 Presentation of Proclamations 1. John Muir Community Health Fund Day (Lillian Roselin & Ken Carlson)

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.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.

3.1 Approve Minutes from the Regular Joint City Council/City Council Acting as the Successor Agency to the Redevelopment Agency/Public Financing Authority Meeting held 09/27/2022 (Libby Vreonis, City Clerk)

Minutes 09-27-22

3.2 Approve Minutes from the Regular Joint City Council/City Council Acting as the Successor Agency/Public Financing Authority Meeting held October 11, 2022 (Libby Vreonis, City Clerk)

Minutes 10-11-22

3.3 Award of Construction Contract to R&R Pacific Construction Inc. for the construction of East Cypress Road Widening Project (Knightsen Avenue to Jersey Island Road) – Capital Improvement Project (CIP) Number 247 (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Resolution
2. Bid Summary

3.4 Authorize the City Manager to Execute a Consulting Services Agreement with BKF Engineers Inc., to Provide Engineering Design Services for Capital Improvement Project Number 280 – Laurel Road Widening (Cloverbrook Avenue to O'Hara Avenue) Project (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Proposal
2. Resolution

3.5 Award of Construction Contract to Cairo Builder, Inc. for the Senior Center Roof and HVAC Repair and Replacement Project – Capital Improvement Project Number 288 (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Resolution
2. Bid Summary

3.6 Agreement with Consor North America, Inc. for Right of Way and Surveying Engineering Services associated with Capital Improvement Project Number 273 – Laurel Road Extension Project (Teton Road to Sellers Avenue) (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Proposal
2. Resolution

3.7 Approval of Consulting Services Agreement with Pavement Engineering, Inc. (PEI) for Design Services Associated with Capital Improvement Project (CIP) Number 279 – Fiscal Year 2022/23 Street Repair and Resurfacing Project (Kevin Rohani, P.E., Public Works Directory/City Engineer)

Staff Report
1. PEI Proposal
2. Resolution

3.8 Accepting the Subdivision Improvements Associated with the Cypress Estates Subdivision 8728 located at the east end of Mallard Lane, the south end of Fuschia Way, and Fuschia Court (Kevin Rohani, P.E., Public Works Director/City Engineer)

Staff Report
1. Resolution
2. Vicinity Map

3.9 Agreement for Purchase of Portions of Contra Costa Assessor Parcel No. 034-090-022 for Road Widening at and Near the Intersection of Laurel Road and O'Hara Avenue (Derek Cole, City Attorney)

Staff Report
1. Resolution Approving Agreement to Purchase Real Property
2. Agreement

3.10 Adopt a Resolution Appointing Marie Osuna to the Contra Costa Transportation Authority Citizens Advisory Committee for the Remainder of the Current Four-Year Term Expiring August 11, 2025 (Libby Vreonis, City Clerk)

Staff Report
1. Application
2. Resolution

3.11 Review of Proclamation Request for Future Agenda (Extra Mile Day) (Libby Vreonis, City Clerk)

Staff Report
1. Proclamation Request Form
2. Sample Proclamation

4.PUBLIC HEARINGS

4.1 (Continued from September 27th) Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) – Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots. (APN: 035-090-082). (Kenneth Strelo, Planning Manager)

Suggested Action: Staff Recommendation: 1) Receive the Staff Report, 2) Receive Questions from the City Council, 3) Open the Public Hearing, 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
Staff Report
1. Vicinity Map.pdf
2. Notice of Public Hearing
3. Applicant's Plans
4. Traffic Calming Measures Exhibit
5. Traffic Memo
6. City Council Draft Minutes dated September 27, 2022 (excerpt of draft minutes related to the project)
7. City Council Staff Report dated September 27, 2022 (without attachments)
8. Planning Commission Staff Report dated August 2, 2022 (without attachments)
9. Planning Commission Resolution No. 05-22
10. Draft Resolution

5.REGULAR CALENDAR

5.1 Adopt a Resolution to Appropriate ARPA Funds for Police Recruitment Incentives and Marketing (Jeri Tejeda, Human Resources Director)
Staff Report
1. Resolution

6.REPORTS

6.1 CITY MANAGER
(a) City Manager
(b) Update on Emerson Ranch Commercial Center Approvals
(c) City Attorney Report Regarding Raising of Personnel Matters During Public Comment

MEMO - Emerson Commercial Entitlements Summary
Staff Report-Analysis Concerning Regulations Limiting Discussion of Personnel Matters During Public Comment
1. Judicial Opinion (Leventhal v Vista Unified School District)
2. Judicial Opinion (Baca v Moreno Valley Unified School District)

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

9.ADJOURN

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Proclamation

John Muir Community Health Fund Day

October 25, 2022

WHEREAS, the John Muir Community Health Fund was established in 1997 when the John Muir Medical Center and Mt Diablo Health Care District merged to form the John Muir Health System. The John Muir Health System established and funded an independent Community Benefit Corporation; and

WHEREAS, the Board of the John Muir Community Health Fund is comprised of three representatives appointed by the City of Concord, and two representatives appointed by the City of Pleasant Hill and five members appointed by the John Muir Association: and

WHEREAS, the John Muir Community Health Fund's mission is to distribute grants and partner with community-based nonprofit organizations to create sustainable health initiatives that expand and enhance health care and wellness services for those most in need in Central and East Contra Costa County; and

WHEREAS, over their 25-year history, the John Muir Community Health Fund has distributed over $31.5 million in grant funding to over 100 community-based nonprofit organizations that have delivered essential, health-related services to hundreds of thousands of Contra Costans; and

WHEREAS, the John Muir Community Health Fund has worked to support the creation of partnerships that have been recognized by the State of California and nationally, such as the "Healthcare Careers Pathway," a partnership between Empowered Aging, Opportunity Junction, Mt. Diablo Adult Education, the Food Bank of Contra Costa and Solano, and Loaves and Fishes of Contra Costa, which has expanded, with a five and a half million dollar grant from the State of California, to five additional counties in California; and

WHEREAS, the John Muir Community Health Fund has evolved from supporting organizations that deliver direct medical care to building lasting relationships with community-based nonprofit organizations that address the social determinants of health and systemic racism leading to better health outcomes and better quality of lives for our community; and

WHEREAS, the John Muir Community Health Fund has shown by its actions and good works for the past 25 years that it is a significant asset to the community, providing leadership, building partnerships and funding projects that have greatly benefited the area and its citizens.

NOW, THEREFORE, I, Randy Pope, Mayor of the City of Oakley, on behalf of the City Council, do hereby proclaim Thursday, October 25, 2022, as John Muir Community Health Fund Day in the City of Oakley, and I urge all citizens to recognize the achievements the John Muir Community Health Fund has made to our community and commend the organization for a wonderful heritage and a bright future.

October 25, 2022

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Randy Pope, Mayor

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 September 27, 2022

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 and Special Meeting of the Oakley Public Financing Authority

Mayor Randy Pope called the meeting to order at 6:30 p.m. in the Oakley City Council Chambers locates at 3231 Main Street, Oakley, California. Vice Mayor Aaron Meadows and Councilmembers Anissa Williams, George Fuller and Sue Higgins were also in attendance.

1.2 Pledge of Allegiance to the Flag

Mayor Pope led the Pledge of Allegiance to the Flag.

1.3 Reading/Presentation of Proclamation 1. Peripheral Artery Disease Month (PAD) (RoseMarie Laguna, Sutter Delta Advanced Wound Care Center Program Director)

Mayor Pope presented the proclamation to RoseMarie Laguna, Sutter Delta Advanced Wound Care Center Program Director. She thanked the Council.

2) PUBLIC COMMENTS

Liz Fuller provided written comment regarding library programming made possible by ARPA funding from the City.

Barbara Bautista requested the Council consider rent stabilization for Oakley to keep residents housed. She shared information regarding significant rent increases since 2019.

City Attorney Derek Cole responded that the City has no input as federal and state law control; however, with exception, Antioch passed a rent stabilization ordinance and it is a completely different undertaking; absent something like that, the City has no control.

Mayor Pope invited her to stay after the meeting to have a more robust discussion.

3) CONSENT CALENDAR

3.1 Approve Minutes from the Regular Joint City Council/City Council Acting as the Successor Agency/Public Financing Authority Meeting held September 13, 2022 (Libby Vreonis, City Clerk)

3.2 Approve Minutes from the Special City Council Meeting held August 25, 2022 (Libby Vreonis, City Clerk)

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

3.4 Waive the Second Reading and Adopt an Ordinance to Amend Oakley Municipal Code Chapter 4.31 (Water-Efficient Landscape Requirements) to Adopt the State of California's Model Water Efficient Landscape Ordinance as Amended by Diablo Water District's Regulation No. 8 which Prohibits New Installation of Non-Functional Turf (Ken Strelo, Planning Manager)

3.5 Adopt a Resolution to authorize execution of the Joint Community Facilities Agreement between the City of Oakley and East Contra Costa County Habitat Conservancy for Community Facilities District No. 2022-1 (HCP/NCCP Services) (Kevin Rohani, P.E., Public Works Director/City Engineer)

No public comments were submitted.

It was moved by Vice Mayor Meadows and seconded by Councilmember Higgins to approve the Consent Calendar. Motion was unanimous and so ordered. (5-0)

4) PUBLIC HEARINGS

4.1 AB 1276 Single-Use Foodware Accessories and Condiments - Introduction of an Ordinance Adding Chapter 4.38 (Single-Use Foodware Accessories and Condiments) to the Oakley Municipal Code (Ken Strelo, Planning Manager)

Planning Manager Ken Strelo presented the staff report and PowerPoint presentation.

Councilmember Fuller inquired how disabled individuals that require use of straws can access utensils.

Mr. Strelo explained straws can be given to customers upon request.

Councilmember Fuller inquired if the intent is that they would have those available.

Mr. Strelo confirmed that is correct.

Public Comment

Dan O'Leary inquired if it is required that someone asks for them or if an establishment could offer one.

Mr. Strelo confirmed an establishment could offer one.

Councilmember Williams commented that the ordinance doesn't restrict the type of straw provided or that it cannot be self-serve, so she feels the ordinance is fine.

It was moved by Councilmember Williams and seconded by Councilmember Higgins to waive the first reading and introduce the ordinance. Motion was unanimous and so ordered. (5-0)

4.2 Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots (APN: 035-090-082) (Ariana Ruiz, Planning Technician)

Ken Strelo presented the staff report and PowerPoint presentation.

Councilmember Williams inquired if there is any way for the project to happen without the roads being connected.

Mr. Strelo explained staff may not be able to answer that as staff analyzes the project presented by the applicant.

Councilmember Williams inquired if the streets connecting is what the applicant wanted, not the City.

Mr. Strelo explained the site plan presented is what was originally proposed to the City. He mentioned Wildcat terminates right now at Fuchsia and West Ruby terminates in a flat manner. He indicated owners haven't moved forward until now with a subdivision and it makes sense to have streets for connectivity.

Councilmember Higgins inquired why there is no stop sign at Wildcat Way and West Ruby.

Mr. Strelo explained the area would have to undergo a stop sign warrant and if a stop sign is then warranted, the applicant would have to fund it.

Councilmember Higgins commented there was a public comment to change the proposed roadway to a bike path and pedestrian access, but then they wouldn't have a roadway.

Mr. Strelo mentioned curb gutter and sidewalk will be installed on the north and south side and the roadway would be 36 feet.

Councilmember Higgins commented that Police will use that as an entrance and exit.

Mr. Strelo commented that Police would continue to have use of the gate on West Ruby and if the project is approved, they would have the option to exit out the gate west toward Teakwood.

Councilmember Higgins expressed concern with the number of Police trips that could be made onto Wildcat and Fuchsia.

Mr. Strelo commented Police use of the gate may not be too often as they are usually already out in the field when they get calls, but the opportunity would be there for Police coming and going to/from shifts or for emergency calls. He mentioned on Duarte there is a curve in the road that significantly slows down traffic and this curb would be similar.

Councilmember Higgins commented it could also be like Nascar and some may view the road as fun, not prohibiting.

Vice Mayor Meadows inquired if they could condition the project with a stop sign without doing a study.

Public Works Director/City Engineer Kevin Rohani commented that when adding a stop sign or signal, nationwide, Police cannot enforce someone running the stop sign or signal unless there is a warranted study. He mentioned the warrant would be done and paid for by the developer. He shared staff is involved with traffic issues across town and have implemented traffic calming measures including bulb-outs at the end of Ruby and Fuchsia. He mentioned the length of the street is 100 feet from the end of the Police parking lot to Fuchsia and because of the geometry, this is not designed as a racetrack; Police will deal with people not following the law.

Vice Mayor Meadows inquired how stop signs are placed in major subdivisions without warrant.

Mr. Rohani indicated the developer does the study as part of their project.

Public Comments

Dan O'Leary shared a copy of an alternative proposed plan with the Council that would creating a buffer for residents on Duarte. He commented he believes they can all work together toward a mutually beneficial solution. He mentioned the current 8-lot proposal overpopulates the neighborhood which will result in a decline of quality of life, against Oakley’s vision for a unique and small-town feel. He requested the oak tree be spared and conserved for the habitat and ecosystem. He suggested alternative road devices

such as roundabouts, bike paths and pedestrian walkways. He requested the project be postponed proposal until equitable collaboration can be achieved.

The Council requested Mr. O'Leary allow the applicant to see the alternative plan.

Kimberly Brower commented that where Wildcat connects to Gardenia will become a raceway for people to make up time where they had to slow down for the curve. She mentioned the bulb-outs on Duarte are ineffective and don't work. She mentioned the proposed intersection is in front of her house and she has 2 young children whose safety is of concern. She provided Saturday as an example when Main Street was closed for a festival; she saw dozens of speeding cars on Fuchsia. She mentioned she moved near a lot that she knew would be developed, but she never thought the street would join. She requested the Council consider postponement to allow for collaboration.

Greg and Susan Dahl submitted written comment made part of the meeting record.

Scott Brower shared he works for UPS and sees speeding situations all the time. He mentioned the S-curve is used to mitigate speed, but it really doesn't; he sees all the time people hit the gas and bulbed curbs are the same. He mentioned the area will be congested as a parking lot for school drop off and pick up; people will still speed otherwise. He shared he saw the streets used as bypasses when Main Street was closed with 30+cars that went by on Fuchsia. He expressed fear that as proposed, they will be in danger of drivers not paying attention and speeding to get time back. He mentioned the court with the walkthrough would allow access to the park and Downtown but restrict access for vehicles.

Doug Fowler requested the Council not move forward with the project as proposed because there are too many houses on a small property and traffic that comes with it. He commented that by connecting Ruby and Wildcat, it unintentionally creates a bypass from Main Street which will result in increased traffic. He shared they all bought homes on the street for quality of life because the street wouldn't go through. He mentioned they can take land for the road and allow the developer to reconfigure the plan for pedestrian and bike access without adding cars so that everyone gets something out of it; the neighborhoods maintain their character, the developer gets the lots they want, the people buying the homes are not slighted, and there is access to parks and the school.

Councilmember Higgins inquired if there is enough space to have a roundabout at Wildcat, Fuchsia and West Ruby instead of a bulb out.

Mr. Strelo indicated roundabouts have different requirements and he is having trouble visualizing where it would go but has noted the comment for staff follow up.

Councilmember Fuller expressed concerned regarding the S-curve. He mentioned if someone is going west on Ruby making a turn northeast, it is somewhat blind, then going west to Fuchsia there is not a clear view for a driver what is ahead in the residential zone; there is a blind spot. He shared he went through the same thing in his

neighborhood; the street was 60-feet wide until the developer built south, the street opened and became an exit out of the development. He mentioned it was traumatic and there was a safety concern for kids playing in the street and driving in and out of driveways. He suggested staff check in regularly with people and how to mitigate it, especially around the school. He expressed he is bothered by the lack of visibility when making a northeast turn and making another turn into a street blind coming from the east going west on Ruby.

Councilmember Williams inquired if there is any option to consider an alternative site plan such as the one submitted by Mr. O'Leary. She mentioned the roadway is the sticking point, but the number of homes doesn't seem to be an issue.

The applicant spoke mentioning the road connection was requested by the City for access and the proposed plan may be workable.

Mayor Pope commented that the variances are no problem. He mentioned it meets density for the area and they are not changing the zoning. He expressed concern with traffic as they are not just building 8 houses; it is changing traffic patterns as vehicles use Ruby to Wildcat as a bypass. He mentioned it is probably bigger than they realize in the planning phase. He mentioned if they do something, they need more traffic calming measures as lot 5 will be backing out of the driveway at the S-curve. He commented he likes the bulb outs on the west side and should have them on the east side as well. He inquired if there is pedestrian access west of this property between Wildcat and Main Street.

Someone in the audience commented it is gated off.

Mayor Pope commented he is interested in hearing about the City-initiated street connection. He mentioned he understands the need for emergency vehicle access to go east and west. He inquired if there is a timeline for the stop sign warrant.

Mr. McMurray mentioned staff can initiate it as soon as the street is developed. He shared the items can be addressed through conditions of approval such as traffic calming measures to make the roads safer. He shared when the City acquired the property to create the Police parking lot extension it was always intended for the street connection to Ruby to the west. He indicated it changes the character of the neighborhood some. He expressed he feels the project is safe but can look at the project to make it safer. He indicated the ability for Police to move throughout the City for public safety is important and staff wanted to make sure that connection exists for that reason.

Mayor Pope mentioned regarding the traffic warrant, if it is done too soon after the project, the motoring public may not have yet discovered this path. He suggested to do two studies, one immediately and one in one year, or do one a year post-project.

Councilmember Fuller corrected his previous comment. He mentioned he meant a northwest turn going west. He inquired what staff's take is on visibility as vehicles move along the streets.

Mr. Strelo commented if there are concerns regarding visibility, they don't have house layouts or driveway cuts proposed; they can always condition the map that lot 5 must locate the garage or driveway on the west side of the lot to help increase visibility around that turn.

Councilmember Williams expressed she believes it is important for Police to have access to both the east and west. She inquired if the proposed handout map included Police access and viewed the map to confirm.

Vice Mayor Meadows suggested the study for the stop sign be done immediately and if not warranted, again 6 months -1 year later.

Councilmember Higgins commented looking at an alternative is great but then they are forced to say we want Police to have access; it is a lot to ask for a new map to be drawn.

Mayor Pope mentioned they build roads to keep 80-90% of motorists safe, but there is a percentage of drivers that will do stupid stuff so they can be as safe as possible, but they may never be 100% safe; they can mitigate risks but cannot eliminate everything. He mentioned in looking at the streets, both Ruby side sidewalks turn into grapevines, and it appears very clear with the temporary barrier that the street will be extended; it was not meant to be the end of the line and should have been expected to happen. Regarding the stop sign warrant, he suggested they look at Wildcat and Fuchsia and West Ruby and Duarte, immediately after completion (before City accept improvements) and 1 year after.

Councilmember Fuller agreed with Mr. Strelo that it would be much easier if there is a condition on lot 5 to place the driveway exit on the west side of the lot to increase visibility. He mentioned the area needs proper signage for vehicles to drive slowly.

Vice Mayor Meadows inquired if there are any other conditions the Council wishes to add. He agreed with both the stop sign warrant and changing the driveway location on lot 5.

Mayor Pope inquired if they could put signage for "local residents only beyond this point" or something similar to discourage vehicles from using it as a bypass from Main Street.

Mr. Strelo indicated traffic calming signage such as a school coming up or slowing for children would be possible; however, he is not sure if the intention is to turn a public road into what may be thought of as a private road; signs need to potentially be regulated and enforced.

Councilmember Fuller commented that if Police can't enforce a stop sign it is better not to put it up with a false sense of security; he would rather have a stop sign that is warranted. He mentioned if there is no stop sign, he believes all people are responsible to stop before the intersection.

Mayor Pope commented in an uncontrolled intersection, a blind intersection requires drivers to slow down to 15 mph but may not apply to all points of an intersection if there are some stop signs.

Mr. Rohani mentioned the City can have a robust sign package, advisory signs lower speed, and Oakley has its own traffic calming signs for pedestrians and bicyclists. He mentioned they also have enhanced bulb outs and can added enhanced traffic calming measures.

Councilmember Higgins inquired about a tabletop like in Emerson instead of a bulb out.

Mr. Rohani commented that once all is built staff can consider it with traffic calming measures and study.

Mayor Pope asked him to explain what a tabletop looks like.

Mr. Rohani explained as a vehicle approaches an intersection, there are crosswalks, and the asphalt raises about 4 inches above street level into the intersection so if a vehicle runs fast through it, it won't do it again. The speed intended is 15 mph for both this and speedhumps.

Mayor Pope mentioned there are speedhumps on Fairview in Brentwood and great for slowing vehicles down.

Mr. Rohani mentioned they are located at Emerson Ranch and Delaney Park.

Mayor Pope inquired if the signage would include the school and park.

Mr. Rohani mentioned they will look at the comprehensive sign package; there are two parks and a school.

Mayor Pope commented the exit at the Police lot should have signage for slowing due to emergency access.

Mr. Rohani mentioned on Highway 4 and Empire, just before 7-11, there is a self-storage driveway; there were issues with cars exiting and they installed signs that cars are exiting the driveway so they can incorporate similar signs at the Police gate.

Mr. Strelo commented that staff would be happy to summarize the conditions expressed.

Councilmember Fuller commented he heard they could take it back and redesign. He inquired if that is a better alternative than placing conditions. He shared he wants conditions but is leaning toward sending it back and including conditions, so everyone has a clear view of what they are doing.

It was moved by Councilmember Fuller and seconded by Councilmember Williams to continue the item until the plan is updated. Motion was unanimous and so ordered. (5-0)

Mayor Pope indicated he would like the things talked about included ahead of time.

Mayor Pope called for a brief recess at 7:55 p.m. The City Council reconvened at 8:02pm.

4.3 Approve the Formation of the City of Oakley Community Facilities District No. 2022-1 (HCP/NCCP Services), hold a Public Hearing and Special Landowner Election, Declare the Results of the Election and Introduce an Ordinance to Levy a Special Tax for Community Facilities District No. 2022-1 (HCP/NCCP Services) (Kevin Rohani, P.E., Public Works Director/City Engineer)

Mayor Pope announced this is the time and place for the public hearing. He called for any written protests then opened the public hearing.

Public Works Director/City Engineer Kevin Rohani presented the staff report.

Mayor Pope asked for comments, questions, and protests from the audience. Being none, he closed the public hearing. He mentioned the Council will consider the resolutions. He asked the City Clerk to announce the result of the property owner vote.

City Clerk Libby Vreonis announced ACD-TI Oakley LLC is in favor of the levy of the special taxes and the establishment of the appropriations limit.

Mayor Pope announced that at least 2/3 of the property owners' votes are in favor of the levy of the special taxes and the establishment of the appropriations limit. He mentioned the Council will proceed with considering the resolution to direct the City Clerk to record the special tax lien and introduction of the ordinance levying the special taxes in the district to be considered for adoption on October 11, 2022.

It was moved by Councilmember Fuller and seconded by Vice Mayor Meadows to adopt the resolution and waive the first reading and introduce the ordinance. Motion was unanimous and so ordered. (5-0)

5) REGULAR CALENDAR

5.1 Adopting a Resolution Amending the Fiscal Year 2022/2023 Budget and Authorizing the City Manager to Execute the Contract for the Preparation of an Economic Development Work Plan Update (Harumi Murata, Economic Development Analyst)

City Manager Joshua McMurray presented the staff report.

Councilmember Williams inquired what the timeline is to see results from this.

Mr. McMurray responded that it is a 5–6-month proposal and a lot of work will occur in the early stages to present something meaningful to the Council.

Councilmember Fuller mentioned they can realign assets to the greatest economic growth and he would like to go along with the program.

No public comments were submitted.

It was moved by Councilmember Fuller and seconded by Vice Mayor Meadows to adopt the resolution. Motion was unanimous and so ordered. (5-0)

5.2 Authorize for the City Manager to Execute a Purchase and Sale Agreement with Roy and Erica Pantle for the sale of real property located at 3980 Empire Avenue (APN: 034-010-033) (Joshua McMurray, City Manager)

City Manager Joshua McMurray presented the staff report and PowerPoint presentation.

Vice Mayor Meadows inquired if the item requires two motions or one.

City Attorney Derek Cole advised that because the Council is acting as two separate agencies with the Successor Agency, two motions are preferred.

No public comments were submitted.

It was moved by Vice Mayor Meadows and seconded by Councilmember Williams to adopt a resolution on behalf of the City Council. Motion was unanimous and so ordered. (5-0)

It was moved by Vice Mayor Meadows and seconded by Councilmember Williams to adopt a resolution on behalf of the Successor Agency. Motion was unanimous and so ordered. (5-0)

5.3 Waive the First Reading and Introduce an Ordinance Amending Sections 2.9.002 through 2.9.010 of the City of Oakley Conflict of Interest Code to Adopt and Incorporate by Reference the Terms of 2 California Code of Regulations Section 18730 and Any Amendments to it Duly Adopted by the Fair Political Practices Commission (FPPC), and Repeal Sections 2.9.012 through 2.9.020 of the Oakley Municipal Code, and Adopt a Resolution Providing Disclosure Categories and updating Designated Positions, to become the "Appendix" of the City of Oakley Conflict of Interest Code (Libby Vreonis, City Clerk and Kim Snodgrass, Deputy City Clerk)

City Clerk Libby Vreonis presented the staff report.

No public comments were submitted.

Councilmember Fuller inquired if the Planning Commission is included.

Mrs. Vreonis responded that the Planning Commission and other select positions are included in Government Code Section 87200 which is incorporated into the ordinance.

It was moved by Councilmember Higgins and seconded by Councilmember Fuller to waive the first reading and introduce the ordinance and adopt the resolution. Motion was unanimous and so ordered. (5-0)

5.4 Adopt a Resolution declaring one property as "Surplus" and direct Staff to provide the notices required by AB 1255 and AB 1486 (Joshua McMurray, City Manager)

City Manager Joshua McMurray presented the staff report.

No public comments were submitted.

It was moved by Councilmember Williams and seconded by Vice Mayor Meadows to adopt the resolution. Motion was unanimous and so ordered. (5-0)

6) REPORTS

6.1 CITY MANAGER
(a) City Manager

City Manager Joshua McMurray shared that the City will have events next month to celebrate Oaktober (they are branding). He reported he attended a joint meeting between the Oakley City Council, Diablo Water District and Ironhouse Sanitary District yesterday to discuss the Delta Conveyance Project. He announced a Movie in the Park will be held October 1 and the last Friday Night Bites and concert series for the year will be held October 7.

(b) Policy Regarding Future Agenda Requests

Mr. McMurray mentioned a policy regarding future agenda requests has been requested. He shared the current informal policy requires when a Councilmember wants to bring an item forth to the Council to obtain a second approval for the item to move forward for staff to research, prepare and bring back to the Council for consideration. He mentioned it takes time and resources to bring every item forward so the policy provides more validity to spend the time to bring items forth. He mentioned should a written policy be desired; staff can move forward with a draft policy and resolution to bring forth to the Council and in the meanwhile, continue with the informal policy of having approval from two Councilmembers to research items and bring them forth. He requested Council feedback.

Councilmember Fuller mentioned the Brown Act gives the City Manager leeway to talk with City Councilmembers and let them know if an idea is taking or not. He mentioned requiring two Councilmembers to approve negates their ability to put an agenda item together, although he understands time spent if only one Councilmember is requesting an item; therefore he encourage the City Manager using his leeway.

Councilmember Higgins commented she likes having support of another member or it dies right there.

Vice Mayor Meadows commented if there are two people there is more validity instead of staff wasting time. He expressed he understands what Councilmember Fuller is saying and doesn't mind the City Manager talking to the Council, but there should be a written policy for support of at least two Councilmembers.

Councilmember Williams expressed she likes that the request comes straight from the person's mouth. She explained when it comes from 1-1 meetings, other Councilmembers may not understand why it is important to that Councilmember; it can be lost in translation. She mentioned she has always understood future agenda items to require first and second approval and she feels like it works okay.

Mayor Pope commented that the policy could prevent one Councilmember from being an activist on everything and staff spending time researching everything to bring back to the Council for consideration that may not be successful; with at least two Councilmembers supporting items, it gives some consensus on Council and the item has a better chance of being successful. He expressed the discussion needs to be public to hear arguments for and against. He mentioned he doesn't like the idea of using the City Manager; it is unfair to the City Manager and looks like a backroom deal that could provide the appearance of a Brown Act violation. He shared the consensus is to bring a policy back for consideration.

(c) Policy Regarding Ad Hoc Committees

City Attorney Derek Cole reported on the subcommittee process for the City Manager's review. He mentioned years ago a resolution was adopted for a one-year term and was then followed by practice with more recently the City Attorney taking the lead and having a subcommittee review. He mentioned with consensus and direction from the Council, he can prepare a staff report as a regular agenda item and bring forth to the Council to discuss.

Councilmember Fuller requested the item be brought forth. He mentioned the subcommittee has substance, but parameters and boundaries need to be set, and the City should codify how it selects the committee.

The remainder of the Council agreed with bringing an item forth.

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

Councilmember Fuller reported he attended the Heart of Oakley Festival and yesterday a landmark decision was made during a joint meeting between the Oakley City Council (Vice Mayor Meadows and Councilmembers Fuller and Higgins attended), Diablo Water District and Ironhouse Sanitary District to pass a resolution to stop the Delta Tunnel/Delta Conveyance Project.

Councilmember Higgins commented the Heart of Oakley Festival was awesome. She announced the 6th Out of the Darkness Walk Saturday at Cypress Grove Park beginning at 9am. She mentioned they will be presenting ceremonial beads. She shared four of her family members have taken their lives which is symbolized by purple beads which she will be speaking about.

Councilmember Williams reported she attended the Park and Ride opening and ribbon cutting ceremony for Tri-Delta; its next Board meeting will be held tomorrow. She commented that the Heart of Oakley Festival was amazing, and she appreciates the work put into it and it sets our community apart.

Vice Mayor Meadows commented that the joint meeting held last night was very informative. He thanked Diablo Water District for suggesting it. He also commented that the Heart of Oakley Festival was a fantastic event.

Mayor Pope commented that the joint meeting was unprecedented, and he hopes the relationships and partnerships will go beyond this conveyance.

(b) Requests for Future Agendas

Mayor Pope mentioned the Habitat Conservancy is inquiring who the new appointee will be for its December 19 meeting. He inquired if the 2023 appointment list can be brought forth December 13 for discussion by the Council.

City Clerk Libby Vreonis confirmed staff can bring forth the list December 13 to the Council.

Councilmember Fuller requested the following items:

1. Advance notice of pending CUPs to the Council and public. He mentioned if they are not calling it for consideration by the Council, they are acquiescing to it being heard by the Planning Commission. Mr. McMurray mentioned staff can advertise more through social media every few weeks, links to the Council on a weekly basis, and when staff anticipates projects to be heard. Councilmember Williams supported it. Mayor Pope cautioned of timing of notice as to not tilt the scale regarding a project.
2. Nonprofits applying for temporary permits-advertise and create a standard for issuing a permit and for reporting. There was no support for it.
3. Public comments to address non-agenda items, but not personnel items as it can threaten property rights, it creates acts of violence, and creates a hostile work environment for staff. He suggested a vehicle tag that staff delivers dedicated service or staff are dedicated civil servants. Vice Mayor Meadows indicated he supports First Amendment rights; however, he had issue with the threats made during the last Council meeting that were beyond reasonable. Mayor Pope commented he can take a more proactive stance for people to address the Council, not staff, at the podium. He mentioned the Council tells staff what to do and so people should be upset with them, not staff. He also mentioned he believes it will be a treacherous path to limiting free speech; however, laws already exist regarding threats against public officials. He inquired if they can have language that addresses that.

City Attorney Derek Cole commented at least 2 members would like analysis and he will provide a report; if appropriate changes can be made respecting both the Brown Act and First Amendment, the Council can provide direction and he can bring it back.

Councilmember Higgins inquired if there is a process or policy who gets to have business at events. She mentioned licensed Oakley businesspeople are saying they couldn't get a spot at events. Councilmember Fuller supported looking at a process or policy. Mayor Pope mentioned he is curious what the current policy is.

7) WORK SESSION

None.

8) CLOSED SESSIONS

Mayor Pope announced the closed session.

8.1 CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION-SIGNIFICANT EXPOSURE TO LITIGATION
Pursuant to Government Code Section 54956.9(d)(2). One potential case.

9) ADJOURN

There being no further business, the meeting was adjourned at 9:40 p.m.

Respectively Submitted,

Libby Vreonis
City Clerk

Minutes of Oakley City Council/Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency/Oakley Public Financing Authority held October 11, 2022

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 Randy Pope 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 Aaron Meadows and Councilmembers Anissa Williams and George Fuller were also in attendance. Mayor Pope announced Councilmember Sue Higgins was absent due to attending a transportation conference in Seattle, Washington, representing the City and her committee assignment.

1.2 Pledge of Allegiance to the Flag

Mayor Pope led the Pledge of Allegiance to the Flag.

The City Council considered Public Comments and the Consent Calendar prior to presentation of proclamations while the City Clerk obtained the proclamations to present.

1.3 Presentation of Proclamations - 1. National Friends of the Library Month (Lorena Campos, Friends of the Oakley Library President) 2. Domestic Violence Awareness Month (Shannon Starzyk, Contra Costa Family Justice Center) 3. Red Ribbon Week (Patricia Britton & Van Le, Pride & Purpose Project Youth Advocates, Shameka Bolds, Pride & Purpose Project Coordinator, Fatima Matal Sol, CCC Alcohol and Other Drugs Program Chief) 4. Breast Cancer Awareness Month (Janet Jule, Antioch Medical Center Chief Nursing Officer)

Mayor Pope presented the proclamations. Recipients accepted and shared information. Pride & Purpose Project Youth Advocates Patricia Britton and Van Le provided red ribbons to the City Council.

2) PUBLIC COMMENTS

None.

3) CONSENT CALENDAR

3.1 Approve Minutes from the Special Joint Meeting of the Oakley City Council, Board of Directors of Diablo Water District, and Board of Directors of Ironhouse Sanitary District held September 26, 2022 (Libby Vreonis, City Clerk)

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

3.3 Approve second reading of Ordinance No. 14-22 authorizing the levy of a special tax commencing in Fiscal Year 2023-24 and each ensuing fiscal year thereafter solely within and relating to City of Oakley Community Facilities District No. 2022-1 (HCP/NCCP Services)

3.4 Waive the Second Reading and Adopt an Ordinance Adding Chapter 4.38 (Single-Use Foodware Accessories and Condiments) to the Oakley Municipal Code (Ken Strelo, Planning Manager)

3.5 Waive the Second Reading and Adopt an Ordinance Amending Sections 2.9.002 through 2.9.012 of the City of Oakley Conflict of Interest Code to Adopt and Incorporate by Reference the terms of 2 California Code of Regulations Section 18730 and any Amendments to it duly adopted by the Fair Political Practices Commission and Repeal Sections 2.9.014 through 2.9.020 of the Oakley Municipal Code (Libby Vreonis, City Clerk)

3.6 Fiscal Year (FY) 2022/23 First Quarter Report on the Capital Improvement Program (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.7 Acceptance of work associated with the Construction Contract to R & R Pacific Construction, Inc. for the construction of Fiscal Year (FY) 2020/2021 Street Repair and Resurfacing Project-Capital Improvement Project (CIP) Number 246 (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.8 Authorize the City Manager to execute a Construction Agreement with Martell Water Systems, Inc. for the Construction of Capital Improvement Project Number 265 -Irrigation Well Installation Project at the City's Freedom Basin (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.9 Authorize the City Manager to Execute a Consulting Agreement with Callander Associates Landscape Architecture, Inc. for Landscape Architectural Design Services for the Enrico Cinquini Park Construction Project-Capital Improvement Project Number 281 (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.10 Adopt Resolution of Intention to Establish Community Facilities District No. 2022-2 (Summer Lake North Maintenance Services) (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.11 Creating Zone 186 within the Oakley Special Police Tax Area consisting of the Summer Lake North project located on the northeast corner of the intersection of Bethel Island Road and East Cypress Road (Kevin Rohani, P.E., Public Works Director/City Engineer)

3.12 Review of Proclamation Request for Future Agenda (John Muir Community Health Fund Day) (Libby Vreonis, City Clerk)

One online public comment was submitted by Dwight Hodgen regarding item 3.8. He inquired about the impact of extraction of water from the well on private party wells in the area. Public Works Director/City Engineer Kevin Rohani spoke directly with Mr. Hodgen prior to the meeting to answer his question.

It was moved by Councilmember Fuller and seconded by Vice Mayor Meadows to approve the Consent Calendar. Motion was unanimous and so ordered. (4-0)

Presentation of proclamations occurred next, before Public Hearings.

4) PUBLIC HEARINGS

4.1 Zoning Ordinance Text Amendments to Article 12 of Chapter 1 of Title 9 of the Oakley Municipal Code ("Special Land Uses")- Adding Four Subsections to Address Drive-Through Restaurants, Carwashes, Gas Stations, and Self-Storage (RZ 04-21) (Ken Strelo, Planning Manager)

Planning Manager Ken Strelo shared staff recommends continuing this item to a date uncertain to allow time for staff to review and analyze comments submitted.

City Attorney Derek Cole explained there is a difference between continuing an item to a date certain or date uncertain. He shared if an item is continued to a date certain, staff does not have to re-notice. He mentioned the reason the agenda says a date uncertain doesn't mean staff is going to push it off; it is because staff is looking for flexibility to do analysis and review, and respond to comments received. He mentioned the intention is to bring this item back at the beginning of the year, but staff does not yet have a date certain. He commented that the Council has the option to pick a date certain.

Mayor Pope called for public comments and shared that one written public comment was submitted (by Shelly Fitzgerald) inquiring about the delay which Mr. Cole explained.

Councilmember Fuller requested a moratorium on issuing any building permit, CUP, variance, or other item that would fall within the Zoning Code until the Council passes a zoning ordinance. He mentioned it has been 18 months since Councilmember Williams requested the item and it has gone back and forth since then, and the community is losing confidence that it will come together.

Councilmember Williams inquired what it would take to have moratorium.

Mr. Cole responded that they cannot discuss the substance of it because it is not on the agenda; it can be requested as a future agenda item; however, he can mention that a moratorium requires an urgency ordinance that would require time for him to draft and bring back.

Councilmember Fuller respectfully disagreed that it is not off the agenda.

Mr. Cole clarified if regarding the special land uses only, they could discuss further; however, if a blanket moratorium is desired, the Council may request it as a future agenda item.

Councilmember Fuller indicated he would accept special land uses for this meeting, but he wants a moratorium across the board to come back which he will request as a future agenda item, so the community has trust that the City is not just putting things off.

Mr. Cole commented the Council needs to give staff and legal counsel time to do the job well. He mentioned they may disagree with the developer request, but he wants to hear all comments and create zoning ordinances that work well for everyone. He also mentioned he can appreciate how people can say it is taking a long time, but he also appreciates considering all aspects to bring it forth while balancing all other tasks.

Councilmember Fuller mentioned he is not saying don’t look at it, but until it comes back and passes, he wants a moratorium, and the community needs to know they are going to have a zoning ordinance.

Mayor Pope commented he won’t be on the Council next year but would feel more comfortable to continue to a date certain in January 2023.

Councilmember Williams agreed with a moratorium for the special land uses until it is solidified and to bring the item back on a date certain, January 24, 2023. She mentioned she is not certain how many pending applications there may be or what affect this will have but she thinks a moratorium may be needed so the community knows the City is not just putting it off while more applications can potentially come in.

Mr. Cole commented it is up to the Council if a moratorium is wanted but he cannot draft it by Monday to meet the agenda deadline for the next Council meeting to be held October 25. He suggested he could bring it forth for the November Council meeting.

Councilmember Fuller inquired what happens if the Council passes a moratorium tonight.

Mr. Cole explained the Council cannot address a moratorium tonight as there has been no notice of it on the agenda.

Councilmember Fuller expressed concern regarding putting it off. He made a records request for every CUP, building permit, variance and design submitted until the item is brought back.

Vice Mayor Meadows inquired if Councilmember Williams' motion was only to continue the item to a date certain, January 24, 2023, not a moratorium.

Councilmember Williams indicated her motion is to continue the item to January 24, 2023. It was seconded by Vice Mayor Meadows. AYES: Meadows, Pope, Williams. NOES: Fuller. (3-1)

5) REGULAR CALENDAR

None.

6) REPORTS

6.1 CITY MANAGER
(a) City Manager

City Manager Joshua McMurray reported the BNSF railroad signal arms have been malfunctioning. He shared BNSF indicated there were some faulty shunts on the track that have been fixed, but arms are still malfunctioning. He also shared that BNSF indicated technology warns the train operator of malfunction; however, he does not believe this creates comfort for residents or staff; BNSF needs to make sure the railroad arms are operational and safe, and staff has been in contact with BNSF repeatedly regarding this issue.

Councilmember Williams inquired if there is anything the City can do to hold BNSF accountable.

Mr. McMurray explained he wishes the City had more leverage but the railroad is higher on the totem pole than the City; however, contacts at BNSF have now been more responsive and he believes they are making positive traction. He mentioned the 1-800 number on the control cabinets has been ineffective. He expressed any comments the

Council can provide to staff to direct to the Washington BNSF team to direct to the BNSF local team would be helpful.

Vice Mayor Meadows commented it is imperative for staff to keep working on it and he appreciates contacts made. He suggested Congressional representatives may help. He mentioned even if BNSF is taking precautions, it is still a safety issue for the City with traffic backing up on Cypress and Main streets, and the railroad needs to be responsible for its equipment and step up.

Councilmember Fuller suggested the City Attorney might help to draft an ordinance provision to place a limit on the amount of time trains can block traffic. He mentioned when he was with LAPD, trains could not block traffic for more than 15 minutes.

Mayor Pope mentioned if it can be addressed by local ordinance that it should, but he believes it may be a federal matter and suggested reaching out to federal representatives. He shared he believes there already is a restriction for trains blocking traffic for more 15 minutes, but he would like to hear back regarding enforcement of that restriction.

Mr. McMurray also reported on the Burrough's property consisting of 43 acres with Westgate Venture. He mentioned the City has accelerated frontage improvements along East Cypress, the parcel extending from Knightsen to the canal overcrossing. He shared that plans are out for CIP 247, the bid will occur later this week, staff will bring forth a contract on October 25, and construction is expected to begin early next year to provide a 6-lane road and improvements to make the section safer.

Mr. McMurray also reported on East Cypress from the canal to Bethel Island Road. He mentioned the Council approved a reimbursement agreement earlier this year with two developers, TI Capital and DeNova. He shared TI Capital is developing 3,200 homes and is wrapping up plans and permits, and DeNova has 824 homes and they are actively building the levy on the Summerlake North project. He mentioned staff is working with both developers for roadway improvements including widening of the canal crossing and a 4-lane divided road. He shared that eventually, the project will traverse over Rock Slough Bridge to a new road to connect to Delta Road. He indicated staff is analyzing right-of-way to acquire and will engage with property owners regarding acquisitions early next year.

Councilmember Williams mentioned she previously suggested a timeline be placed on the City's website. She inquired if anything is available on the City's website to view.

Mr. McMurray responded that the City's website was updated to include the evacuation route and staff can provide more detail on the website regarding improvements to be installed on that section and the Burrough's project.

Councilmember Fuller suggested periodically posting updates on all projects so the public knows what is being done and that projects have not fallen off just because others have started.

Mr. McMurray responded staff can update the website and get more information out to the public.

Mr. McMurray also reported that the City has a MOU in place now with property owners on Holland Tract in addition to Reclamation District 2025 on Holland Tract for evacuation routes. He mentioned they are nearing signature on a similar MOU with Reclamation District 799 within Oakley's jurisdiction to complete the overall agreement structure to allow the evacuation route to happen.

Mr. McMurray also reported that on October 25, staff expects to bring a preliminary design and right of way alignment contract between Teton and Sellers to provide relief from East Cypress and direct access from Sellers to Laurel. He mentioned it is a $40 million project and staff will notify property owners and find money for construction. He shared the City has a new grant writing firm to find money.

(b) Update on Current Planning Applications

Mr. McMurray provided an update on current Planning applications pursuant to the Council's request for staff to provide more advance notice on Planning projects. He shared staff has started social media outreach to advertise current projects and provide links to information. He also shared the projects' page is the 7th most viewed webpage on the City's website.

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 Meadows reported he attended the Mayors' Conference virtually last week and there will be several appointments at the next Mayors' Conference meeting with some current Councilmembers retiring and with openings on committees. He announced transit meetings have been canceled for November.

Councilmember Williams reported Tri-Delta Transit had a full return to service on September 12, an Uber-like service called "Try My Ride" provided by Tri-Delta for public transit is up 46% and is doing great, and at-large board position is up for anyone interested in applying. She shared it is the best committee she has served on.

Mayor Pope announced the next Habitat Conservancy meeting will be held virtually on October 21 at 10am and he expects it will be the last virtual meeting which can be viewed by going to the Habitat Conservancy page on the County's website. He

mentioned Habitat Conservancy meetings in 2023 should be held in person. He suggested a similar page on the City's website to that of Planning projects for CIP projects.

Mr. McMurray indicated staff can provide a similar page for CIP projects.

(b) Requests for Future Agendas

Councilmember Fuller requested:

1. A moratorium on development of special land uses (drive-through restaurants, carwashes, gas stations and self-storage). Councilmember Williams supported this moratorium.
2. A moratorium stopping all applications until a zoning ordinance is approved. There was no support for this moratorium.
3. A closed or open session item regarding the Laurel Road acquisition. Mr. McMurray indicated staff is on track to bring forth an agreement for the right-of-way on Laurel Road on October 25.
4. A policy addressing no person may discuss personnel matters at the podium during public comment. Mr. McMurray indicated the City Attorney will address the item via memorandum.
5. Consider any CUPs, licenses, or business operations for the NW corner of Sellers and E. Cypress to come before Council. Mr. McMurray commented he will check and report back, but he believes the development plan was already approved. Mr. Fuller specified in relation to CUPs (a potential beer cave in the area), he would like to see that come to Council.
6. Ordinance restricting amount of time trains can stop traffic.

7) WORK SESSIONS

None.

8) CLOSED SESSION

None.

9) ADJOURN

There being no further business, the meeting was adjourned at 7:44 p.m.

Respectively Submitted,

Libby Vreonis
City Clerk

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Award of Construction Contract to R&R Pacific Construction Inc. for the construction of East Cypress Road Widening Project (Knightsen Avenue to Jersey Island Road) – Capital Improvement Project (CIP) Number 247

Background and Analysis

The City's adopted FY 2022/23 Capital Improvement Program Budget designates funding for various infrastructure repair and replacement projects. This is consistent with the City's Strategic Goals to improve the quality of the City's public infrastructure and to enhance the quality of life for our residents.

In the recent years, East Cypress Road has seen an increase in traffic due to the rise in subdivisions developments along the East Cypress Corridor. The roadway needs to be widened and improved from its current 2-lane configuration that was constructed by the County decades ago to accommodate the growth of the community in East Cypress Road corridor.

The Cypress Grove, Emerson Ranch, and Gilbert Ranch subdivisions widened East Cypress Road from Main Street to Knightsen Avenue as a part of their developments and the Grand Cypress Preserve development will reconstruct and widen East Cypress Road from Jersey Island Road to Bethel Island Road as a part of that development project.

CIP No. 247 will complete the gap between the development projects and widen East Cypress Road to 6 lanes from Knightsen Avenue to west of Jersey Island Road. This project will help alleviate the congestion and provide a higher capacity roadway to handle the demand from the future growth along the East Cypress Corridor.

The project will construct a 6-lane divided roadway from Knightsen Avenue to west of Jersey Island Road. The improvements will include a median island, buffered bike lanes, sidewalk, traffic signal, streetlights, underground utility (storm, sewer, water, gas), landscaping and irrigation.

On October 14, 2022, a total of nine (9) bids were received and R&R Pacific Construction Inc. was the lowest responsible bidder for the project at a total cost of $9,176,712.25. The regional economic climate has activated a great deal of construction activity, both in private development and in public works projects. Staff will continue to work on implementing the Capital projects for the City of Oakley as effectively as possible, taking economic trends into consideration and strategically executing the bidding and construction of projects in Oakley. The construction of CIP 247 is anticipated to start in early 2023, after the holiday season.

Consistency with the Oakley Strategic Plan 27+

This item is consistent with the Strategic Plan 27+ Community Health and Safety goals.

Fiscal Impact

The FY 2022/23 budget has allocated total funding of $8.9 million from Traffic Impact Fees, Measure J, and Gas Tax. To fully fund this construction project, including $900,000 for change orders, staff is proposing to transfer $2.0 million from CIP 280, as those budgeted funds will not be needed within the next two or three fiscal years.

Staff Recommendation

Staff recommends that the City Council adopt the resolution authorizing a $2.0 million budget transfer from CIP 280 to CIP 247, approving the construction agreement with R&R Pacific Construction Inc. for an amount not to exceed $9,176,712.25 and authorizing the City Manager to execute the agreement.

Additionally, due to variables associated with construction projects, and to address unforeseen circumstances during construction; staff further recommends that the City Council authorize staff to execute future change orders to the construction contract as necessary in an amount not to exceed $900,000 for work beyond what is defined in the base project bid.

Attachments

1) Resolution
2) Bid Summary

RESOLUTION NO. XX-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT WITH R&R PACIFIC CONSTRUCTION, INC. FOR THE CONSTRUCTION OF CAPITAL IMPROVEMENT PROJECT (CIP) NUMBER 247 – EAST CYPRESS ROAD WIDENING PROJECT (KNIGHTSEN AVENUE TO JERSEY ISLAND ROAD)

WHEREAS, Bellecci and Associates Inc., prepared the plans, specifications, and estimates for CIP No. 247 – East Cypress Road Widening Project (Knightsen Avenue to Jersey Island Road); and

WHEREAS, the plans, specifications and special provisions were publicly advertised for bidding, with the bid period closing at 2:00 P.M. on October 14th, 2022; and

WHEREAS, nine (9) total bids were received prior to the close of the bidding process; and

WHEREAS, R&R Pacific Construction, Inc. submitted the lowest responsible bid for a total cost of $9,176,712.25 for the work, and the bid summary is attached as Exhibit A; and

WHEREAS, another $2.0 million beyond what has been appropriated will be needed to complete this project; and

WHEREAS, funding that has been appropriated for CIP No. 280 will not be needed within the next three fiscal years and staff is recommending a transfer of $2.0 million from CIP No. 280 to CIP No. 247;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oakley that the Agreement with R&R Pacific Construction, Inc. for the East Cypress Road Widening Project (Knightsen Avenue to Jersey Island Road) – CIP No. 247, for an amount not to exceed $9,176,712.25 is approved, the City Manager is hereby authorized to execute the Agreement and change orders in an amount not to exceed $900,000 as necessary, and a $2.0 million budget transfer from CIP No. 280 to CIP No. 247 is hereby approved.

PASSED, APPROVED AND ADOPTED this 25th day of October 2022 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____ _____
Libby Vreonis, City Clerk Date

City of Oakley Public Works Department
East Cypress Road Widening Project (Knightsen Ave. to Jersey Island Rd.) - CIP No. 247
REVISED Certified Bid Tabulation Bid opening: October 14, 2022 at 2:00 P.M. at the Civic Center

				Engineers Estimate		R&R Pacific Construction Inc. P.O. Box 1029 Woodland, CA 95776		Bay Cities Paving & Grading Inc 1450 Civic Court Concord, CA 94520	
Item No.	*Description*	*Quantity*	*Unit*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*
1	Traffic Control & Construction Area Signs	1	LS	$250,000	$250,000.00	275,850.00	275,850.00	122,165.45	122,165.45
2	Orange Construction Fence	3,000	LF	$10	$30,000.00	1.50	4,500.00	2.86	8,580.00
3	Remove Trees and Tree Stumps	1	LS	$7,200	$7,200.00	12,500.00	12,500.00	10,980.00	10,980.00
4	Remove Fences	3,372	LF	$10	$33,720.00	1.50	5,058.00	4.30	14,499.60
5	Remove Culvert	3	EA	$800	$2,400.00	3,500.00	10,500.00	1,947.08	5,841.24
6	Removal/Relocation of Unknown Pipe	1	LS	$3,500	$3,500.00	6,500.00	6,500.00	7,200.76	7,200.76
7	PG&E Gas Distribution Main Relocation Work	1	LS	$6,000	$6,000.00	28,600.00	28,600.00	32,870.90	32,870.90
8	PG&E Gas Transmission Main Removal & Abandonment Work	1	LS	$15,000	$15,000.00	32,400.00	32,400.00	44,754.36	44,754.36
9	PG&E Electric Servce & New Pedestal for Signal, Lighting, and Irrigation Controller	1	LS	$3,000	$3,000.00	24,600.00	24,600.00	26,500.00	26,500.00
10	Calpine Main Relocation Work	1	LS	$8,000	$8,000.00	28,650.00	28,650.00	107,783.39	107,783.39
11	Storm Water Pollution Preventioin Plan (SWPPP)	1	LS	$6,000	$6,000.00	7,500.00	7,500.00	17,865.00	17,865.00
12	Storm Water Pollution Control Implementation	1	LS	$50,000	$50,000.00	78,256.00	78,256.00	75,513.37	75,513.37
13	Monument Referencing	1	LS	$5,000	$5,000.00	2,500.00	2,500.00	4,476.00	4,476.00
14	Survey Monument	1	EA	$4,000	$4,000.00	1,200.00	1,200.00	3,182.56	3,182.56
15	Roadway Excavation	3,511	CY	$70	$245,770.00	32.00	112,352.00	31.66	111,158.26
16	Common Excavation	5,028	CY	$45	$226,260.00	16.00	80,448.00	33.68	169,343.04
17	Strippings	1	LS	$70,000	$70,000.00	55,700.00	55,700.00	60,347.08	60,347.08
18	Common Backfill	44,431	CY	$28	$1,244,068.00	16.00	710,896.00	27.73	1,232,071.63
19	Aggregate Base Class 2	14,596	CY	$55	$802,780.00	56.00	817,376.00	46.97	685,574.12
20	Digouts (HMA Type A) (Revocable Item)	1,000	SF	$24	$24,000.00	8.50	8,500.00	23.84	23,840.00
21	HMA Dike	40	LF	$20	$800.00	45.00	1,800.00	65.48	2,619.20
22	HMA (Type A)	10,829	TON	$160	$1,732,640.00	135.00	1,461,915.00	118.66	1,284,969.14
23	RHMA-G	2,572	TON	$215	$552,980.00	165.00	424,380.00	150.00	385,800.00
24	Paving Mat	100	SY	$50	$5,000.00	4.50	450.00	25.00	2,500.00
25	Subgrade Enhancement Geotextile	23,043	SY	$8	$184,344.00	4.25	97,932.75	2.89	66,594.27
26	Profile Grind	2,782	SY	$50	$139,100.00	4.75	13,214.50	6.22	17,304.04
27	Conform Grind	360	SF	$30	$10,800.00	4.75	1,710.00	8.92	3,211.20
28	Median Pavers	4,740	SF	$50	$237,000.00	40.35	191,259.00	42.50	201,450.00
29	Pressure Treated Wooden Header Board	1,200	LF	$15	$18,000.00	12.50	15,000.00	11.83	14,196.00
30	City Standard Sidewalk	8,233	SF	$12	$98,796.00	12.50	102,912.50	12.55	103,324.15
31	City Standard Curb and Gutter	3,417	LF	$50	$170,850.00	31.00	105,927.00	44.02	150,416.34
32	M1-8 Standard Vertical Curb	1,496	LF	$32	$47,872.00	28.00	41,888.00	51.73	77,388.08
33	M3-8 Doweled Vertical Curb	1,628	LF	$28	$45,584.00	35.00	56,980.00	36.05	58,689.40
34	Bioretention Curb and Gutter	427	LF	$100	$42,700.00	85.00	36,295.00	114.47	48,878.69
35	Bioretention Vertical Curb	1,603	LF	$80	$128,240.00	55.00	88,165.00	85.69	137,361.07
36	City Standard Driveway	2,300	SF	$20	$46,000.00	12.00	27,600.00	24.29	55,867.00
37	Driveway Conform	100	TONS	$15	$1,500.00	339.00	33,900.00	242.38	24,238.00
38	Curb Ramp (Case A)	7	EA	$4,500	$31,500.00	4,500.00	31,500.00	4,726.31	33,084.17
39	Retaining Curb	193	LF	$40	$7,720.00	36.00	6,948.00	79.54	15,351.22
40	Adjust Utility Structures to Grade	4	EA	$600	$2,400.00	850.00	3,400.00	1,100.00	4,400.00
41	Adjust DWD Structures to Grade	9	EA	$600	$5,400.00	850.00	7,650.00	1,100.00	9,900.00
42	Adjust ISD Structures to Grade	2	EA	$600	$1,200.00	850.00	1,700.00	1,100.00	2,200.00
43	20" Butterfly Valve	3	EA	$5,000	$15,000.00	15,400.00	46,200.00	16,408.30	49,224.90
44	6" Gate Valve	2	EA	$2,000	$4,000.00	2,600.00	5,200.00	6,167.23	12,334.46
45	20" DIP Class 50 Pipe	1,289	LF	$300	$386,700.00	245.00	315,805.00	323.45	416,927.05
46	20" Steel Pipe	96	LF	$500	$48,000.00	1,400.00	134,400.00	2,037.31	195,581.76
47	24"x20" Hot Tap Connection with 20" Butterfly Valve	1	LS	$35,000	$35,000.00	48,500.00	48,500.00	66,002.89	66,002.89
48	6" DIP Class 50 Fire Hydrant Lateral	80	LF	$140	$11,200.00	125.00	10,000.00	269.72	21,577.60
49	Install New Fire Hydrant Assembly	3	EA	$7,000	$21,000.00	14,500.00	43,500.00	15,365.92	46,097.76
50	Remove Existing Fire Hydrant Assembly	1	EA	$2,000	$2,000.00	1,600.00	1,600.00	4,694.28	4,694.28
51	Combination Air Release Valve	1	EA	$4,000	$4,000.00	14,500.00	14,500.00	9,712.97	9,712.97
52	6" Blow Off Assembly	2	EA	$3,000	$6,000.00	8,500.00	17,000.00	12,133.20	24,266.40
53	2" Irrigation Servcie and Water Meter	1	EA	$3,500	$3,500.00	15,600.00	15,600.00	18,948.59	18,948.59
54	City Standard Inlet - Type I	13	EA	$5,500	$71,500.00	4,200.00	54,600.00	8,024.47	104,318.11
55	City Standard Inlet - Type II	2	EA	$4,500	$9,000.00	4,150.00	8,300.00	5,853.87	11,707.74
56	Bioretention Dome Inlet	12	EA	$3,000	$36,000.00	3,200.00	38,400.00	3,274.26	39,291.12
57	Standard Storm Drain Manhole	1	EA	$15,000	$15,000.00	5,500.00	5,500.00	5,007.08	5,007.08
58	24" HDPE Storm Drainage Pipe	1,045	LF	$220	$229,900.00	135.00	141,075.00	120.62	126,047.90
59	18" HDPE Storm Drainage Pipe	1,285	LF	$200	$257,000.00	115.00	147,775.00	108.09	138,895.65
60	15" HDPE Storm Drainage Pipe	392	LF	$170	$66,640.00	105.00	41,160.00	154.43	60,536.56
61	12" HDPE Storm Drainage Pipe	68	LF	$150	$10,200.00	110.00	7,480.00	260.78	17,733.04
62	15" Round Equivalent Reinforced Concrete Arch Pipe	286	LF	$250	$71,500.00	195.00	55,770.00	234.35	67,024.10
63	Extend Existing 24" Storm Drainage Culvert	1	LS	$13,000	$13,000.00	12,500.00	12,500.00	4,821.38	4,821.38
64	Connect to Existing Storm Drain Manhole & Install Flapgate	1	EA	$800	$800.00	8,500.00	8,500.00	7,306.62	7,306.62
65	14" PVC C900 DR14 Sewer Force Main Pipe	2,180	LF	$270	$588,600.00	195.00	425,100.00	292.00	636,560.00
66	Air Release Vavle on Sewer Force Main Pipe	1	EA	$5,500	$5,500.00	48,500.00	48,500.00	39,470.64	39,470.64
67	Sewer Manhole Type 1	1	EA	$15,000	$15,000.00	5,500.00	5,500.00	5,117.41	5,117.41
68	Vertical Offset on Sewer Force Main Pipe	1	LS	$25,000	$25,000.00	78,000.00	78,000.00	92,867.83	92,867.83
69	Stub 14" PVC Sanitary Sewer Force Main	1	EA	$800	$800.00	3,500.00	3,500.00	4,853.39	4,853.39
70	Connect to Existing Sanitary Sewer Force Main	3	EA	$1,000	$3,000.00	12,500.00	37,500.00	28,618.59	85,855.77
71	Relocate Existing Mailbox	14	EA	$800	$11,200.00	350.00	4,900.00	300.00	4,200.00
72	Signing and Striping	1	LS	$95,000	$95,000.00	98,450.00	98,450.00	69,000.00	69,000.00
73	Install No Pedestrian Crossing Barricades	3	EA	$1,500	$4,500.00	2,500.00	7,500.00	750.00	2,250.00
74	Type-K Railing Concrete Barrier	1,020	LF	$50	$51,000.00	48.00	48,960.00	32.58	33,231.60
75	Crash Cushions System	1	LS	$30,000	$30,000.00	16,500.00	16,500.00	5,000.00	5,000.00
76	Remove Traffic Striping and Markings and Prepare Lead Compliance Plan	1	LS	$8,000	$8,000.00	5,500.00	5,500.00	7,765.00	7,765.00
77	Lighting and Electrical Work	1	LS	$330,000	$330,000.00	265,430.00	265,430.00	200,000.00	200,000.00
78	Traffic Signal Systems	1	LS	$275,000	$275,000.00	607,640.00	607,640.00	393,600.00	393,600.00
79	Landscape Planting	1	LS	$250,000	$250,000.00	132,947.00	132,947.00	146,255.62	146,255.62
80	Landscape Irrigation	1	LS	$200,000	$200,000.00	311,258.00	311,258.00	274,949.28	274,949.28
81	Bioretention Area	12,207	SF	$30	$366,210.00	12.50	152,587.50	26.94	328,856.58
82	Grouted Cobbles	344	SF	$100	$34,400.00	23.00	7,912.00	39.20	13,484.80
83	Cathodic Protection	1	LS	$11,500	$11,500.00	55,200.00	55,200.00	31,583.97	31,583.97
84	Mobilization	1	LS	$250,000	$250,000.00	568,000.00	568,000.00	1,042,008.84	1,042,008.84
85	Fill Wall	250	LF	$50	$12,500.00	78.00	19,500.00	113.98	28,495.00
86	Rock Slope Protection	4,900	SF	$30	$147,000.00	9.50	46,550.00	12.71	62,279.00
					$10,578,274.00		9,176,712.25		10,420,031.42

	Ghilotti Construction Inc. 246 Ghilotti Avenue Santa Rosa, CA 95407		McGuire & Hester Inc. 2810 Harbor Bay Parkway Alameda, CA 94502		Desilva Gates Construction 11555 Dublin Blvd. Dublin, CA 94568	
Item No.	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*
1	250,000.00	250,000.00	380,274.00	380,274.00	281,206.00	281,206.00
2	3.00	9,000.00	4.00	12,000.00	4.00	12,000.00
3	16,000.00	16,000.00	15,000.00	15,000.00	20,000.00	20,000.00
4	1.00	3,372.00	2.25	7,587.00	1.00	3,372.00
5	3,500.00	10,500.00	2,750.00	8,250.00	3,000.00	9,000.00
6	12,500.00	12,500.00	13,000.00	13,000.00	8,000.00	8,000.00
7	20,000.00	20,000.00	40,000.00	40,000.00	15,000.00	15,000.00
8	60,000.00	60,000.00	58,000.00	58,000.00	35,000.00	35,000.00
9	35,000.00	35,000.00	31,000.00	31,000.00	45,000.00	45,000.00
10	50,000.00	50,000.00	58,500.00	58,500.00	15,000.00	15,000.00
11	1,295.00	1,295.00	1,600.00	1,600.00	5,000.00	5,000.00
12	68,200.00	68,200.00	81,000.00	81,000.00	75,000.00	75,000.00
13	4,476.00	4,476.00	4,725.00	4,725.00	3,500.00	3,500.00
14	2,700.00	2,700.00	1,375.00	1,375.00	5,500.00	5,500.00
15	120.00	421,320.00	48.00	168,528.00	150.00	526,650.00
16	38.00	191,064.00	30.00	150,840.00	17.00	85,476.00
17	55,000.00	55,000.00	238,000.00	238,000.00	190,000.00	190,000.00
18	10.00	444,310.00	28.00	1,244,068.00	32.00	1,421,792.00
19	74.00	1,080,104.00	58.00	846,568.00	70.00	1,021,720.00
20	15.00	15,000.00	9.10	9,100.00	7.00	7,000.00
21	75.00	3,000.00	38.00	1,520.00	50.00	2,000.00
22	135.00	1,461,915.00	112.00	1,212,848.00	115.00	1,245,335.00
23	183.00	470,676.00	162.00	416,664.00	160.00	411,520.00
24	3.75	375.00	58.00	5,800.00	20.00	2,000.00
25	3.00	69,129.00	2.65	61,063.95	3.00	69,129.00
26	11.00	30,602.00	8.80	24,481.60	10.00	27,820.00
27	20.00	7,200.00	3.60	1,296.00	15.00	5,400.00
28	50.00	237,000.00	48.00	227,520.00	35.00	165,900.00
29	12.00	14,400.00	13.20	15,840.00	26.00	31,200.00
30	9.00	74,097.00	11.25	92,621.25	7.00	57,631.00
31	38.00	129,846.00	42.75	146,076.75	27.00	92,259.00
32	42.00	62,832.00	35.50	53,108.00	24.00	35,904.00
33	38.00	61,864.00	37.25	60,643.00	23.00	37,444.00
34	100.00	42,700.00	107.00	45,689.00	165.00	70,455.00
35	60.00	96,180.00	61.00	97,783.00	54.00	86,562.00
36	17.00	39,100.00	21.00	48,300.00	10.00	23,000.00
37	280.00	28,000.00	146.00	14,600.00	300.00	30,000.00
38	3,000.00	21,000.00	3,750.00	26,250.00	6,000.00	42,000.00
39	28.00	5,404.00	43.50	8,395.50	21.00	4,053.00
40	1,200.00	4,800.00	1,100.00	4,400.00	2,200.00	8,800.00
41	1,200.00	10,800.00	1,100.00	9,900.00	2,200.00	19,800.00
42	1,200.00	2,400.00	1,100.00	2,200.00	2,200.00	4,400.00
43	14,000.00	42,000.00	17,300.00	51,900.00	15,000.00	45,000.00
44	3,200.00	6,400.00	4,490.00	8,980.00	2,400.00	4,800.00
45	425.00	547,825.00	320.00	412,480.00	345.00	444,705.00
46	1,100.00	105,600.00	1,290.00	123,840.00	1,100.00	105,600.00
47	62,000.00	62,000.00	64,700.00	64,700.00	60,000.00	60,000.00
48	240.00	19,200.00	321.00	25,680.00	160.00	12,800.00
49	14,000.00	42,000.00	14,100.00	42,300.00	16,000.00	48,000.00
50	1,500.00	1,500.00	3,170.00	3,170.00	6,500.00	6,500.00
51	5,800.00	5,800.00	9,540.00	9,540.00	9,000.00	9,000.00
52	9,400.00	18,800.00	13,600.00	27,200.00	11,000.00	22,000.00
53	58,000.00	58,000.00	18,500.00	18,500.00	15,000.00	15,000.00
54	6,800.00	88,400.00	4,800.00	62,400.00	6,000.00	78,000.00
55	6,800.00	13,600.00	3,980.00	7,960.00	4,000.00	8,000.00
56	3,000.00	36,000.00	2,860.00	34,320.00	3,000.00	36,000.00
57	6,800.00	6,800.00	9,450.00	9,450.00	4,800.00	4,800.00
58	180.00	188,100.00	164.00	171,380.00	130.00	135,850.00
59	170.00	218,450.00	144.00	185,040.00	130.00	167,050.00
60	160.00	62,720.00	134.00	52,528.00	122.00	47,824.00
61	280.00	19,040.00	406.00	27,608.00	130.00	8,840.00
62	285.00	81,510.00	247.00	70,642.00	230.00	65,780.00
63	6,500.00	6,500.00	8,780.00	8,780.00	7,000.00	7,000.00
64	7,000.00	7,000.00	15,400.00	15,400.00	7,500.00	7,500.00
65	307.00	669,260.00	293.00	638,740.00	205.00	446,900.00
66	35,000.00	35,000.00	51,300.00	51,300.00	45,000.00	45,000.00
67	10,000.00	10,000.00	8,580.00	8,580.00	5,500.00	5,500.00
68	98,000.00	98,000.00	145,000.00	145,000.00	32,000.00	32,000.00
69	3,000.00	3,000.00	3,860.00	3,860.00	3,300.00	3,300.00
70	17,500.00	52,500.00	11,800.00	35,400.00	4,200.00	12,600.00
71	300.00	4,200.00	300.00	4,200.00	300.00	4,200.00
72	69,000.00	69,000.00	69,000.00	69,000.00	70,000.00	70,000.00
73	750.00	2,250.00	750.00	2,250.00	750.00	2,250.00
74	44.00	44,880.00	63.00	64,260.00	60.00	61,200.00
75	5,500.00	5,500.00	8,550.00	8,550.00	5,000.00	5,000.00
76	7,765.00	7,765.00	7,800.00	7,800.00	8,000.00	8,000.00
77	241,300.00	241,300.00	304,000.00	304,000.00	240,000.00	240,000.00
78	552,400.00	552,400.00	544,000.00	544,000.00	550,000.00	550,000.00
79	92,428.00	92,428.00	143,000.00	143,000.00	145,000.00	145,000.00
80	249,882.00	249,882.00	238,000.00	238,000.00	275,000.00	275,000.00
81	19.53	238,402.71	19.00	231,933.00	14.00	170,898.00
82	25.00	8,600.00	45.00	15,480.00	52.00	17,888.00
83	44,000.00	44,000.00	33,100.00	33,100.00	65,000.00	65,000.00
84	750,000.00	750,000.00	761,614.95	761,614.95	1,060,000.00	1,060,000.00
85	105.00	26,250.00	280.00	70,000.00	150.00	37,500.00
86	15.00	73,500.00	10.00	49,000.00	12.00	58,800.00
		10,538,523.71		10,809,281.00		10,913,913.00

	Goodfellow Brothers LLC 50 Contractors Street Livermore, CA 94551		Graniterock Company 5225 Hellyer Avenue San Jose, CA 95138		Argonaut Constructors P.O. Box 360 Santa Rosa, CA 95402		Ghilotti Bros Inc. 525 Jacoby Street San Rafel, CA 94901	
Item No.	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*
1	250,000.00	250,000.00	690,000.00	690,000.00	361,000.00	361,000.00	105,000.00	105,000.00
2	6.00	18,000.00	4.07	12,210.00	4.00	12,000.00	4.00	12,000.00
3	20,000.00	20,000.00	10,980.00	10,980.00	11,000.00	11,000.00	15,000.00	15,000.00
4	5.00	16,860.00	4.30	14,499.60	4.30	14,499.60	4.30	14,499.60
5	2,600.00	7,800.00	1,650.00	4,950.00	1,650.00	4,950.00	1,650.00	4,950.00
6	7,000.00	7,000.00	8,300.00	8,300.00	14,000.00	14,000.00	6,600.00	6,600.00
7	30,000.00	30,000.00	8,500.00	8,500.00	42,500.00	42,500.00	50,000.00	50,000.00
8	70,000.00	70,000.00	32,000.00	32,000.00	92,000.00	92,000.00	64,287.00	64,287.00
9	30,000.00	30,000.00	32,300.00	32,300.00	34,000.00	34,000.00	26,500.00	26,500.00
10	50,000.00	50,000.00	14,800.00	14,800.00	75,000.00	75,000.00	44,370.00	44,370.00
11	20,000.00	20,000.00	2,500.00	2,500.00	2,500.00	2,500.00	2,000.00	2,000.00
12	65,000.00	65,000.00	340,000.00	340,000.00	75,000.00	75,000.00	81,000.00	81,000.00
13	7,500.00	7,500.00	8,050.00	8,050.00	5,000.00	5,000.00	3,500.00	3,500.00
14	900.00	900.00	1,500.00	1,500.00	1,100.00	1,100.00	4,500.00	4,500.00
15	40.00	140,440.00	70.00	245,770.00	65.00	228,215.00	30.50	107,085.50
16	25.00	125,700.00	70.00	351,960.00	22.00	110,616.00	7.00	35,196.00
17	30,000.00	30,000.00	375,000.00	375,000.00	205,000.00	205,000.00	27,000.00	27,000.00
18	32.00	1,421,792.00	25.00	1,110,775.00	20.00	888,620.00	40.00	1,777,240.00
19	75.00	1,094,700.00	51.00	744,396.00	70.00	1,021,720.00	81.00	1,182,276.00
20	8.00	8,000.00	19.00	19,000.00	11.00	11,000.00	18.00	18,000.00
21	75.00	3,000.00	125.00	5,000.00	50.00	2,000.00	70.00	2,800.00
22	124.00	1,342,796.00	95.00	1,028,755.00	120.00	1,299,480.00	139.00	1,505,231.00
23	175.00	450,100.00	185.00	475,820.00	180.00	462,960.00	190.00	488,680.00
24	30.00	3,000.00	75.00	7,500.00	15.00	1,500.00	22.00	2,200.00
25	3.00	69,129.00	4.75	109,454.25	3.50	80,650.50	3.75	86,411.25
26	10.00	27,820.00	11.00	30,602.00	35.00	97,370.00	11.00	30,602.00
27	4.00	1,440.00	6.25	2,250.00	13.00	4,680.00	9.00	3,240.00
28	55.00	260,700.00	40.00	189,600.00	50.00	237,000.00	55.00	260,700.00
29	8.00	9,600.00	28.00	33,600.00	11.00	13,200.00	8.50	10,200.00
30	7.00	57,631.00	8.05	66,275.65	8.05	66,275.65	19.00	156,427.00
31	27.00	92,259.00	31.15	106,439.55	31.15	106,439.55	39.00	133,263.00
32	23.00	34,408.00	29.25	43,758.00	29.25	43,758.00	28.00	41,888.00
33	23.00	37,444.00	36.05	58,689.40	36.00	58,608.00	25.00	40,700.00
34	170.00	72,590.00	88.65	37,853.55	95.00	40,565.00	182.00	77,714.00
35	58.00	92,974.00	60.40	96,821.20	67.00	107,401.00	145.00	232,435.00
36	10.00	23,000.00	12.50	28,750.00	12.50	28,750.00	30.00	69,000.00
37	290.00	29,000.00	550.00	55,000.00	200.00	20,000.00	950.00	95,000.00
38	5,800.00	40,600.00	3,175.00	22,225.00	3,200.00	22,400.00	4,600.00	32,200.00
39	21.00	4,053.00	34.25	6,610.25	34.25	6,610.25	30.00	5,790.00
40	3,200.00	12,800.00	3,000.00	12,000.00	1,500.00	6,000.00	3,500.00	14,000.00
41	2,000.00	18,000.00	1,300.00	11,700.00	1,500.00	13,500.00	1,500.00	13,500.00
42	3,000.00	6,000.00	1,600.00	3,200.00	1,500.00	3,000.00	3,400.00	6,800.00
43	17,000.00	51,000.00	14,500.00	43,500.00	14,000.00	42,000.00	16,810.00	50,430.00
44	3,700.00	7,400.00	2,400.00	4,800.00	3,300.00	6,600.00	3,695.00	7,390.00
45	290.00	373,810.00	307.00	395,723.00	410.00	528,490.00	300.00	386,700.00
46	1,900.00	182,400.00	1,100.00	105,600.00	1,150.00	110,400.00	1,930.00	185,280.00
47	83,000.00	83,000.00	61,500.00	61,500.00	68,000.00	68,000.00	83,170.00	83,170.00
48	130.00	10,400.00	160.00	12,800.00	200.00	16,000.00	130.00	10,400.00
49	15,000.00	45,000.00	16,000.00	48,000.00	20,000.00	60,000.00	14,760.00	44,280.00
50	7,000.00	7,000.00	1,600.00	1,600.00	4,000.00	4,000.00	6,650.00	6,650.00
51	10,300.00	10,300.00	8,800.00	8,800.00	8,000.00	8,000.00	10,300.00	10,300.00
52	16,200.00	32,400.00	10,500.00	21,000.00	24,000.00	48,000.00	16,200.00	32,400.00
53	22,000.00	22,000.00	15,600.00	15,600.00	14,000.00	14,000.00	21,400.00	21,400.00
54	6,500.00	84,500.00	6,000.00	78,000.00	5,000.00	65,000.00	7,400.00	96,200.00
55	4,600.00	9,200.00	5,000.00	10,000.00	4,000.00	8,000.00	6,500.00	13,000.00
56	3,600.00	43,200.00	2,900.00	34,800.00	3,100.00	37,200.00	5,500.00	66,000.00
57	7,700.00	7,700.00	4,700.00	4,700.00	5,800.00	5,800.00	7,700.00	7,700.00
58	155.00	161,975.00	130.00	135,850.00	205.00	214,225.00	153.00	159,885.00
59	95.00	122,075.00	130.00	167,050.00	160.00	205,600.00	95.00	122,075.00
60	152.00	59,584.00	121.00	47,432.00	125.00	49,000.00	152.00	59,584.00
61	260.00	17,680.00	130.00	8,840.00	65.00	4,420.00	258.00	17,544.00
62	265.00	75,790.00	235.00	67,210.00	235.00	67,210.00	268.00	76,648.00
63	20,000.00	20,000.00	7,000.00	7,000.00	2,500.00	2,500.00	20,000.00	20,000.00
64	23,000.00	23,000.00	7,500.00	7,500.00	7,500.00	7,500.00	24,000.00	24,000.00
65	317.00	691,060.00	218.00	475,240.00	350.00	763,000.00	317.00	691,060.00
66	40,000.00	40,000.00	43,000.00	43,000.00	40,000.00	40,000.00	40,500.00	40,500.00
67	5,900.00	5,900.00	5,500.00	5,500.00	11,000.00	11,000.00	6,000.00	6,000.00
68	115,000.00	115,000.00	31,700.00	31,700.00	90,000.00	90,000.00	115,300.00	115,300.00
69	5,300.00	5,300.00	3,300.00	3,300.00	1,400.00	1,400.00	5,300.00	5,300.00
70	5,000.00	15,000.00	4,100.00	12,300.00	4,800.00	14,400.00	5,000.00	15,000.00
71	300.00	4,200.00	550.00	7,700.00	400.00	5,600.00	780.00	10,920.00
72	70,000.00	70,000.00	87,500.00	87,500.00	70,000.00	70,000.00	88,800.00	88,800.00
73	750.00	2,250.00	1,500.00	4,500.00	750.00	2,250.00	2,500.00	7,500.00
74	80.00	81,600.00	32.00	32,640.00	74.00	75,480.00	80.00	81,600.00
75	8,500.00	8,500.00	9,250.00	9,250.00	5,000.00	5,000.00	8,500.00	8,500.00
76	10,000.00	10,000.00	7,765.00	7,765.00	5,750.00	5,750.00	3,000.00	3,000.00
77	240,000.00	240,000.00	241,300.00	241,300.00	312,705.00	312,705.00	248,500.00	248,500.00
78	500,000.00	500,000.00	552,400.00	552,400.00	570,000.00	570,000.00	508,500.00	508,500.00
79	92,000.00	92,000.00	145,000.00	145,000.00	151,000.00	151,000.00	93,000.00	93,000.00
80	240,000.00	240,000.00	275,000.00	275,000.00	295,000.00	295,000.00	269,000.00	269,000.00
81	16.00	195,312.00	22.00	268,554.00	20.00	244,140.00	25.00	305,175.00
82	25.00	8,600.00	30.00	10,320.00	42.00	14,448.00	34.00	11,696.00
83	60,000.00	60,000.00	85,000.00	85,000.00	50,000.00	50,000.00	60,820.00	60,820.00
84	1,100,000.00	1,100,000.00	1,010,130.00	1,010,130.00	900,000.00	900,000.00	600,000.00	600,000.00
85	110.00	27,500.00	80.35	20,087.50	320.00	80,000.00	160.00	40,000.00
86	8.00	39,200.00	9.50	46,550.00	9.00	44,100.00	13.00	63,700.00
		11,102,872.00		11,121,435.95		11,249,086.55		11,664,692.35

This certifies that all bids were received and opened on October 14, 2022, and that this is a copy of the bid tabulation with bids corrected for errors in addition and multiplication. By:

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Authorize the City Manager to Execute a Consulting Services Agreement with BKF Engineers Inc., to Provide Engineering Design Services for Capital Improvement Project Number 280 – Laurel Road Widening (Cloverbrook Avenue to O'Hara Avenue) Project

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Background and Analysis

The City's adopted FY 2022/23 Capital Improvement Program designates funding for various infrastructure repair and replacement projects. This is consistent with the City's Strategic Goals to improve the quality of the City's public infrastructure and to enhance the quality of life for our residents.

Laurel Road is a major arterial street in Oakley and a key component of the City's transportation network, in addition to being the only direct connector to Highway 4. The improvements and widening of Laurel Road are a top priority for the City of Oakley.

The City's Capital Improvement Program includes this project to widen Laurel Road from Cloverbrook Avenue to O'Hara Avenue. This is the last segment of Laurel Road to be widened between Highway 4 and Main Street. This section of Laurel Road becomes congested and creates a major bottleneck during school pick up and drop off times and commute rush hours. The construction of this project will help to improve the congestion and alleviate back-up in front of the school. Also included with this project is the widening of the east side of O'Hara Avenue approximately 750 feet south of the Laurel Road and O'Hara Avenue intersection.

The widening of Laurel Road in the section from Cloverbrook Avenue to O'Hara Avenue will require the relocation of Western Area Power Administration (WAPA) electric transmission poles along the south side of Laurel Road. WAPA is a federal agency that services a 15-state region of the central and western US and part of the overall electricity grid network. These WAPA poles would have to be relocated away from the street towards the vineyard on the south side of Laurel Road. It will take an extensive amount of coordination between WAPA and the City to get the poles relocated.

The work on this project had been on hold for several years since the City did not have the Right of Way needed to proceed with roadway construction and utility relocation. As a result of the diligent work of City staff during the past year, it has resulted in an agreement with the vineyard owner on the south side of Laurel Road. This agreement will allow for the City to acquire the Right of Way needed for this project.

Staff has selected BKF Engineers Inc., as the best suited firm to design this important infrastructure improvement project. This design is complex, since the new widening will have to conform to existing infrastructure both horizontally and vertically and accommodate the multitude of underground utility lines. The design will also include preparing the project documents needed by WAPA as part of their relocation process.

This firm has successfully designed other parts of Laurel Road and have great familiarity with the City's standards and processes. Staff negotiated the final scope of design work and cost proposal at a cost of $424,318, which is very competitive pricing for a project that will cost more than $4M to construct. BKF Engineers Inc., is the premiere civil engineering firm in the bay area with in-depth expertise in design and construction of infrastructure, including utility relocation and roadway improvement projects for a wide range of municipalities.

Consistency with the Oakley Strategic Plan 27+

This item is consistent with the Strategic Plan 27+ Community Health and Safety section goal to provide safe streets.

Fiscal Impact

The funding for this project is allocated from the Traffic Impact Fee Fund.

Staff Recommendation

Staff recommends that the City Council adopt the resolution approving the proposal with BKF Engineers Inc., for the design services associated with CIP No. 280 – Laurel Road Widening (Cloverbrook Avenue to O'Hara Avenue) Project and to authorize the City Manager to enter into an agreement not to exceed an amount of $424,318.

Attachments

1. BKF Engineers Inc., Proposal
2. Resolution

Date 10/10/2022
BKF No 20220520

Kevin Rohani, PE, Public Works Director/City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561
Transmitted Via Email

Subject: CIP 280 – Laurel Road Widening (O'Hara Avenue to Cloverbrook Avenue)

Dear Mr. Rohani:

BKF Engineers welcomes the opportunity to submit this proposal for civil engineering services associated with the CIP 280 - Laurel Road Widening (O'Hara Ave to Cloverbrook Ave) project located in the City of Oakley, California. To arrive at the estimated effort required by our office for this Project, we have outlined a proposed scope of services, identified assumptions, and determined a level of effort fee based on our understanding of the Project.

I. PROJECT UNDERSTANDING

Based on our meeting on 9/30/2022 and information obtained from the City, we understand the Project as:

> *The Project proposes to widen Laurel Road to the south from O'Hara Avenue to Cloverbrook Avenue and widen O'Hara Avenue to the east from Laurel Road to approximately 700' south of the Laurel Road/O'Hara Avenue intersection. The roadway work will also include meandering sidewalks with detached landscape areas, landscape irrigation, stormwater treatment, drainage and utility improvements, signing and striping, green bike lanes, street lighting and traffic signal modifications.*

II. BASIS OF DESIGN

Our proposal is based on the following:

1. Meeting with the City on 9/30/2022

III. SCOPE OF SERVICES

TASK 1: PROJECT MANAGEMENT

1. Project Management: BKF's Project Manager, Marcelo Cosentino, will be responsible for managing the project team, providing the resources to complete the job, monitoring and updating the Project budget and schedule, implementing a quality assurance/quality control program and communicating regularly with the City staff.

2. Project Kick-off and Coordination Meetings: BKF has budgeted up to a maximum of twenty four (24) combined staff hours to attend meetings, participate in conference calls and coordinate response to comments. Anticipated meetings include internal coordination, City coordination, and design review meetings.

TASK 2: DESIGN DEVELOPMENT

1. Obtain/Review Existing Data, As-builts: BKF will contact the City and utility (water, sewer, storm, gas, communications and power) companies that serve have utilities within the Project limits. We will gather the available record drawings and/or block maps to depict the record location of the utilities superimposed onto the existing topographic survey. BKF will compile available street as-builts and right of way record maps to supplement the topographic base drawing.

2. Site Investigations: BKF will visit the site to review the existing site constraints and conditions. We will note any potential challenges for the project improvements and confirm our scope of survey services to support the design process. BKF will document each site visit with notes and photo logs.

3. Establish Boundary/Project Control: BKF will prepare a resolved boundary for the Project. This work will include monument found in the field, research into record maps and county records. Boundary mapping will be shown on the Project control drawing.

4. Topographic Field Survey: BKF will provide the field work to prepare a Topographic Map for the Project. The topographic survey will be comprised of identified visible site features such as roadways, pavements, evidence of significant traveled ways, walls, fences, trees 9-inches and larger in diameter and visual utility infrastructure. The Project will utilize City benchmarks for the horizontal and vertical datums.

    a. Utilities - Utility infrastructure within the mapping limits, including sewer, water valves, hydrants, meter boxes, storm drain and marked utilities, if encountered during the course of our field survey, will also be identified. The basic routing, inverts and orientation of the on-site gravity utilities will be identified based on field evidence and any available plans provided if to BKF prior to commencement of the survey. If as-built drawings are not provided or are inconclusive when compared to the field evidence, only data at the dipped structures will be provided. BKF will also provide survey of the existing Western Area Power Administration (WAPA) towers.

5. Aerial Survey/Control: BKF will obtain aerial topographic mapping of the site. The aerial topographic map will be in in digital AutoCAD format and will be used as the background for all project plans and exhibits.

    a. The mapping is anticipated to be compiled at 1” = 20’, and will also indicate individual spot elevations at various locations throughout the site. BKF will take a series of photographs for future reference and documentation of current field conditions encountered during the time of our survey.

6. Utility Investigations and Coordination: BKF will prepare a potholing plan for concurrence by the City and work with a potholing contractor to perform utility investigation. This level of effort will minimize construction costs and ensure the correct placement of the proposed improvements. BKF will update the utility base mapping with the pothole information. BKF’s current proposal assumes up to 5 potholes.

    BKF will provide coordination with utility owners for relocation of facilities in conflict with the proposed improvements. We will coordinate with the team and verify that the proposed plan conforms to existing conditions, boundary, and site constraints. In particular, BKF will work with the City and WAPA for relocation of three transmission towers on the south side of Laurel Road. We will also work with PG&E for relocation of two guy pole(s) on the south side of Laurel Road

7. NPDES C.3 Compliance: Based on a preliminary review, the site will be subject to the NPDES Stormwater regulations. BKF shall follow the Contra Costa County C.3 Guidebook on the type and amount of

stormwater quality measures required to develop the site. BKF identify opportunities for low impact design (LID) elements at the site such as bioretention areas and utilize site design measures for the Project.

BKF's scope will include preparation of a draft and final Stormwater Control Plan for the Project, including an Operations and Maintenance (O&M) plan for the stormwater treatment facilities after the construction is complete.

8. Plat and Legal Preparation: BKF will prepare up to three (3) plat and legals for the Project. Up to two plat and legal descriptions will be prepared for the dedication to the City for public use located at 1650 O'Hara Avenue. One plat and legal description will be prepared for WAPA utility easement along Laurel Road.

9. Design Concept Exhibit: BKF will prepare a concept exhibit to be used as the basis of design for the 65% submittal. The concept exhibit will show the proposed Project geometry, including lane configuration, medians, crosswalks, curb ramps, sidewalks, driveways and landscape areas. The existing and proposed right of way will also be defined on the exhibit.

TASK 3: CONSTRUCTION DOCUMENTS

Based on comments received on the concept exhibit, BKF will develop Plans, Specifications and Estimate (PS&E) documents for the project. BKF will further progress the design with each submittal to ensure that backgrounds, utility points of connection, accessible paths of travel, and stormwater treatment areas are designed and detailed to the level required by the contractor to bid and construct.

BKF will provide design (PS&E) submittals at the 65%, 95% and 100% level of completion. The 65% submittal will become the backbone of the Project and define all major elements of the design. The 95% submittal will refine the project details by incorporating comments on the 65% submittal, continued design development and coordination with utility owners. The 100% submittal will finalize the project design and resolve all comments and coordination from comment on the 95% submittal, design development and utility relocations.

1. Plans: For each design submittal, BKF will prepare the following plans sheets in progressive levels of detail:
   - Title Sheet: This plan will include the Project title, vicinity map, location map, drawing index, abbreviations and signature block.
   - General Notes: This plan will include the City standard notes, project notes and applicable utility notes.
   - Project Control: This plan will define the project horizontal and vertical control, control point information and roadway alignment.
   - Key Map: To provide overall limit of work, the key map will identify the limits of work for each plan sheet.
   - Typical Cross Sections: Typical cross sections will be develop for the proposed improvements along the Laurel Road and O'hara Avenue alignments. These sections will show the limits of existing roadway conditions, and the width, dimensions and configuration of the proposed improvements including right of way, curb and gutter, planting areas, pavement structural sections and pedestrian areas.
   - Demolition Plan: BKF will evaluate the existing facilities impacted by the proposed improvements. The evaluation shall include existing conditions, unusual/special conditions and conform edge conditions for the proposed work. The demolition plan will show existing sidewalk, curb and gutter to be removed, roadway excavation, common excavation and conform grind areas.

Additionally, facilities to be protected in place will be identified. Existing utility information will be shown as background information.

- Site Plan: The site plan will be prepared showing the limits and scope of the proposed improvements. Plan sheets will include horizontal layout information and identify all major construction features including areas of reconstruction and limits of conform. The plan will include references to other plans and details for the proposed work.
- Grading and Drainage Plan: This plan will be prepared to show the proposed elevations and drainage facilities for the proposed site improvements along Laurel Road and O'hara Avenue. Grading information will include pavement, curb, gutter and sidewalk elevations at key points and along even intervals along the Project alignments. Drainage information will include location, facility type, surface and invert elevations, and slopes for the proposed drainage facilities. Drainage profiles will be provided for new segments of pipes.
- Construction Details: Details will be provided as necessary to guide the Contractor on special conditions related to the project improvements. This plan will include City and utility owner standard details, and custom details for the project. Each curb ramp, driveway and bioretention area will have a breakout detail for the layout, grading and other pertinent information.
- Pavement Delineation and Sign Plan: BKF will prepare pavement delineation and sign plan based on the approved concept design for the project.
- Stage Construction Plans: BKF will prepare stage construction plans for the Project to show how vehicular and pedestrian traffic are managed during construction.
- Utility Plan: This plan will summarize existing utilities and proposed utility relocations for the project. Existing utilities will be protected, adjusted, removed or relocated. Utility relocations will be coordinated with the utility owners and appropriate details/notes will be included.
- Planting and Irrigation Plans and Details: BKF, through its subconsultant Gates and Associates, will prepare planting and irrigation plans and details. New landscaping will be added adjacent to the sidewalk on Laurel Road and O'hara Avenue. Landscaping will also be provided in the roadway medians.
- Traffic Signal Plan: The traffic signal modification plan will be prepared for the existing traffic signal at the intersection of Laurel Road and O'hara Avenue. Equipment and conductor schedules will be included with the traffic signal plan.
- Lighting Plan: BKF, through its subconsultant AEC Engineers, will prepare lighting plans for the proposed street lights to be installed along Laurel Road and O'hara Avenue.
- Erosion Control Plan: BKF will prepare erosion control plans showing the location and protection of existing inlets, silt fences, and other temporary stormwater control measures/best management practices (BMPs).

2. Specifications: BKF will prepare Parts 1, 2 and 3 of the Specifications using City standard format for all work items necessary for the construction of the project. BKF will assemble the Technical Specifications and appropriate City Special Provisions for locally funded Projects. The specifications will be included with each design submittal.

3. Estimate: BKF will prepare a Construction Cost Estimate to ensure that the magnitude of cost corresponds to the Project budget. The estimate will be prepared using present-day dollars; escalation costs will not be applied. The Construction Cost Estimate will be updated for each design submittal.

4. Quality Control: Based on BKF's in-house Quality Management Plan (QMP), we will perform an in-house QA/QC review of all submittal documents prior to delivery to the City. BKF's quality control review will include both a discipline and interdisciplinary review of the design package for coordination among the various design elements.

TASK 4: BID SUPPORT

1. Bid Support Services: BKF will perform the following tasks in support of the Project during the bid period:
    a. Attend pre-bid meeting with the City and potential bidders to discuss bidding procedures
    b. Respond to bidders' questions on the construction documents
    c. Provide technical assistance during the bid process, including the preparation of up to one addendum.
    d. Provide a conform set of drawings incorporating all addendum revisions.

IV. SCHEDULE

We understand that the design phase will commence in fall 2022 and is anticipated to be completed by fall of 2023.

COMPENSATION

1. BASE SCOPE OF WORK:
   BKF proposes to provide the services described above and will invoice our services on a time and materials basis not to exceed the cost per task summarized as follows:

ITEM	DESCRIPTION	FEE
1	PROJECT MANAGEMENT	$18,076.00
	Project Management	$12,484.00
	Project Kick-off and Coordination Meetings	$5,592
2	DESIGN DEVELOPMENT	$120,767.00
	Obtain/Review Existing Data, As-Builts	$7,246.00
	Site Investigations	$5,542.00
	Establish Boundary/Project Control	$7,280.00
	Topographic Field Survey	$18,800.00
	Aerial Survey/Control	$8,496.00
	Utility Investigations and Coordination	$17,312.00
	NPDES C.3 Compliance	$23,408.00
	Plat and Legal Preparation	$9,406.00
	Design Concept Exhibit	$23,277.00
3	CONSTRUCTION DOCUMENTS	$168,744.00
	Prepare 65% Submittal Package/PS&E	$64,254.00
	Prepare 95% Plan Check Submittal Package/PS&E	$54,888.00
	Prepare 100% Final Submittal Package/PS&E	$43,506.00
	Quality Control	$6,096.00
4	BID SUPPORT	$6,736.00
	Bid Support Services	$6,736.00
SUB	SUBCONSULTANTS	$77,880.00
	Gates and Associates – Task 3	$59,938.00
	Gates and Associates – Task 4	$1,122.00
	AEC Engineers – Task 3	17,820.00

RE	REIMBURSABLE EXPENSES	$32,115.00
	Printing, Deliver, Mileage, Postage, Parking	$2,000.00
	Utility Potholing (Allowance)	$25,000.00
	Aerial Topo	$5,115.00
	TOTAL FEE PER SCOPE	$424,318.00

Reimbursable expenses are anticipated for reproduction, mileage, express and messenger deliveries, and computer deliverable plots. Reimbursable expenses will be billed on a cost plus 10-percent markup basis.

For tasks requested by the City not defined in this scope of services, BKF will identify them as potential extra work. We can provide a scope and fee for these items or they may be tracked separately as extra work and billed on a time and materials per our attached rate schedule.

Thank you for the opportunity to present this proposal. We look forward to assisting in developing this project. Please contact me at 408-706-4036 if you have any questions regarding our scope of services.

Respectfully,
BKF Engineers

Marcelo Cosentino, PE
Associate

Attachments:
1. BKF Engineers Professional Services Rate Schedule
2. Cost Breakdown

BKF ENGINEERS PROFESSIONAL SERVICES RATE SCHEDULE

EFFECTIVE MARCH 28, 2022

CLASSIFICATION	HOURLY RATE
PROJECT MANAGEMENT	
Principal/Vice President	$272.00
Senior Associate/Vice President	$244.00
Associate | Senior Project Manager | Senior Technical Manager	$237.00
Project Manager | Technical Manager	$231.00
Engineering Manager | Surveying Manager | Planning Manager	$213.00
TECHNICAL STAFF	
Senior Project Engineer | Senior Project Surveyor | Senior Project Planner	$198.00
Project Engineer | Project Surveyor | Project Planner	$174.00
Design Engineer | Staff Surveyor | Staff Planner	$151.00
BIM Specialist I, II, III	$151.00 - $174.00 - $198.00
Technician I, II, III, IV	$144.00 - $153.00 - $168.00 - $181.00
Drafter I, II, III, IV	$113.00 - $124.00 - $134.00 - $149.00
Engineering Assistant | Surveying Assistant | Planning Assistant	$94.00
FIELD SURVEYING	
Survey Party Chief	$198.00
Instrument Person	$170.00
Survey Chainperson	$127.00
Utility Locator I, II, III, IV	$103.00 - $146.00 - $175.00 - $199.00
Apprentice I, II, III, IV	$78.00 - $105.00 - $116.00 - $123.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	$259.00
Senior Construction Administrator	$225.00
Resident Engineer	$167.00
Field Engineer I, II, III	$151.00 - $174.00 - $198.00
FUNDING & GRANT MANAGEMENT	
Director of Funding Strategies	$198.00
Funding Strategies Manager	$181.00
Funding/Research Analyst I, II, III, IV	$124.00 - $144.00 - $153.00 - $168.00
PROJECT ADMINISTRATION	
Project Coordinator	$126.00
Senior Project Assistant	$109.00
Project Assistant	$96.00
Clerical | Administrative Assistant	$81.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.
- The rates shown are subject to periodic increases, including January 1st of each year.

City of Oakley
Laurel Road Widening Project
(O'Hara Avenue to Cloverbrook Avenue)

10/14/2022

TASK	SCOPE DESCRIPTION	STAFF CATEGORY												Total Hrs	EST FEE
		PIC (Gordon Sweet)	PM (Marcelo Cosentino	Principal (Davis Thresh)	QA/QC (Carmelo Cecilio)	Jeff Wang, PE Andrew Michel, PE	Chia Chi, PE (Project Manager)	Sr Project Eng/Sur	Project Eng/Sur	Design Eng/Sur	Tech IV	2-Man Survey	Administrative Assistant		
		$272.00	**$237.00**	**$272.00**	**$237.00**	**$237.00**	**$231.00**	**$198.00**	**$174.00**	**$151.00**	**$181.00**	**$325.00**	**$81.00**		
Task 1	PROJECT MANAGEMENT														
	Project Management	8	24				20							52	$ 12,484.00
	Project Kick-off and Coordination Meetings		8				16							24	$ 5,592.00
	Subtotals	8	32	-	-	-	36	-	-	-	-	-	-	76	$ 18,076.00
Task 2	DESIGN DEVELOPMENT														
	Obtain/Review Existing Data, As-builts		4			2	6	6	10	10				38	$ 7,246.00
	Site Investigations						6		10	16				32	$ 5,542.00
	Establish Boundary/Project Control			1			2		14	10		8		35	$ 7,280.00
	Topographic Field Survey						2		12			50		64	$ 18,800.00
	Aerial Survey/Control (Also see Aerial Topo)								4			24		28	$ 8,496.00
	Utility Investigation and Coordination		6			4	12	18	12	12	26			90	$ 17,312.00
	NPDES C.3 Compliance						14	18	24	32	42			130	$ 23,408.00
	Plat and Legal Preparation			2			8	8	26	6				50	$ 9,406.00
	Design Concept Exhibit		4		2	2	7	24	28	24	36			127	$ 23,277.00
	Subtotals	-	14	3	2	8	57	74	140	110	104	82	-	594	$ 120,767.00
Task 3	CONSTRUCTION DOCUMENTS														
	Prepare 65% Submittal Package/PS&E		8			8	36	42	76	82	98		6	356	$ 64,254.00
	Prepare 95% Plan Check Submittal Package/PS&E		8			8	28	32	68	70	86		4	304	$ 54,888.00
	Prepare 100% Final Submittal Package/PS&E	2	8			6	22	28	48	58	64		4	240	$ 43,506.00
	Quality Control		4		8	2	6		8					28	$ 6,096.00
	Subtotals	2	28	-	8	24	92	102	200	210	248	-	14	928	$ 168,744.00
Task 4	BID SUPPORT														
	Bid Support Services	2	2			2	4	6	18					34	$ 6,736.00
	Subtotals	2	2	-	-	2	4	6	18	-	-	-	-	34	$ 6,736.00

	PIC (Gordon Sweet)	PM (Marcelo Cosentino	Principal (Davis Thresh)	QA/QC (Carmelo Cecilio)	Jeff Wang, PE Andrew Michel, PE	Chia Chi, PE (Project Manager)	Sr Project Eng/Sur	Project Eng/Sur	Design Eng/Sur	Tech IV	2-Man Survey	Administrative Assistant	Total	Total Labor
Totals By Classifications	12	76	3	10	34	189	182	358	320	352	82	14	1,632	$ 314,323.00
Total Direct Labor	$ 3,264.00	$ 18,012.00	$ 816.00	$ 2,370.00	$ 8,058.00	$ 43,659.00	$ 36,036.00	$ 62,292.00	$ 48,320.00	$ 63,712.00	$ 26,650.00	$ 1,134.00	$ 314,323.00	

Subconsultant	Task 1	Task 2	Task 3	Task 4	
Gates + Associates (Landscaping)			$ 58,938.00	$ 1,122.00	$ 60,060.00
AEC Engineers (Lighting/Electrical)			$ 17,820.00		$ 17,820.00
Subconsultant Costs					$ 77,880.00

Reimbursable	
Printing, Deliver, Mileage, Postage, Parking	$ 2,000.00
Utility Potholing (Allowance)	$ 25,000.00
Aerial Topo	$ 5,115.00
Reimbursable	$ 32,115.00

PROJECT TOTAL	$ 424,318.00

Assumptions:

1. Environmental services and project environmental clearance will be provided by the City.
2. Survey scope of services does not include survey staking.

RESOLUTION NO. XX-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT WITH BKF ENGINEERS, INC. FOR ENGINEERING DESIGN SERVICES ASSOCIATED CAPITAL IMPROVEMENT PROJECT NUMBER 280 - LAUREL ROAD WIDENING (CLOVERBROOK AVENUE TO O'HARA AVENUE) PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT

WHEREAS, as part of the Fiscal Year 2022/23 Budget the City of Oakley approved a 5-Year Capital improvement Program (CIP); and

WHEREAS, Project Number 280 is to design the improvements for the Laurel Road Widening Project from Cloverbrook Avenue to O'Hara Avenue; and

WHEREAS, staff solicited a proposal from BKF Engineers, Inc., for the design of this project; and

WHEREAS, BKF Engineers Inc., has submitted a proposal to prepare engineering design services for CIP Project Number 280 for an amount not to exceed $424,318; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the City Council of the City of Oakley hereby approves the proposal from BKF Engineers, Inc., for engineering design services for CIP Project Number 280 for an amount not to exceed $424,318, in the form attached hereto as Exhibit A, and authorizing the City Manager to execute this into an Agreement.

PASSED, APPROVED AND ADOPTED this 25th day of October 2022 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Award of Construction Contract to Cairo Builder, Inc. for the Senior Center Roof and HVAC Repair and Replacement Project – Capital Improvement Project Number 288

Background and Analysis

The City's adopted FY 2022/23 Capital Improvement Program (CIP) Budget designates funding for various infrastructure repair and replacement projects. This is consistent with the City's Strategic Goals to improve the quality of the City's public infrastructure and to enhance the quality of life for our residents.

The Oakley Senior Center, located at 215 2nd Street is a facility that had been used as a fire station decades ago. Since the construction of the more modern fire stations within East Contra Costa County, this facility had been vacant for many years. In more recent years, it has been used as a Senior Center to service the senior citizens of the Oakley community. There have not been any recent renovations to this building to upgrade and make functional for the Oakley senior citizens.

In 2017, the City of Oakley used the Community Development Block Grant (CDBG) Program to perform improvements to this facility's parking lot and ADA access improvements. Earlier this year, staff successfully secured an additional round of CDBG grant funds to renovate the building roof and replace the broken and dysfunctional HVAC system.

Staff prepared the project bid documents which was advertised in accordance with the CDBG program guidelines.

On October 13, 2022, the bidding period closed and a total of two (2) bids were received. Cairo Builder, Inc. was the lowest bidder for the project at a total cost of $75,000.

Consistency with the Oakley Strategic Plan 27+

This item is consistent with the Strategic Plan 27+ Community Health and Safety goals.

Fiscal Impact

The available CDBG grant funds and budgeted City match will be from the Public Facilities Impact Fee fund.

Staff Recommendation

Staff recommends that the City Council adopt the resolution approving the construction agreement with Cairo Builder, Inc. for an amount not to exceed $75,000 and authorizing the City Manager to execute the agreement.

Additionally, due to variables associated with construction projects, and to address unforeseen circumstances during construction; staff further recommends that the City Council authorize staff to execute future change orders to the construction contract as necessary in an amount not to exceed $5,000 for work beyond what is defined in the base project bid.

Attachments

1) Resolution
2) Bid Summary

RESOLUTION NO. XX-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT WITH CAIRO BUILDER, INC. FOR THE CONSTRUCTION OF CAPITAL IMPROVEMENT PROJECT NO. 288 – SENIOR CENTER ROOF AND HVAC REPAIR AND REPLACEMENT PROJECT

WHEREAS, staff prepared the bid documents for the Oakley Senior Center Roof and HVAC Repair and Replacement project – CIP 288; and

WHEREAS, the plans, specifications and special provisions were publicly advertised for bidding, with the bid period closing at 2:00 P.M. on Thursday, October 13, 2022; and

WHEREAS, two (2) bids were received prior to the close of the bidding process; and

WHEREAS, Cairo Builder, Inc. submitted the lowest responsible bid for a total cost of 75,000; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oakley that the proposal from with Cairo Builder, Inc. for the Senior Center Roof and HVAC Repair and Replacement Project – CIP 288, for an amount not to exceed $75,000 is approved, and the City Manager is hereby authorized to execute this into an Agreement and approve change orders in an amount not to exceed $5,000 as necessary.

PASSED, APPROVED AND ADOPTED this 25th day of October 2022 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

City of Oakley Public Works Department
Senior Center Roof and HVAC Repair and Replacement Project, CIP 288
Certified Bid Tabulation Bid opening: October 13, 2022 at 2:00 P.M. at the Civic Center

				Engineers Estimate		Cairo Builder, Inc. 433 Second Street Suite 101B Woodland, CA 95695		Trahan Mechnical, Inc. P.O. Box 10462 San Rafael, CA 94912	
Item No.	*Description*	*Quantity*	*Unit*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*	*Unit Price*	*Item Cost*
1	Senior Center Roof Repair and Replacement Project	1	LS	80,000.00	$80,000.00	75,000.00	75,000.00	79,900.00	79,900.00
					$80,000.00		**75,000.00**		79,900.00

This certifies that all bids were received and opened on October 13, 2022, and that this is a copy of the bid tabulation with bids corrected for errors in addition and multiplication. By:



OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Agreement with Consor North America, Inc. for Right of Way and Surveying Engineering Services associated with CIP Project Number 273 – Laurel Road extension project (Teton Road to Sellers Avenue)

Background and Analysis

The City's General Plan and its Circulation section outlines the transportation network for the community and one of the key projects that will enhance the City's transportation network is the extension of Laurel Road from Teton Road to Sellers Avenue. This roadway extension will provide a major east/west connection from sections of far east Oakley to Highway 4 westward and job centers in the bay area.

Laurel Road currently ends at Teton Road which will be extended in an easterly direction across the railroad tracks towards Sellers Avenue, which will ultimately have a new signalized intersection with the new Laurel Road. The design and construction of the Laurel Road extension is complex and will take several years to accomplish. This project involves the construction of an overhead grade separation at the Burlington Northern Santa Fe (BNSF) railroad tracks and its retaining walls. As part of this project, new Right of Way must be acquired to accommodate the new Laurel Road extension from the BNSF railroad tracks to Sellers Avenue.

Staff has worked with the design team over the past several months to develop the best alignment alternative for the extension of Laurel Road. After extensive engineering analysis, one alternative was selected as the best suited for this project, which was approved by the City Council at its meeting on June 14, 2022.

The next phase of this project is performing the topography survey and determining the Right of Way requirements for this roadway extension project. The survey will provide the details needed to start the Right of Way acquisition process.

Staff worked with Consor North America, Inc. to finalize the scope of work and design cost proposal for Topography Surveying and Right of Way mapping of the project.

As this phase of the design progresses, staff will be working with BNSF, the County, and utility companies to determine the permits needed for this project and its processing requirements.

The execution of this project will span several years, considering its complexity and magnitude. Staff will investigate any grant funding opportunities to fund the construction of this project, to supplement local funds that are allocated for the project.

Consistency with the Oakley Strategic Plan 27+
This item is consistent with the Strategic Plan 27+ Community Health and Safety goal.

Fiscal Impact
The funding for this project is allocated from the Traffic Impact Fee Fund.

Staff Recommendation
Staff recommends that the City Council adopt the resolution approving the proposal from Consor North America, Inc. for Topography Surveying and Right of Way mapping services associated with CIP No. 273 – Laurel Road Extension Project and to authorize the City Manager to enter into an agreement not to exceed an amount of $120,000.

Attachments
1) Proposal
2) Resolution

2950 Buskirk Avenue, Suite 122
Walnut Creek, CA 94597

October 5, 2022

Jason Kabalin
City of Oakley
3231 Main Street
Oakley, CA 94561

RE: Proposal for Laurel Road Extension – CIP No. 273 Topographic Survey and Right of Way Needs Map and Report, with Plats and Descriptions included

Dear Jason,

As discussed previously, enclosed Is our proposal for the reference project under our new letterhead for Consor. As I mentioned to Kevin Rohani via email yesterday, we are requesting that the firm name "Consor North America, Inc." be used on the contract. I will follow up with W9 and Insurance Certificates for the new agreement.

Sincerely,
Consor Engineers, LLC



Russ Moore, PE *Principal Engineer, Bay Area Group Manager*
Phone 925-433-6990 | Russ.Moore@consoreng.com

2950 Buskirk Avenue, Suite 122
Walnut Creek, CA 94597

Laurel Road Extension – CIP No. 273 Topographic Survey and Right of Way Needs Map and Report, with Plats and Descriptions included

Project Description

The limits of the project are Laurel Road from its current terminus at Teton Road easterly to Sellers Road, approximately 2,600 in length. The new/extended roadway cross-section will be along the approximate alignment of Alternative 2 from the Precise Alignment Study as confirmed with Oakley City Council. Precise Alignment Alternative 2 consists of a 106' width right of way with the centerline of that right of way atop the extended property boundary line east of the railroad right of way.

Project Team

Our team will consist of these members:

Team Member	Position	Role
Russ Moore	Project Manager	Project Management
Rob Ferguson	Bridge Lead	Bridge and Walls design development
Andrew Mitchell	Roadway Lead	Roadway Layout development
Craig Polglase	Engineering Designer IX	Roadway and Bridge Layout development
O'Dell Engineering	Land Surveyor	Prepare project base map from aerial survey and ground topographic survey and plats and legal descriptions for takes and easements

Scope of Work

Topographic Survey- Our subconsultant, O'Dell Engineering, will provide topographic survey, by way of aerial photogrammetry and supplemental ground survey. O'Dell will then create a project base map that includes all surface features and existing property and right of way lines within the approximate future right-of-way limits of the Laurel Road Extension. For additional details of this scope, see O'Dell's attached proposal letter dated September 9, 2022.

Draft Alignment and Constraints Map- working from the base mapping, Quincy will create a draft alignment (based on Alternative 2 from the previous phase of the work) and constraints map to review with the City. The draft map will indicate locations where the Alternative 2 roadway alignment has impacts on existing properties and features and will include a summary table of the impacted locations, who's property is impacted, issues at each location, and how much area is affected.

Review Meeting – we will meet with City staff to go over your review comments from the draft submittal package to make sure that we have a clear understanding of potential constraints and City concerns.

Draft Right of Way Needs Map and Report - based on City review comments of the Draft Constraints Map and with further adjustment of the roadway alignment to avoid or minimize impacts to properties, we will prepare a Draft Right of Way Needs Map and Report for City review. The Right of Way Needs Map will include the revised roadway alignment as agreed to in the previous phase, summary tables of right of way needs by parcel number on each sheet, and a report that provides narrative of the right of way needs that the alignment requires.

Final Right of Way Needs Map and Report – based on City review comments of the Draft Map and Report, we will finalize the Right of Way Map and Report for delivery to the City and for future reference in the next phase of the Laurel Road Extension's planning and development.

Plats and Legal Descriptions- Our subconsultant, O'Dell Engineering, will provide plats and legal descriptions for right of way impacts assumed as

- 6 parcel takes
- 6 slope easements on the 6 impacted parcels
  - We will acquire Preliminary Title Reports for up to seven (7) impacted properties and have budgeted an allowance of $1,430 for PTR purchases. For additional details of this scope, see O'Dell's attached proposal letter dated September 9, 2022.

Deliverables

- Project Base Mapping
- Draft Alignment and Constraints on Base Map along with Summary of Constraints for Review with City staff
- Draft Right of Way Needs Map and Report
- Final Right of Way Needs Map and Report
- Land Description packages signed and stamped by CA licensed Land Surveyor

Schedule

	Milestone	Due date
Milestone Schedule	NTP from City	Assumed October 26, 2022
	Complete Aerial Mapping and Field Topographic Survey	October 31, 2022
	Finalize Base Mapping	November 11, 2022
	Meet to Review constraints with City	November 19, 2022

Laurel Road alignment adjustments to minimize property impacts	November 29, 2022
ROW Needs Report and Map	December 9, 2022

Fee

Not to exceed **$120,000** based on hours per position, billing rates, and subconsultant costs as shown below.

Hours and Fee Estimate

Team Member	Position	Role	Estimated Hours	Hourly Rate	Extended Fee
Russ Moore	Project Manager	Project Management	40	$ 296	$ 11,840
Rob Ferguson	Bridge Lead	Bridge and Walls design	40	$ 243	$ 9,720
Andrew Mitchell	Roadway Lead	Roadway Design	24	$ 226	$ 5,424
Craig Polglase	Engineering Designer IX	Roadway and Bridge Alignment Adjustments	32	$ 198	$ 6,336
O'Dell Engineering	Land Surveyor	Topo Survey and Base Mapping			$ 53,000
O'Dell Engineering	Land Surveyor	Plats and Descriptions for Takes and Slope Easements			$ 24,500
				subconsultant markup 10%	$ 7,750
				Allowance for acquiring 7 Preliminary Title Reports	$ 1,430
				total estimated fee	**$ 120,000**

Assumptions upon which this fee estimate is based:
All work to be completed by Dec 31, 2022
Scope, Deliverables, and Schedule details as shown in Quincy Engineering proposal letter of August 4, 2022

City to provide:
Review of ROW constraints, Review of Draft ROW Needs Map and Report, Participation in Project Meetings

O'DELL ENGINEERING

LAND SURVEY PROPOSAL

Date: September 9, 2022

To: Russ Moore, PE
Quincy Engineering

From: Scott J. Roberts, P.L.S.

Re: Laurel Road Extension Oakley / M3530

Project Description
Field and office surveying to prepare base mapping to support the design of new roadway improvements to connect Laurel Road from its current terminus at Teton Road, over the AT&SF Railroad, to Sellers Ave.

Mapping Limits
See attached mapping limits exhibit (Exhibit "A"), attached hereto and by this reference made a part hereof.

Scope of Work

Task 1: Survey Base Mapping

a. Establish primary project survey control points using the NAD83 horizontal datum and NAVD88 vertical datum. Coordinates and bearings will be based on California Coordinate System of 1983 (CCS83).
b. Set and locate aerial target panels and acquire nadir photography of the project area sufficient for map compilation.
c. Prepare photogrammetric mapping at a horizontal scale of 1" = 40' with a 1-foot minor contour interval. Planimetric mapping, spot elevations, and contours will be included in the aerial topographic mapping. Color orthophotography will also be provided.
d. Perform supplemental ground infill surveys at critical match locations and integrate the ground survey data with the aerial mapping to provide a uniform base map drawing.
e. Perform field surveys to locate existing survey monumentation controlling the location of property boundaries and rights-of-way.
f. Resolve the location of existing rights-of-way and property boundaries within and adjacent to the mapping limits. Examine title reports (if provided by others) and incorporate the location of any plottable title encumbrances of record. The purpose of this task is to develop a land-net for the purpose of deriving a right-of-way needs exhibit and to serve as the basis for the preparation of acquisition land description packages.

DELIVERABLES:

- Digital copy of the survey base mapping in AutoCAD Civil 3D 2020 format.
- PDF copy of survey base mapping on O'Dell title block.
- Color orthophotography in TIFF format.

Task 2: Land Description Packages twelve (12)

a. Prepare ~~twenty (20)~~ land description packages to support fee or easement acquisitions. A land description package includes a written description, a closure report, and a plat (exhibit).

DELIVERABLES:

- Land description packages signed and stamped by a California licensed Professional Land Surveyor.

Compensation:

Task 1: $ 53,000.00 Time & Materials Basis, Not to Exceed

Task 2: $ ~~38,000.00~~ Time & Materials Basis, Not to Exceed

$24,500

Subconsultants & Contractors:

This proposal was prepared with the cooperation of the following subconsultants and/or contractors:

Task	Consultant/Contractor Name
1(b)/1(c)	GSP Consulting/Synergy Mapping

Client to Provide:

a. Fees & permits.
b. Private property access coordination assistance.
c. Title report(s) obtained by City.
d. Existing utility records, including as-builts, record drawings, plans, or GIS information, knowingly possessed by or available to client/owner.

Limitations:

a. If awarded, it is assumed that the client/owner will approve the use of the companies listed under the "Subconsultants & Contractors" section. O'Dell Engineering shall not be responsible for increased costs or schedule delays that may result from client/owner driven changes. It is also assumed that the client/owner will afford a reasonable amount of assistance and coordination to facilitate these companies and their representatives in the execution of their respective scopes of work.
b. Obstructed or inaccessible areas may not be mapped.
c. Scope does not include mapping of small trees, shrubs, or other minor vegetation.
d. Scope does not include research, mapping, potholing, locating, or any other form of subsurface utility investigation or verification.
e. Scope does not include additional mobilizations to capture pothole, USA markings, or any site work performed after field surveys are complete.
f. Scope does not include survey monument preservation as defined and required by Section 8771 of the Professional Land Surveyors' Act.
g. Scope does not include preparation of land description packages or other property/right-of-way acquisition documents.
h. Scope does not include special title research, preparation of chain-of-title, and research of documents not maintained in the records of the County Surveyor or County Clerk and Recorder.
i. Scope does not include setting of property corner monuments or other marks on old or new property lines.
j. Scope does not include preparation of a record-of-survey map or corner records.


Exhibit "A"
Mapping Limits Exhibit (2022-07-27)
M3530 Laurel Road Extension Oakley
O'DELL ENGINEERING
Legend
Aerial Mapping Limits
Ground Survey Limits
Sellers Ave
Sellers Ave
Sellers Ave
Riley Rd
Vitale Ln
Machado Ln
Yosemite Cir
Yosemite Cir
Glacier Way
Lutumne Way
Teton Rd
Lassen Way
Mockingbird Ln
Laurel Rd
Google Earth
1000 ft
59

RESOLUTION NO.XX-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY AUTHORIZING THE CITY MANAGER TO SIGN A CONSULTING SERVICES AGREEMENT WITH CONSOR NORTH AMERICA, INC. FOR TOPOGRAPHY SURVEYING AND RIGHT OF WAY MAPPING SERVICES FOR THE LAUREL ROAD EXTENSION PROJECT (TETON ROAD TO SELLERS AVENUE) – CAPITAL IMPROVEMENT PROJECT NUMBER 273

WHEREAS, as part of the Fiscal Year 2022/23 Budget the City of Oakley approved a 5-Year Capital improvement Program (CIP); and

WHEREAS, CIP Project Number 273 is to extend Laurel Road from Teton Road to Sellers Avenue; and

WHEREAS, staff solicited a proposal from Consor North America, Inc. for the topography surveying and right of way mapping services of this project; and

WHEREAS, Consor North America, Inc. has submitted a proposal for topography surveying and right of way mapping services for CIP Project Number 273 for an amount not to exceed $120,000; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the City Council of the City of Oakley hereby approves the proposal from Consor North America, Inc. for Topography Surveying and Right of Way mapping services for CIP Project Number 273 for an amount not to exceed $120,000, in the form attached hereto as Exhibit A, and authorizing the City Manager to execute this into an Agreement.

PASSED, APPROVED AND this 25th day of October, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

ATTEST: _____
Randy Pope, Mayor

_____ _____
Libby Vreonis, City Clerk Date

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kevin Rohani, P.E. Public Works Director/City Engineer

SUBJECT: Approval of Consulting Services Agreement with Pavement Engineering, Inc. for Design Services Associated with Capital Improvement Project (CIP) Number 279 – Fiscal Year 2022/23 Street Repair and Resurfacing Project

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Background and Analysis

The City's adopted FY 2022/23 Capital Improvement Program (CIP) designates funding for various infrastructure repair and replacement projects. This is consistent with the City's strategic goals to improve the quality of the City's public infrastructure and to enhance the quality of life for our residents.

Each year the street pavement conditions change due to wear, and environmental impacts; and the streets must routinely undergo preventative maintenance to ensure their functionality. The City uses this annual project to perform rehabilitative and preventative maintenance on the public street network through a series of base dig-outs, crack sealing, slurry sealing, pavement overlays and removal and replacement of the asphalt surface on streets where it has failed. The project will be completed with the placement of new striping and pavement markings on newly resurfaced streets.

The Metropolitan Transportation Commission (MTC) has created a Pavement Management System (PMS) program that is used by all municipalities and transportation agencies in the Bay Area to evaluate the condition of their respective agency streets. MTC uses the data collected by all agencies to create reports annually that show the overall condition of Bay Area streets and funding needed to maintain the streets.

The City of Oakley uses this PMS program to evaluate the condition of streets and to prioritize projects to repair and resurface the streets. Each annual street repair and resurfacing project is performed to ensure the funds allocated are utilized to not only repair and resurface the streets that are in poor condition, but also to rehabilitate streets that are in fair to good condition to prolong their life and performance.

The Public Works staff strategically designs and constructs Capital projects to take advantage of the seasons and bidding climates. The winter and spring months are most favorable to design and bid projects as most contractors are not very busy and generally the City can get very competitive and favorable bids for the summer construction season.

Despite the Covid-19 Pandemic, the construction industry has stayed active throughout the Bay Area as reflected in the bids that all agencies are receiving on their projects. Staff will continue to work on implementing the Capital projects for the City of Oakley as effectively as possible, taking economic trends into consideration and strategically executing the bidding and construction of projects in Oakley.

Staff has selected Pavement Engineering, Inc. (PEI) as the best suited firm to design this street resurfacing project. This firm has successfully designed other street resurfacing projects for the City in previous years and has great familiarity with the City's standards and processes. Staff negotiated the final scope of design work and cost proposal for this project at a cost of $193, 890.00, which is very competitive pricing for a project of this magnitude.

CIP 279 is focused on the repair and resurfacing of residential streets within the Wildcat Way Neighborhood between Main Street and West Cypress Road, the Parklands Neighborhood and the Cypress Grove Neighborhood. This project will also include street repair on E. Cypress Road from Main Street to Emerson Ranch Way and Empire Avenue from the southern City limits to Neroly Road. Lastly, the project will also include street repair, slurry, and crack sealing on Main Street from Big Break Road to Teakwood Drive. All street surfacing projects not only improve the quality of the streets in the community, but also enhance the quality of life for the residents. After the completion of the project design and bidding, staff will present to the City Council the contractor award report before summer 2023.

Fiscal Impact

The funding for this project is allocated from the Street Maintenance and Rehabilitation Fund.

Staff Recommendation

Staff recommends that the City Council adopt the resolution approving the proposal with Pavement Engineering, Inc. (PEI), for the design services associated with CIP No. 279 – FY 2022/23 Street Repair and Resurfacing Project and to authorize the City Manager to enter into an agreement not to exceed an amount of $193,890.

Attachments

1. PEI Proposal
2. Resolution

October 8, 2022 MP22-561

Jason Kabalin, P.E.
City of Oakley
3231 Main Street
Oakley, CA 94561

Subject: Proposal to Provide Engineering Design Services for the FY 2022/23 Street Repair & Resurfacing Project

Dear Jason:

We appreciate the confidence you have in our services and look forward to working with you and the City of Oakley on the subject project. This proposal outlines our services and fees.

DESCRIPTION OF SERVICES

The City of Oakley would like Pavement Engineering Inc. (PEI) to assist them with its FY 2022/23 Street Repair & Resurfacing Project. Working off the attached street list we will compile measured field quantities, prepare contract documents and estimates and provide bid and construction support services for two separate PS&E packages, one slurry seal package and one rehabilitation packge. The scope of work and our approach will be similar to pervious projects performed with the City of Oakley.

As part of our proposal preparation, we visually reviewed the project streets to determine the next anticipated treatment. Our observations are summarized in the attached street lists.

This project includes incorporating the previously prepared design of the Wildcat Neighborhood into this project. The Wildcat neighborhood has an estimated construction cost of $1 million.

SCOPE OF WORK

Phase 1 – Project Management and Coordination

This work includes a kick-off meeting with City staff to confirm the project's scope of work, schedule, budget and availability of project documents; review project goals; discuss format of deliverables; and clarify the responsibilities of each party.

Progress meetings will be arranged to review the work at critical stages. For this project, we are recommending that we meet after we complete the field measurement and pavement evaluation work to review and confirm the final treatments and conceptual level budget analysis, then again at the 65% stage, at the 90% stage to review and confirm the final documents and collect comments. We anticipate three (3) meetings, including the kick-off meeting, with City of Oakley staff.

Constant communication between the project manager and City staff is part of our approach and will help ensure a successful project.

Phase 2 - Measure Field Quantities

Once the final street list and preliminary budget are finalized from Task 1, PEI will field measure all of the pertinent field quantities from the project streets. Physically measuring the quantities provides confidence that the bid quantities are correct, ensures smoother contract administration and reduces the potential for change orders.

We will compile and summarize physical elements, including the location of existing striping, pavement markers and paint markings; location of underground utility covers; limits of paving transitions, digouts, and other pavement repairs; and the total area of pavement to be resurfaced.

If we identify any concrete repairs or tree root damage during our field reviews, we will note it and bring it to your attention to determine if the repairs should be added to the contract.

This work includes visually evaluating the plans prepared for the Wildcat Way neighborhood to confirm that the design and previously identified digouts are accurate. Any changes will be incorporated into the revised bid schedule and plans.

Phase 3 - Perform Deflection Testing and Coring for Pavement Design

PEI will perform deflection testing, coring and analysis on all of the street segments identified as needing a rehabilitation treatment. This analysis will eliminate the guesswork and ensure than an optimum maintenance/rehabilitation approach is identified.

The deflection analysis will be performed in general accordance with California Test Method 356 (CTM 356). Deflection tests will be performed at 100-foot maximum intervals. Coring will be performed at 500-foot maximum intervals over the street segment (minimum two cores per street segment).

Traffic control will be provided using vehicle mounted warning lights. Flagging will be provided as needed. The City of Oakley will provide the traffic index for design.

Our goal will be to present a number of options to the City with anticipated costs and service life estimates so a life cycle cost analysis can be performed. The deflection testing and coring data for the project will be included in the project development binders; however, no formal deflection testing report will be prepared. The pavement evaluation information will be compiled into a binder and reviewed by the City during progress meetings.

Because of potential unknowns, we are including an allowance that will provide the opportunity to investigate any pavement that may have severe structural needs.

Phase 4 - Prepare and Incorporate Contract Documents and Estimates

PEI will compile all field quantities into individual engineer's estimates by street segment and will provide a summary spreadsheet of the entire project. Using these quantities, along with the pavement evaluation data, PEI will meet with City staff to determine the most cost-effective maintenance approach for each of the project streets. This meeting will be considered the 65% submittal.

We will draft technical specifications and details for typical sections, transitions, conforms and digouts, and additional pavement work will be prepared. PEI will submit any portion of the maintenance work that requires further clarification in the form of drafted plan views, details, elevations, or cross sections, as necessary. Where it facilitates the design, PEI will use aerial photographs to develop base sheets. This information will be submitted to the City at the 90% design review.

After reviewing the 90% submittal, we will meet with City staff to resolve any outstanding issues and will adjust the contract documents accordingly. A final 100% submittal will follow.

Phase 5 - Bid Support Services

After the final submittal, we will be available to answer any specific questions from the Town concerning the design. Should the need arise, we will prepare an addendum as required. In addition, we will also be available to attend a pre-bid meeting and for help with questions from the contractors during the bidding process.

Phase 6 - Construction Support Services

During construction, PEI will be available to the City construction staff to review design questions, submittals, and construction problems. In addition, PEI will assist the City during construction by meeting with the contractor and City representative to mark out areas of removal.

EXCLUSIONS

This work excludes developing traffic control plans, performing curb ramp assessments or design, post storm water requirement mitigations or design, retaining wall designs, ROW research/documentation and providing testing or inspection services during construction. Also not included is any electronic locating or potholing of underground utilities. Any of these services can be added to our scope at any time for additional fees.

PROPOSED WORK SCHEDULE

PEI understands that time is of the essence. We are committed to completing the final contract documents quickly, so the City can enter into a construction contract by summer of 2023. We will work out a more exact schedule during the kick-off meeting

PROPOSAL FEE & FEE BREAKDOWN

Our not-to-exceed fee to perform the outlined work will be $193,890. The fee is based on preparing documents for a project with a $3.5 million budget. PEI's fee for the work is based on our experience with similar projects performed for the City and throughout the State.

The estimated fees for the total project include all field work, design work and contract document development up to completion of the project for the project streets. Construction inspection and testing services are not included.

The attached breakdown shows our projected costs for the project. Our work will be invoiced on a time and material basis. The individual fees associated with each task will serve as guidelines for progress payments. All fees and costs associated with this project are subject to final negotiation with the City of Oakley. Any change in scope may result in additional fees. The attached proposal conditions apply.

Please call me at (805) 781-2265 with any questions you may have about this proposal. It's always great working with you, Jason.

Very truly yours,
PAVEMENT ENGINEERING INC.

Joseph L. Ririe, P.E.
Senior Principal Engineer

Enclosures: Street List,
Estimated Fee Breakdown,
Proposal conditions

pc: C File
M File
MP Files

CITY OF OAKLEY
FY 2022/23 STREET REPAIR & RESURFACING PROJECT
STREET LIST

Wildcat Way Neighborhood			
Street	**From**	**To**	**Anticipated Treatment**
Ashwood Drive	1607 Ashwood Drive	Fuschia Way 7877W	Digout with TMO
Buttons Court	Gardenia Avenue 7877M	End	Digout with TMO
Camelia Court	Gardenia Avenue 7877M	End	Digout with TMO
Dawson Court	Dawson Drive 7877Y	End / 1600 Dawson Court 7877Z	Digout with TMO
Dawson Drive	Dawson Court 7877Z	Ashwood Drive 7877E	Digout with TMO
Drake Court	Gardenia Avenue 7877M	End	Digout with TMO
Forest Court	Oak Forest Avenue 7877U	End / 1407 Forest Court 7877T	Digout with TMO
Fuschia Way	End / 4771 Fuschia Way	Wildcat Way	Digout with TMO
Gardenia Avenue	Ashwood Drive 7877E	Main Street	Digout with TMO
Kale Court	Oak Forest Avenue 7877U	End / 1400 Kale Court 7877X	Digout with TMO
Mallard Lane	Oak Forest Avenue 7877U	End / 1401 Mallard Lane	Digout with TMO
Montague Avenue	Wildcat Way 7877Y	Ashwood Drive 7877E	Digout with TMO
Oak Forest Avenue	Ashwood Drive 7877E	Cypress Road 8174	Digout with TMO
Rosewood Court	Gardenia Avenue 7877M	End	Digout with TMO
Teal Court	Oak Forest Avenue 7877U	End / 1403 Teal Court 7877V	Digout with TMO
Wildcat Court	Wildcat Way 7877L	End / 1458 Wildcat Court 7877K	Digout with TMO
Wildcat Way	Dawson Drive 7877Y	Fuschia Way 7877W	Digout with TMO

Area 3			
Street	**From**	**To**	**Anticipated Treatment**
Arches Court	Grand Canyon Circle	Cul de Sac	Slurry Seal
Big Bend Court	Yosemite Circle	Cul de Sac	Slurry Seal
Bridalveil Way	Sierra Trail Road	Teton Road	Slurry Seal
Crater Lake Court	Grand Canyon Circle	Cul de Sac	Rehabilitation
Glacier Way	Yosemite Circle (N)	Yosemite Circle (S)	Rehabilitation
Grand Canyon Circle	Teton Road (N)	COP 100' E of Arches Court	Rehabilitation
Grand Canyon Circle	COP 100' E of Arches Court	COP 40' of Rocky Mountain Way	Slurry Seal
Grand Canyon Circle	COP S of Rocky Mnt Way	Teton Road	Rehabilitation

Area 3 (Continued)			
Street	**From**	**To**	**Anticipated Treatment**
Heavenly Way	Sierra Trail Road	Bridalveil Way	Slurry Seal
Kings Canyon Way	Yosemite Circle	COP 125' N of Tuolumne Way	Rehabilitation
Kings Canyon Way	COP 125' N of Tuolumne Way	End of Road	Slurry Seal
Lassen Way	Grand Canyon Circle (N)	Grand Canyon Circle (S)	Rehabilitation
Minaret Road	Tuolumne Way	Sierra Trail Road	Slurry Seal
Muir Court	Sierra Trail Road	Cul de Sac	Slurry Seal
Rocky Mountain Way	Grand Canyon Circle (N)	COP 85' S of Grand Canyon Circle	Rehabilitation
Rocky Mountain Way	COP 85' S of Grand Canyon Circle	Grand Canyon Circle (S)	Slurry Seal
Sierra Trail Road	Teton Road	Kings Canyon Way	Slurry Seal
Teton Road	Laurel Road	End of Road after Sierra Trail Roundabout	Slurry Seal
Tioga pass Road	Teton Road	Yosemite Circle	Rehabilitation
Tuolumne Way	Teton Road	Kings Canyon Way	Slurry Seal
Whitney Court	Kings Canyon Way	Cul de Sac	Slurry Seal
Yosemite Circle	Teton Road	Yosemite Circle	Rehabilitation
Zion Court	Yosemite Circle	Cul de Sac	Rehabilitation

Area 4			
Street	**From**	**To**	**Anticipated Treatment**
Empire Avenue	Neroly Road	South City Limit	Rehabilitation

Area 13			
Street	**From**	**To**	**Anticipated Treatment**
Blue Heron Court	Puffin Circle	Cul de Sac	Slurry Seal
Bramante Court	Picasso Drive	Cul de Sac	Slurry Seal
Crane Court	Meganser Drive	Cul de Sac	Slurry Seal
Da Vinci Court	Frank Hengal Way	Cul de Sac	Slurry Seal
Dowitcher Court	Shearwater Way	Cul de Sac	Slurry Seal
E. Cypress Road	Main Street	Picasso Drive	Slurry Seal
E. Cypress Road	Picasso Drive	COP 600' E of Frank Hengel Way	Rehabilitation
E. Cypress Road	COP 600' E of Frank Hengel Way	Emerson Ranch Way	Slurry Seal

Area 13 (Continued)			
Street	**From**	**To**	**Anticipated Treatment**
Escher Circle	Frank Hengel Way (W)	Frank Hengel Way (E)	Slurry Seal
Frank Hengel Way	E. Cypress Road	Monet Drive	Slurry Seal
Gull View Court	Ibis Drive	Cul de Sac	Slurry Seal
Ibis Drive	Frank Hengel Way	COP 115' E of Merganser Court	Slurry Seal
Merganser Court	Ibis Drive	Cul de Sac	Slurry Seal
Merganser Drive	Money Drive	Ibis Drive	Slurry Seal
Monet Drive	Frank Hengel Way	Merganser Drive	Slurry Seal
Murillo Court	Frank Hengel Way	Cul de Sac	Slurry Seal
O'Keefe Street	Monet Drive	Frank Hengel Way	Slurry Seal
Picasso Drive	E. Cypress Road	Frank Hengel Way	Slurry Seal
Prescott Circle	Picasso Drive (N)	Picasso Drive (S)	Slurry Seal
Puffin Circle	Shearwater Way	Cul de Sac	Slurry Seal
Rembrandt Court	Picasso Drive	Cul de Sac	Slurry Seal
Sandhill Crane Court	Shearwater Way	Cul de Sac	Slurry Seal
Shearwater Way	Frank Hengel Way	Snowy Egret Way/Ct	Rehabilitation
Shearwater Way	Snowy Egret Way/Ct	COP 115' E of Puffin Cir/Dowitcher Ct	Slurry Seal
Snowy Egret Court	Shearwater Way	Cul de Sac	Slurry Seal
Snowy Egret Way	Crane Court	Shearwater Way	Slurry Seal
Vella Circle	Picasso Drive (N)	Picasso Drive (S)	Slurry Seal
Vignola Court	Picasso Drive	Cul de Sac	Slurry Seal
Warhol Way	Picasso Drive	Rembrandt Court	Slurry Seal

Area 14			
Street	**From**	**To**	**Anticipated Treatment**
Main Street	Big Break Road	Teakwood Drive	Slurry Seal

ESTIMATED FEE BREAKDOWN SCHEDULE
FOR THE CITY OF OAKLEY
FY 2022/23 STREET REPAIR & RESURFACING PROJECT

		Rate	Hours	Total
Phase 1	**Project Management and Coordination**			
	Senior Principal Engineer	$255	24	$6,120
	Assistant Engineer	$170	24	$4,080
		Est. Total		**$10,200**
Phase 2	**Measurement of Field Quantities**			
	Senior Principal Engineer	$255	8	$2,040
	Assistant Engineer	$170	110	$18,700
	Senior Engineering Technician	$150	110	$16,500
		Est. Total		**$37,240**
Phase 3	**Perform Deflection Testing and Coring for Pavement Design**			
	Lump Sum			$23,870
	Allowance for additional evaluation			$5,000
		Est. Total		**$28,870**
Phase 4	**Prepare Contract Documents and Estimates**			
	Senior Principal Engineer	$255	24	$6,120
	Assistant Engineer	$170	80	$13,600
	Senior Engineering Technician	$150	304	$45,600
	Engineering Technician	$135	304	$41,040
		Est. Total		**$106,360**
Phase 5	**Bid Support Services**			
	Senior Principal Engineer	$255	4	$1,020
	Assistant Engineer	$170	8	$1,360
		Est. Total		**$2,380**
Phase 6	**Construction Support Services**			
	Senior Principal Engineer	$255	8	$2,040
	Assistant Engineer	$170	40	$6,800
		Est. Total		**$8,840**
		Total Estimated Project Fee:		**$193,890**

PROPOSAL CONDITIONS

1. Proposal is valid for thirty days from the date of the proposal.

2. All work shall be performed utilizing common methods and practices of the civil engineering profession. Reports and construction documents will be signed by a registered civil engineer.

3. Fees for Lump Sum or Unit Price Proposals will be charged at the quoted price. The quoted prices include all laboratory testing costs. Fees for Engineering and Technical Services on a Time and Materials Basis will be charged at the applicable hourly rates of the current PEI Fee Schedule.

4. The proposal is based upon providing liability insurance with limits up to $2,000,000.

5. One copy of an Engineering Report or Plans and Specifications will be provided to the Owner of a project. Additional copies are $35 each.

6. Payment: Invoices will be submitted at the completion of the work for Engineering Reports. Inspection fees will be invoiced on a monthly basis. All invoices are due upon receipt. Interest of 1-1/2% per month (but not exceeding the maximum rate allowable by law) will be payable on any amounts not paid within 30 days, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Attorneys' fees or other costs incurred in collecting any delinquent amount shall be paid by the client.

RESOLUTION NO. XX-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING AN AGREEMENT WITH PAVEMENT ENGINEERING INC., (PEI) FOR DESIGN SERVICES ASSOCIATED WITH CAPITAL IMPROVEMENT PROGRAM PROJECT NUMBER 279 – FISCAL YEAR 2022/23 STREET REPAIR AND RESURFACING PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, as part of the Fiscal Year (FY) 2022/23 Budget the City of Oakley approved a 5-Year Capital improvement Program (CIP); and

WHEREAS, CIP Project Number 279 is the FY 2022/23 Street Repair and Resurfacing Project, which will include rehabilitative and preventative maintenance on the public street network through a series of dig-outs, crack sealing, slurry sealing, pavement overlays, and;

WHEREAS, staff identified numerous streets throughout the City of Oakley for this repair and resurfacing project; and

WHEREAS, Pavement Engineering Inc. has submitted a proposal to prepare design drawings, specifications, and cost estimates and construction support for CIP Project Number 279 for an amount not to exceed $193,890.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the City Council of the City of Oakley hereby approves the proposal with Pavement Engineering, Inc. for the preparation of design drawings, specifications, and cost estimates for CIP Project Number 279 for an amount not to exceed $193,890, in the form attached hereto as Exhibit A, and authorizing the City Manager to execute this into an Agreement.

PASSED, APPROVED AND ADOPTED this 25th day of October 2022 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

STAFF REPORT

DATE: October 25, 2022

Approved and Forwarded to the City Council

TO: Joshua McMurray, City Manager

FROM: Kevin Rohani, P.E., Public Works Director/City Engineer

SUBJECT: Accepting the Subdivision Improvements Associated with the Cypress Estates Subdivision 8728 located at the east end of Mallard Lane, the south end of Fuschia Way, and Fuschia Court

Background and Analysis

On August 11, 2015, the City Council approved the final map for Cypress Estates Subdivision 8728 and the Subdivision Improvement Agreement with Forecast Land Development, LLC, a California Limited Liability Company, hereinafter referred to as the (Developer), to construct the necessary public infrastructure for this community.

The Developer has since completed all the required improvements for Fuschia Way (approximately 125 feet south of Ashwood Drive), Fuschia Court, and Mallard Lane (approximately 146 feet continuation to the east). At this time, the Developer has requested that the city accept the subdivision improvements for maintenance. The Public Works and Engineering staff has completed a final inspection of all public improvements and has found them to be in substantial compliance with the approved improvement plans.

Consistency with the Oakley Strategic Plan 27+

This item is consistent with the Strategic Plan 27+ Community Health and Safety section goal to provide safe streets.

Fiscal Impact

Upon acceptance of the improvements, the city will be obligated to maintain the public infrastructure. Preventative street maintenance for public roadway improvements will be funded using the Gas Tax and inspections for the clearwater facilities through Community Facilities District 2015-2.

Staff Recommendation

Staff recommends that the City Council adopt the resolution accepting the subdivision improvements associated with Cypress Estates Subdivision 8728 and for the City to begin the maintenance of the public infrastructure for this subdivision.

Attachments

1) Resolution
2) Vicinity Map

RESOLUTION NO. __-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY, CALIFORNIA, ACCEPTING THE SUBDIVISION IMPROVEMENTS ASSOCIATED WITH CYPRESS ESTATES SUBDIVISION 8728 LOCATED AT THE EAST END OF MALLARD LANE, THE SOUTH END OF FUSCHIA WAY, AND FUSCHIA COURT

WHEREAS, On August 11, 2015, the City Council approved the final map for Cypress Estates Subdivision 8728 and the Subdivision Improvement Agreement with Forecast Land Development, LLC, a California Limited Liability Company, hereinafter referred to as the (Developer), to construct the necessary public infrastructure for this subdivision;

WHEREAS, the City of Oakley Public Works and Engineering staff has inspected the Subdivision Improvements and have determined the Developer has since completed all of the required improvements for Fuschia Way (approximately 125 feet south of Ashwood Drive), Fuschia Court, and Mallard Lane (approximately 146 feet continuation to the east). At this time, the Developer has requested that the city accept the improvements for maintenance. The Public Works and Engineering staff has completed a final inspection of all public improvements and has found them to be in substantial compliance with the approved improvement plans;

WHEREAS, staff recommends that the City Council adopt the Resolution accepting the subdivision improvements associated with Cypress Estates Subdivision and for the City to begin the maintenance of the public infrastructure for this subdivision;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley as follows:

a) Accept the dedication for Fuschia Way (approximately 125 feet south of Ashwood Drive), Fuschia Court, and Mallard Lane (approximately 146 feet continuation eastbound) for public use as recorded in Subdivision 9474 in Map Book 536, Page 40, and

b) The roadway improvements for Fuschia Way (approximately 125 feet south of Ashwood Drive), Fuschia Court, and Mallard Lane (approximately 146 feet continuation to the east) are accepted and begin the maintenance by the City, and

c) In accordance with the City Clerk's Statement on the Subdivision 8728 Final Map, this portion of the map related to these roads, avenues, drives, or easements and right of way dedications shown on the map as dedicated to public use are accepted.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th of October 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

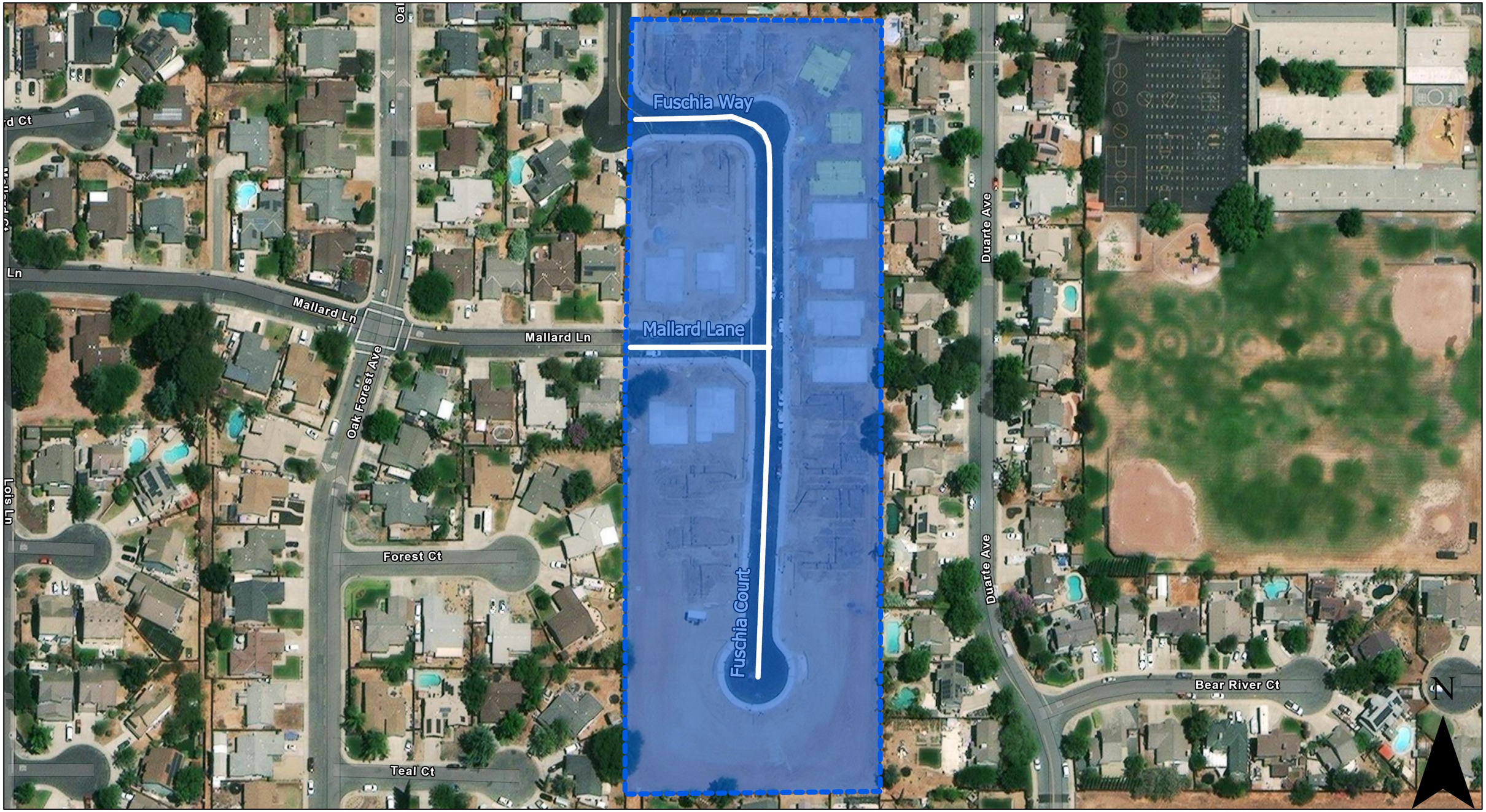
APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date



OAKLEY
CALIFORNIA

Vicinity Map
Cypress Estates
Subdivision 8728

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Derek P. Cole, City Attorney

SUBJECT: Agreement for Purchase of Portions of Contra Costa Assessor Parcel No. 034-090-022 for Road Widening at and Near the Intersection of Laurel Road and O'Hara Avenue

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Background and Analysis

As indicated in the related matter on the October 25, 2022 City Council agenda, the City is in the process of completing the construction of CIP No. 280, the widening of Laurel Road from Cloverbrook Avenue to O'Hara Avenue. As noted in the staff report for that related agenda item, the work on this project had been on hold for several years since the City did not have the Right of Way needed to proceed with roadway construction and utility relocation. The good work of staff during past year resulted on reaching an agreement with the vineyard owner on south side of Laurel Road for the City to acquire the Right of Way needed for this project.

This agenda item involves the entry into an agreement with the owners of that property, the Del Barba Family. This agreement would effectively be an agreement committing the parties to execute a future purchase and sale agreement for the formal acquisition.

Under the proposed agreement, Staff has preliminarily identified the areas of the Del Barba property for the necessary improvements. At this time, City estimates that the City would need to acquire approximately 58,000 square feet, composed of acquisition areas along the northern and western property lines. Staff has also determined that approximately 1,300 grapevines would need to be removed from within the areas to be acquired.

The proposed agreement would pay the property owners $6 per square foot of land acquired and $100 for each grapevine to be removed. Following execution of the agreement, the City would have the acquisition areas formally surveyed, allowing for legal descriptions and plats of the acquired areas to be developed. Once these surveying documents are prepared, the actual acquisition numbers would be "trued up." The parties would then be required to enter into a separate and formal purchase

and sale agreement to finalize the acquisition, which would be brought to the Council at a future meeting, most likely in the early part of 2023.

Fiscal Impact

At this time, the estimated purchase price the City will pay for the property to be acquired is $478,000. As noted, however, the actual purchase price would be "trued up" following the completion of the survey work necessary to prepare the property descriptions and plats. The funding for this project is allocated from the Traffic Impact Fee Fund.

Staff Recommendation

Staff recommends that the City Council adopt the Resolution Authorizing the City Manager to Execute an Agreement for Purchase of Portions of Contra Costa Assessor Parcel No. 034-090-022 for Road Widening at and Near the Intersection of Laurel Road and O'Hara Avenue.

Attachments

1. Resolution Approving Agreement to Purchase Real Property
2. Agreement

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PURCHASE OF PORTIONS OF CONTRA COSTA ASSESSOR PARCEL NO. 034-090-022 FOR ROAD WIDENING AT AND NEAR THE INTERSECTION OF LAUREL ROAD AND O'HARA AVENUE

WHEREAS, the City requires the acquisition of certain portions of real property at and near the intersection of Laurel Road and O'Hara Avenue to complete the widening of Laurel Road, as provided for in Capital Improvement Project Number 280;

WHEREAS, the owners of the real property south of Laurel Road and east of O'Hara Avenue have reached an agreement in principle to sell to the City the necessary right-of-way; and

WHEREAS, the execution of an agreement with these property owners would avoid the need for the City to commence formal condemnation proceedings to acquire the necessary right-of-way.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Oakley authorizes the City Manager to Execute the Agreement for Sale of Portions of Contra Costa Assessor Parcel No. 034-090-022 for Road Widening at And Near the Intersection of Laurel Road and O'Hara Avenue, attached as Exhibit A.

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Oakley held on the 25th day of October 2022 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:

_____
Randy Pope, Mayor

ATTEST:

_____

Libby Vreonis, City Clerk Date

AGREEMENT FOR PURCHASE OF PORTIONS OF CONTRA COSTA ASSESSOR PARCEL NO. 034-090-022 FOR ROAD WIDENING AT AND NEAR THE INTERSECTION OF LAUREL ROAD AND O'HARA AVENUE

This Agreement for Purchase of Real Property ("Agreement") is made between the City of Oakley ("City") and Frederick J. Del Barba, Shirley Ann Del Barba, Victoria Louse Mann, Julie Ann Favalora, Cynthia N. Del Barba, Tom Del Barba as their interest may appear, (collectively, "Owners"). The City and Owners are collectively referred to within as "Parties" and each is referred to within as a "Party". The Effective Date of this Agreement is October 25, 2022 ("Effective Date").

WHEREAS, Owners are collectively the owners of the property more particularly described as Contra Costa Assessor Parcel 034-090-022, located at the intersection of Laurel Road and O'Hara Avenue ("Subject Property").

WHEREAS, for purpose of widening portions of Laurel Road and O'Hara Avenue at and near the intersection of both roadways, the Owners have agreed to sell, and City has agreed to purchase, portions of the Subject Property as more particularly depicted in Exhibit A ("Acquisition Portions"), and as further described within.

WHEREAS, the acquisition of the Acquisition Portions of the Subject Property are necessary to allow the City to complete the construction of Capital Improvement Project Number 280 ("Public Project").

WHEREAS, the City's purchase of the Acquisition Portions by sale is made with the Parties' mutual understanding that the City would seek to acquire the Acquisition Portions through eminent domain but for the Owners' agreement to sell the City the Acquisition Portions of the Subject Property, and that for the Owners, the sale of the Acquisition Portions is intended to be subject to 26 U.S.C. section 1033 for taxation purposes.

WHEREAS, the Parties have reached a deal in principle as to the essential terms of the sale of the Acquisition Portions and desire to memorialize the terms by which they will enter into and execute a separate and future purchase and sale agreement for the City's acquisition of the Acquisition Portions of the Subject Property.

NOW THEREFORE, in consideration of mutual covenants contained herein, the Parties to this Agreement mutually agree as follows:

1. Survey of Acquisition Portions and Grapevines to be Removed

For purposes of this Agreement, the Parties agree that the portions of the Subject Property to be acquired, as preliminarily depicted in Exhibit A, consist of approximately 43,000 square feet of area along the northern property line of the Subject Property, and of approximately 15,000 square feet of area along the Western property line of the Subject Property. (Collectively, these areas are referred to as the "Preliminary Acquisition Areas.")

Within a reasonable time of the Effective Date, City shall, at its sole expense, formally survey the Preliminary Acquisition Areas and develop legal descriptions and plats to accurately and properly identify the actual areas that the City will acquire through purchase from the Owners ("Final Acquisition Portions"). The City agrees that the actual areas to be acquired through the Final Acquisition Portions shall be only that which is necessary for purpose of completing the Public Project.

The Parties further agree that in acquiring the Final Acquisition Areas, the City will be required to remove approximately 1,300 grapevines, which are used for commercial production of wine. In conjunction with the survey and preparation of legal descriptions and plats described in the preceding paragraph, City shall simultaneously calculate the exact number of grape vines that will be removed for purpose of obtaining the Final Acquisition Areas ("Final Removed Vines").

2. Purchase Price

The Parties agree the City shall pay just compensation to the Owners at the rate of $6.00 per square foot of land acquired and $100 per grapevine removed. Preliminary, the Parties understand that the estimated purchase price is $478,000. The actual purchase price, to be incorporated into the purchase and sale agreement required in Section 3, will be calculated based on the actual area of the Final Acquisition Portions and the actual number of Final Removed Vines determined in accordance with the preceding Section.

The City represents that as of the Effective Date, the City is not in negotiation with the owner of any other property within the City regarding the acquisition of property related to any intended or actual public project. Nonetheless, should the City enter into any proposed purchase and sale agreement with any other property prior to the execution of the purchase and sale agreement with the Owners, as required under Section 3 of this Agreement, the Parties covenant to meet and confer regarding providing the Owners comparable terms and conditions to the other agreement to the extent reasonable and feasible.

3. Execution of Purchase and Sale Agreement and Conveyance

Promptly following the preparation of the legal descriptions and plats for the Final Acquisition Portions, the City shall furnish Owners copies of the legal descriptions and plats and disclose the number of Final Removed Vines. At the same time, the City shall present Owners with a draft purchase and sale agreement and grant deed for effecting the conveyance of the Final Acquisition Portions. Owners shall provide any comments concerning the legal description, plats, number of Final Removed Vines, draft purchase and sale agreement, and the draft grant deed to the City within 30 days thereafter. The City shall have 30 days to then respond to any such comments provided by the Owners. The Parties shall thereafter enter into escrow for sale and purchase of the Final Acquisition Portions within 60 days, or within such additional time as the Parties may mutually agree is reasonably necessary ("Negotiation Period"). The Parties shall at all

times use their good faith and best efforts to resolve any disputes that may exist or may arise during the Negotiation Period.

4. Additional Terms

A. The City hereby agrees to indemnify, defend and hold Owners and their respective directors, officers, partners, members, managers, agents and employees harmless from and against any and all liabilities, losses, claims (including third party claims), demands, damages, injuries, expenses, causes of action, costs, penalties, fines, taxes and assessments, judgments, attorneys' fees and costs, consultants' fees and costs and experts' fees and costs (collectively, "Claims") caused by or as a result of any entry onto the Property by any City Party and provide appropriate liability insurance upon the signed agreement and prior to entering the property.

B. All utilities included but not limited to gas, electric, sewer, and water shall be brought to the frontage of the Subject Property with the understanding to size any lines for current commercial use and of sufficient capacity which would be accommodate the current commercial zoning or a mixed zoning of commercial and residential zoning.

C. Proper ingress and egress shall be provided, including two (2) curb cuts along the frontage of Laurel Road and one (1) curb cut along the frontage of O'Hara Avenue at three locations of Owners' choice if proposed locations meet City standards. Future development of the Subject Property will not be limited to these curb cuts, if proposed additional curb cuts meet City Standards.

D. Owners are to be provided forty-eight (48) hours in writing prior to any work being performed on the Subject Property.

E. The City accepts full responsibility for the improvement, relocation, and or undergrounding of utility, Western Area Power Administration, or other poles or improvements along Laurel Road's frontage.

F. If the Acquisition Portions are ever used for non-public use, Owners shall have an option to purchase the Acquisition Portions at a price being that of final purchase price of the certain purchase and sale agreement.

5. Termination of this Agreement

If following the conclusion of the Negotiation Period, the Parties are unable to agree to the final terms of a purchase and sale agreement, either Party may give written notice to the other Party of the termination of this Agreement. Upon termination of this Agreement, the Parties mutually recognize that the City shall thereupon have the right to commence eminent domain proceedings, in accordance with applicable law, for acquisition of the portions of the Subject Property necessary for the City's completion of

the Public Project. In the event of termination of this Agreement, the Parties reserve all rights and defenses they would otherwise possess by law in any eminent domain proceeding.

6. Entire Agreement

This Agreement, including any exhibits attached hereto, constitutes the entire agreement and understanding between the Parties regarding its subject matter and-supersedes all prior or contemporaneous negotiations. representations, understandings, correspondence, documentation, and agreements (written or oral).

7. Written Amendment

This Agreement may only be changed by written amendment signed by the duly appointed representatives of all Parties to this Agreement on the effective date of the amendment. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9. Negotiated Agreement

The Parties acknowledge that this Agreement has been negotiated and that each Party has had an opportunity to have the Agreement reviewed by legal counsel. Accordingly, the doctrine that ambiguities in an agreement shall be construed against the drafting party shall not be employed in connection with this Agreement.

10. Time of the Essence

The Parties agree that time is of the essence of this Agreement. If either Party fails to perform an obligation contained herein by the date such performance is required, it shall not be deemed to be unreasonable for the other Party to pursue its remedies hereunder, including termination of this Agreement.

11. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

[*Signatures on Next Page*]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement.

SUBJECT PROPERTY OWNERS

Frederick J. Del Barba

Shirley Ann Del Barba

Victoria Louise Mann

Julie Ann Del Barba-Favalora

Cynthia N. Del Barba

Tom Del Barba

CITY OF OAKLEY

Joshua McMurry
City Manager

Approved as to form:

Derek P. Cole
City Attorney

EXHIBIT A

Laurel Road

O'Hara Avenue

32.5'

69'

52.5

43,000 +/- sq.ft.

31'

15,000 +/- sq.ft.

31'

N

0 60 120 240 360 480

US Feet

87

OAKLEY
CALIFORNIA

Agenda Date: _____

Agenda Item: _____

STAFF REPORT

Date: October 25, 2022

To: Joshua McMurray, City Manager

From: Libby Vreonis, City Clerk

Approved and Forwarded to City Council:

Joshua McMurray, City Manager

SUBJECT: Appointment of Marie Osuna to the Contra Costa Transportation Authority Citizens Advisory Committee for the Remainder of the Current Four-Year Term Expiring August 11, 2025

Background and Analysis

The Contra Costa Transportation Authority (CCTA) is a public agency formed by Contra Costa County voters in 1988 to manage the County's transportation sales tax program and to do County-wide transportation planning. The CCTA indicates it "works to plan, fund, and implement innovative transit programs that strengthen our diverse communities and improve the lives of residents." (https://ccta.net/about-us/what-we-do/)

The CCTA has a Citizens Advisory Committee (CAC) to provide citizen perspective, participation and involvement. The CAC is made up of 23 members: 20 members appointed by Contra Costa cities (including Oakley), towns and the County, and 3 "at-large" members.

The former appointed CCTA-CAC representative for Oakley resigned at the end of 2021 upon relocating from the city. Since that time, Staff has advertised for the vacancy position. Marie Osuna, a retired public servant of 35 years and graduate of the City of Oakley Leadership Academy, recently submitted her application for the position (Attachment 1). If appointed, Ms. Osuna would serve the remainder of the current four-year term expiring August 11, 2025.

Fiscal Impact

There is no fiscal impact.

Recommendation

Adopt a resolution appointing Marie Osuna to the Contra Costa Transportation Authority Citizens Advisory Committee for the remainder of the current four-year term expiring August 11, 2025.

Attachments

1. Application
2. Resolution

APPLICATION FOR APPOINTMENT
BY OAKLEY CITY COUNCIL
TO THE CONTRA COSTA TRANSPORTATION AUTHORITY-
CITIZENS ADVISORY COMMITTEE*
(Please Print Clearly)

Name: _____Marie L. Osuna_____

Home Address: _____[redacted], Oakley CA 94561_____

_____

Mailing Address: _____
(if different)

_____

Home Phone: ___[redacted]_____

Work Phone: _____

Fax: _____

E-Mail: ___[redacted]_____

I am applying for: ___City of Oakley's Representative to Contra Costa County Transportation Authority's Citizen Advisory Committee_____

_____

Statement of interest in the position:
(Please attach additional pages as needed. Use no more than 200 words.)

Oakley has been home to my family for over 30 years. I witnessed the transition of Oakley from unincorporated to its inception as City. It was the residents' desire back then to maintain Oakley's small-town feel as its personality. I appreciate very much what has been done to keep Oakley as such; highly commendable is Oakley being one of the safest cities in California.

I would like to serve the residents of Oakley to assist in providing better standard of living for everyone in whatever capacity that I can serve. I have worked in public service for 35 years; 27 years of these were working for Contra Costa County in the areas of legal, financial and domestic. I have a heart to serve the public.

I know Oakley quite well; love the people who live here. I am available to listen to residents' priorities, concerns, and future plans. I have a desire to know how the subject of transportation affects each resident as population increases.

I am interested to understand the inner workings of Contra Costa Transportation Authority and how they affect our residents as they make decisions to provide quality transportation, housing, education, health care, public safety, and employment.

Qualifications:
(Please describe educational, work and other experience, which would make you a valuable addition to the Board or Commission for which you are applying. Use no more than 200 words.)

I completed Bachelor of Science degree in Business, Major in Economics. I gained skills in research, evaluation of data, and report writing. I am hoping that I will have the opportunity to take surveys from the community on how residents are affected by decisions made by Contra Costa County Transportation Authority; and to closely work with them.

I worked for 35 years serving the public in areas of legal, financial, and domestic. I have a good understanding of what people in Contra Costa faced as they responded to federal, state, and local rules and regulations.

My work experience in Contra Costa County gave me an opportunity to learn rules of court, processes, and government laws and their enforcements.

I have taken and have been a member of Dale Carnegie Public Speaking Training Programs for a few years. I am hoping that this skill may help me as I serve the City to provide updates on meeting agenda and reports from CCCTA.

I am a government retiree which means that I will have the time, energy, motivation, and flexibility to devote in representing the City of Oakley before CCCTA; and also, to go through the required training program for this position.

Date: _October 7, 2022

Please return to:
City of Oakley
Libby Vreonis, City Clerk
3231 Main Street
Oakley, CA 94561
Phone: (925) 625-7013

***All information contained in this application is public data and will be made available for public review and copying for anyone requesting it, and may be posted on the website of the City of Oakley. All information in this application will be provided to the Oakley City Council in a public forum and will be reviewed in public. It will therefore be part of the public record. Although you are not legally required to provide any of the information requested in this application, the information may be needed to determine your suitability for appointment to the committee.**

RESOLUTION NO. __-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY TO APPOINT MARIE OSUNA TO THE CONTRA COSTA TRANSPORTATION AUTHORITY CITIZENS ADVISORY COMMITTEE FOR THE REMAINDER OF THE CURRENT FOUR-YEAR TERM EXPIRING AUGUST 11, 2025

BE IT RESOLVED by the City Council of the City of Oakley that Marie Osuna is hereby appointed to the Contra Costa Transportation Authority Citizens Advisory Committee for the remainder of the current four-year term expiring August 11, 2025.

PASSED, APPROVED AND ADOPTED this 25h day of October, 2022 by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:

_____
Randy Pope, Mayor

ATTEST:

_____
Libby Vreonis, City Clerk

_____
Date

STAFF REPORT

DATE: October 25, 2022

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

FROM: Libby Vreonis, City Clerk

SUBJECT: **Review of Requested Proclamation - (Extra Mile Day)**

Summary and Background

On August 9, 2022, the Oakley City Council approved a proclamation policy. In accordance with the policy, the Mayor, without formal action of the City Council, may issue proclamations on behalf of the City Council that adhere to the policy and are on a pre-approved list adopted by the City Council. Proclamations not on the list may be submitted and brought forth to the City Council for consideration. The attached proclamations are not on the pre-approved list; therefore, approval is requested.

Consistency with the Oakley Strategic Plan 27+

Council engagement with community partners is consistent with the Community and Collaborative Partnerships Goal in the Oakley Strategic Plan 27+.

Fiscal Impact

None.

Recommendation

Staff recommends that the City Council review the requested proclamation and either approve or deny. The item is not required to be pulled from the Consent Calendar if unanimous approval is provided.

Attachments

1. Proclamation Request Form
2. Sample proclamation

OAKLEY
CALIFORNIA

OFFICE OF THE CITY CLERK

PROCLAMATION REQUEST FORM

Proclamations are public announcements or recognitions directing attention to local residents, organizations or events. Proclamations are not statements of policy. The Mayor, without formal action of the City Council, may issue proclamations on behalf of the City Council that adhere to these guidelines and are among the proclamations approved on the attached list. Proclamations can be sent to the requestor or presented at a City Council meeting as arranged with the requesting body and at the Mayor's discretion. Proclamations not included on the attached list may be submitted and brought forth to the City Council for consideration. Proclamations approved by the City Council are authorized to be added to the approved list without further City Council action. **Requests for proclamations should be submitted at least Thirty (30) Days in advance**

Date of Request: Oct 18, 2022

Date needed: November 1, 2022 Time of event: NA

Event Location: This is to request to proclaim November 1 as Extra Mile Day. There is not an event.

Requestor Name: Christine Ott

Organization: Extra Mile America

Address: 5034 Runway Drive

City: Fair Oaks State: CA Zip: 95628

Email: Christine@ExtraMileAmerica.org Phone: 310-619-3205

Please specify below whether you would like the proclamation mailed to you or if you will accept in person

Name of the person who will be in attendance at the Meeting to accept the proclamation _____

If no-one will be in attendance would you like the proclamation mailed to you ☑ yes(inc mailing address below) ☐ no
Mailing Address_____

A brief history of the organization or a description of the purpose, goals, motto or theme of the event is required to complete the proclamation. If funds are to be raised, who will benefit from the event, and what will take place during the time of celebration/recognition, including dates and times, are required to be included. A sample proclamation is highly recommended to expedite the process.

Extra Mile Day is a day to recognize people and organizations who are creating positive change in Oakley through their extra mile efforts in volunteerism and service.

You may also submit requests to:

City of Oakley
City Clerk's Office
3231 Main Street | Oakley, CA 94561
phone: (925) 625-7000| fax: (925) 625-9859
city clerk@ci.oakley.ca.us

EXTRA MILE DAY
NOVEMBER 1, 2022

WHEREAS, (city, state), is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively "go the extra mile" in personal effort, volunteerism, and service; and

WHEREAS, (city, state), is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, (city, state), is a community which chooses to shine a light on and celebrate individuals and organizations within its community who "go the extra mile" in order to make a difference and lift up fellow members of their community; and

WHEREAS, (city, state), acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support "Extra Mile Day" on November 1, 2022.

NOW THEREFORE, I, Mayor of (city, state), do hereby proclaim November 1, 2022, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only "go the extra mile" in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Kenneth Strelo, Planning Manager

SUBJECT: **Continued Public Hearing - Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) – Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots. (APN: 035-090-082).**

Summary

This is a continued public hearing for an application by Pam Young ("Applicant") requesting approval of Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082.

Based on the Planning Commission's recommendation and the additional exhibit submitted by the applicant, Staff recommends the City Council adopt the resolution approving the project titled "Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22)," as conditioned.

Background

On September 27, 2022, the City Council opened the public hearing and received the Staff Report with the Planning Commission's recommendation made on August 2, 2022, which was to approve the project as conditioned. At that hearing the City Council received public comments, deliberated on the project, and ultimately continued the public hearing to a date uncertain with a specific request for the applicant to provide an illustrative site plan of various traffic calming measures discussed during the public hearing. This Staff Report is focused on the illustrative site plan submitted by the applicant. The September 27, 2022 Staff Report is included as an attachment for the main information on the project, including the main project description and analysis for

the proposed Tentative Map and Variance entitlements. The relative draft minutes from that meeting are also included as an attachment.

Discussion on Connectivity (from 9/27/2022)

One of the main attributes of the project is the connectivity it provides between West Ruby Street and Wildcat Way. Connectivity would not only allow for more efficient Police Department access to different areas of the City, but also other east/west emergency access. The connectivity would also benefit members of the public by providing more direct access to Oakley Elementary School and its park area for students, parents, and park visitors, to the Civic Center and park, and to other local businesses along Main Street. In general, greater neighborhood connectivity is a positive attribute for the community as a whole.

Public comments on the project that led to the continuation included concerns that providing a public vehicle connection would result in increased vehicle trips by drivers looking to bypass any back up on Main Street. Those concerns included predicting unsafe situations in a neighborhood not accustomed to pass-through vehicle trips. Public comments ranged between showing a plan with a redesign of the project, to requesting not allowing any public vehicles to pass through, to increasing traffic calming measures.

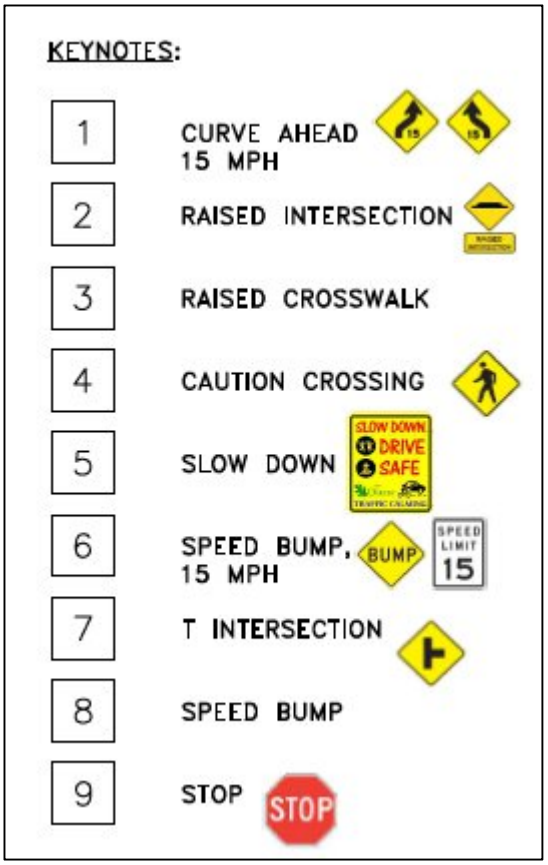
The project was originally conditioned to include stop warrant analyses and to install stop signs where necessary for the intersections at Fuschia Way and West Ruby Street, and Duarte Avenue and West Ruby Street. In addition to the stop warrant analyses, the project was conditioned to design Fuschia Way and West Ruby Street with traffic calming improvements such as speed tables, speed bumps, or bulb outs where necessary, as required by the City Engineer. As a result of the public comments and the City Council deliberation, specific ideas were discussed as means to slow down and calm any traffic passing through the project site, as proposed. The City Council eventually continued the public hearing and requested the applicant submit an exhibit to Staff that would show the potential traffic calming measures, and possibly some additional traffic calming measures, discussed during the public hearing.

Traffic Calming Measures Exhibit

On October 4, 2022, the applicant's engineer (Freyer and Laureta, Inc) submitted a "Traffic Calming Measures Exhibit" in response to City Council direction and other comments made during the September 27, 2022 public hearing. The exhibit is attached to this Staff report and includes the following items:

- "Curve Ahead 15 MPH" signs on either side of the "S" curve proposed within the project.
- Raised intersection at Wildcat Way and West Ruby Street connection.

- Raised crosswalk across West Ruby Street just west of the Duarte Avenue intersection.
- "Caution Crossing [pedestrians]" signage on West Ruby Street before the raised crosswalk.
- "Slow Down Drive Safe" City of Oakley Traffic Calming signage.
- Speed bump on Fuschia Way.
- "Speed Bump 15 MPH" signage on north and south side of speed bump shown on Fuschia Way.
- "T" intersection signage on the Fuschia Way approach to Wildcat Way.
- Stop signs at the 3-way stop at Wildcat Way, Fuschia Way and West Ruby Street, if warranted.



The exhibit includes a few notes and details for additional clarity. One such note includes that the crosswalks will be painted yellow. Other details include a photo example of a raised intersection and a revision to the driveway on the lot adjacent to the west edge of the Police parking lot so it is further from the curve in the road, which was discussed during the September 27, 2022 public hearing.

Staff notes that while the exhibit does not show potential stop signs on West Ruby Street at Duarte Avenue, that a stop warrant analysis has been conditioned for that intersection since the project was originally presented to the Planning Commission and that condition still remains. The same type of analysis has also been conditioned at Wildcat Way, Fuschia Way, and West Ruby Street. Also noted is that the exhibit shows a speed bump and related signage on Fuschia Way south of project's lots that front Fuschia Way.

Environmental Review

The project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332 (Class 32 – Infill Development Projects). Section 15332 of the State CEQA Guidelines exempts projects when the proposed project is consistent with the applicable general plan designation and all applicable general plan policies, as well as applicable zoning designation and regulations. Additionally, the project must occur within City limits on a project site of no more than five acres that is surrounded by urban uses. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. Lastly, the site can be adequately served by all required utilities and public services. The project meets the requirements as

mentioned. Therefore, there is no substantial evidence that the project may have a significant effect on the environment.

Analysis

Staff has proposed findings and conditions of approval to support the City Council approving both entitlements for the Tentative Map and Variance. Opposition to the project has mostly come in the form of objecting to the connection of West Ruby Street to Wildcat Way which would result in vehicle pass through traffic. Residents along Wildcat Way and Fuschia Way have requested the City Council not allow the roads to connect in order to preserve the current neighborhood setting. The project design and Staff's recommendations have sought ways to allow progress in emergency vehicle and neighborhood connectivity while understanding the local residents' comments on how this project may alter the number of vehicles using the residential public street on which they reside.

At the September 27, 2022 public hearing, the City Council requested the applicant submit a plan showing how traffic calming measures, as conditioned and discussed, might look. In response to the City Council's request, the applicant submitted an exhibit to help visualize how and where the traffic calming measures, including physical bulb outs, would look if installed. If all measures shown were implemented, the area would include several new signs, a raised "T" intersection, a raised crosswalk, and potentially five new stop signs, when considering existing conditions of approval. Staff has considered all of the traffic calming measures in the exhibit and proposed a condition of approval that the project implement any of the measures that would not require additional analysis prior to installation. That would include the traffic calming signage, a raised crosswalk, and a raised intersection. The stop signs will require stop warrant analyses, and those conditions are already proposed. Staff will also condition Lot 5 to be oriented so that the driveway is placed as far away as possible from the curve on West Ruby Street just east of the lot.

Comments and draft plans have been provided that range from a second Police exit to the west, to allowing pedestrian traffic between the two side, but not vehicles. These solutions would serve to eliminate public vehicle pass through traffic This would likely result in maintaining the number of vehicle trips on Wildcat Way and Fuschia Way but at the expense of the community benefit of increasing neighborhood connectivity. Similar, although not identical, examples of these sorts of neighborhood connectivity connections have occurred between Emerson Ranch and Cypress Grove along Ibis Drive and Shearwater Way. In support of the overall community benefit of increasing neighborhood connectivity, Staff recommends approval of the project as proposed, with additional traffic calming measures implemented, as conditioned.

Consistency with the City of Oakley Strategic Plan 27+

In line with the City of Oakley Strategic Plan 27+, Community Health and Safety Goal emphasizes the need to protect the public and prioritize safe streets, healthy

neighborhoods to benefit the residents of the City of Oakley. The proposed project includes the dedication and improvements to the public right-of-way. The inclusion of a sidewalk along the perimeter of the project is consistent with the Safe Streets Objective in that it will help provide an alternative route for pedestrians traveling to and from the elementary school and/or Downtown area. Furthermore, the Safe Street Objectives requires the City to consider road improvements such as delineators where speed is an issue and implement traffic-calming measures as traffic grows within the City.

Fiscal Impact

This project will not impact the General Fund. This is a developer-funded account. All Staff time and City of Oakley generated materials related to the processing of this application, including reproduction of physical copies and postage for public hearing notices, are charged to the account.

Findings

Draft findings for the Tentative Map and Variance can be found within the proposed resolution.

Staff Recommendation

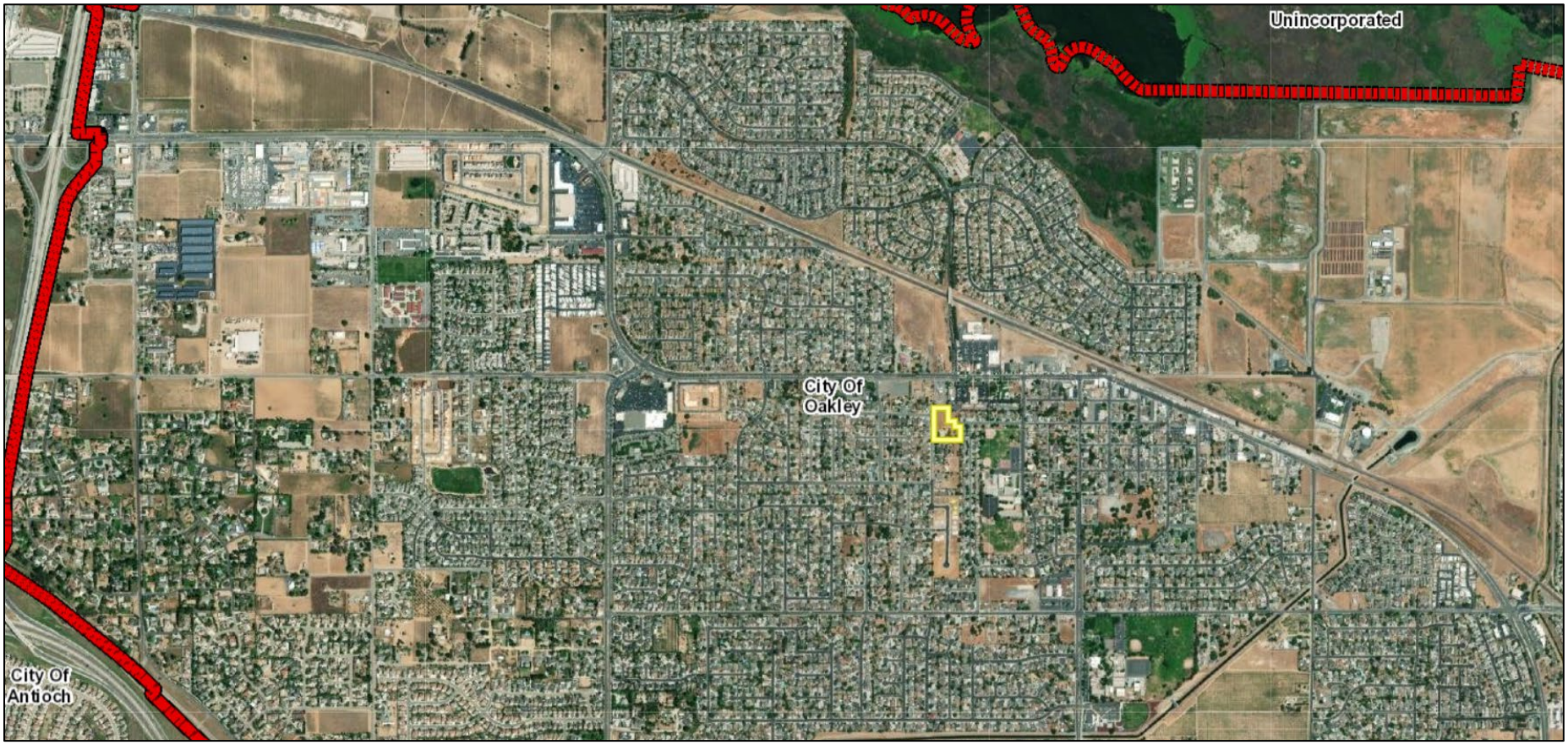
Staff recommends the City Council adopt the resolution approving the project titled “Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22)”, as conditioned.

Attachments

1. Vicinity Map
2. Notice of Public Hearing
3. Applicant’s Plans
4. Traffic Calming Measures Exhibit
5. Traffic Memo
6. Draft Resolution
7. City Council Draft Minutes dated September 27, 2022 (excerpt of draft minutes related to the project)
8. City Council Staff Report dated September 27, 2022 (without attachments)
9. Planning Commission Staff Report dated August 2, 2022
10. Planning Commission Resolution No. 05-22

Vicinity Map

Golden Oaks Subdivision Tentative Map (TM 02-22) and Variance (VA 01-22). APN: 035-090-082



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

NOTICE OF PUBLIC HEARING

Notice is hereby given that on **October 25, 2022,** 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 continued Public Hearing at the Council Chambers located at 3231 Main Street, Oakley, CA 94561 for the purposes of considering an application for a **Tentative Map and Variance** as described below:

Project Name: Golden Oak Subdivision and Tentative Map (TM 02-22) and Variance (VA 01-22)

Project Location: 4960 Fuschia Way, Oakley, CA 94561

Applicant: Pam Young (S&Y Properties), 4960 Fuschia Way, Oakley, CA 94561

Request: Application by Pam Young ("Applicant") requesting approval of a Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082.

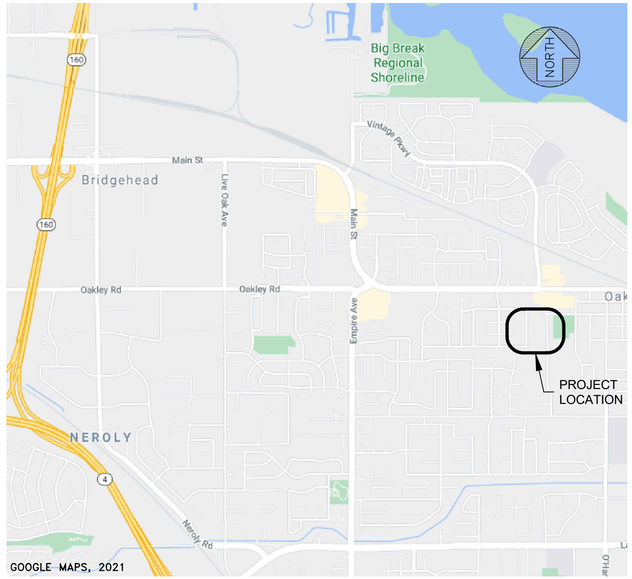
How to Review: The Staff Report and its attachments will be available for public review, on or before **October 19, 2022** at City Hall, 3231 Main Street, Oakley, CA 94561 or online at www.ci.oakley.ca.us/agendas-minutes-videos-archive/ by navigating to the **October 25, 2022** agenda. (Note: City Hall is closed on the 1st and 3rd Fridays of each month). Interested persons are invited to submit written comments prior to 5:00 P.M. the day of, and may testify at, the public hearing. **Written comments may be submitted to Ariana Ruiz, Planning Technician at the City of Oakley, 3231 Main Street, Oakley, CA 94561 or by email to ruiz@ci.oakley.ca.us.**

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.

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

GENERAL NOTES:

1.	OWNER:	S&Y PROPERTIES, LLC. 4960 FUSCHIA WAY OAKLEY, CA 94561
2.	APPLICANT:	PAM YOUNG S&Y PROPERTIES, LLC. 4960 FUSCHIA WAY OAKLEY, CA 94561
3.	ENGINEER:	FREYER & LAURETA, INC. 825 WASHINGTON ST. #237 OAKLAND, CA 94607
4.	SUBDIVIDED AREA:	PARCEL 1 FILED JANUARY 1, 1989 IN MAP BOOK 35 AT PAGE 9.
5.	ASSESSOR'S PARCEL NUMBERS:	035-090-080
6.	SANITARY SEWER/RECYCLED WATER:	IRON HOUSE SANITARY DISTRICT
7.	STORM DRAINAGE:	CITY OF OAKLEY
8.	POTABLE WATER:	DIABLO WATER DISTRICT
9.	GAS/ELECTRIC:	PG&E
10.	TELECOMMUNICATIONS:	AT&T
11.	CABLE T.V.:	COMCAST
12.	FIRE DISTRICT:	EAST CONTRA COSTA FIRE PROTECTION DISTRICT
13.	FLOOD ZONE:	AREA OF MINIMAL FLOOD HAZARD, PER PANEL 06013C0355G DATED 3/21/2017
14.	STREET IMPROVEMENTS:	CITY OF OAKLEY
15.	EXISTING ZONING:	RESIDENTIAL
16.	EXISTING LAND USE:	RESIDENTIAL
17.	PROPOSED LAND USE:	RESIDENTIAL



LOCATION MAP - NTS

BASIS OF BEARINGS

THE BEARING OF NORTH 00° 51' 29" EAST (NORTH 00° 53' 27" EAST RECORD), BEING THE CENTERLINE OF FUSCHIA WAY, AS SHOWN ON SUBDIVISION MAP NO. 5500 ENTITLED, "ORCHARD PARK UNIT 3", FILED FOR RECORD ON NOVEMBER 12, 1980 IN BOOK 247 OF MAPS AT PAGE 28 IN THE OFFICE OF THE RECORDER FOR THE COUNTY OF CONTRO COSTA, WAS USED AS THE BASIS FOR ALL BEARINGS SHOWN HEREON.

BENCHMARK AND DATUM

THE COORDINATES SHOWN HEREON ARE BASED UPON THE NORTH AMERICAN DATUM OF 1983, EPOCH 2011.00 (CALIFORNIA COORDINATE SYSTEM-ZONE 3) AND WERE ESTABLISHED USING THE CALIFORNIA SURVEYING AND DRAFTING REAL-TIME NETWORK (CSDS RTN).
WWW.CSDSINC.COM/GPS-NETWORK-SERVICES/
ELEVATION = 26.69 (NAVD88).
FD BDM IN WELL.
CENTERLINE-CENTERLINE INTERSECTION OF FUSCHIA WAY AND WILDCAT WAY AS SHOWN HEREON.

ENGINEER'S STATEMENT

THIS TENTATIVE MAP HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION.

RICHARD J. LAURETA, PRESIDENT — DATE
P.E. C-055783

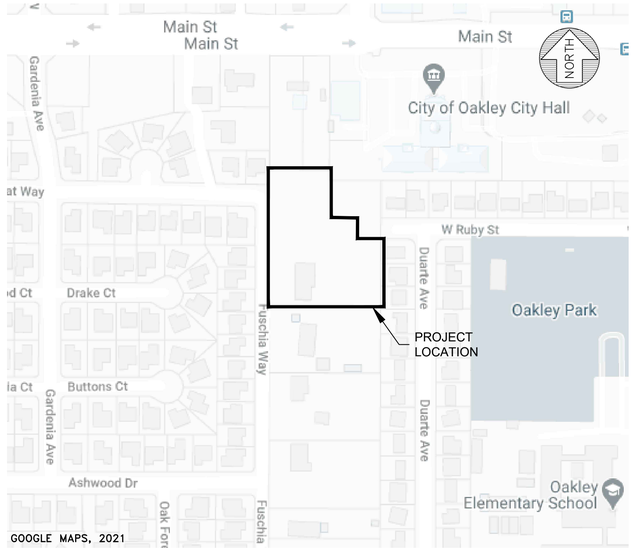
REGISTERED PROFESSIONAL ENGINEER — RICHARD J. LAURETA — C-055783 — CIVIL — STATE OF CALIFORNIA

SURVEYOR'S STATEMENT

THIS TENTATIVE MAP HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION.

CURTIS C. CHAPPELL, P.L.S. — DATE
LICENSE NO. 7992

PROFESSIONAL LAND SURVEYOR — CURTIS CHAPPELL — No. 7992 — STATE OF CALIFORNIA



VICINITY MAP - NTS

LEGEND

- PROJECT BOUNDARY LINE
- PROPOSED PARCEL LINE
- EXISTING PARCEL LINE
- EXISTING OFFSITE PROPERTY LINE
- PROPOSED EASEMENT LINE
- EXISTING EASEMENT LINE
- PROPOSED CENTERLINE
- EXISTING CENTERLINE

SHEET INDEX

SHEET 1	TITLE SHEET & GENERAL NOTES
SHEET 2	EXISTING CONDITIONS
SHEET 3	DEMOLITION PLAN
SHEET 4	EXISTING PARCELS AND EASEMENTS
SHEET 5	PROPOSED PARCELS AND EASEMENTS
SHEET 6	SITE PLAN
SHEET 7	PRELIMINARY GRADING PLAN
SHEET 8	PRELIMINARY DRAINAGE PLAN
SHEET 9	PRELIMINARY UTILITY PLAN
SHEET 10	PRELIMINARY STORMWATER CONTROL PLAN
SHEET 11	TYPICAL STREET SECTIONS
SHEET 12	DETAILS

PROPOSED	EXISTING	
		STORM DRAIN LINE
SS	SS	SANITARY SEWER LINE
W	W	DOMESTIC WATER LINE
GAS	GAS	GAS LINE
ELEC	ELEC	ELECTRICAL LINE
COMM	COMM	COMMUNICATIONS LINE
OH - E\COMM\TELE	OH - E\COMM\TELE	FIRE WATER LINE
CATV	CATV	RECLAIMED WATER LINE
TELE	TELE	GAS LINE
	X	FENCE
		CURB AND GUTTER
		SIDEWALK
		STRIPING
		WALL
	75	CONTOUR LINE
		BUILDING FOOTPRINT
		CONCRETE
		CONCRETE GRADE BREAK

PROPOSED	EXISTING	
	ICV	IRRIGATION CONTROL BOX
		MONITORING WELL
		BENCHMARK
	EB	ELECTRICAL BOX
		FIRE HYDRANT
S	S	SEWER MANHOLE
D	D	STORM DRAIN MANHOLE
WM	WM	WATER METER
		STREET SIGN
		AREA LIGHT
		BACK FLOW PREVENTOR
		STORM DRAIN INLET
	100.00 x AC AC 100.00 +	SURVEY POINT W/ DESCRIPTION AND GRADE
		SURVEY CONTROL POINT
		TREE WITH DRIPLINE
CO	CO	SEWER CLEANOUT
		WATER VALVE
		JOINT UTILITY POLE
	DRIVEWAY	DRIVEWAY
		BIORETENTION
		UTILITY BOX
		SUBSURFACE TRANSFORMER

ABBREVIATIONS

APN	ASSESSOR'S PARCEL NUMBER
ARV	AIR RELEASE VALVE
ASPH	ASPHALT PAVEMENT
BCR	BEGINNING OF CURB RETURN
BF	BLIND FLANGE
BFP	BACK FLOW PREVENTER
BFV	BUTTERFLY VALVE
BLDG	BUILDING
BM	BENCHMARK
BO	BLOWOFF
BW	BACK OF SIDEWALK
CB	CATCH BASIN
CO	SANITARY SEWER CLEANOUT
CONC	CONCRETE PAVEMENT
CS	COMBINED SEWER
DI	DRAINAGE INLET
DIP	DUCTILE IRON PIPE
DW	DOMESTIC WATER
ESMT	EASEMENT
E/ELEC	ELECTRICAL
(E)/EX.	EXISTING
FFE	FINISHED FLOOR ELEVATION
FG	FINISHED GRADE
FH	FIRE HYDRANT
FM	FORCE MAIN
FW	FIRE WATER
G	GAS
GV	GATE VALVE
INV	INVERT OF PIPE
IRR	IRRIGATION
LT.	LEFT
M–M	MONUMENT TO MONUMENT
MH	MANHOLE
P	PAD
PVC	POLYVINYL CHLORIDE PIPE
R	RADIUS
(R)	RADIAL BEARING
RIM	RIM OF MANHOLE
ROW	RIGHT OF WAY
RT.	RIGHT
S	SLOPE
SDMH	STORM DRAIN MANHOLE
SF	SQUARE FEET
SSMH	SANITARY SEWER MANHOLE
STA.	STATION
(T)	TOTAL
TBO	TEMPORARY BLOWOFF
TC	TOP OF CURB
TYP	TYPICAL
W	WATER MAIN
WS	WATER SERVICE
WV	WATER VALVE

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

FREYER & LAURETA, INC.
CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS
825 Washington Street • Oakland, CA 94607
(510) 937-2310 • www.freyerlaureta.com

DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

TITLE SHEET & GENERAL NOTES

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 1 OF 12 SHEETS

JOB NO. 316002

WILDCAT WAY

FUSCHIA WAY

WEST RUBY STREET

DUARTE AVENUE

LANDS OF
SEENO FAMILY TRUST
APN 035-090-080
DOC 2016-0087011-00
PARCEL ONE P.T.R.

AREA = 1.985± ACRES

EXISTING 16.50' WIDE ROADWAY, PEDESTRIAN, & UTILITY EASEMENT. PARCELS TWO AND THREE P.T.R. ALSO REFERENCED IN BK. 2774, PG. 308 (EX. 4 P.T.R.)

RIM: 26.16
INV 12"C: 23.56(W)(OUT)
IRREVOCABLE OFFER OF DEDICATION PER BK. 10575, PG. 654 (EX. 6 P.T.R.)

CB
RIM: 26.37
INV 4" PVC: 24.92(E)(IN)
INV 26" RCP: 21.92(E)(IN)
INV 18"RCP: 21.67(SE)(IN)
INV 30" RCP: 21.52(W)(OUT)

CB
RIM: 25.52
INV 18"RCP: 22.92(E)(IN)
INV 18"RCP: 22.82(NW)(OUT)

CB
22.39 RIM
16.44 INV(18" PVC) IN E
15.72 INV(34" CONC) OUT N

CB
22.15 RIM
13.15 INV(34"CONC) IN S
13.15 INV(24" PVC) IN E
NORTH PIPE NOT VISIBLE

SSMH
RIM: 28.73
INV 12"PVC: 13.78(E)(OUT)
INV 10"PVC: 13.78(S)(IN)
INV 12"PVC: 13.73(N)(IN)

SSMH
RIM: 20.47
INV: 12.70

SSMH
RIM: 21.20

EXISTING FIRE HYDRANT, FURTHER DOWN WEST RUBY

(E) FIRE HYDRANT

(E) FIRE HYDRANT

STORAGE CONTAINER

CONC BLOCK WALL

WOOD RETAINING WALL

WOOD FENCE

STUCCO HOUSE

NORTH

GRAPHIC SCALE
20 0 10 20 40
(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

EXISTING CONDITIONS

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 2 OF 12 SHEETS

JOB NO. 316002

LEGEND

— — — LIMIT OF WORK

KEY NOTES:

1. REMOVE FENCING.
2. FENCING TO REMAIN.
3. TREES TO BE REMOVED BY ARBORIST (52).
4. TREES TO REMAIN.
5. REMOVE EXISTING STRUCTURE.
6. STRUCTURE TO REMAIN.
7. REMOVE AND SALVAGE EXISTING EQUIPMENT.
8. REMOVE HOSE BIB.
9. REMOVE AND SALVAGE EXISTING SIGN.
10. REMOVE AND SALVAGE RAILING.
11. REMOVE AND SALVAGE GATE.
12. REMOVE EXISTING UTILITY AFTER INSTALLATION OF NEW SERVICE.
13. REMOVE AND REPLACE EXISTING STORM DRAIN AND CATCH BASIN.
14. SIDEWALK TO BE REMOVED AND REPLACED WITH BULB OUTS.
15. TREES TO BE REMOVED BY OTHERS (3).
16. REMOVE CLEAN OUT.
17. EXISTING VAULT TO BE RELOCATED.

WILDCAT WAY

FUSCHIA WAY

WEST RUBY STREET

DUARTE AVENUE

APN: 035424011

APN: 035090060

APN: 035090061

APN: 035425001

APN: 035425039

APN: 035425040

APN: 035425041

APN: 035425042

APN: 035090020

APN: 035682001

APN: 035682002

APN: 035682003

APN: 035681008

APN: 035681007

APN: 035681006

APN: 035681005

EXISTING POLICE STATION PARKING LOT

FUTURE POLICE STATION PARKING LOT (NOT IN CONTRACT)

OAKLEY CITY HALL

LANDS OF SEENO FAMILY TRUST APN 035-090-080 DOC 2016-0087011-00 PARCEL ONE P.T.R.

AREA = 1.985± ACRES

SINGLE STORY STUCCO HOUSE

WOOD RETAINING WALL

6' WOOD FENCE

6.5' CONC BLOCK WALL

EXISTING FIRE HYDRANT, FURTHER DOWN WEST RUBY

(E) FIRE HYDRANT

STORAGE CONTAINER

SHED

PUMP EQUIP

GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

DEMOLITION PLAN

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 3 OF 12 SHEETS

JOB NO. 316002

NOTES:

1. ALL EXISTING PARCEL AND RIGHT OF WAY LINES WITHIN SITE BOUNDARY TO BE REMOVED.
2. ALL EASEMENTS TO BE REMOVED UNLESS OTHERWISE NOTED.

APN: 035424011

APN: 035090060

APN: 035090061

N89° 07' 14"W 158.17'

EXISTING POLICE STATION PARKING LOT

OAKLEY CITY HALL

WILDCAT WAY

FUTURE POLICE STATION PARKING LOT (NOT IN CONTRACT)

N0° 52' 46"E 128.76'

WOOD RETAINING WALL

APN: 035682001

APN: 035682002

APN: 035682003

N89° 07' 14"W 85.31'

DRIVEWAY

WEST RUBY STREET

56.00'

N0° 52' 46"E

GUARD

DRIVEWAY

N89° 07' 14"W 56.00'

APN: 035425001

APN: 035425039

APN: 035425040

APN: 035425041

APN: 035425042

N0° 51' 29"E 360.03'

IRREVOCABLE OFFER OF DEDICATION PER BK. 10575, PG. 654 (EX. 6 P.T.R.)

EXISTING 16.50' WIDE ROADWAY, PEDESTRIAN, & UTILITY EASEMENT. PARCELS TWO AND THREE P.T.R. ALSO REFERENCED IN BK. 2774, PG. 308 (EX. 4 P.T.R.)

PARCEL : 1
AREA = 1.985 ACRES

FUSCHIA WAY

OH-E/COMM/TELE

28.76
FF @ THRESHOLD

28.70
FF @ THRESHHOLD

N89° 07' 14"W 299.34'

APN: 035090020

APN: 035681008

APN: 035681007

N0° 52' 46"E 175.27'

APN: 035681006

APN: 035681005

DUARTE AVENUE

NORTH

GRAPHIC SCALE
20 0 10 20 40
(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022
SCALE:	AS SHOWN
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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

EXISTING PARCELS AND EASEMENTS

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 4 OF 12 SHEETS

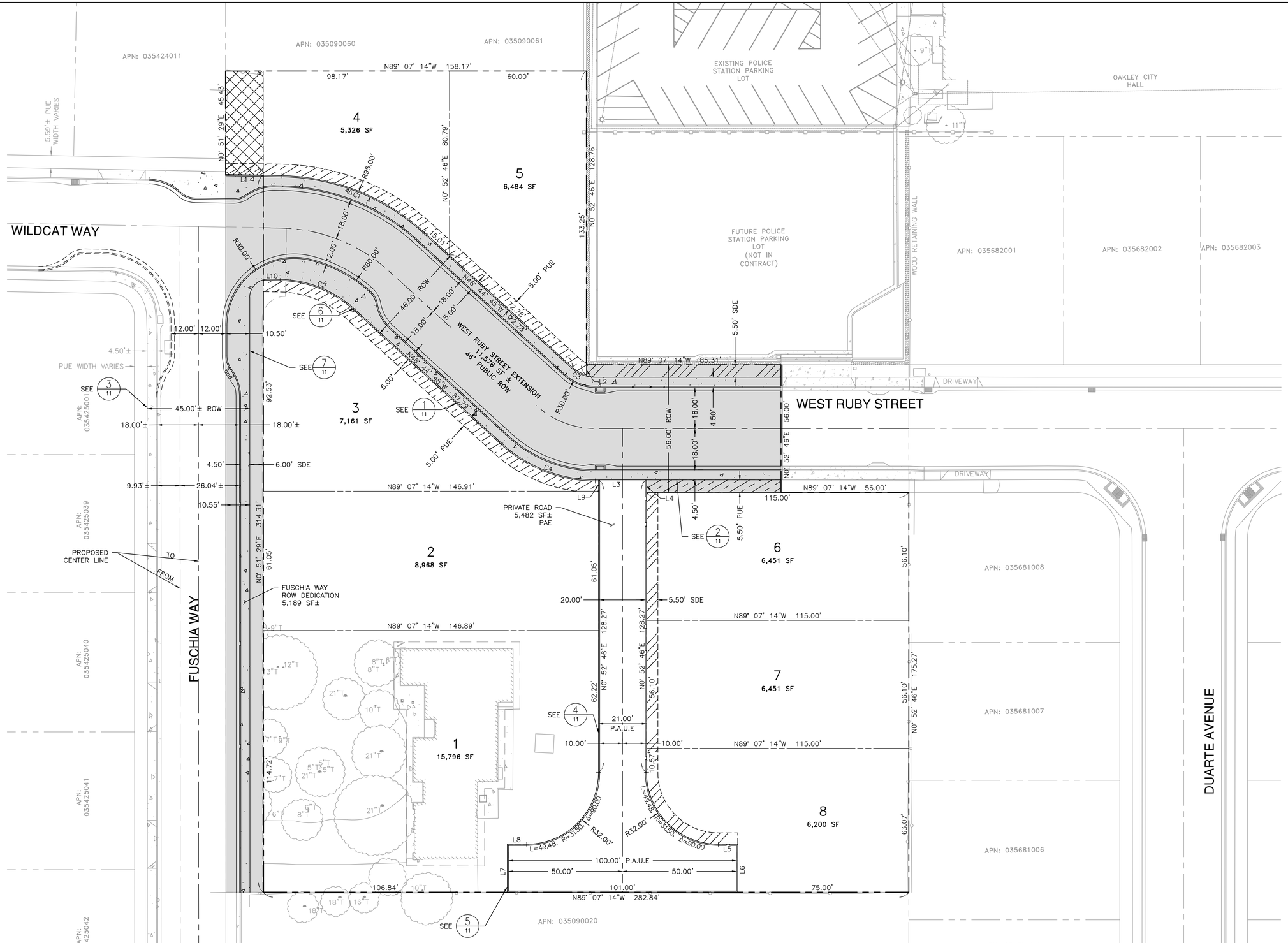
JOB NO. 316002

LEGEND

- PUBLIC RIGHT OF WAY (ROW)
- PUBLIC UTILITY EASEMENT (PUE)
- STORM DRAINAGE EASEMENT (SDE)
- EXISTING IRREVOCABLE OFFER OF DEDICATION PER BK 10575, PG 654 (TO REMAIN)

LINE TABLE		
NO.	BEARING	LENGTH
L1	N88°06'45"W	16.50'
L2	N00°52'46"E	4.49'
L3	N89°07'14"W	21.00'
L4	N00°52'46"E	5.50'
L5	N89°07'14"W	8.50'
L6	N00°52'46"E	21.00'
L7	N00°52'46"E	21.00'
L8	N89°07'14"W	8.50'
L9	N00°52'46"E	4.50'
L10	N88°06'45"W	7.38'

CURVE TABLE			
NO.	RADIUS	LENGTH	DELTA
C1	95.00'	68.59'	41° 22' 00"
C2	49.00'	35.38'	41° 22' 00"
C3	15.00'	7.17'	27° 23' 55"
C4	61.00'	45.11'	42° 22' 29"



NORTH

GRAPHIC SCALE
20 0 10 20 40
(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022
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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

PROPOSED PARCELS AND EASEMENTS

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 5 OF 12 SHEETS

JOB NO. 316002

LOT BREAKDOWN			
PARCEL	ACREAGE (AC)	BUILDING (SF)	LANDSCAPE (%)
1	0.362	4,502	63
2	0.206	3,362	58
3	0.164	2,085	65
4	0.122	1,616	61
5	0.149	2,678	49
6	0.148	2,707	51
7	0.148	2,707	51
8	0.142	2,056	62

NOTES:

1. BUILDING FOOTPRINTS ARE CONCEPTUAL AND APPROXIMATED PER CITY REQUIRED SETBACKS AND DISTANCES.
2. EXISTING HOME ON PARCEL 1 TO REMAIN.

GRAPHIC SCALE
20 0 10 20 40
(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022
SCALE:	AS SHOWN
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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

SITE PLAN

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 6 OF 12 SHEETS

JOB NO. 316002

EARTHWORK SUMMARY		
CUT (CY±)	FILL (CY±)	NET CUT (CY±)
2,053	141	712

NOTES:

1. LOTS HAVE BEEN CONCEPTUALLY GRADED TO DRAIN.
2. PAD ELEVATIONS ARE APPROXIMATE AND SUBJECT TO CHANGE.

WILDCAT WAY

FUSCHIA WAY

WEST RUBY STREET

DUARTE AVENUE

OAKLEY CITY HALL

EXISTING POLICE STATION PARKING LOT

FUTURE POLICE STATION PARKING LOT (NOT IN CONTRACT)

1 P 27.4

2 P 28.2

3 P 27.5

4 P 27.9

5 P 27.4

6 P 26.6

7 P 27.2

8 P 27.3

SINGLE STORY STUCCO HOUSE

APN: 035424011
APN: 035090060
APN: 035090061
APN: 035425001
APN: 035425039
APN: 035425040
APN: 035425041
APN: 035425042
APN: 035090020
APN: 035682001
APN: 035682002
APN: 035682003
APN: 035681008
APN: 035681007
APN: 035681006
APN: 035681005

GRAPHIC SCALE
20 0 10 20 40
(IN FEET)
1 inch = 20 ft.

DATE:	7/22/2022	
SCALE:	AS SHOWN	
DESIGNED:	CSM	
DRAWN:	CSM	
CHECKED:	RJL	
PROJ. ENGR:	LFH	

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DATE	DESCRIPTION OF REVISIONS	APP'D

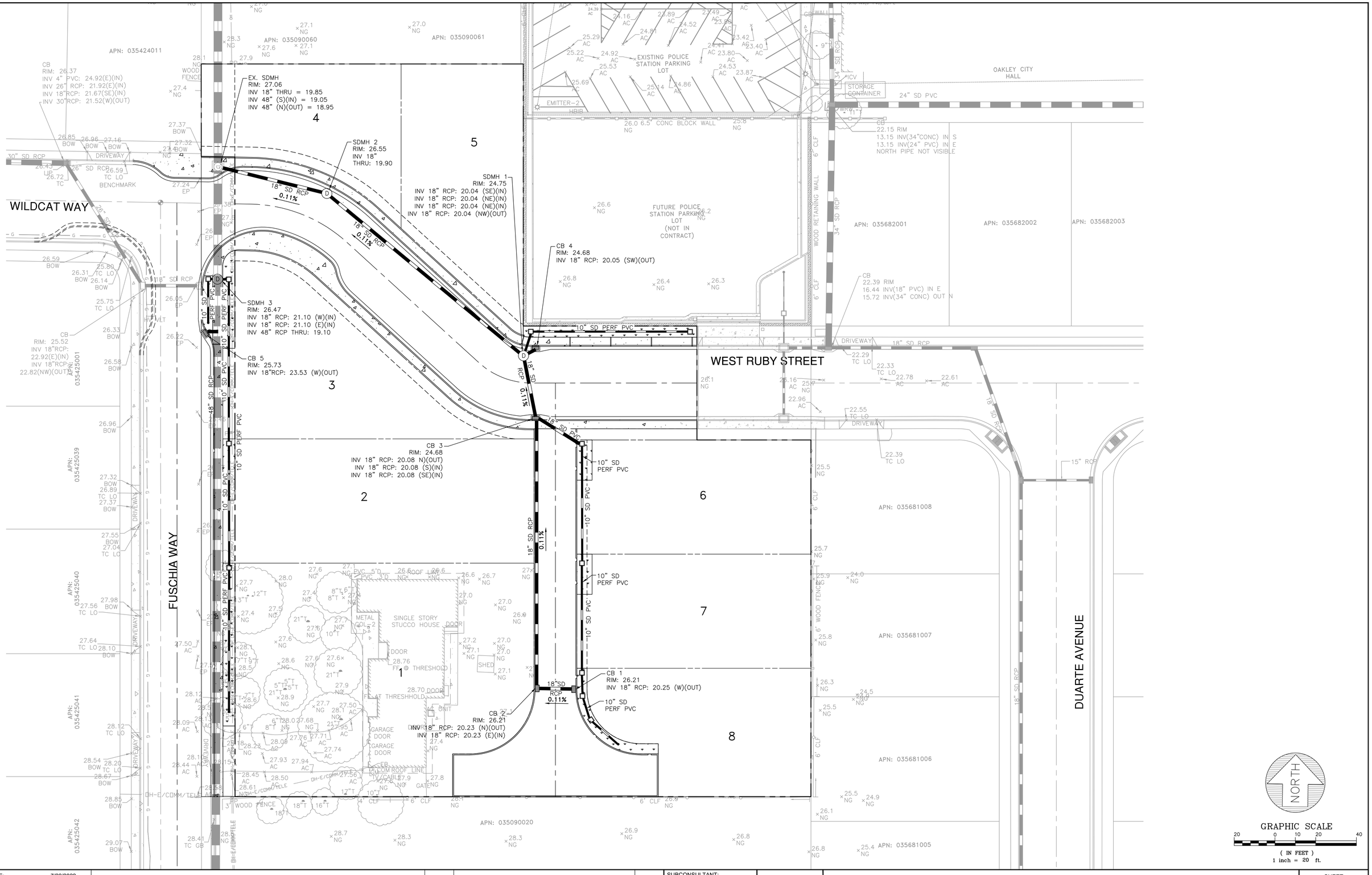
SUBCONSULTANT:

PRELIMINARY GRADING PLAN

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 7 OF 12 SHEETS

JOB NO. 316002



DATE:	7/22/2022
SCALE:	AS SHOWN
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DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

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DATE	DESCRIPTION OF REVISIONS	APP'D

SUBCONSULTANT:

PRELIMINARY DRAINAGE PLAN

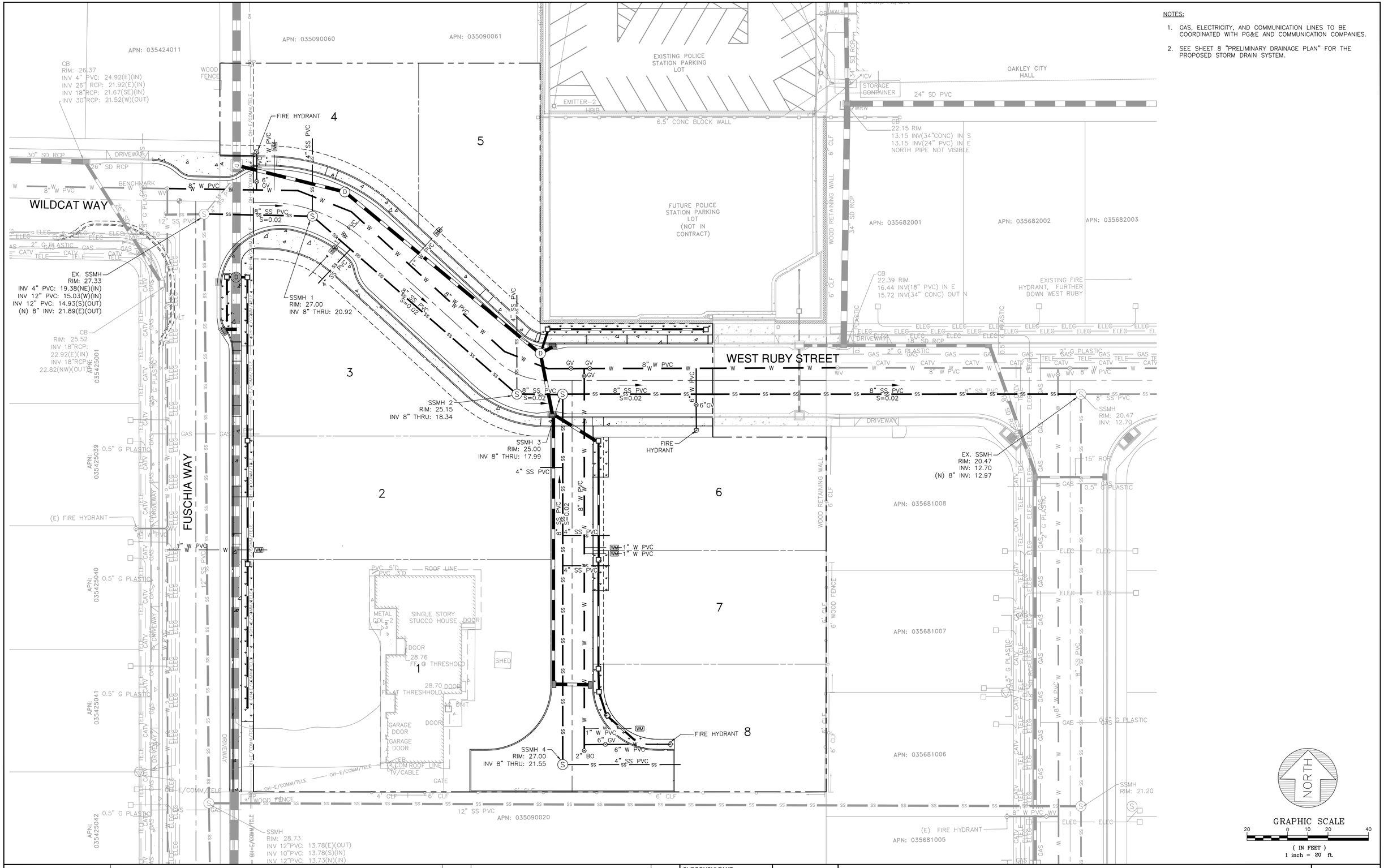
TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET **8** OF 12 SHEETS

JOB NO. 316002

NOTES:

1. GAS, ELECTRICITY, AND COMMUNICATION LINES TO BE COORDINATED WITH PG&E AND COMMUNICATION COMPANIES.
2. SEE SHEET 8 "PRELIMINARY DRAINAGE PLAN" FOR THE PROPOSED STORM DRAIN SYSTEM.



DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

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DATE	DESCRIPTION OF REVISIONS	APP'D

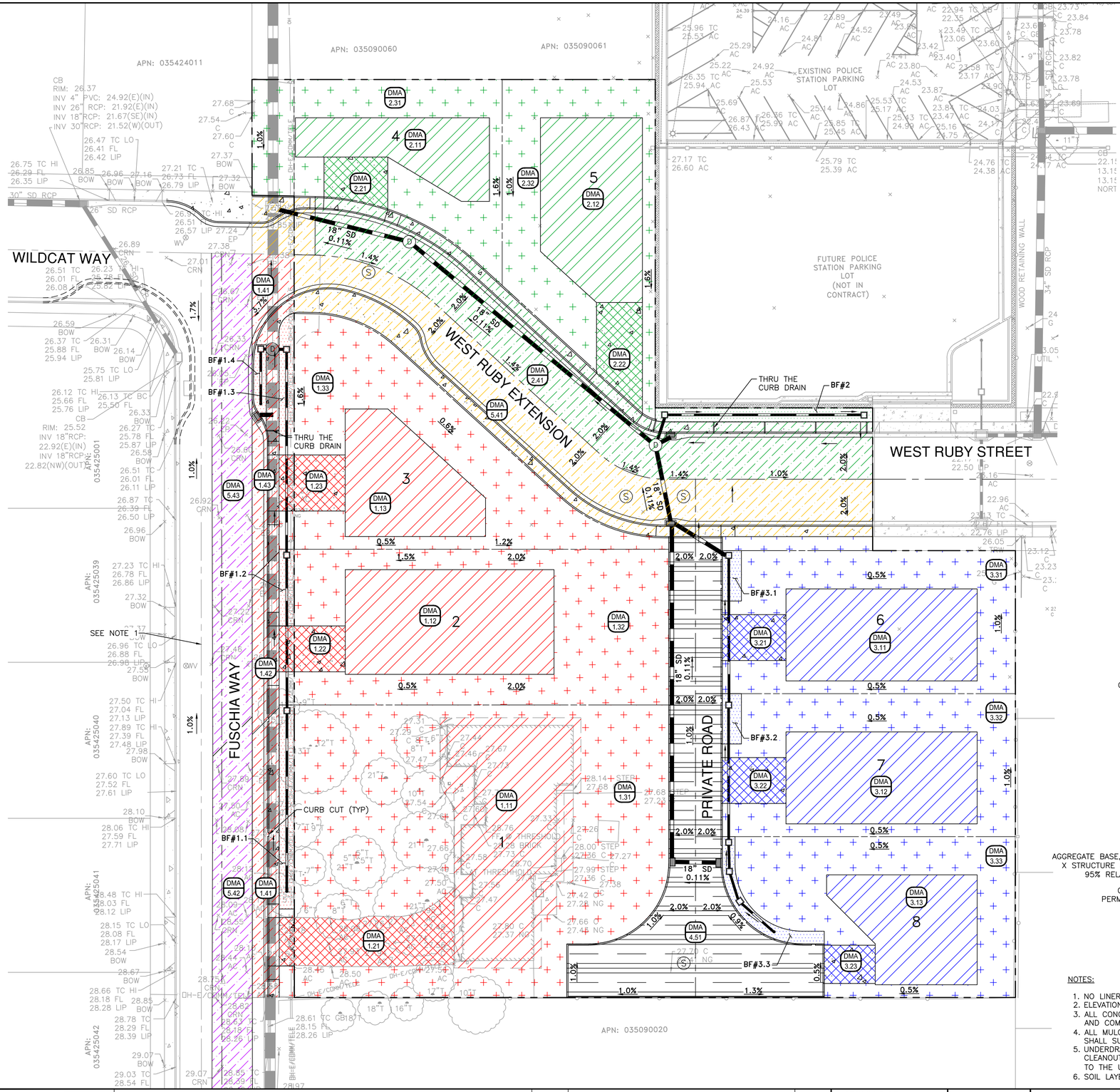
SUBCONSULTANT:

PRELIMINARY UTILITY PLAN

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 9 OF 12 SHEETS

JOB NO. 316002



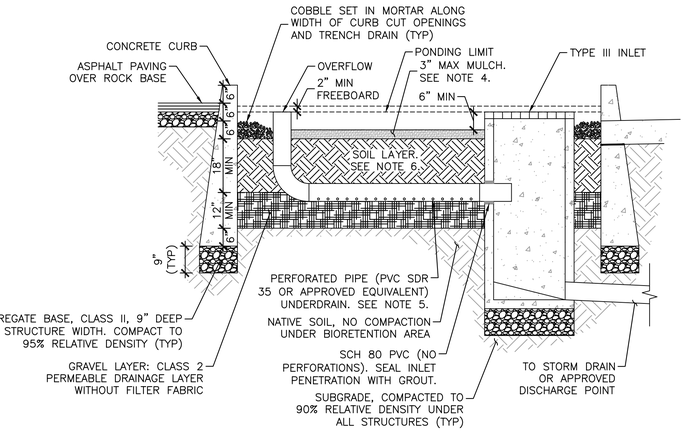
LEGEND

- BF#1 – BIORETENTION AREA
- BF#1 – SURFACE TYPE: 1 – ROOF
- BF#1 – SURFACE TYPE: 2 – DRIVEWAY
- BF#1 – SURFACE TYPE: 3 – LANDSCAPE
- BF#1 – SURFACE TYPE: 4 – ROADWAY
- BF#2 – BIORETENTION AREA
- BF#2 – SURFACE TYPE: 1 – ROOF
- BF#2 – SURFACE TYPE: 2 – DRIVEWAY
- BF#2 – SURFACE TYPE: 3 – LANDSCAPE
- BF#2 – SURFACE TYPE: 4 – ROADWAY
- BF#3 – BIORETENTION AREA
- BF#3 – SURFACE TYPE: 1 – ROOF
- BF#3 – SURFACE TYPE: 2 – DRIVEWAY
- BF#3 – SURFACE TYPE: 3 – LANDSCAPE
- BF#3 – SURFACE TYPE: 4 – ROADWAY
- TRADE OFF AREA – SURFACE TYPE: 4 – ROADWAY
- EQUIVALENT SPACE – SURFACE TYPE: 4 – ROADWAY
- SURFACE TYPE: 5 – PERMEABLE PAVEMENT
- DMA 1.11 — DRAINAGE MANAGEMENT ID (SURFACE ID, SURFACE TYPE, BIORETENTION FACILITY ID)
- X.X% — DIRECTION AND SLOPE OF PIPE FLOW
- DIRECTION OF OVERLAND FLOW

NOTE:

1. EQUIVALENT RUNOFF FROM FUSCHIA WAY TO BE TREATED IN BIORETENTION FACILITY #1 IN EXCHANGE FOR RUNOFF FROM DMA 5.41, AS REPRESENTED BY THE PURPLE AREAS IN DMA 5.42 AND DMA 5.43.

PARCEL	DMA ID	AREA (SF)	DESCRIPTION	DMA TYPE/DRAINS TO
1	1.11	4,502	ROOF	BF#1.1
1	1.21	1,392	DRIVEWAY	BF#1.1
1	1.31	10,109	LANDSCAPE	BF#1.1
2	1.12	3,362	ROOF	BF#1.2
2	1.22	468	DRIVEWAY	BF#1.2
2	1.32	5,323	LANDSCAPE	BF#1.2
3	1.13	2,085	ROOF	BF#1.3
3	1.23	571	DRIVEWAY	BF#1.3
3	1.33	4,858	LANDSCAPE	BF#1.3
4	2.11	1,616	ROOF	BF#2
4	2.21	448	DRIVEWAY	BF#2
4	2.31	3,317	LANDSCAPE	BF#2
5	2.12	2,678	ROOF	BF#2
5	2.22	646	DRIVEWAY	BF#2
5	2.32	3,199	LANDSCAPE	BF#2
6	3.11	2,708	ROOF	BF#3.1
6	3.21	450	DRIVEWAY	BF#3.1
6	3.31	3,471	LANDSCAPE	BF#3.1
7	3.12	2,707	ROOF	BF#3.2
7	3.22	450	DRIVEWAY	BF#3.2
7	3.32	3,146	LANDSCAPE	BF#3.2
8	3.13	2,057	ROOF	BF#3.3
8	3.23	300	DRIVEWAY	BF#3.3
8	3.33	3,521	LANDSCAPE	BF#3.3
FUSCHIA WAY	1.41	1,145	SIDEWALK, FUSCHIA WAY	BF#1.1
FUSCHIA WAY	1.42	644	SIDEWALK, FUSCHIA WAY	BF#1.3
FUSCHIA WAY	1.43	1,285	SIDEWALK, FUSCHIA WAY	BF#1.3
WEST RUBY EXTENSION	2.41	5,596	SIDEWALKS, FUSCHIA, AND W RUBY EXTENSION	BF#2
PRIVATE ROAD	4.51	5,903	PERMEABLE PAVEMENT	SELF–RETAINING
WEST RUBY EXTENSION	5.41	6,345	TRADEOFF AREA	SEE NOTE 1
FUSCHIA WAY	5.42	3,374	EQUIVALENT SPACE	BF#1.1
FUSCHIA WAY	5.43	2,971	EQUIVALENT SPACE	BF#1.3,1.4



BIORETENTION DETAIL

SCALE: NTS

NOTES:

1. NO LINER, NO FILTER FABRIC, NO LANDSCAPE CLOTH.
2. ELEVATION OF PERFORATED PIPE UNDERDRAIN IS ATOP GRAVEL LAYER.
3. ALL CONCRETE STRUCTURES (VERTICAL, CURB, INLET) SHALL BE CONSTRUCTED ATOP 9" DEEP CLASS II AB AND COMPACTED SUBGRADE.
4. ALL MULCH WITHIN STORMWATER PLANTING AREAS SHALL BE 3" OF WASHED PEA GRAVEL. CONTRACTOR SHALL SUBMIT SAMPLE FOR REVIEW AND APPROVAL.
5. UNDERDRAIN SHALL HAVE OUTLET LOCATED FLUSH OR NEARLY FLUSH WITH PLANTER BOTTOM, WITH CLEANOUT PORT CONSISTING OF A VERTICAL, RIGID, NON–PERFORATED PVC PIPE. IT SHALL BE CONNECTED TO THE UNDERDRAIN VIA A SWEEP BEND, WITH A MINIMUM DIAMETER OF 4" AND A WATERTIGHT CAP.
6. SOIL LAYER SHALL CONSIST OF SOIL MIX WITH MINIMUM LONG–TERM INFILTRATION RATE OF 5"/HOUR.

NORTH

GRAPHIC SCALE

20 0 10 20 40

(IN FEET)

1 inch = 20 ft.

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

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DATE	DESCRIPTION OF REVISIONS	APP'D

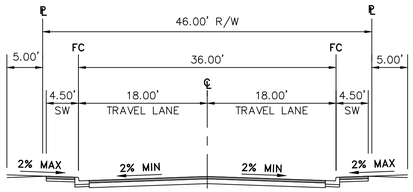
SUBCONSULTANT:

PRELIMINARY STORMWATER CONTROL PLAN

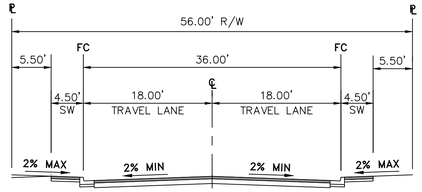
TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 10 OF 12 SHEETS

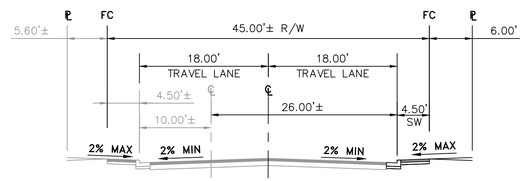
JOB NO. 316002



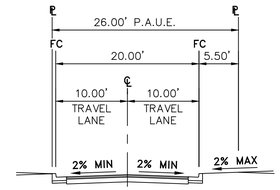
1 WEST RUBY EXTENSION WITHOUT STORM TREATMENT
SCALE: 1" = 10'



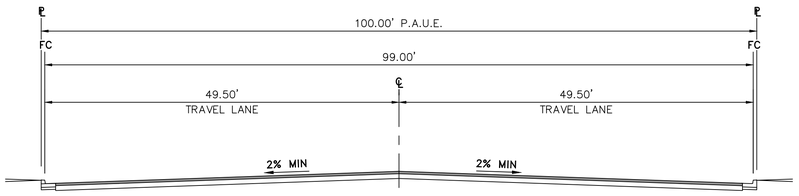
2 WEST RUBY EXTENSION WITH STORM TREATMENT
SCALE: 1" = 10'



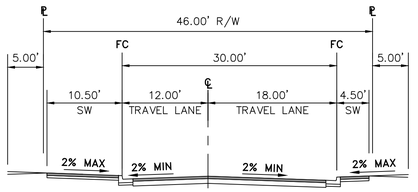
3 FUSCHIA WAY EAST SIDE WITH SIDEWALK
SCALE: 1" = 10'



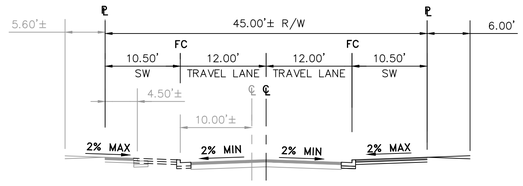
4 PRIVATE ROAD
SCALE: 1" = 10'



5 PRIVATE ROAD
SCALE: 1" = 10'



6 WEST RUBY EXTENSION WITH BULB OUT
SCALE: 1" = 10'



7 FUSCHIA WAY EAST SIDE – SIDEWALK WITH BULB OUT
SCALE: 1" = 10'

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

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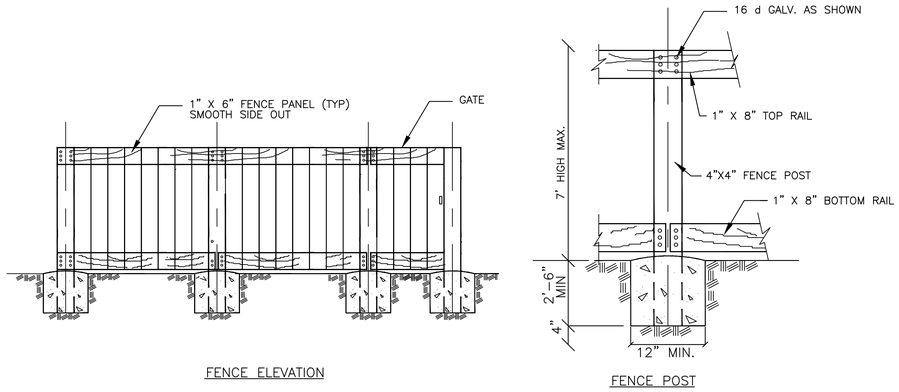
SUBCONSULTANT:

TYPICAL STREET SECTIONS

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

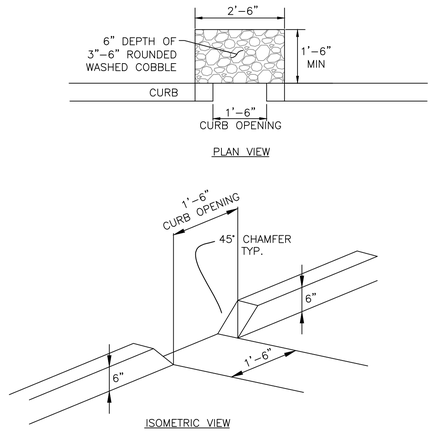
SHEET 11 OF 12 SHEETS

JOB NO. 316002



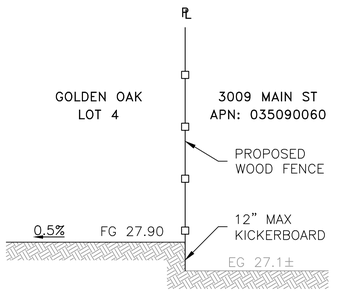
1 TYPICAL WOOD FENCE AND GATE

SCALE: NTS



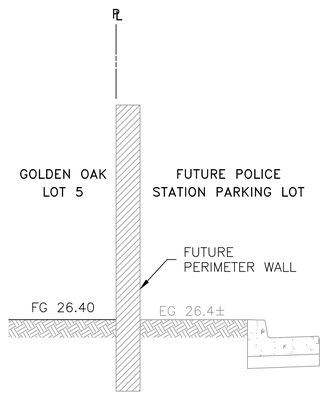
2 CURB CUT

SCALE: NTS



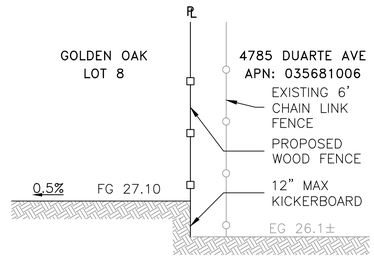
3 TYPICAL ADJOINER – LOT 4

SCALE: NTS



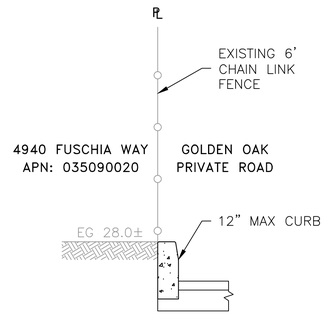
4 TYPICAL ADJOINER – LOT 5

SCALE: NTS



5 TYPICAL ADJOINER – LOT 8

SCALE: NTS



6 TYPICAL ADJOINER – HAMMERHEAD

SCALE: NTS

NOTE:
1. FENCE DETAILS AS PROVIDED ARE TYPICAL AND SUBJECT TO CHANGE AS THE DESIGN PROGRESSES.

DATE:	7/22/2022
SCALE:	AS SHOWN
DESIGNED:	CSM
DRAWN:	CSM
CHECKED:	RJL
PROJ. ENGR:	LFH

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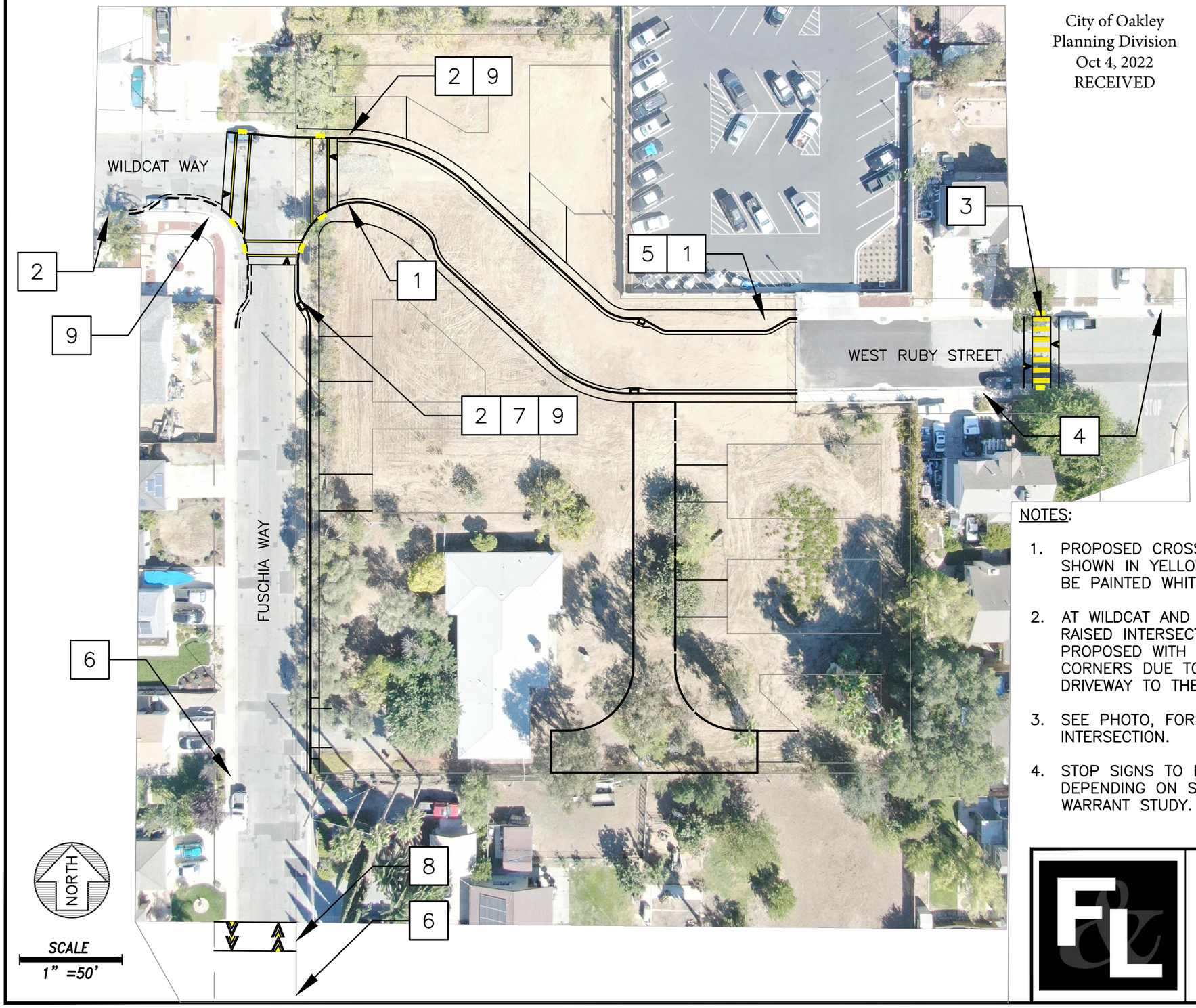
SUBCONSULTANT:

DETAILS

TENTATIVE MAP NO. 9580
GOLDEN OAK SUBDIVISION
OAKLEY, CALIFORNIA

SHEET 12 OF 12 SHEETS

JOB NO. 316002



City of Oakley
Planning Division
Oct 4, 2022
RECEIVED



PHOTO: EXAMPLE OF RAISED INTERSECTION AT GOLDEN STATE PARKWAY AND MARATHON DRIVE

KEYNOTES:

1	CURVE AHEAD 15 MPH
2	RAISED INTERSECTION
3	RAISED CROSSWALK
4	CAUTION CROSSING
5	SLOW DOWN
6	SPEED BUMP, 15 MPH
7	T INTERSECTION
8	SPEED BUMP
9	STOP

NOTES:

1. PROPOSED CROSSWALKS AS SHOWN IN YELLOW WOULD BE PAINTED WHITE.
2. AT WILDCAT AND FUSCHIA, RAISED INTERSECTION IS PROPOSED WITH BULBED CORNERS DUE TO EXISITNG DRIVEWAY TO THE NORTH.
3. SEE PHOTO, FOR RAISED INTERSECTION.
4. STOP SIGNS TO BE PLACED DEPENDING ON STOP WARRANT STUDY.

TRAFFIC CALMING MEASURES EXHIBIT

10/3/2022

FREYER & LAURETA, INC. CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS

MEMORANDUM

To: City of Oakley, Billilee Saengchalern, P.E.

From: Freyer & Laureta, Inc., Richard J. Laureta, P.E., Lorraine Htoo, P.E., and Camille Miculob

cc: Pam Young, S&Y Properties

RE: Golden Oak Development Traffic Memorandum

Introduction

This traffic technical memorandum is provided for the Golden Oak Development located at 4960 Fuschia Way (See Figure 1 - Location Map) and provides background information on the project, reference traffic study guidelines, findings, and recommendations.

Project Description

The Golden Oak Development site is approximately two (2) acres south of the downtown area as depicted in Figure 2 – Site Plan. The project site is mostly undeveloped with one residential structure approximately 4,500 square feet. The proposed development will divide the lot into eight (8) parcels and include seven (7) new single-family homes, a private drive, and a new public road to connect West Ruby Road in the east to Wildcat Way to the west. The existing land use will remain “Residential Low/Medium” as defined in the City of Oakley’s General Plan.

Traffic Study Guidelines

Certain types of projects are exempt from having to provide a traffic impact analysis (TIA) due to size, nature of project and/or location. For the Golden Oak Development with the addition of seven single family homes, it is not anticipated that one hundred or more A.M. or P.M. peak-hour trips would be generated. Given that one hundred trips are not generated, a TIA is not required.

Findings and Recommendations

The site will be accessed off Wildcat Way, Fuschia Way, and West Ruby Road. The development will provide a new public thoroughfare connecting Wildcat Way to the west to Duarte Road to the east. The newly constructed development to the south, Cypress

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Oakland Office:
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Oakland, CA 94607
Tel: (510) 937-2310

Estates and its 30 single family homes would benefit from the project as it creates accessibility to their site outside of Mallard Lane, Fuschia Way and Wildcat Way alone.

The new public road provides an alternative route for the Oakley Elementary School and the City's newly expanded police parking lot. As Fuschia is a straight road, aligned North-South from Wildcat Way past Ashwood Drive for approximately 1,000 feet, there could be a potential for vehicular speed limits to be exceeded. With the proposed development providing an alternative route to Oakley Elementary, certain measures can be included to promote safer streets as the City continues to develop a "Vision Zero" policy in line with the County's goal to eliminate fatalities due to vehicular collisions. As discussed with the City, a narrowing of the intersection of Fuschia and Wildcat is proposed and depicted in Figure 3. These proposed bulb outs can help temper the speeds along Fuschia Way, Wildcat Way, and the new West Ruby Extension. Figure 3 also provides recommendations for improvements to the intersection of West Ruby Road and Duarte Road, outside of the project limits, for the City's consideration.

Figures:

Figure 1 – Location Plan

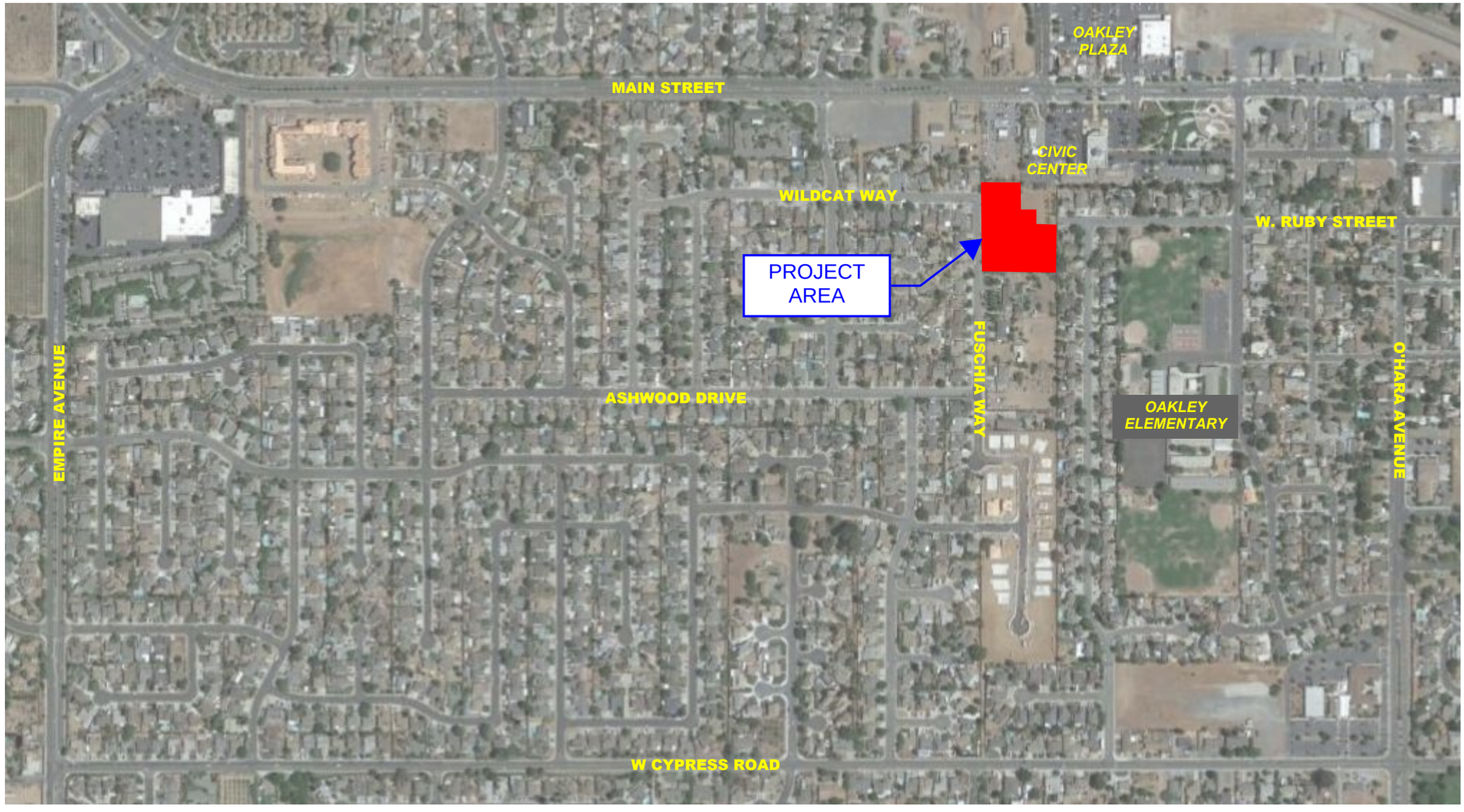
Figure 2 – Site Plan

Figure 3 – Improvements Plan

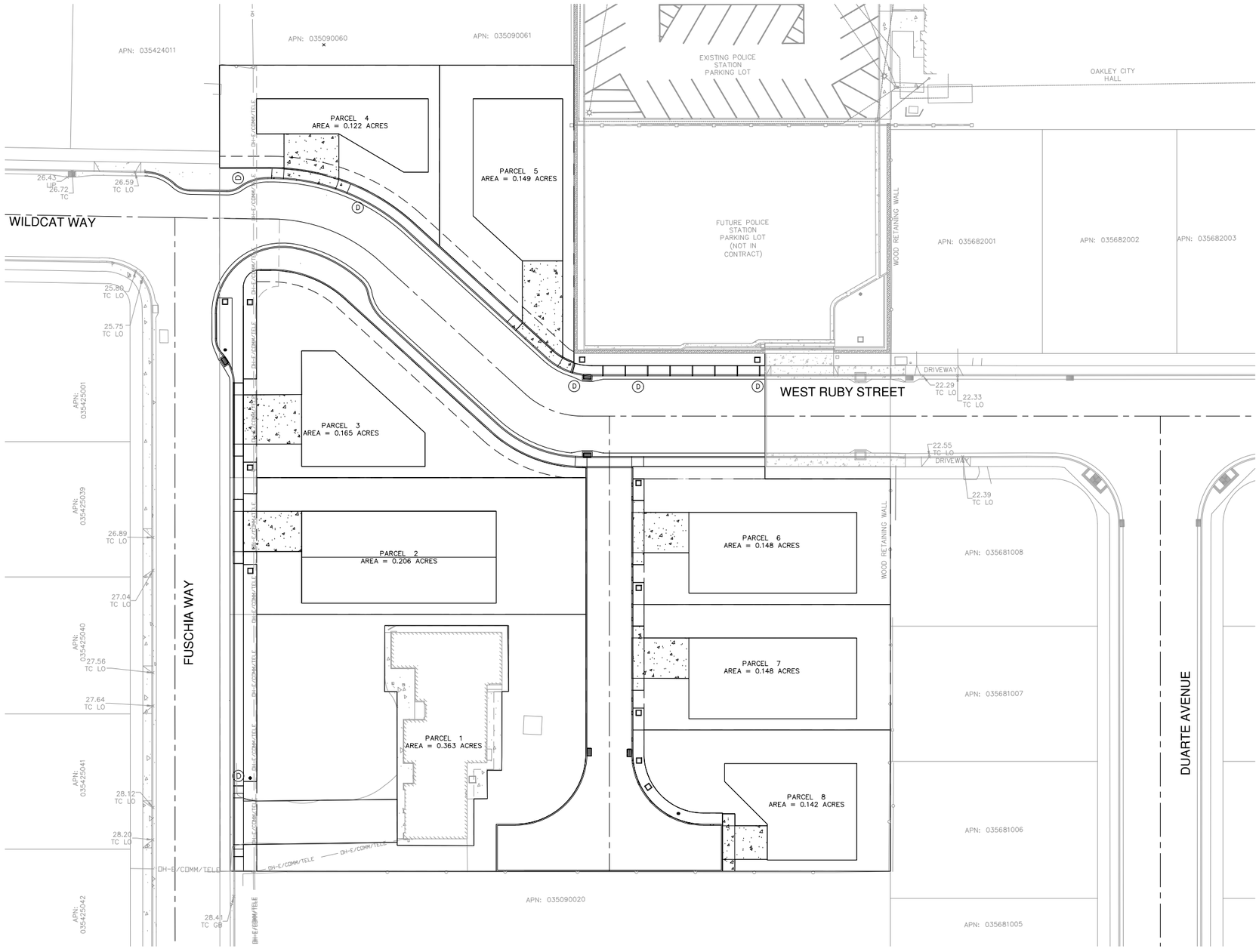
References:

City of Oakley, 2020 General Plan Adopted December 16, 2002, Amended February 2, 2016.

De Novo Planning Group, City of Oakley General Plan Public Review Draft, August 2021.



	GOLDEN OAK DEVELOPMENT LOCATION MAP	FIGURE 1
	JOB NO.: 316002 DATE: 12/9/2021	



	GOLDEN OAK DEVELOPMENT SITE PLAN	FIGURE **2**
	JOB NO.: 316002 DATE: 12/1/2021	

PARCEL 4
AREA = 0.122 ACRES

BULB OUTS

PARCEL 5
AREA = 0.149 ACRES

FUTURE POLICE
PARKING LOT

WOOD RETAINING WALL

WILDCAT WAY

40.0'±

12.00'

RECOMMENDED
BULB OUT

10.00'

10.00'

R30.00'

12.00'

18.00'
5.00'
5.00'

46.00' R/W

R30.00'

W. RUBY
EXTENSION

18.00'
4.50'
5.50'

DRIVEWAY

WEST RUBY STREET

RECOMMENDED
BULB OUTS

5.00'
18.00'
5.00'

PARCEL 3
AREA = 0.165 ACRES

5.60'±
4.50'±

4.50'
6.00'

45.0' R/W
36.0'

18.00'
4.50'
5.50'

45.00' R/W

PARCEL 6
AREA = 0.148 ACRES

DRIVEWAY

WOOD RETAINING WALL

R38.00'

R38.00'

PARCEL 2
AREA = 0.206 ACRES

PRIVATE
DRIVE

FUSCHIA WAY

DUARTE AVENUE

20.50'

5.50'

PARCEL 7
AREA = 0.148 ACRES

26.00' P.A.U.E

10.00'

10.00'

PARCEL 1
AREA = 0.363 ACRES

R32.00'

R32.00'

PARCEL 8
AREA = 0.142 ACRES

100.00' P.A.U.E

50.00'

50.00'

20.00'

12.0'

76.0'

12.0'

	GOLDEN OAK DEVELOPMENT PROPOSED IMPROVEMENTS	FIGURE **3**
	JOB NO.: 316002 DATE: 12/1/2021	

Excerpt of Item 4.2. All other Items shown with Strikethrough Text. All non-item related pages have been removed.

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 September 27, 2022

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 and Special Meeting of the Oakley Public Financing Authority

Mayor Randy Pope called the meeting to order at 6:30 p.m. in the Oakley City Council Chambers locates at 3231 Main Street, Oakley, California. Vice Mayor Aaron Meadows and Councilmembers Anissa Williams, George Fuller and Sue Higgins were also in attendance.

1.2 Pledge of Allegiance to the Flag

Mayor Pope led the Pledge of Allegiance to the Flag.

1.3 Reading/Presentation of Proclamation 1. Peripheral Artery Disease Month (PAD) (RoseMarie Laguna, Sutter Delta Advanced Wound Care Center Program Director)

Mayor Pope presented the proclamation to RoseMarie Laguna, Sutter Delta Advanced Wound Care Center Program Director. She thanked the Council.

2) PUBLIC COMMENTS

Liz Fuller provided written comment regarding library programming made possible by ARPA funding from the City.

Barbara Bautista requested the Council consider rent stabilization for Oakley to keep residents housed. She shared information regarding significant rent increases since 2019.

City Attorney Derek Cole responded that the City has no input as federal and state law control; however, with exception, Antioch passed a rent stabilization ordinance and it is a completely different undertaking; absent something like that, the City has no control.

Mayor Pope invited her to stay after the meeting to have a more robust discussion.

~~Public Comment~~

~~Dan O'Leary inquired if it is required that someone asks for them or if an establishment could offer one.~~

~~Mr. Strelo confirmed an establishment could offer one.~~

~~Councilmember Williams commented that the ordinance doesn't restrict the type of straw provided or that it cannot be self-serve, so she feels the ordinance is fine.~~

~~It was moved by Councilmember Williams and seconded by Councilmember Higgins to waive the first reading and introduce the ordinance. Motion was unanimous and so ordered. (5-0)~~

4.2 Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots (APN: 035-090-082) (Ariana Ruiz, Planning Technician)

Ken Strelo presented the staff report and PowerPoint presentation.

Councilmember Williams inquired if there is any way for the project to happen without the roads being connected.

Mr. Strelo explained staff may not be able to answer that as staff analyzes the project presented by the applicant.

Councilmember Williams inquired if the streets connecting is what the applicant wanted, not the City.

Mr. Strelo explained the site plan presented is what was originally proposed to the City. He mentioned Wildcat terminates right now at Fuchsia and West Ruby terminates in a flat manner. He indicated owners haven't moved forward until now with a subdivision and it makes sense to have streets for connectivity.

Councilmember Higgins inquired why there is no stop sign at Wildcat Way and West Ruby.

Mr. Strelo explained the area would have to undergo a stop sign warrant and if a stop sign is then warranted, the applicant would have to fund it.

Councilmember Higgins commented there was a public comment to change the proposed roadway to a bike path and pedestrian access, but then they wouldn't have a roadway.

Mr. Strelo mentioned curb gutter and sidewalk will be installed on the north and south side and the roadway would be 36 feet.

Councilmember Higgins commented that Police will use that as an entrance and exit.

Mr. Strelo commented that Police would continue to have use of the gate on West Ruby and if the project is approved, they would have the option to exit out the gate west toward Teakwood.

Councilmember Higgins expressed concern with the number of Police trips that could be made onto Wildcat and Fuchsia.

Mr. Strelo commented Police use of the gate may not be too often as they are usually already out in the field when they get calls, but the opportunity would be there for Police coming and going to/from shifts or for emergency calls. He mentioned on Duarte there is a curve in the road that significantly slows down traffic and this curb would be similar.

Councilmember Higgins commented it could also be like Nascar and some may view the road as fun, not prohibiting.

Vice Mayor Meadows inquired if they could condition the project with a stop sign without doing a study.

Public Works Director/City Engineer Kevin Rohani commented that when adding a stop sign or signal, nationwide, Police cannot enforce someone running the stop sign or signal unless there is a warranted study. He mentioned the warrant would be done and paid for by the developer. He shared staff is involved with traffic issues across town and have implemented traffic calming measures including bulb-outs at the end of Ruby and Fuchsia. He mentioned the length of the street is 100 feet from the end of the Police parking lot to Fuchsia and because of the geometry, this is not designed as a racetrack; Police will deal with people not following the law.

Vice Mayor Meadows inquired how stop signs are placed in major subdivisions without warrant.

Mr. Rohani indicated the developer does the study as part of their project.

Public Comments

Dan O'Leary shared a copy of an alternative proposed plan with the Council that would creating a buffer for residents on Duarte. He commented he believes they can all work together toward a mutually beneficial solution. He mentioned the current 8-lot proposal overpopulates the neighborhood which will result in a decline of quality of life, against Oakley’s vision for a unique and small-town feel. He requested the oak tree be spared and conserved for the habitat and ecosystem. He suggested alternative road devices

such as roundabouts, bike paths and pedestrian walkways. He requested the project be postponed proposal until equitable collaboration can be achieved.

The Council requested Mr. O'Leary allow the applicant to see the alternative plan.

Kimberly Brower commented that where Wildcat connects to Gardenia will become a raceway for people to make up time where they had to slow down for the curve. She mentioned the bulb-outs on Duarte are ineffective and don't work. She mentioned the proposed intersection is in front of her house and she has 2 young children whose safety is of concern. She provided Saturday as an example when Main Street was closed for a festival; she saw dozens of speeding cars on Fuchsia. She mentioned she moved near a lot that she knew would be developed, but she never thought the street would join. She requested the Council consider postponement to allow for collaboration.

Greg and Susan Dahl submitted written comment made part of the meeting record.

Scott Brower shared he works for UPS and sees speeding situations all the time. He mentioned the S-curve is used to mitigate speed, but it really doesn't; he sees all the time people hit the gas and bulbed curbs are the same. He mentioned the area will be congested as a parking lot for school drop off and pick up; people will still speed otherwise. He shared he saw the streets used as bypasses when Main Street was closed with 30+cars that went by on Fuchsia. He expressed fear that as proposed, they will be in danger of drivers not paying attention and speeding to get time back. He mentioned the court with the walkthrough would allow access to the park and Downtown but restrict access for vehicles.

Doug Fowler requested the Council not move forward with the project as proposed because there are too many houses on a small property and traffic that comes with it. He commented that by connecting Ruby and Wildcat, it unintentionally creates a bypass from Main Street which will result in increased traffic. He shared they all bought homes on the street for quality of life because the street wouldn't go through. He mentioned they can take land for the road and allow the developer to reconfigure the plan for pedestrian and bike access without adding cars so that everyone gets something out of it; the neighborhoods maintain their character, the developer gets the lots they want, the people buying the homes are not slighted, and there is access to parks and the school.

Councilmember Higgins inquired if there is enough space to have a roundabout at Wildcat, Fuchsia and West Ruby instead of a bulb out.

Mr. Strelo indicated roundabouts have different requirements and he is having trouble visualizing where it would go but has noted the comment for staff follow up.

Councilmember Fuller expressed concerned regarding the S-curve. He mentioned if someone is going west on Ruby making a turn northeast, it is somewhat blind, then going west to Fuchsia there is not a clear view for a driver what is ahead in the residential zone; there is a blind spot. He shared he went through the same thing in his

neighborhood; the street was 60-feet wide until the developer built south, the street opened and became an exit out of the development. He mentioned it was traumatic and there was a safety concern for kids playing in the street and driving in and out of driveways. He suggested staff check in regularly with people and how to mitigate it, especially around the school. He expressed he is bothered by the lack of visibility when making a northeast turn and making another turn into a street blind coming from the east going west on Ruby.

Councilmember Williams inquired if there is any option to consider an alternative site plan such as the one submitted by Mr. O'Leary. She mentioned the roadway is the sticking point, but the number of homes doesn't seem to be an issue.

The applicant spoke mentioning the road connection was requested by the City for access and the proposed plan may be workable.

Mayor Pope commented that the variances are no problem. He mentioned it meets density for the area and they are not changing the zoning. He expressed concern with traffic as they are not just building 8 houses; it is changing traffic patterns as vehicles use Ruby to Wildcat as a bypass. He mentioned it is probably bigger than they realize in the planning phase. He mentioned if they do something, they need more traffic calming measures as lot 5 will be backing out of the driveway at the S-curve. He commented he likes the bulb outs on the west side and should have them on the east side as well. He inquired if there is pedestrian access west of this property between Wildcat and Main Street.

Someone in the audience commented it is gated off.

Mayor Pope commented he is interested in hearing about the City-initiated street connection. He mentioned he understands the need for emergency vehicle access to go east and west. He inquired if there is a timeline for the stop sign warrant.

Mr. McMurray mentioned staff can initiate it as soon as the street is developed. He shared the items can be addressed through conditions of approval such as traffic calming measures to make the roads safer. He shared when the City acquired the property to create the Police parking lot extension it was always intended for the street connection to Ruby to the west. He indicated it changes the character of the neighborhood some. He expressed he feels the project is safe but can look at the project to make it safer. He indicated the ability for Police to move throughout the City for public safety is important and staff wanted to make sure that connection exists for that reason.

Mayor Pope mentioned regarding the traffic warrant, if it is done too soon after the project, the motoring public may not have yet discovered this path. He suggested to do two studies, one immediately and one in one year, or do one a year post-project.

Councilmember Fuller corrected his previous comment. He mentioned he meant a northwest turn going west. He inquired what staff's take is on visibility as vehicles move along the streets.

Mr. Strelo commented if there are concerns regarding visibility, they don't have house layouts or driveway cuts proposed; they can always condition the map that lot 5 must locate the garage or driveway on the west side of the lot to help increase visibility around that turn.

Councilmember Williams expressed she believes it is important for Police to have access to both the east and west. She inquired if the proposed handout map included Police access and viewed the map to confirm.

Vice Mayor Meadows suggested the study for the stop sign be done immediately and if not warranted, again 6 months -1 year later.

Councilmember Higgins commented looking at an alternative is great but then they are forced to say we want Police to have access; it is a lot to ask for a new map to be drawn.

Mayor Pope mentioned they build roads to keep 80-90% of motorists safe, but there is a percentage of drivers that will do stupid stuff so they can be as safe as possible, but they may never be 100% safe; they can mitigate risks but cannot eliminate everything. He mentioned in looking at the streets, both Ruby side sidewalks turn into grapevines, and it appears very clear with the temporary barrier that the street will be extended; it was not meant to be the end of the line and should have been expected to happen. Regarding the stop sign warrant, he suggested they look at Wildcat and Fuchsia and West Ruby and Duarte, immediately after completion (before City accept improvements) and 1 year after.

Councilmember Fuller agreed with Mr. Strelo that it would be much easier if there is a condition on lot 5 to place the driveway exit on the west side of the lot to increase visibility. He mentioned the area needs proper signage for vehicles to drive slowly.

Vice Mayor Meadows inquired if there are any other conditions the Council wishes to add. He agreed with both the stop sign warrant and changing the driveway location on lot 5.

Mayor Pope inquired if they could put signage for "local residents only beyond this point" or something similar to discourage vehicles from using it as a bypass from Main Street.

Mr. Strelo indicated traffic calming signage such as a school coming up or slowing for children would be possible; however, he is not sure if the intention is to turn a public road into what may be thought of as a private road; signs need to potentially be regulated and enforced.

Councilmember Fuller commented that if Police can't enforce a stop sign it is better not to put it up with a false sense of security; he would rather have a stop sign that is warranted. He mentioned if there is no stop sign, he believes all people are responsible to stop before the intersection.

Mayor Pope commented in an uncontrolled intersection, a blind intersection requires drivers to slow down to 15 mph but may not apply to all points of an intersection if there are some stop signs.

Mr. Rohani mentioned the City can have a robust sign package, advisory signs lower speed, and Oakley has its own traffic calming signs for pedestrians and bicyclists. He mentioned they also have enhanced bulb outs and can added enhanced traffic calming measures.

Councilmember Higgins inquired about a tabletop like in Emerson instead of a bulb out.

Mr. Rohani commented that once all is built staff can consider it with traffic calming measures and study.

Mayor Pope asked him to explain what a tabletop looks like.

Mr. Rohani explained as a vehicle approaches an intersection, there are crosswalks, and the asphalt raises about 4 inches above street level into the intersection so if a vehicle runs fast through it, it won't do it again. The speed intended is 15 mph for both this and speedhumps.

Mayor Pope mentioned there are speedhumps on Fairview in Brentwood and great for slowing vehicles down.

Mr. Rohani mentioned they are located at Emerson Ranch and Delaney Park.

Mayor Pope inquired if the signage would include the school and park.

Mr. Rohani mentioned they will look at the comprehensive sign package; there are two parks and a school.

Mayor Pope commented the exit at the Police lot should have signage for slowing due to emergency access.

Mr. Rohani mentioned on Highway 4 and Empire, just before 7-11, there is a self-storage driveway; there were issues with cars exiting and they installed signs that cars are exiting the driveway so they can incorporate similar signs at the Police gate.

Mr. Strelo commented that staff would be happy to summarize the conditions expressed.

Councilmember Fuller commented he heard they could take it back and redesign. He inquired if that is a better alternative than placing conditions. He shared he wants conditions but is leaning toward sending it back and including conditions, so everyone has a clear view of what they are doing.

It was moved by Councilmember Fuller and seconded by Councilmember Williams to continue the item until the plan is updated. Motion was unanimous and so ordered. (5-0)

Mayor Pope indicated he would like the things talked about included ahead of time.

Mayor Pope called for a brief recess at 7:55 p.m. The City Council reconvened at 8:02pm.

~~4.3 Approve the Formation of the City of Oakley Community Facilities District No. 2022-1 (HCP/NCCP Services), hold a Public Hearing and Special Landowner Election, Declare the Results of the Election and Introduce an Ordinance to Levy a Special Tax for Community Facilities District No. 2022-1 (HCP/NCCP Services) (Kevin Rohani, P.E., Public Works Director/City Engineer)~~

~~Mayor Pope announced this is the time and place for the public hearing. He called for any written protests then opened the public hearing.~~

~~Public Works Director/City Engineer Kevin Rohani presented the staff report.~~

~~Mayor Pope asked for comments, questions, and protests from the audience. Being none, he closed the public hearing. He mentioned the Council will consider the resolutions. He asked the City Clerk to announce the result of the property owner vote.~~

~~City Clerk Libby Vreonis announced ACD-TI Oakley LLC is in favor of the levy of the special taxes and the establishment of the appropriations limit.~~

~~Mayor Pope announced that at least 2/3 of the property owners' votes are in favor of the levy of the special taxes and the establishment of the appropriations limit. He mentioned the Council will proceed with considering the resolution to direct the City Clerk to record the special tax lien and introduction of the ordinance levying the special taxes in the district to be considered for adoption on October 11, 2022.~~

~~It was moved by Councilmember Fuller and seconded by Vice Mayor Meadows to adopt the resolution and waive the first reading and introduce the ordinance. Motion was unanimous and so ordered. (5-0)~~

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: September 27, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Ariana Ruiz, Planning Technician

SUBJECT: **Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) – Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots. (APN: 035-090-082).**

Summary

This is a public hearing for an application by Pam Young ("Applicant") requesting approval of Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082.

The Planning Commission has reviewed the project and has forward its recommendation for consideration by the City Council. The Planning Commission's recommendation to the City Council is to adopt the resolution approving the project titled "Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22)," subject to conditions.

Background

On August 2, 2022, the Planning Commission held a public hearing on the proposed Tentative Map and Variance request. Staff recommended approval the project subject to conditions of approval (see Attachment 6: "Planning Commission Staff Report dated August 2, 2022"). The Planning Commission adopted Planning Commission Resolution No. 05-22 recommending the City Council adopt the resolution approving the Tentative Map and Variance (Attachment 7).

After the Notice of Public Hearing was mailed out, the Planning Division received written comments in opposition of the project. At that hearing members of the public provided testimony opposing the project. Concerns on behalf of the public brought into question safety, traffic, density, and overall, a decreased quality of life that is speculated to result if the project

is approved. These concerns were considered by the Planning Commission and are further discussed within the Analysis section of this Staff Report.

General Plan

- The General Plan Land Use Designation for the project site is *Residential Low/Medium (RLM)* as depicted in the Oakley General Plan Figure 2-2 (Land Use Diagram).
- This designation allows for a minimum of 3.8 dwelling units and a maximum of 5.5 dwelling units per gross acre.

Zoning

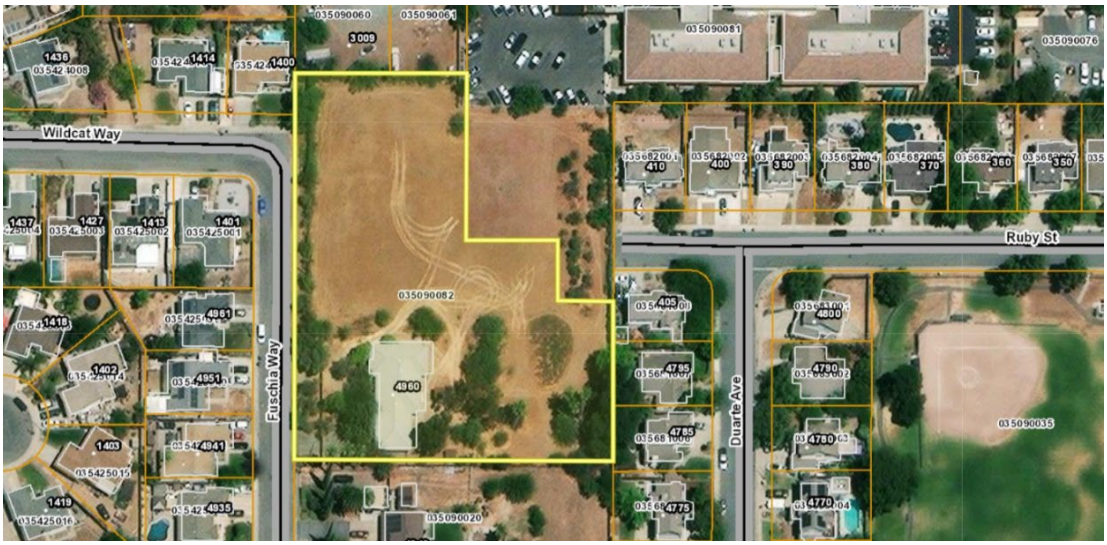
- The site is zoned R-6 (Single-Family Residential) District.

The proposed project is in compliance with the applicable General Plan and Zoning standards as listed within the OMC section 9.1.404 except for Lots 3,4, 6, and 7 which are the subject of the Variance request.

Location and Surrounding Land Uses

The approximately 2-acre project site (Figure 1. Aerial of Project Site) is located within the R-6 (Single-Family Residential) District. The parcel is partially developed with an existing single-family residence on site. Properties located to the north are zoned SP-4 (Downtown Specific Plan) District. The site is currently bounded to the north by an existing non-conforming use, and police parking lot. Properties located to the east and south of the site are zoned R-6 District. There are existing single-family homes to the east and south. There is also an elementary school abutting the homes to the east. Immediately to the west of the site is a roadway, Fuschia Way adjoined by existing single-family residences. Figure 1 shows an aerial view of the site from the Contra Costa County GIS website.

Figure 1. Aerial View of Project Site (CCMaps).



Project Description

Tentative Map

The proposed tentative map is designed to create eight (8) new single-family residential lots within the R-6 District. The development regulations for this district require a minimum lot area of 6,000 square feet, lot width of 60', and lot depth of 80'. With the exception of Lot 4, each lot is proposed to meet or exceed the minimum lot area of 6,000 square-feet. The proposed lots range from approximately 5,326 square-feet to 15,796 square-feet.

The applicant is proposing to complete an Offer a Dedication for Roadway Purposes for the area located along the west and northern end of the parcel abutting Fuschia Way and West Ruby Street. The roadway will begin at the intersection of Wildcat Way and Fuschia Way. In order to connect to West Ruby Street, the road must curve across the parcel through proposed Lots 3, 4, and 5. Approximately 11,576 square feet will be used to create the 56' wide public right-of-way area along connecting West Ruby Street to Wildcat Way. There will be approximately 5,189 square feet dedicated to the public right-of-way along Fuschia Way. The applicant has also proposed to continue the sidewalk, curb and gutter, and street along these streets. The extension of West Ruby Street will allow pedestrians, bicyclists, and vehicles to pass through to West Ruby Street from Wildcat Way and Fuschia Way without having to navigate through Main Street or Cypress Road.

A private roadway is also proposed within the subdivision to create an access point for three (3) of the eight (8) lots. The width of the roadway is approximately 20'. The T-shaped hammerhead roadway will comply with the regulations and standards of the Contra Costa County Fire Protection District.

Due to the proposed extension of West Ruby Street and dedication of land to the public-right-of-way, the lot configuration for four (4) of the eight (8) lots do not meet the minimum lot requirements. The below table summarizes the proposed lot dimensions. As demonstrated by the Preliminary Site Plan with the Applicant's Plans (Attachment 3), future homes can comply with minimum setbacks required for all eight (8) lots.

Lot Number	Lot Width	Lot Depth	Lot Area
Lot 1	114.72'	146.89'	15,796 s.f.
Lot 2	61.05'	146.9'	8,968 s.f.
Lot 3[1]	92.53'	146.91'	7,161 s.f.
Lot 4	98.17'	45.43'	5,326 s.f.
Lot 5	60'	80.79'	6,484 s.f.
Lot 6	56.10'	115'	6,451 s.f.
Lot 7	56.10'	115'	6,451 s.f.
Lot 8	63.07'	115'	6,200 s.f.

[1] Although Lot Width and Lot Depth are met, the lot is abnormally shaped. This lot is triangularly shaped where the side property line decreases to the rear property line of 4.5' in width.

The lot layout for the tentative map shows Lots 1, 2, and 3 abutting Fuschia Way and the proposed private road. Driveways for Lots 1, 2, and 3 will be accessed off of Fuschia Way. Lots 4 and 5 are shown fronting and will have driveways connecting to the extension of West Ruby Street. Lots 6, 7, and 8, front and will be accessed by the new private road.

Design Review has not been proposed with the tentative map and as a result, there are no accompanying house plans or landscape plans. A condition has been placed within the resolution requiring the developer or future property owners to submit a design review application prior to construction on any new homes.

Utilities

Major utilities for the tentative map include water, sewer collection, gas and electricity, telephone, and cable. The City of Oakley requires new development to underground existing utilities that are adjacent to the project frontage to be undergrounded. Development of the project is subject to the applicable regulations and plan checks/approvals by each respective agency.

Traffic Study

The City of Oakley requires a Traffic Impact Analysis is performed for projects that generate more than 100 vehicle trips during either the weekday morning or evening peak hours. A project of this scale will not result in this number of trips. Instead, a Traffic Memo, which does not require the same level of analysis, has been submitted that discusses potential traffic congestion created by the proposed project. More detailed analysis of the conducted Traffic Memo has been provided in the Analysis.

Variance

Per the OMC, a Variance may be granted to modify the zoning regulations as they pertain to lot area, lot building coverage, average lot width, minimum setbacks, off-street parking, building structure or height, or any other regulation pertaining to size, dimension, shape or design of a lot, parcel, building or structure, or the placement of a building or structure on a lot or parcel. The applicant has requested a Variance on meeting the minimum lot requirements for a total of four (4) of the eight (8) lots proposed.

Environmental Review

The project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332 (Class 32 – Infill Development Projects). Section 15332 of the State CEQA Guidelines exempts projects when the proposed project is consistent with the applicable general plan designation and all applicable general plan policies, as well as applicable zoning designation and regulations. Additionally, the project must occur within City limits on a project site of no more than five acres that is surrounded by urban uses. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. Lastly, the site can be adequately served by all required utilities and public services. The project meets the requirements as

mentioned. Therefore, there is no substantial evidence that the project may have a significant effect on the environment.

Analysis

Planning Commission Meeting 08/02/2022 Summary

During the meeting, members of the public raised concerns due to the proposed density, safety of the existing residents, and increased traffic. The Residential Low/Medium land use designation allows for a maximum of 5.5 dwelling units per acre. The proposed subdivision is consistent with the density range, proposing only four (4) dwelling units per acre.

Members of the public also provided testimony their families and children utilize the public streets of Wildcat Way and Fuschia Way to enjoy outdoor activities as there are no parks that are accessible within the vicinity and the addition of seven (7) homes and a through-street would significantly impact the ability of adjacent residences to utilize the public streets. While the existing homes along these streets may lack direct access to public amenities, the extension of West Ruby Street would create direct access to the Oakley Elementary School and its public park, and Oakley's Downtown area and the Civic Center Park located within the Civic Center Plaza. The addition of the sidewalk would help promote safety and prevent the use of the roadway for recreational activities and provide direct pedestrian access to the parks.

While some members of the public did not directly oppose the increase of lots, they did oppose the extension of West Ruby Street and Wildcat Way. The public testified the extension would result in an increase in traffic and a decrease in public safety. After considering the public comment, testimony, and information received at the hearing, the Planning Commission also questioned the possibility of increased traffic and lack of Traffic Impact Analysis. A Traffic Impact Analysis is not required for a subdivision of this size. The project has been evaluated by the City of Oakley's Public Works and Engineering Division and Traffic Engineer and there are no additional comments on behalf of Staff. Additionally, the roadways and infrastructure within the public right-of-way will be developed with sidewalks that will help promote a safe route to the school and Oakley's Downtown area. The Oakley Police Department has reviewed the proposed project and noted the extension of West Ruby Street will help increase public safety and decrease response times of service calls by providing an alternative route for emergency services.

Tentative Map

The tentative map has been reviewed against all applicable codes including the Subdivision Map Act, General Plan, and the Zoning Ordinance. The tentative map's gross density falls within the gross density range of the *Residential Low/Medium (RLM)* General Plan Land Use Designation of 3.8 – 5.5 du/ga, proposing a gross density of 4 du/ga. The tentative map is designed in a manner that complies with all applicable development regulations, such as minimum lot size, minimum lot width, and minimum lot depth of the R-6 District. For Lots 3,

4, 6, and 7, that do not comply with these development regulations, a Variance is being requested.

The site is physically suitable for the project in that it is accessible, not physically constrained, and near the same or similar uses, and it is also able to accommodate the proposed density of development in a manner consistent with the underlying land use designation. The subdivision is not expected to result in any serious public health problems. Public improvements are proposed and conditioned to occur as a result of the subdivision, which is a benefit to the public. Connecting Wildcat Way to West Ruby Street will provide the following public benefits:

- More direct pedestrian, bicycle, and vehicle access to Oakley Elementary School, Oakley City Hall and Civic Center Park, and multiple downtown businesses without needing to travel to Main Street or Cypress Road.
- An alternative through-route for Oakley Police Department and other first responders, although it is likely Main Street and Cypress Road would continue to offer the most direct routes.

The area that will be dedicated to the public right-of-way through an Offer of Dedication to Public Right-of-Way, will comply with the Typical Street Sections for Minor Residential Standards developed by the Public Works and Engineering Division. The improvements will also be consistent with the clean water requirements listed within the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.

Traffic Memo

Freyer and Laureta, Inc composed a Traffic Memo for the proposed project. The memo discussed how the extension of West Ruby Street may be utilized by residents within the area and first responders, and also acknowledged the possibility that vehicular speeds may be exceeded. This can be the case with any public road, and working with the Public Works and Engineering Division, the applicant has proposed to install bulb outs at the intersection of Fuschia Way and Wildcat Way. Due to the curvature of the roadway, speed bumps were not recommended. For this project, bulb outs are the most effective way to help reduce speeds. Additionally, the Public Works and Engineering Department has added a condition that requires the Applicant to conduct a stop warrant analysis and install stop signs if warranted and necessary.

Variance

A Variance is being requested for four (4) of the eight (8) lots. The extension of West Ruby Street impacts Lots 3 and 4 directly as Lot 3 and 4 will not meet the minimum lot requirements as listed within the R-6 District. Lot 3 is proposed at the corner and intersection of the three streets: Fuschia Way, Wildcat Way, and West Ruby Street. This causes Lot 3 to form a triangular shape of only three property lines. A Variance is being requested for Lot 3 as it does not meet the minimum width or depth. Lot's 4 and 5 will also be impacted by the

proposed roadway. Specifically, Lot 4 requests a Variance for the minimum lot area and lot depth. The lot depth of the western portion of this lot is a total of 45.43'. The eastern portion of this lot is proposed at approximately 80'. The lot width of this lot is 98.17', resulting in a total lot area of 5,326 square-feet. Lots 6 and 7 also require a Variance as the lot width is proposed under the minimum lot depth of 60', at approximately 56'.

There are three specific standards that must be considered and found to exist in order to approve a variance. Staff has analyzed the project with those standards in mind and provided draft findings to support the Variance request. The three standards followed by the draft finding for each are listed below, as well as within the Draft Resolution (Attachment 5). A Variance may be granted when it can be shown the project shall comply with the following:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

   Lots 3, 4, 6, and 7 are being proposed on an infill lot that is being bifurcated by a residential public street and its full width of right of way. Due to the irregular shape of the subject site, and the curve in the streets needed to connect to two existing public streets, unusual challenges are created when designing the lot layouts. Lots 3 and 4 fails to meet the minimum lot area and lot depth, respectively. Both are affected by the curving extension of West Ruby Street through the project. Lots 6 and 7 meet the minimum lot depth and size but are both approximately four feet short of the minimum lot width. The property line between the southern end of the site and the southern portion of the future right of way of West Ruby Street is 175.27 feet. At a minimum lot width of 60 feet, at least one of these lots would be required to not meet the minimum. The applicant has designed the properties to be more similar in size by increasing the width of the southern-most lot (Lot 8) affected by the private hammerhead. New construction on these lots will need to comply with the other development regulations of the R-6 District and there is adequate lot area to achieve this as shown in the Applicant's plans. This shows the lots with a minimum lot size, lot width, and depth can still meet other applicable development standards of the R-6 District;

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

   Lot 3 is a triangular-shaped corner lot with frontages on both Fuschia Way and West Ruby Street. The Variance would not affect the overall

appearance of the lot size from Fuschia Way, and Lot 3 will meet the minimum lot area required by the R-6 District. Due to the extension of West Ruby Street, Lot 4 will not meet the minimum lot depth of lot of 80' on one side and the minimum lot area of 6,000 square-feet. Lots 6 and 7 are restricted in that they do not meet the minimum lot width of 60'. However, the lot area and lot depth are still met. Due to the dedication of land to the roadway and lot configuration, these parcels have been designed as abnormal lots. Any structures placed on these lots will meet the minimum development standards of the R-6 District;

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

   Lots 3, 4, 6, and 7 could still be developed in a manner consistent with the R-6 District development standards and maintain the residentially zoned district that exists today.

General Plan Consistency

Approval of the Tentative Map and Variance will also provide consistency with the following goals and policies listed within the Oakley General Plan:

- Policy 2.2.5. Encourage higher density residential development at locations within convenient walking distance of Downtown, employment areas, services, schools, retail, transit stops, near community destinations, and/or near major streets with high access to transit and nonvehicle transportation modes.
- Policy 2.2.8. Require the establishment of lighting and landscaping districts and/or community facility districts, as appropriate, for new residential developments.
- Policy 2.2.9. Protect existing residential areas from intrusion of incompatible land uses and disruptive traffic to the extent reasonably possible.
- Goal 2.10 Corridors, Pathways, Streetscapes, and Edges - Enhance the corridors, pathways, and edges that form physical boundaries and provide transitions and connections throughout the community.

Consistency with the City of Oakley Strategic Plan 27+

In line with the City of Oakley Strategic Plan 27+, Community Health and Safety Goal emphasizes the need to protect the public and prioritize safe streets, healthy neighborhoods to benefit the residents of the City of Oakley. The proposed project includes the dedication and improvements to the public right-of-way. The inclusion of a sidewalk along the perimeter of the project is consistent with the Safe Streets Objective in that it will help provide an alternative route for pedestrians traveling to and from the elementary school and/or Downtown area. Furthermore, the Safe Street Objectives requires the City to consider road improvements such as delineators where speed is an

issue and implement traffic-calming measures as traffic grows within the City. The Applicant has submitted a Traffic Memo that addresses the potential risk of traffic violations and recommended the Applicant include bulb outs to create a better streetscape and promote traffic calming.

Fiscal Impact

This project will not impact the General Fund. This is a developer-funded account. All Staff time and City of Oakley generated materials related to the processing of this application, including reproduction of physical copies and postage for public hearing notices, are charged to the account.

Findings

Draft findings for the Tentative Map and Variance can be found within the proposed resolution.

Staff Recommendation

Staff recommends the City Council adopt the resolution approving the project titled “Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22)”, as conditioned.

Attachments

1. ~~Vicinity Map~~
2. ~~Notice of Public Hearing~~
3. ~~Applicant’s Plans~~
4. ~~Traffic Memo~~
5. ~~Draft Resolution~~
6. ~~Planning Commission Staff Report dated August 2, 2022~~
7. ~~Planning Commission Resolution No. 05-22~~

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: August 2, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the Planning Commission

FROM: Ariana Ruiz, Planning Technician

SUBJECT: **Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22) – Request to subdivide an approximately 2-acre site into eight (8) single-family residential lots and a variance request on meeting the minimum lot requirements for four (4) of the eight (8) lots. (APN: 035-090-082).**

Summary

This is a public hearing for an application by Pam Young ("Applicant") requesting approval of Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082.

Background

General Plan

- The General Plan Land Use Designation for the project site is *Residential Low/Medium (RLM)* as depicted in the Oakley General Plan Figure 2-2 (Land Use Diagram).
- This designation allows for a minimum of 3.8 dwelling units and a maximum of 5.5 dwelling units per acre.

Zoning

- The site is zoned R-6 (Single-Family Residential) District.

The proposed project is in compliance with the applicable General Plan and Zoning standards as listed within the OMC section 9.1.404 except for Lots 3,4, 6, and 7 which are discussed later in this report.

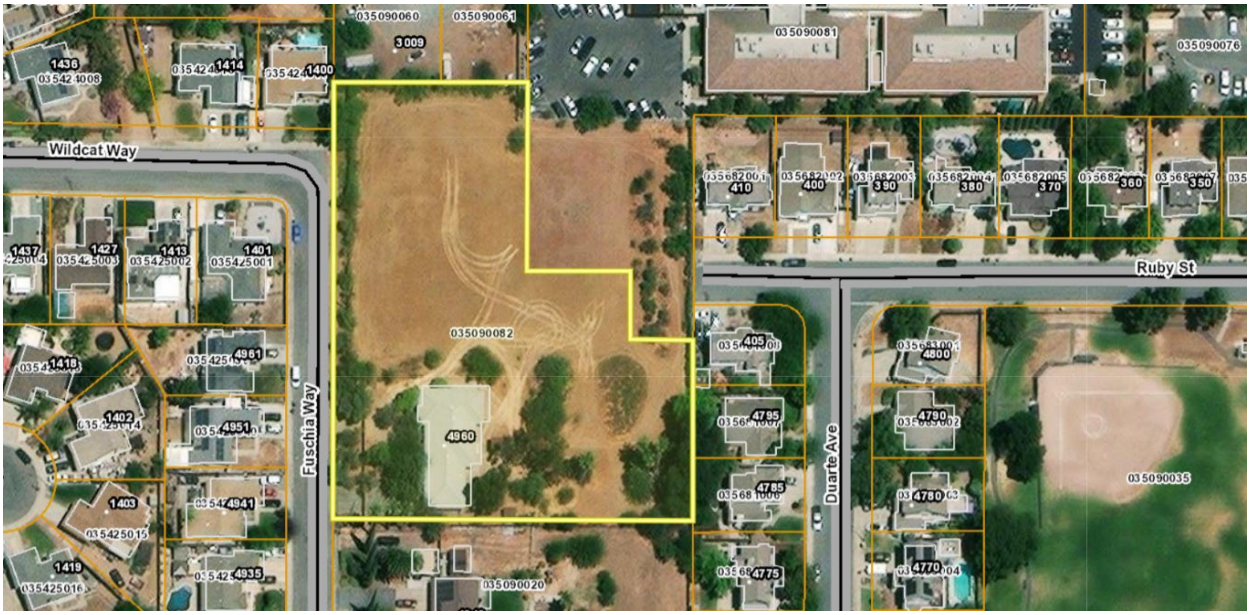
Previous History

In 2020, the property owners entered into a purchase agreement with the City of Oakley. Approximately 17,267 square-feet of the property was obtained by the City of Oakley with the intent to expand the existing Police Department parking lot to provide adequate space for the daily operations of the Police Department. The addition of the police parking lot has helped to provide direct access to West Ruby Street allowing for an alternative exit.

Location and Surrounding Land Uses:

The approximately 2-acre project site (Figure 1. Aerial of Project Site) is located within the R-6 (Single-Family Residential) District. The parcel is partially developed with an existing single-family residence on site. Properties located to the north are zoned SP-4 (Downtown Specific Plan) District. The site is currently bounded to the north by an existing non-conforming use, and police parking lot. Properties located to the east and south of the site are zoned R-6 District. There are existing single-family homes to the east and south. There is also an elementary school abutting the homes to the east. Immediately to the west of the site is a roadway, Fuschia Way adjoined by existing single-family residences. Figure 1 shows an aerial view of the site from the Contra Costa County GIS website.

Figure 1. Aerial View of Project Site (CCMaps).



Project Description

Tentative Map

The proposed tentative map is designed to create eight (8) new single-family residential within the R-6 District.

Within the R-6 District, the development regulations are as follows:

Minimum Lot Requirements	Lot Width	Lot Depth	Lot Area
R-6 District	60’	80’	6,000 s.f.

With the exception of Lot 4, the lots sizes are proposed to meet or exceed the minimum 6,000 square-foot lot size. The proposed lots range from approximately 5,326 square-feet to 15,796 square-feet.

The applicant is proposing to complete an Offer a Dedication for Roadway Purposes for the area located along the west and northern end of the parcel abutting Fuschia Way and West Ruby Street. The roadway will begin at the intersection of Wildcat Way and Fuschia Way meet. In order to connect to West Ruby, the road must curve across the parcel through proposed Lots 3, 4, and 5. This roadway area is composed of approximately 11,576 square-feet that will be used to create a 56’ wide public right-of-way area along connecting West Ruby Street to Wildcat Way. There will be approximately 5,189 square-feet dedicated to the public right-of-way along Fuschia Way. The applicant has also proposed to continue the sidewalk, curb and gutter, and street along these streets. The dedicated roadway will also allow vehicular traffic to pass through to West Ruby Street from Wildcat Way and Fuschia Way without having to navigate through Main Street or Cypress Road.

A private roadway is also proposed within the parcel to create an access point for three of the eight lots. The width is approximately 20’. This roadway is proposed to comply with the regulations and standards of the Contra Costa County Fire Protection District, as a T-shaped hammerhead is proposed.

Due to the proposed extension of West Ruby Street and dedication of land to the public-right-of-way, the lot configuration for four (4) of the eight (8) lots do not meet the minimum lot requirements. The below table summarizes the proposed lot dimensions. As demonstrated by the Preliminary Site Plan with the Applicant’s Plans (Attachment 3), all eight (8) lots can still comply with all pertinent setbacks.

Lot Number	Lot Width	Lot Depth	Lot Area
Lot 1	114.72’	146.89’	15,796 s.f.
Lot 2	61.05’	146.9’	8,968 s.f.
Lot 3[1]	92.53’	146.91’	7, 161 s.f.
Lot 4	98.17’	45.43’	5,326 s.f.
Lot 5	60’	80.79’	6,484 s.f.
Lot 6	56.10’	115’	6,451 s.f.
Lot 7	56.10’	115’	6,451 s.f.
Lot 8	63.07’	115’	6,200 s.f.

[1] Although Lot Width and Lot Depth are met, the lot is abnormally shaped. This lot is triangularly shaped where the side property line decreases to the rear property line of 4.5’ in width.

The lot layout for the tentative map shows Lots 1, 2, and 3 abutting Fuschia Way and the proposed private road. Driveways for Lots 1,2, and 3 will be accessed off of Fuschia Way. Lots 4 and 5 are shown fronting and will have driveways connecting to the extension of West Ruby Street. Lots 6, 7, and 8, front and will be accessed by the new private road.

Currently Design Review has not been proposed with the tentative map and as a result, there are no accompanying house plans or landscape plans. A condition has been placed within the resolution requiring the developer or future property owners to submit a design review application prior to construction on any new homes.

Utilities

Major utilities for the tentative map include water, sewer collection, gas and electricity, telephone, and cable. The City of Oakley requires new development to underground existing utilities that are adjacent to the project frontage to be undergrounded. Development of the project is subject to the applicable regulations and plan checks/approvals by each respective agency.

Traffic Study

The City of Oakley requires a Traffic Impact Analysis is performed for projects that generate more than 100 vehicle trips during either the weekday morning or evening peak hours. However, a Traffic Study was requested to evaluate the potential traffic congestion created by the proposed project. More detailed analysis of the conducted Traffic Study has been provided in the Analysis.

Variance

Per the OMC, a Variance may be granted to modify the zoning regulations as they pertain to lot area, lot building coverage, average lot width, side yard, rear yard setback and auto parking space, building structure or height, or any other regulation pertaining to size, dimension, shape or design of a lot, parcel, building or structure, or the placement of a building or structure on a lot or parcel. The applicant has requested a Variance on meeting the minimum lot requirements for a total of four (4) of the eight (8) lots proposed.

Environmental Review

The project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332 (Class 32 – Infill Development Projects). Section 15332 of the State CEQA Guidelines exempts projects when the proposed project is consistent with the applicable general plan designation and all applicable general plan policies, as well as applicable zoning designation and regulations. Additionally, the project must occur within City limits on a project site of no more than five acres that is surrounded by urban uses. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. Lastly, the site can be adequately served by all required utilities and public services. The project meets the requirements as mentioned. Therefore,

there is no substantial evidence that the project may have a significant effect on the environment.

Analysis

Tentative Map

The tentative map has been reviewed against all applicable codes including the Subdivision Map Act, General Plan, and the Zoning Ordinance. The tentative map's gross density falls within the gross density range of the *Residential Low/Medium (RLM)* General Plan Land Use Designation of 3.8 – 5.5 du/ga. The tentative map is designed in a manner that complies with all applicable development regulations, such as minimum lot size, minimum lot width, and minimum lot depth of the R-6 District. For Lots 3, 4, 6, and 7, that do not comply with these development regulations, a Variance is being requested.

The site is physically suitable for the project in that it is accessible, not physically constrained, and near like uses, and it is also able to accommodate the proposed density of development in a manner consistent with the underlying land use designation. The subdivision is not expected to result in any serious public health problems. Public improvements are proposed and conditioned to occur as a result of the subdivision, which is a benefit to the public and surrounding residents and property owners of the vicinity. The area that will be dedicated to the public right-of-way through an Offer of Dedication to Public Right-of-Way, will comply with the Typical Street Sections for Minor Residential Standards developed by the Public Works and Engineering Division. The parking lot will also be consistent with the clean water requirements listed within the City's National Pollutant Discharge Elimination System (NPDES) permit requirements.

Traffic Study

The study conducted by Freyer and Laureta, Inc., discussed the project, referenced traffic study guidelines, findings, and recommendations. The findings and recommendations indicate the development will provide a new thoroughfare connected Wildcat Way with Duarte Way to the east of the project site. The study further analyzed the correlation between the West Ruby Street extension and new development of thirty (30) single-family residential homes to the south of the project called Cypress Estates. The study states the residents of Cypress Estates will benefit from the roadway extension. The nearby Elementary School as well as Oakley's Police Department will greatly benefit from this extension as it creates direct access from the extended parking lot to multiple directions of the City.

The study also evaluated the potential possibility that vehicular speeds may be exceeded. The proposed intersection of Fuschia Way and Wildcat Way includes bulb outs. Bulb outs are an effective way to help reduce speeds. As noted within the Circulation Element of the General Plan, the City has tried to monitor, improve, and enhance traffic safety to eliminate traffic fatalities and reduce the rate of injury collisions. Roundabouts, medians, street trees, and narrower street widths are required to slow down traffic and provide a safer pedestrian

environment. In line with the General Plan, the installation of bulb outs at the intersection of Wildcat Way, Fuschia Way, and the extension of West Ruby Street, the roadway has been reduced in width, directly maximizing safety for all uses and results in safe speeds on city streets.

Variance

A Variance is being requested for four (4) of the eight (8) lots. The extension of West Ruby Street impacts Lots 3 and 4 directly as Lot 3 and 4 will not meet the minimum lot requirements as listed within the R-6 District. Lot 3 is proposed at the corner and intersection of the three streets: Fuschia Way, Wildcat Way, and West Ruby Street. This causes Lot 3 to form a triangular shape of only three property lines. A Variance is being requested for Lot 3 as it does not meet the minimum width or depth. Lot's 4 and 5 will also be impacted by the proposed roadway. Specifically, Lot 4 requests a Variance for the minimum lot area and lot depth. The lot depth of the western portion of this lot is a total of 45.43'. The eastern portion of this lot is proposed at approximately 80'. The lot width of this lot is 98.17', resulting in a total lot area of 5,326 square-feet. Lots 6 and 7 require also require a Variance as the lot width is proposed under the minimum lot depth of 60', at approximately 56'.

There are three specific standards that must be considered and found to exist in order to approve a variance. Staff has analyzed the project with those standards in mind and provided draft findings to support the Variance request. The three standards followed by the draft finding for each are listed below, as well as within the Draft Resolution (Attachment 4). A Variance may be granted when it can be shown the project shall comply with the following:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

   Lots 3,4, 5, and 6 exist in an area of existing properties where there are legal lots that currently do not meet the minimum lot area for the R-6 District. New construction on these lots will need to comply with the development regulations of the R-6 District and there is adequate lot area to achieve this as shown in the Applicant's plans. This shows the lots with a minimum lot size, lot width, and depth can still meet the development standards of the R-6 District;

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

   Lots 1, 2, 5, and 8 adequately meet the minimum lot requirements of the R-6 District. Parcel 3 is a triangular-shaped corner lot with frontages on

both Fuschia Way and West Ruby Street. The Variance would not affect the overall appearance of the lot size and Lot 3 will meet the minimum lot area required by the R-6 District. Due to the extension of West Ruby Street, Lot 4 has been created that will not meet the minimum lot depth of lot of 80' on one side and the minimum lot area of 6,000 square-feet. Lots 6 and 7 are restricted in that they do not meet the minimum lot width of 60'. However, the lot area and lot depth are still met. Due to the dedication of land to the roadway and lot configuration, these parcels have been designed as abnormal lots. Any structures placed on these lots will meet the minimum development standards of the R-6 District;

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

   Lots 3, 4, 6, and 7 could still be developed in a manner consistent with the R-6 District development standards and maintain the residentially zoned district that exists today.

Council Mission / Vision / Goals Addressed

Approval of the Tentative Map and Variance will also provide consistency with the following goals and policies listed within the Oakley General Plan:

- Policy 2.2.5. Encourage higher density residential development at locations within convenient walking distance of Downtown, employment areas, services, schools, retail, transit stops, near community destinations, and/or near major streets with high access to transit and nonvehicle transportation modes.
- Policy 2.2.8. Require the establishment of lighting and landscaping districts and/or community facility districts, as appropriate, for new residential developments.
- Policy 2.2.9. Protect existing residential areas from intrusion of incompatible land uses and disruptive traffic to the extent reasonably possible.
- Goal 2.10 Corridors, Pathways, Streetscapes, and Edges - Enhance the corridors, pathways, and edges that form physical boundaries and provide transitions and connections throughout the community.

Consistency with the City of Oakley Strategic Plan 27+

In line with the City of Oakley Strategic Plan 27+, Community Health and Safety Goal emphasizes the need to protect the public and prioritize safe streets, healthy neighborhoods to benefit the residents of the City of Oakley. The proposed project includes the dedication and improvements to the public right-of-way. The inclusion of a sidewalk along the perimeter of the project is consistent with the Safe Streets Objective in that it will help provide an alternative route for pedestrians traveling to and from the elementary school and/or Downtown area. Furthermore, the Safe Street Objectives

requires the City to consider road improvements such as delineators where speed is an issue and implement traffic-calming measures as traffic grows within the City. The Applicant has submitted a Traffic Memo that addresses the potential risk of traffic violations and recommended the Applicant include bulb outs to create a better streetscape and promote traffic calming.

Fiscal Impact

The recommendation to approve the application will not impact the General Fund. This is a developer-funded account. All Staff time and City of Oakley generated materials related to the processing of this application, including reproduction of physical copies and postage for public hearing notices, are charged to the account.

Findings

Draft findings for the Tentative Map and Variance can be found within the proposed resolution.

Staff Recommendation

Staff recommends that the Planning Commission adopt the resolution, recommending that the City Council adopt the resolution approving the project titled “Golden Oak Subdivision 9580 Tentative Map (TM 02-22) and Variance (VA 01-22)”, as conditioned.

Attachments

1. ~~Vicinity Map~~
2. ~~Notice of Public Hearing~~
3. ~~Applicant’s Plans~~
4. ~~Traffic Memo~~
5. ~~Draft Resolution~~

RESOLUTION NO. 05-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OAKLEY MAKING FINDINGS AND RECOMMENDING THE CITY COUNCIL APPROVE A TENTATIVE MAP (TM 02-22) TO SUBDIVIDE AN APPROXIMATELY 2-ACRE SITE INTO EIGHT (8) SINGLE-FAMILY RESIDENTIAL LOTS AND A VARIANCE (VA 01-22) REQUEST ON MEETING THE MINIMUM LOT REQUIREMENTS FOR FOUR (4) OF THE EIGHT (8) LOTS KNOWN AS THE PROJECT TITLED "GOLDEN OAK SUBDIVISION 9580": APN 035-090-082.

WHEREAS, on January 24, 2022, Pam Young ("Applicant") filed an application requesting approval of a of a Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082; and

WHEREAS, Design Review (i.e. home design, landscape design, entrance features, street tree plan, etc.) has not been submitted in conjunction with this Tentative Map and Variance; and

WHEREAS, on March 3, 2022, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Residential Low/Medium (RLM)* in the Oakley General Plan, and zoned R-6 (Single Family Residential) District; and

WHEREAS, the proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, "Class In-Fill Development Projects; and

WHEREAS, on July 22, 2022, the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution. On or before July 22, 2022, the Notice of Public Hearing was posted at the Project site, at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, and outside the library at Freedom High School located at 1050 Neroly Road, and the notice was 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 August 2, 2022, the Planning Commission 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 Planning Commission took a vote adopting this resolution, recommending the City Council adopt

a resolution to approve the project, as revised by the Planning Commission during its deliberations; and

WHEREAS, these Findings are based on the City's General Plan and the City's Zoning Ordinance, and the information submitted to the Planning Commission at its August 2, 2022, meeting, both written and oral, as reflected in the minutes of such meetings, together with the documents contained in the file for the Project (hereafter the "Record").

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the Planning Commission makes the following additional findings in support of the approvals:

A. In regard to the application requesting approval of Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots and dedication of public right-of-way, and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way:

1. The proposed Tentative Map ("TM"), together with the provisions of its design and improvements, is consistent with the Zoning Ordinance, and applicable portions Residential Low/Medium (RLM), General Plan Land Use Designation, in that the TM's gross density within the gross density range of the RLM General Plan Land Use Designation of 3.8-5.5 du/ga, and the TM is designed in a manner that complies with all applicable development regulations, where possible and a variance has been requested for lots where not possible; and

2. The site is physically suitable for the type of development in that the tentative map is accessible, not physically constrained, and near like uses, and it is also able to accommodate the proposed density of development in a manner consistent with the underlying land use designation; and

3. The site is physically suitable for the proposed density and number of dwelling units in that the proposed TM falls within the allowable density while creating lots compliant with the applicable Zoning District, and public and private roads to access the homes; and

4. The Project's is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, "Class In-Fill Development Projects"; and

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 eight (8) 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; and

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 Fuschia Way and extending West Ruby Street by providing additional roadway, sidewalks, curbs, and gutters; 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 aa 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 judgement 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 tentative map does not conflict with easements acquired by the public for access and utilities.

B. In regard to the Variance (VA 01-22) for Los 3, 4, 6, and 7 on meeting the minimum lot requirements required by the R-6 District:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

   Lots 3,4, 6, and 7 exist in an area of existing properties where there are legal lots that currently do not meet the minimum lot area for the R-6 District. New construction on these lots will need to comply with the development regulations of the R-6 District and there is adequate lot area to achieve this as shown in the Applicant's plans. This shows the lots with a minimum lot size, lot width, and depth can still meet the development standards of the R-6 District;

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

   Lots 1, 2, 5, and 8 adequately meet the minimum lot requirements of the R-6 District. Parcel 3 is a triangular-shaped corner lot with frontages on both Fuschia Way and West Ruby Street. The Variance would not affect the overall appearance of the lot size and Lot 3 will meet the minimum lot area required by the R-6 District. Due to the extension of West Ruby Street, Lot 4 has been created that will not meet the minimum lot depth of lot of 60' on one side and the minimum lot area of 6,000 square-feet. Lots 6 and 7 are

restricted in that they do not meet the minimum lot width of 80'. However, the lot area and lot depth are still met. Due to the dedication of land to the roadway and lot configuration, these parcels have been designed as abnormal lots. Any structures placed on these lots are required to meet the minimum development standards of the R-6 District;

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

   Lots 3, 4, 6, and 7 could still be developed in a manner consistent with the R-6 District development standards and maintain the residentially zoned district that exists today.

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 Planning Commission hereby recommends that the City Council grant the Applicant's request for the **Tentative Map (TM 02-22) and Variance (VA 01-22)**, 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 **January 24, 2022**, 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 BUILDING'S ON EITHER PARCEL UNLESS OTHERWISE NOTED:

PLANNING DIVISION CONDITIONS OF APPROVAL

General:

1. This **Tentative Map (TM 02-22) and Variance (VA 01-22)** application is recommended for approval, as shown on the plans presented as part of the packet presented to the Planning Commission at the August 2, 2022 public hearing, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.

2. This approval for **Tentative Map (TM 02-22) and Variance (VA 01-22)** shall be effectuated within a period of three (3) years from the effective date of this resolution by either satisfying conditions in the Subdivision Map Act, or pulling a building permit for construction of the homes, and if not effectuated shall expire on

that same date three years later, on _____. Prior to the expiration date, the applicant may apply for a Tentative Map Extension pursuant to the provisions of the Zoning Code and Subdivision Map Act.

3. All construction drawings submitted for plan check shall be in substantial compliance with the plans presented to and approved by the Planning Commission on August 2, 2022.

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. If the remains are determined to be that of Native American origin, procedures will be guided by California PRC 5097 through California's Native American Heritage Commission.

7. The applicant shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project. The city shall promptly notify the applicant of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

8. The applicant shall post a copy of the City of Oakley General Plan 2020 Land Use Diagram, in a conspicuous place, within the model homes or sales office.

9. Applicant shall submit a plan addressing on-site trash, litter, and debris during all construction phases.

10. 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 Public Works and Engineering Division. The site shall be kept in a manner as orderly as possible, given the nature of the project. Failure to maintain the site according to this condition may result in the City issuing a Stop Work order until the issue has been resolved.

Parks and Landscaping:

11. This project is not proposing to construct any parkland. The applicant will be required to pay the full in-lieu park impact fees on each lot.

12. The applicant shall submit conceptual landscape plans with any future Design Review application.

Fences and Walls:

13. Within the subdivision good neighbor fences shall be constructed as shown on the proposed plans, but with metal posts surrounded by a wood exterior or acceptable alternative, rather than wooden posts, 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.

14. All CMU walls, such as landscape retaining walls, shall use colored (i.e. non-grey) split-face CMU for all publicly and privately visible portions of the wall.

15. Anti-graffiti techniques shall be used on masonry walls.

Subdivision Design:

16. Driveway openings may be a maximum 18' in width or up to 25% of the lot's frontage, whichever is larger.

17. The street names shall be approved by the Community Development Department and the Contra Costa County Fire Protection District.

Subdivision Disclosures:

18. Where a lot/parcel is located within 300' of a high voltage electric transmission line, the applicant shall record the following notice:

> "The subject property is located near a high voltage electric transmission line. Purchasers should be aware that there is ongoing research on

possible potential adverse health effects caused by the exposure to a magnetic field generated by high voltage lines. Although much more research is needed before the question of whether magnetic fields actually cause adverse health effects can be resolved, the basis for such a hypothesis is established. At this time no risk assessment has been made."

When a Final Subdivision Public Report issued by the California Department of Real Estate is required, the applicant shall also request that the Department of Real Estate insert the above note in the report.

19. The following statements shall be recorded at the County Recorder's Office for each parcel to notify future owners of the parcels that they own property in an agricultural area:

> "This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust or blowing sand; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment such as zon guns and aerial crop dusting and certain animals, including equestrian trails as well as flies may exist on surrounding properties. This statement is again, notification that this is part of the agricultural way of life in the open space areas of the City of Oakley and you should be fully aware of this at the time of purchase."

Energy Efficiency:

20. Water heaters shall provide an energy efficiency factor of 0.62 or better.

21. Dual zone air conditioning shall be provided on all two-story residential units.

22. 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.

23. Design and site units so as to take advantage of natural heating and cooling, sin and wind exposure, and solar energy opportunities.

Design Review

24. The future design review application shall include details of 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.

Waste Management Plan:

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

BUILDING DIVISION CONDITIONS OF APPROVAL

26. 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.

27. 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.

28. 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 OF APPROVAL

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

29. 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.

30. 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.

31. 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.
32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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:

45. EXISTING WELLS. Provide documentation that any gas wells located onsite have been abandon per regulations.

46. 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.

47. 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

48. 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:

49. 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.

50. 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. Fuschia Lane and West Ruby Street shall be constructed with curb, gutter, sidewalk, street lights, pavement widening, signing, striping, and storm drainage as required consistent with the Vesting Tentative Map.

    b. Conduct a stop warrant analysis and install stop signs where necessary for the proposed intersections:

        - Fuschia Lane and West Ruby Street
        - Duarte Avenue and West Ruby Street

    c. Design Fuschia Way and West Ruby Street with traffic calming improvements such as speed tables, speed bumps, or bulb outs where necessary as required by the City Engineer.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. LANDSCAPING IN PUBLIC RIGHT OF WAY.
   a) Prepare landscape plans for landscape improvements within the public right of way. Landscape plans shall be prepared by a licensed landscape architect.
   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 private properties have assumed maintenance of front yard landscaping.
   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.

58. FENCING. Any proposed fencing and walls shall be located on private property and maintained by the property owner or owner.

59. SOUNDWALL. Soundwalls shall be installed within private property and not within public right of way.

60. MAINTENANCE EXHIBIT. Submit a maintenance exhibit showing the responsible maintenance entity of proposed subdivision improvements. Exhibit must clearly show which areas are to be maintained by the City of Oakley.

THE FOLLOWING PUBLIC WORKS AND ENGINEERING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE FINAL MAP:

61. 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.

62. FINAL MAP. Submit a Final Map prepared by a Licensed Land Surveyor. The final 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.

63. 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.
    b) Public Utility Easement (PUE): 5' PUE beyond 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 any existing easements no longer necessary have been quitclaimed.

64. 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.

65. 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.

66. DRAINAGE FEES. This project is located within Drainage Area 52D (DA 52D) and Drainage Area 130 (DA 130), for which drainage fees are due in accordance with Flood Control Ordinance Number 2006-52 and 2007-06 respectively. By ordinance, all building permits or subdivision maps filed in this area are subject to the provisions of the drainage fee ordinances.

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

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. ANNEXATIONS

a) Annex the property to the City of Oakley Community Facilities District No. 2020-1 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, streetlights, 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.

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. 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, APPROVED AND ADOPTED this 2nd day of August, 2022 by the following vote:

AYES: Chuiko, Henderson, Price, Shaw, Verduzco
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

Shannon Shaw, Chair

ATTEST:

Libby Vreonis, City Clerk

8/10/22
Date

RESOLUTION NO. XX-22

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING A TENTATIVE MAP (TM 02-22) TO SUBDIVIDE AN APPROXIMATELY 2-ACRE SITE INTO EIGHT (8) SINGLE-FAMILY RESIDENTIAL LOTS AND A VARIANCE (VA 01-22) REQUEST ON MEETING THE MINIMUM LOT REQUIREMENTS FOR FOUR (4) OF THE EIGHT (8) LOTS FOR THE PROJECT TITLED "GOLDEN OAK SUBDIVISION 9580": APN 035-090-082.

WHEREAS, on January 24, 2022, Pam Young ("Applicant") filed an application requesting approval of a of a Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots, including dedication and improvement of public right-of-way and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way. Applicant also requests approval of a Variance (VA 01-22) on meeting the minimum lot requirements for four (4) of the eight (8) lots ("Project"). The project site is located at 4960 Fuschia Way and zoned R-6 (Single-Family Residential) District. APN: 035-090-082; and

WHEREAS, Design Review (i.e. home design, landscape design, entrance features, street tree plan, etc.) has not been submitted in conjunction with this Tentative Map and Variance; and

WHEREAS, on March 3, 2022, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Residential Low/Medium (RLM)* in the Oakley General Plan, and zoned R-6 (Single Family Residential) District; and

WHEREAS, the proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, "Class In-Fill Development Projects; and

WHEREAS, on August 2, 2022, the Planning Commission held a properly noticed public hearing at which it received a report from City Staff, oral and written testimony from the Applicants and the public and deliberated on the applications. At the conclusion of its deliberations, the Commission took a vote and adopted Planning Commission Resolution Number 05-22 recommending the City Council adopt a resolution to approve the project, subject to the conditions recommended by Staff; and

WHEREAS, on September 27, 2022, the City Council held a properly noticed 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 continued the public hearing to a date uncertain; and

WHEREAS, on or before October 14, 2022, the Notice of Public Hearing for the Project was duly noticed in the Contra Costa Times, a newspaper of general distribution. On or before October 14, 2022, the Notice of Public Hearing was posted at the Project site, at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, and outside the library at Freedom High School located at 1050 Neroly Road, and the notice was 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 October 25, 2022, the City Council re-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 conditioned, 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 and the City's Zoning Ordinance, and the information submitted to the City Council at its September 27, 2022 and October 25, 2022 meetings, both written and oral, as reflected in the minutes of such meetings, together with the documents contained in the file for the Project (hereafter the "Record").

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the approvals:

A. In regard to the application requesting approval of Tentative Map (TM 02-22) to subdivide an approximately 2-acre parcel in to eight (8) single-family residential lots and dedication of public right-of-way, and extension of West Ruby Street to the intersection of Wildcat Way and Fuschia Way:

1. The proposed Tentative Map ("TM"), together with the provisions of its design and improvements, is consistent with the Zoning Ordinance, and applicable portions Residential Low/Medium (RLM), General Plan Land Use Designation, in that the TM's gross density within the gross density range of the RLM General Plan Land Use Designation of 3.8-5.5 du/ga, and the TM is designed in a manner that complies with all applicable development regulations, where possible and a variance has been requested for lots where not possible; and

2. The site is physically suitable for the type of development in that the project site for the tentative map is accessible, not physically constrained, and near

like uses, and it is also able to accommodate the proposed density of development in a manner consistent with the underlying land use designation; and

3. The site is physically suitable for the proposed density and number of dwelling units in that the proposed tentative map falls within the allowable density while creating lots compliant with the applicable Zoning District, as allowed by the related variance, and public and private roads to access the homes; and

4. The Project's is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, "Class In-Fill Development Projects"; and

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 eight (8) 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; and

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 Fuschia Way and extending West Ruby Street by providing additional roadway, sidewalks, curbs, and gutters; 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 aa 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 judgement 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 tentative map does not conflict with easements acquired by the public for access and utilities.

B. In regard to the Variance (VA 01-22) for Los 3, 4, 6, and 7 on meeting the minimum lot requirements required by the R-6 District:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in which the subject property is located.

Lots 3, 4, 6, and 7 are being proposed on an infill lot that is being bifurcated by a residential public street and its full width of right of way. Due to the irregular shape of the subject site, and the curve in the streets needed to connect to two existing public streets, unusual challenges are created when designing the lot layouts. Lots 3 and 4 fails to meet the minimum lot area and lot depth, respectively. Both are affected by the curving extension of West Ruby Street through the project. Lots 6 and 7 meet the minimum lot depth and size but are both approximately four feet short of the minimum lot width. The property line between the southern end of the site and the southern portion of the future right of way of West Ruby Street is 175.27 feet. At a minimum lot width of 60 feet, at least one of these lots would be required to not meet the minimum. The applicant has designed the properties to be more similar in size by increasing the width of the southern-most lot (Lot 8) affected by the private hammerhead. New construction on these lots will need to comply with the other development regulations of the R-6 District and there is adequate lot area to achieve this as shown in the Applicant's plans. This shows the lots with a minimum lot size, lot width, and depth can still meet other applicable development standards of the R-6 District; and

2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district.

   Lot 3 is a triangular-shaped corner lot with frontages on both Fuschia Way and West Ruby Street. The Variance would not affect the overall appearance of the lot size from Fuschia Way, and Lot 3 will meet the minimum lot area required by the R-6 District. Due to the extension of West Ruby Street, Lot 4 will not meet the minimum lot depth of lot of 80' on one side and the minimum lot area of 6,000 square-feet. Lots 6 and 7 are restricted in that they do not meet the minimum lot width of 60'. However, the lot area and lot depth are still met. Due to the dedication of land to the roadway and lot configuration, these parcels have been designed as abnormal lots. Any structures placed on these lots will meet the minimum development standards of the R-6 District;

3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the subject property is located.

   Lots 3, 4, 6, and 7 could still be developed in a manner consistent with the R-6 District development standards and maintain the residentially zoned district that exists today.

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 of the Applicant's request for the **Tentative Map (TM 02-22) and Variance (VA 01-22)**, 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 **January 24, 2022**, 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 BUILDING'S ON EITHER PARCEL UNLESS OTHERWISE NOTED:

PLANNING DIVISION CONDITIONS OF APPROVAL

General:

1. This **Tentative Map (TM 02-22) and Variance (VA 01-22)** application is recommended for approval, as shown on the plans presented as part of the packet presented to the City Council at the October 25, 2022 public hearing, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.

2. This approval for **Tentative Map (TM 02-22) and Variance (VA 01-22)** shall be effectuated within a period of three (3) years from the effective date of this resolution by either satisfying conditions in the Subdivision Map Act, or pulling a building permit for construction of the homes, and if not effectuated shall expire on that same date three years later, on October 25, 2025. Prior to the expiration date, the applicant may apply for a Tentative Map Extension pursuant to the provisions of the Zoning Code and Subdivision Map Act.

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 October 25, 2022.

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. If the remains are determined to be that of Native American origin, procedures will be guided by California PRC 5097 through California's Native American Heritage Commission.

7. The applicant shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project. The city shall promptly notify the applicant of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

8. The applicant shall post a copy of the City of Oakley General Plan Land Use Diagram, in a conspicuous place, within the model homes or sales office.

9. Applicant shall submit a plan addressing on-site trash, litter, and debris during all construction phases.

10. 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 Public Works and Engineering Division. The site shall be kept in a manner as orderly as possible, given the nature of the project. Failure to maintain the site according to this condition may result in the City issuing a Stop Work order until the issue has been resolved.

Parks and Landscaping:

11. This project is not proposing to construct any parkland. The applicant will be required to pay the full in-lieu park impact fees on each lot.

12. The applicant shall submit conceptual landscape plans with any future Design Review application.

Fences and Walls:

13. Within the subdivision good neighbor fences shall be constructed as shown on the proposed plans, but with metal posts surrounded by a wood exterior or acceptable alternative, rather than wooden posts, 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.

14. All CMU walls, such as landscape retaining walls, shall use colored (i.e. non-grey) split-face CMU for all publicly and privately visible portions of the wall.

15. Anti-graffiti techniques shall be used on masonry walls.

Subdivision Design:

16. Driveway openings may be a maximum 18' in width or up to 25% of the lot's frontage, whichever is larger.

17. The street names shall be approved by the Community Development Department and the Contra Costa County Fire Protection District.

18. The future driveway cut and driveway for Lot 5 shall be located to allow for as much visibility as possible for vehicles traveling westbound on West Ruby Street. It is anticipated this will require the driveway cut and driveway to be located on the western portion of the lot frontage.

19. In addition to the "Roadway Improvements" section of these conditions of approval, the future development of the project shall include the following traffic calming measures included in the "Traffic Calming Measures Exhibit" attached to the project's City Council Staff Report, dated October 25, 2022. The items are summarized as follows:

    a. "Curve Ahead 15 MPH" signs on either side of the "S" curve proposed within the project.

    b. Raised intersection at Wildcat Way and West Ruby Street connection.

    c. Raised crosswalk across West Ruby Street just west of the Duarte Avenue intersection.

    d. "Caution Crossing [pedestrians]" signage on West Ruby Street before the raised crosswalk.

e. “Slow Down Drive Safe” City of Oakley Traffic Calming signage.

f. Speed bump on Fuschia Way.

g. “Speed Bump 15 MPH” signage on north and south side of speed bump shown on Fuschia Way.

h. “T” intersection signage on the Fuschia Way approach to Wildcat Way.

i. Stop signs at the 3-way stop at Wildcat Way, Fuschia Way and West Ruby Street, if warranted.

Subdivision Disclosures:

20. Where a lot/parcel is located within 300’ of a high voltage electric transmission line, the applicant shall record the following notice:

> “The subject property is located near a high voltage electric transmission line. Purchasers should be aware that there is ongoing research on possible potential adverse health effects caused by the exposure to a magnetic field generated by high voltage lines. Although much more research is needed before the question of whether magnetic fields actually cause adverse health effects can be resolved, the basis for such a hypothesis is established. At this time no risk assessment has been made.”

When a Final Subdivision Public Report issued by the California Department of Real Estate is required, the applicant shall also request that the Department of Real Estate insert the above note in the report.

21. The following statements shall be recorded at the County Recorder’s Office for each parcel to notify future owners of the parcels that they own property in an agricultural area:

> “This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust or blowing sand; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment such as zon guns and aerial crop dusting and certain animals, including equestrian trails as well as flies may exist on surrounding properties. This statement is again, notification that this is part of the agricultural way of life in the open space areas of the City of Oakley and you should be fully aware of this at the time of purchase.”

Energy Efficiency:

22. Water heaters shall provide an energy efficiency factor of 0.62 or better.

23. Dual zone air conditioning shall be provided on all two-story residential units.

24. 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.

25. Design and site units so as to take advantage of natural heating and cooling, sin and wind exposure, and solar energy opportunities.

Design Review

26. The future design review application shall include details of 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.

Waste Management Plan:

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

BUILDING DIVISION CONDITIONS OF APPROVAL

28. 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.

29. 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.

30. 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 OF APPROVAL

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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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:

47. EXISTING WELLS. Provide documentation that any gas wells located onsite have been abandon per regulations.

48. 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.

49. 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

50. 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:

51. 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.

52. 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. Fuschia Way and West Ruby Street shall be constructed with curb, gutter, sidewalk, street lights, pavement widening, signing, striping, and storm drainage as required consistent with the Vesting Tentative Map.

b. Conduct a stop warrant analysis and install stop signs where necessary for the proposed intersections:

- Fuschia Way and West Ruby Street
- Duarte Avenue and West Ruby Street

c. Design Fuschia Way and West Ruby Street with traffic calming improvements such as speed tables, speed bumps, or bulb outs where necessary as required by the City Engineer.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. LANDSCAPING IN PUBLIC RIGHT OF WAY.

    a. Prepare landscape plans for landscape improvements within the public right of way. Landscape plans shall be prepared by a licensed landscape architect.

    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 private properties have assumed maintenance of front yard landscaping.

    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.

60. FENCING. Any proposed fencing and walls shall be located on private property and maintained by the property owner or owner.

61. SOUNDWALL. Soundwalls shall be installed within private property and not within public right of way.

62. MAINTENANCE EXHIBIT. Submit a maintenance exhibit showing the responsible maintenance entity of proposed subdivision improvements. Exhibit must clearly show which areas are to be maintained by the City of Oakley.

THE FOLLOWING PUBLIC WORKS AND ENGINEERING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE APPROVAL OF THE FINAL MAP:

63. 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.

64. FINAL MAP. Submit a Final Map prepared by a Licensed Land Surveyor. The final 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.

65. 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.

b. Public Utility Easement (PUE): 5' PUE beyond public right of way as required.

c. Ingress-egress, storm drainage easements, emergency access easements as required.

d. 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 any existing easements no longer necessary have been quitclaimed.

66. 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.

67. 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.

68. DRAINAGE FEES. This project is located within Drainage Area 52D (DA 52D) and Drainage Area 130 (DA 130), for which drainage fees are due in accordance with Flood Control Ordinance Number 2006-52 and 2007-06 respectively. By ordinance, all building permits or subdivision maps filed in this area are subject to the provisions of the drainage fee ordinances.

THE FOLLOWING SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF THE <u>BUILDING PERMIT</u>:

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. ANNEXATIONS

a. Annex the property to the City of Oakley Community Facilities District No. 2020-1 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, streetlights, 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.

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. 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.)

ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th day of October 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

_____

Randy Pope, Mayor Date

ATTEST:

_____

Libby Vreonis, City Clerk Date

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

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

FROM: Jeri Tejeda, Human Resources Director

SUBJECT: **Adopt a Resolution to appropriate ARPA Funds for Police Recruitment Incentives and Marketing**

Background and Analysis

Police Officer recruitment continues to be a challenge for the City. To date, we have six vacant officer positions and one vacant sergeant position as well as seven additional out on either injury or extended leave. Although we are not alone, as this challenges all police departments, the need to fill our vacant positions remains our top priority.

The safety of our officers and our community remain at the forefront, while continuing to be selective in our recruitment process. Our community deserves the best officers and we continue to keep our expectations high when searching for new team members.

With our needs continuing to grow, we need to look for ways to incentivize potential candidates. Being closer to home has been the common theme for our 2022 new hires. Although this has been great, it is proving to not be enough and doesn't compete with things like seniority, retirement formulas, vacation/sick accruals etc.

We are looking at ways to increase the interest to join our team. We are asking for a $250,000 appropriation from our ARPA funds as a one-time funding source. With this money, we ask that staff have the flexibility to determine how it is spent within the parameters mentioned below.

1. Advertising the Department
    a. Getting our story out there is most important. With our new salary step system and our new benefit package we have many positive things to share. We are a growing city that receives great support from our community and we are an evolving department with so much to offer.

These are all positive things, but unless we are getting this information into the right hands, we will not be successful in our search for good officers.

2. One-Time Hiring Incentive
    a. Provide a one-time hiring incentive to potential candidates. Parameters will be placed around when the funds are received as well as how much the incentive will be based on things like years of experience.
    b. To encourage retention and a commitment to the City of Oakley, the incentive will be paid half when the candidate passes our field training program, which can be 7-12 weeks from hire date depending on experience, and the other half when the candidate passes probation which is 12 months from the hire date.
    c. Incentives can be up to $10,000 based on experience and will be recommended by the Police Chief and approved by the City Manager. Nothing over $10,000 will be offered to an individual without Council consent.
3. Recruitment Incentive
    a. Provide current employees with a recruitment incentive of $2,500 per candidate they recruit.
    b. Incentives will only be provided after the candidate has passed the field training program which is 7-12 weeks from the hire date, depending on experience.
4. Contract Pay Out
    a. If an officer was sponsored in the academy by another agency, they may be obligated by contract to stay with that agency for a certain period of time.
    b. If they leave the agency prior to the end of their obligation, they must return the fee that was paid for their POST academy training.
    c. Allows lateral officers to consider a change now instead of waiting until the end of their contract period.
    d. Incentive will not exceed $10,000 and proof of amount owed will have to be provided. Nothing over $10,000 will be offered to an individual without Council consent.
5. Other Funds
    a. Staff is looking for the flexibility to use these funds should a recruitment opportunity present itself that has not been provided above

b. No incentive will be offered that would create an ongoing cost without Council consent.

c. Funds would only be used for the recruitment of Police Officers

d. Any use of funds other than provided above will be recommended by the Police Chief and approved by the City Manager

As ARPA funding has been available since July of 2021, staff is asking to retro these incentives back to July of 2021 and provide them to any officer hired between July 2021 and October 2022. This retro would include all of the options listed in the parameters above.

Consistency with the Oakley Strategic Plan 27+

This item is consistent with our strategic plans Community Health and Safety and Sustainable Organization goals. In order to maintain and accomplish many of the objectives provided in these goals, we need to ensure our staffing levels increase.

Fiscal Impact

This would require a budget appropriation of $250,000 for the Fiscal Year 2022/2023 Budget. Staff recommends this come from the ARPA funds received.

Staff Recommendation

Adopt a Resolution to appropriate ARPA Funds for Police Recruitment Incentives and Marketing

Attachments

1. Resolution

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROPRIATING ARPA FUNDS FOR POLICE RECRUITMENT INCENTIVES AND MARKETING

WHEREAS, Police Officer recruitment continues to be challenging; and

WHEREAS, with several vacant positions within the department, we need to increase advertisement and offer incentives to find good officers; and

WHEREAS, hiring remains top priority within the department; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oakley hereby approves the following:

Appropriation of $250,000 from the ARPA funds to police recruitment

Approval of the parameters provided in the staff report as options of how the City will incentivize potential candidates.

Approval of retro pay to officers hired between July 2021 through October 2022 as ARPA funding was awarded in July of 2021.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Oakley held on the 25th day of October 2022 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

_____
Mayor

ATTEST:

_____
Libby Vreonis, City Clerk Date

OAKLEY
CALIFORNIA

MEMORANDUM

Date: October 14, 2022

To: Joshua McMurray, City Manager

From: Kenneth Strelo, Planning Manager

Subject: Summary of Entitlements at the Emerson Ranch Commercial Site

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The Emerson Ranch Commercial site is located at the northwest corner of East Cypress Road and Sellers Avenue. It includes approximately 8-acres of commercially designated land and is a part of the Emerson Ranch Planned Unit Development District (P-1). Below is a bullet list showing the summary of entitlements received on the site to date, followed by a list of pending entitlements (one at this time) for applications not yet approved. The bullet list follows a chronological order starting with the original approvals of the Emerson Ranch project, including the P-1 District use and development regulations, and residential and commercial conceptual plans, then leading through amendments related to the Emerson Ranch site, and finally the recent Design Review approval for the Emerson Ranch Commercial site.

- 09/14/2010: City Council approval of Emerson Ranch Subdivision, including 578 single family residential homes and 24-acre commercial development.
    - City Council Resolution 105-10: Certification of the Emerson Ranch EIR.
    - City Council Resolution 106-10: Approval of a General Plan Amendment to expand the commercially designated land from 12 to 24 acres.
    - Ordinance No. 18-10: Rezone to P-1, plus approval of the residential and commercial Final Development Plans.
    - City Council Resolution 107-10: Approval of 1) a Vesting Tentative Map (9032) to subdivide approximately 140 acres into 578 single family lots, a 24 acre commercial parcel, and other park, trails, open space, and stormwater detention pond parcels, and 2) Design Review of the homes and commercial development plan, including the conceptual design and signage.

- 05/13/2013: City Council Resolution 35-13. City Council approval of amendments to the Final Development Plan related to the residential portion of the Emerson Ranch Development. No changes to the commercial portion.

- 06/14/2016: City Council approval of Woodbury (Neighborhood 6).
    - City Council Resolution 86-16: Approval of a General Plan Amendment designating approximately 16-acres of the 24-acre commercial site to "Multi-Family Residential, Low Density".
    - Ordinance No. 13-16: Amending the existing P-1 (Planned Unit Development) District to accommodate a Final Development Plan for the project titled, "Emerson Neighborhood 6 – Woodbury"
    - City Council Resolution 87-16: Approval of 1) a Vesting Tentative Map to subdivide approximately 16 acres into 104 single family lots with associated improvements, 2) a Final Development Plan for the portion of the P-1 District modified by the vesting tentative map, and 3) Design Review of house plans and architecture, and a plotting plan.

- 06/08/2021: City Council approval of the Emerson Ranch Commercial Design Review.
    - City Council Resolution 76-21: Design Review approval to develop an approximately 8-acre commercial center to include a gas station and convenience store, car wash, drive-through restaurant, grocery store, and three retail pad buildings[1].

Potential Future Entitlements:

- Per the approved P-1 District for the Emerson project, if additional conditionally permitted uses that were not originally approved are proposed in the future, they would be subject to approval of a conditional use permit. Examples of such uses are as follows: Gas Service Stations (with or without Car Wash and/or Convenience Store); Restaurants (with drive-thru service); Liquor Store; Hotels; Bar, lounge, tavern and similar establishments; and Tobacco Oriented Retail Establishment. The gas station approved in the Emerson Commercial site will be subject to approval of a conditional use permit (under the use of Liquor Store) if the operator proposes to sell beer, wine, or alcohol.

[1] Per the June 8, 2021 Staff Report supporting City Council Resolution 76-21, the P-1 District Development Standards of the adopted Emerson Ranch Conceptual Commercial Design (City Council Ordinance No. 18-10) includes a zoning matrix of permitted land uses. All of the uses proposed in the proposed plan approved by City Council Resolution 76-21 were included in the conceptual plan, and therefore, permitted by right. No conditional use permits were required. If additional conditionally permitted uses that were not originally approved and conceptualized are proposed, they would be required to file an application for conditional use permit approval.

Pending Entitlements:

- Shell Hydrogen Fueling Station Design Review (DR 07-22) - Application by Greg Kashiyama, on behalf of Fiedler Group requesting approval of a Design Review (DR 07-22) to install two (2) hydrogen fuel dispensers along with associated equipment at the proposed Shell fuel station located within the Emerson Ranch commercial development. Site modifications include removal of approximately 200 square-feet of landscaping and construction of an equipment enclosure. The project site is located at the property address 920 E. Cypress Road and zoned P-1 (Planned Unit Development) District. (APN: 037-192-038).

OAKLEY
CALIFORNIA

STAFF REPORT

DATE: October 25, 2022

TO: Joshua McMurray, City Manager

Approved and Forwarded to the City Council

FROM: Derek P. Cole, City Attorney

SUBJECT: Analysis Concerning Regulations Limiting Discussion of Personnel Matters During Public Comment

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Background and Introduction

At previous City Council meetings, a member of the Council has requested an analysis of what limitations, if any, the Council may impose during public comment concerning the expression of personnel matters involving City employees. This memorandum and the attachments are intended to respond to this request.

As will be explained, the City Council does not have any authority to limit the discussion of personnel matters, including the making of complaints and charges, during public comment.

Analysis

I attach two judicial opinions to this Staff Report. These cases, which challenged rules made by school-district boards, make very clear that the First Amendment precludes any restrictions on discussion of personnel matters during public comment.

For purpose of this discussion, a restriction on "personnel" matters would be typified by a rule at issue in one of the attached opinions. In the *Moreno Valley USD* Case, the rule read as follows:

> "No oral or written presentation in open session shall include charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee. If an attempt is made to include charges or complaints against an employee in any way, the Board President will order the presentation stopped at once, and the Board meeting will continue in accordance with the established agenda. All charges or complaints against employees must be submitted to the Board under provisions of Board policy.

> Any individual who violates this policy will be warned to discontinue his/her comments immediately. If the individual willfully interrupts the meeting by refusing to comply with the warning, the Board President may authorize the removal of the individual pursuant to Government Code section 54957.9."

I will avoid a very lawyerly or overly complex analysis of this issue because I believe the law as to this subject is so clear. Succinctly summarized, the reasoning of the two attached cases is that:

1. In requiring that the public be given an opportunity to comment on matters within the jurisdiction of the City Council, the Brown Act creates what First Amendment law describes as a "limited-purpose public forum."

2. When government creates a limited-purpose public forum, any "content-based" restriction on the speech allowed in such a forum is subject to strict constitutional scrutiny. A limitation on "personnel" matters is inherently content-based as it declares as off-limits speech concerning specific types of subjects—e.g., complaints about or charges against public employees.

3. Under strict-scrutiny analysis, local governments do not have a "compelling interest" in limiting public comment on these subjects. The protection of the rights of public employees who may be the subject of complaints or charges does not rise to the "compelling" level necessary to survive strict constitutional scrutiny.

4. Nor, under strict-scrutiny analysis, would limitations on the making of charges or complaints against public employees be "narrowly tailored" to ensure that do not sweep more broadly than necessary to serve any compelling interest.

Conclusion

The City Council has no authority to impose any limitation on public comments concerning personnel issues, including on the making of complaints about or charges against City employees.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Association of Christian Schools International v. Stearns, C.D.Cal., August 8, 2006

973 F.Supp. 951
United States District Court,
S.D. California.

Nancy LEVENTHAL; Margaret C. O'Neill, Plaintiffs,
v.
VISTA UNIFIED SCHOOL DISTRICT; School Board President David Hubbard, in his Official Capacity, et al., Defendants.

No. 97–709–BTM(LSP).
|
July 1, 1997.

Synopsis

Suit was brought against school district and against school board members in their official capacities, seeking injunctive and declaratory relief with respect to board bylaw prohibiting criticism of district employees at open board meetings. On plaintiffs' motion for permanent injunction and cross motions for summary judgment, the District Court, Moskowitz, J., held that: (1) Eleventh Amendment barred claims against school district and pendent state law claims for declaratory and injunctive relief against the board, but allowed suit under § 1983 for prospective injunctive and declaratory relief against the board members in their official capacities; (2) bylaw's prohibition of criticism violated First Amendment; (3) California law allows public employees to demand that a governing body air complaints about the employee in public, but does not grant the employees the right to force the conflict behind closed doors; and (4) bylaw provision regulating the placement of agenda items at open board meetings was valid.

Motions granted in part and denied in part, and declaration and injunction issued.

Procedural Posture(s): Motion for Summary Judgment.

Attorneys and Law Firms

***953** Guylyn R. Cummins, Gray, Cary, Ware, & Freidenrich, San Diego, CA, Jordan C. Budd, ACLU Foundation of San Diego and Imperial Counties, San Diego, CA, for Plaintiffs.

Susan J. Boyle William Wood Merrill Littler, Mendelson, Fastiff, Tichy & Mathiason, San Diego, CA, for Defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION AND SUMMARY JUDGMENT, AND GRANTING IN PART AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

MOSKOWITZ, District Judge.

INTRODUCTION

This matter comes before the Court on Plaintiffs' motion for permanent injunction and summary judgment, and Defendants' motion for summary judgment. Apart from the amended reasoning outlined below in Part IV, the Court adopts its order of

June 18,1997 and applies that order to Defendant David Hubbard and to the new Defendants—Jenny Vervynck, Lance Vollmer, Linda Rhoades and Barbara Donovan, sued in their official capacity. Accordingly, for the reasons stated below, the Court grants in part and denies in part Plaintiffs' motion and grants in part and denies in part Defendants' motion.

BACKGROUND

The following facts are undisputed. Plaintiffs Margaret C. O'Neill ("O'Neill")—a resident, volunteer, and parent of a student in the Vista Unified School District (the "District")—and Nancy Leventhal ("Leventhal")—a resident and community volunteer of the District and a former teacher—bring this action against the District and David Hubbard, Jenny Vervynck, Lance Vollmer, Linda Rhoades and Barbara Donovan, in their official capacity as members of the Vista School Board. Plaintiffs challenge School Board Bylaw No. 9002 (the "Bylaw") under the First and Fourteenth Amendments to the United States Constitution, Article I, §§ 2, 3 and 7 of the California Constitution, and the state's Brown Act, Cal. Gov't Code §§ 54954.3 and 54960, seeking declaratory and injunctive relief.

The Bylaw permits the Board President to "terminate a presenter's address" at an open Board meeting "if a presenter persists, after a warning, to engage in improper conduct or remarks." Bylaw, § C. The Bylaw acknowledges ***954** that state law grants the public the right "to directly address the Board on items of interest to the public that are within the subject matter jurisdiction of the Board," but limits those rights "with respect to presenting a complaint or charge against an employee of the District." *Id.* § B. Under the Bylaw, "[c]omplaints against an individual employee will not be heard at open Board meetings unless the individual employee consents." *Id.* § C. In addition, all proposed agenda items must be submitted to the Superintendent nine days before any regular Board meeting to "determine whether the specific matter is directly related to the business of the district or is appropriate for an open Board meeting." *Id.* § A. A decision by the Superintendent not to place an item on the agenda may appealed to the Board. *Id.*

During the public comment portion of the February 20, 1997 Board meeting, the Plaintiffs attempted to address the qualifications and job performance of the District Superintendent, Dr. Jack Gyves ("Gyves"). Specifically, Leventhal expressed concerns that Gyves had a social relationship with Board member Jenny Vervynck ("Vervynck"), and that the relationship might compromise Vervynck's ability to participate in Gyves's contract negotiations and performance evaluations. (Leventhal I Decl., ¶ 5.[1]) Because she had concerns over Gyves's fiscal administration of the District, his supervisory skills, and his prior performance as superintendent of another school district, (*id,* ¶ 8), Leventhal also questioned aloud whether the Board had adequately investigated Gyves prior to hiring him. (Leventhal 1 Decl., ¶ 8; Leventhal 2 Decl., ¶ 5.) As soon as Leventhal mentioned Gyves's qualifications, Board President Hubbard interrupted her, stated that Leventhal was "moving into a personnel issue," and, pursuant to the Bylaw, informed her that her criticisms could not be made in a public Board meeting. (Leventhal 1 Decl., ¶ 9; Leventhal 2 Decl., ¶ 5.) According to Leventhal, after Hubbard's interruption, she "respectfully—but not voluntarily—terminated [her] comments about the hiring of Dr. Gyves, rather than face the indignity of further censorship and disruption of the proceedings...." (Leventhal 2 Decl., ¶ 7.)

At the February 20 meeting, O'Neill also tried to raise the issue of Gyves's performance at his former position and was similarly rebuffed by Hubbard. (O'Neill 2 Decl., ¶ 3.) O'Neill claims she omitted certain remarks about Gyves[2] from her prepared statement, "not voluntarily" but because "Mr. Hubbard threatened to clear the meeting room if I continued to criticize Dr. Gyves." (*Id.* ¶ 6.)

During the next Board meeting on March 6, 1997, Vervynck responded to Leventhal's comments from the previous meeting. Vervynck characterized Leventhal as a "voice[ ] of criticism" who "sought to destroy and dismantle" through "innuendo" and the "impugning" of Vervynck's integrity. (Tr. of March 6, 1997 Bd. Mtg., Ex. B to Dow Decl., at 1.) Neither Hubbard nor any other Board member interrupted Vervynck during her statement. Leventhal then spoke, remarking that "it is totally inappropriate to have a community member who is using their free speech rights to speak ... lectured and have judgments made about them

publicly." (*Id.* at 5.) Hubbard responded to Leventhal, explaining that while criticisms of the Board and the District were permissible, "I'm not going to allow this to turn into a situation where members of the public engage board members in personal attacks.... [I]f that's an abridgment of First Amendment rights, ***955** then I'll wait for a court of law to tell me that." (*Id.*)

In addition to Leventhal and O'Neill, other members of the District community have expressed concerns regarding their ability to address the Board on matters of public concern. [3]

The Board addressed the propriety and legality of the Bylaw at a March 20, 1997 open Board meeting, reiterating that the regulation barred criticism of District employees in open sessions and explaining that the District had no intention of changing the bylaw. The Plaintiffs have declined invitations to air their complaints about the Superintendent in closed sessions.

Since the March meetings, the Plaintiffs contend that the Bylaw continues to inhibit their ability to discuss public issues at open Board meetings. For example, concerns have recently arisen as to whether several top school officials—including Superintendent Gyves—have failed to comply with state bidding laws in connection with the renovation of Vista High School's softball fields. Although the controversy has received some media attention, *see, e.g.,* Philip K. Ireland, *VUSD board to discipline employees,* North County Times, June 7, 1997, at A1, Leventhal refrained from discussing it in a June 7, 1997 Board meeting lest she violate the Bylaw and risk being silenced or ejected from the meeting. (Leventhal 3 Decl., ¶ 2.)

DISCUSSION

I. Eleventh Amendment immunity

Defendants argue that because school districts are state agencies for purposes of the Eleventh Amendment, *see* *Belanger v. Madera Unified School Dist.,* 963 F.2d 248, 251 (9th Cir.1992), the District and the individual Defendants are immune from suit.

As to the District itself, the Court agrees that the Eleventh Amendment bars the Plaintiffs' claims. *See, e.g.,* *Cerrato v. San Francisco Community College Dist.,* 26 F.3d 968, 972 (9th Cir.1994) (holding college school district immune from suit in federal court under Eleventh Amendment). This holding has little practical effect, however, because Plaintiffs' claims against the Board members in their official capacity remain in the case. Since *Ex parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), it has been well established that plaintiffs may sue state officers in their official capacity for prospective injunctive and declaratory relief. *See, e.g.,* *Seminole Tribe of Florida v. Florida,* 517 U.S. 609, ——, 116 S.Ct. 1114, 1132, 134 L.Ed.2d 252 (1996) ("[S]ince our decision in *Ex parte Young* ..., we have often found federal jurisdiction over a suit against a state official when that suit seeks only prospective injunctive relief".... (citation omitted)); *Papasan v. Allain,* 478 U.S. 265, 278, 106 S.Ct. 2932, 2940, 92 L.Ed.2d 209 (1986) ("[R]elief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though ***956** accompanied by a substantial ancillary effect on the state treasury."); *Natural Resources Defense Council v. California Dep't of Transp.,* 96 F.3d 420, 423 (9th Cir.1996) (holding that Eleventh Amendment does not bar federal suit against state official for prospective injunctive relief); *Cerrato,* 26 F.3d at 973 ("It is well established that the Eleventh Amendment does not bar a federal court from granting prospective injunctive relief against an officer of the state who acts outside the bounds of his authority."). Accordingly, the Board members are subject to suit under 42 U.S.C. § 1983 for prospective injunctive and declaratory relief. *See, e.g.,* *Chaloux v. Killeen,* 886 F.2d 247, 252 (9th Cir.1989) ("[A]lthough the Supreme Court held recently [in *Will v. Michigan Dep't of State Police,* 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989)] that state or state officials are not considered 'persons' under § 1983, this holding does not apply when a state official in his or her official capacity is sued for prospective relief.").

II. Applicable law

As a general rule, courts should "avoid adjudication of federal constitutional claims when alternative state grounds are available." *Vernon v. City of Los Angeles,* 27 F.3d 1385, 1391–92 (9th Cir.1994). This concept applies even where, as here, the alternate ground is based in state constitutional law. *See* *Carreras v. City of Anaheim,* 768 F.2d 1039, 1042–43 (9th Cir.1985).

In the instant case, however, the avoidance doctrine conflicts with an even stronger constitutional rule. In *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), the Supreme Court held that the Eleventh Amendment bars federal courts from granting injunctive relief against state officials for violations of state law. *See Ashker v. California Dep't of Corrections,* 112 F.3d 392, 394 (9th Cir.1997). The Court thus lacks jurisdiction to hear Plaintiffs' pendent state law claims for declaratory and injunctive relief. Although the Defendants did not raise this argument, the Court has an independent duty to examine its own jurisdiction. *See* *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 229, 110 S.Ct. 596, 606–07, 107 L.Ed.2d 603 (1990). Accordingly, the Court need not and cannot invoke the avoidance doctrine to consider Plaintiffs' state law claims.

III. Ban on criticism of employees in open meetings: Bylaw No. 9002 §§ B and C

Plaintiffs' primary claims challenge the Bylaw's restrictions on raising "complaints" or "charges" against District employees at open Board meetings. [4] Bylaw, §§ B & C. As explained below, the Court finds the criticism provisions to be violative of core First Amendment values.

Because it concerns the government's ability to limit private expression in a public context, this case is governed by the public forum doctrine. Although the doctrine's roots can be traced back to dicta in the Supreme Court's decision in *Hague v. CIO,* 307 U.S. 496, 515, 59 S.Ct. 954, 963–64, 83 L.Ed. 1423 (1939), the modern categorical approach began with *Perry Education Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). In *Perry,* the Court identified three distinct types of fora: first, "traditional" public fora—"places which by long tradition or government fiat have been devoted to assembly and debate;" second, "limited" public fora—"public property which the State has opened for use by the public as a place for expressive activity;" and third, "nonpublic" fora—property not dedicated in any significant way to free or open communication. *Id.* at 45–46, 103 S.Ct. at 954–56.

Under this categorical system, the state's ability to regulate speech depends on the nature of the forum. The government's power to restrict expression in traditional public fora, the *Perry* Court explained, is extremely limited: "reasonable time, place and manner regulations are permissible, and a content- ***957** based prohibition must be narrowly drawn to effectuate a compelling state interest." *Id.* at 46, 103 S.Ct. at 955–56. The Court imposed similar restraints on speech in limited public fora: "Although a State is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum." *Id.* In nonpublic fora, the government may restrict expression only if the regulation is reasonable and viewpoint-neutral. *Id.*

The first step in the public forum analysis requires the Court to determine the nature of the forum at issue. Here, the Court finds that the open Board meetings are limited public fora, "i.e., fora open to the public in general, but limited to comments related to the school board's 'subject matter.' " *Baca v. Moreno Valley Unified School Dist.,* 936 F.Supp. 719, 729 (C.D.Cal.1996). In *City of Madison Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976), where the Supreme Court invalidated a restriction on non-union employee speech at open school board meetings, the Court noted that "the State ha[d] opened a forum for direct citizen involvement." *Id.* at 175, 97 S.Ct. at 426. Because

the case pre-dated *Perry's* categorical public forum approach, the Court in *Madison* did not explicitly refer to the school board meeting as a "limited public forum." Nonetheless, in establishing the three public forum categories, the *Perry* Court cited the school board in *Madison* as a quintessential example of a limited public forum, *Perry,* 460 U.S. at 45, 46 n. 7, 103 S.Ct. at 954–55, 955 n. 7. Since *Perry,* courts have regularly read *Madison* to have declared open school board meetings to be limited public fora. *See, e.g., Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.,* 473 U.S. 788, 803, 105 S.Ct. 3439, 3449–50, 87 L.Ed.2d 567 (1985) ("[I]n *Madison* ..., the Court held that a forum for citizen involvement was created by a state statute providing for open school board meetings."); *Baca,* 936 F.Supp. at 728, 729 (citing *Madison* and holding that school board meetings are limited public fora); *Clark v. Burleigh,* 4 Cal.4th 474, 489, 14 Cal.Rptr.2d 455, 841 P.2d 975 (1992) (noting that *Madison* "presented a designated public forum unlimited as to speakers but not as to topic: any member of the public could speak, but only on school board business").

Although the Ninth Circuit has expressed uncertainty about *Madison's* application to city board meetings, *Kindt v. Santa Monica Rent Control Bd.,* 67 F.3d 266, 270 (9th Cir.1995) (stating that city council and city board meetings "fit more neatly into the nonpublic forum niche"), those meetings are distinguishable from the District's Board meetings for several reasons. First and most simply, since *Madison* the Supreme Court has never wavered from its characterization of school boards as limited public fora. Second, California statutory law mandates the open nature of school board meetings not only in the Brown Act, Cal. Gov't Code §§ 54953 and 54954.3 (requiring meetings of certain public bodies, including school boards, to be open to the public, and declaring that the public must be allowed to speak "on any item of interest to the public ... that is within the subject matter jurisdiction of the legislative body"), but also in the Education Code, Cal. Educ.Code § 35145.5 ("Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the governing board on any item of interest to the public ... that is within the subject matter jurisdiction of the governing board.").

As noted above, content-based restrictions in a limited public forum (beyond those defining the forum's boundaries) are permissible only if they are narrowly drawn to advance a compelling state interest. *See International Soc'y for Krishna Consciousness, Inc. v. Lee,* 505 U.S. 672, 678, 112 S.Ct. 2701, 2705, 120 L.Ed.2d 541 (1992). It seems clear that the Bylaw's prohibition on criticism of District employees is a content-based regulation. *See Baca,* 936 F.Supp. at 729 ("It is difficult to imagine a more content-based prohibition on speech than this policy...."). It is equally clear that the District's concerns and interests in proscribing public commentary cannot outweigh the public's fundamental right to engage in robust public discourse on school issues.

***958** Debate over public issues, including the qualifications and performance of public officials (such as a school superintendent), lies at the heart of the First Amendment. *See, e.g., Schenck v. Pro–Choice Network,* ––U.S. ––––, ––––, 117 S.Ct. 855, 858, 137 L.Ed.2d 1 (1997) (noting that "commenting on matters of public concern" is "classic form[ ] of speech that lie[s] at the heart of the First Amendment"); *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 344–45, 115 S.Ct. 1511, 1518, 131 L.Ed.2d 426 (1995) (remarking that political speech "occupies the core of the protection afforded by the First Amendment"); *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 776–77, 98 S.Ct. 1407, 1415–16, 55 L.Ed.2d 707 (1978) (suggesting that discussion of public issues lies "at the heart of the First Amendment's protection"); *Buckley v. Valeo,* 424 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976) ("The First Amendment affords the broadest protection to ... political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' " (second alteration in original) (quoting *Roth v. United States,* 354 U.S. 476, 484, 77 S.Ct. 1304, 1308–09, 1 L.Ed.2d 1498 (1957))). Central to these principles is the ability to question and challenge the fitness of the administrative leader of a school district, especially in a forum created specifically to foster discussion about a community's school system. As the Supreme Court explained in *New York Times v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964):

> The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. [I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions, and this opportunity is to be afforded for vigorous advocacy no less than abstract discussion.

Id. at 269, 84 S.Ct. at 720 (internal quotations and citations omitted).

Defendants contend that these concerns are outweighed by the District's interest in protecting the privacy and property rights of its employees. They rely primarily on section 54957 of the Brown Act, which provides:

> Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency ... from holding closed sessions ... to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

Cal. Gov't Code § 54957. According to the District, this section codifies the protections for the privacy and property rights of public employees and thus requires the Board to limit criticism of the employees to closed meetings.

Before examining the Defendants' contentions, it is important to remember that even if the Brown Act sanctioned the Bylaw, First Amendment speech guarantees would trump the statute. It is no defense to suggest that since the Brown Act created the Board meetings, the Brown Act can also authorize unconstitutional limitations on those meetings. The essence of the public forum doctrine is the notion that although the government need not devote its property to expressive activity, once it does it is bound by the strictures of the First Amendment.

That said, the Brown Act provides little support for the District's position. Although § 54957 allows public employees to demand that a governing body air complaints about the employee in public, it does not grant the employees the right to force the conflict behind closed doors. Similarly, while the Brown Act permits governing bodies to hold closed sessions about personnel matters, nowhere does it grant those bodies the exceedingly broader authority to silence public speech that may also touch upon related employment issues. As noted above, the sections of the Brown Act and the Education Code that require the Board to hold public meetings grant the public a right to speak "on *any* item of interest to the public ... that is within the subject matter jurisdiction" ***959** of the Board, without exception. Cal. Gov't Code § 54954.3(a) (emphasis added); Cal. Educ.Code § 35145.5 (emphasis added).

The preamble to the Brown Act sets forth the primary purposes of the Act as a whole:

> The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants their right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

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Cal. Gov't Code § 54950. In *San Diego Union v. City Council,* 146 Cal.App.3d 947, 954, 196 Cal.Rptr. 45 (1983), the court balanced the same two Brown Act provisions (the "personnel exception" of § 54957 and the "sunshine law" of § 54953) apparently in conflict in the instant case. Citing the statute's preamble, the court concluded that it "must construe the 'personnel exception' narrowly and the 'sunshine law' liberally in favor of openness." *Id,* at 955, 196 Cal.Rptr. 45. The court explained, "Public visibility breeds public awareness which in turn fosters public activism politically and subtly encouraging the governmental entity to permit public participation in the discussion process." *Id.* Thus, while the Brown Act authorizes a school board to discuss personnel matters in closed session, it does not preclude the public from raising such matters at open Board meetings. Once the matter has surfaced in public, the Board and the employee still may adjudicate the matter in closed session.

While the Court recognizes the privacy and property interests of the District's employees, the District's asserted interests pale in comparison to the expressive rights of the public. In *Baca v. Moreno Valley Unified School Dist.,* 936 F.Supp. 719 (C.D.Cal.1996), the district court invalidated a local ordinance strikingly similar to the Bylaw here. Responding to comparable arguments by the defendants, the *Baca* court explained that the

> District's interest in protecting its employees' right of privacy is an interest it holds only as an employer, not as a government entity, e.g., a legislative body charged with permitting public comment at its meetings. Thus, its interest as an employer in protecting its employees' right to privacy cannot be characterized as a compelling governmental interest.

Id. at 732. This echoes the Supreme Court's discussion in *Madison* of the multi-faceted nature of school board operations: "Whatever its duties as an employer, when the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment or the content of their speech." *Madison,* 429 U.S. at 176, 97 S.Ct. at 426. In presiding over open Board meetings, the District provides a forum for the Plaintiffs' critical comments; it does not endorse, sanction, or act upon those comments at the open meeting. *See Baca,* at 732 n. 13 (noting how, under Brown Act, decisions over employees' appointment, performance evaluation, discipline/dismissal/release, salaries, workers' compensation claims, etc. are considered by Board in closed session). As a result, the public's statements cannot, as a matter of law, give rise to an insulted employees' claim for defamation or deprivation of due process. *See* *Baca,* 936 F.Supp. at 733 (noting that "one who is not the employee's employer can not directly deprive the employee of due process" (citing *Gini v. Las Vegas Metropolitan Police Dep't,* 40 F.3d 1041, 1044 (9th Cir.1994))).

Additionally, it is noteworthy that the Bylaw has not been used to protect "the need for civility and expedition in the carrying out of public business." *Kindt v. Santa Monica Rent Control Bd.,* 67 F.3d 266, 270 (9th Cir.1995). There has been no claim that the Plaintiffs disrupted any Board meeting. If and when such problems do arise, the Board has at its disposal other sections of the Brown Act designed to restoring order and civility to the public meetings. *See, e.g.,* Cal. Gov't Code § 54957.9 [5]

***960** In *Madison,* the challenged regulation prohibited public speech by teachers "on matters subject to collective bargaining." *Madison,* 429 U.S. at 176, 97 S.Ct. at 427. Invalidating the restriction, the Supreme Court noted its potentially broad scope, remarking that "there is virtually no subject concerning the operation of the school system that could not also be characterized as a potential subject of collective bargaining." *Id.* at 177, 97 S.Ct. at 427–28. So, too, most items within the Board's "subject matter jurisdiction" can be recast as "personnel" issues and therefore subjected to the Bylaw's limitation. Thus, as in *Madison,* restraining the public's "expression to the board on matters involving the operation of the schools would seriously impair the

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board's ability to govern the district." *Id.* For these reasons, the Bylaw cannot withstand the constitutional scrutiny applied to limited public fora.

Alternatively, the Bylaw fails even under the more deferential standard of review applied to speech restrictions in nonpublic fora. As mentioned above, regulations in nonpublic fora will survive a constitutional challenge only if they are "reasonable in light of the purpose served by the forum and are viewpoint neutral." *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384, 392–93, 113 S.Ct. 2141, 2146–47, 124 L.Ed.2d 352 (1993) (quoting *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.,* 473 U.S. 788, 806, 105 S.Ct. 3439, 3451, 87 L.Ed.2d 567 (1985)). Although content-based restrictions are permissible in nonpublic fora, laws that discriminate not only on the subject matter of speech but also on the viewpoint of the speaker violate core free speech principles. In *Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995), the Supreme Court explained:

> When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology is the rationale for the restriction.

Id. at 829, 115 S.Ct. at 2516 (citations omitted).

The Bylaw effectuates a classic form of viewpoint discrimination. As the *Baca* court noted, the regulation "allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject matter (District employees' conduct or performance)." *Baca,* 936 F.Supp. at 730. This system engenders discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue and, ultimately, dynamic political change.

The Bylaw fosters yet another form of viewpoint discrimination, unfairly permitting one-sided debate at Board meetings. As previously discussed, Superintendent Gyves and Board member Vervynck criticized several non-employee speakers. (*See, e.g.,* Rosen Decl. ¶¶ 5,7; Bristol Decl. ¶¶ 6, 8–9.) Yet members of the community at large cannot respond to these charges, even to discuss the same subject matter or issue, if Board President Hubbard determines that their comments relate to a "personnel issue." In other words, the Bylaw permits the expression of one viewpoint ("complaints" or "charges" against members of the public) but not another ("complaints" or "charges" against District employees). Accordingly, even if the Board meetings were nonpublic fora, the Bylaw operates in direct violation of the First Amendment.

The Defendants' limitation on public criticism is of particular concern in this case, arising as it does in the context of public education. The public entrusts school boards with the education of its children, and the schools play a critical role in the social, ethical, and civic development of those students. To relegate discussion on the education of a community's children to closed, back-room ***961** sessions would deprive the public of the most appropriate forum to debate these issues. As Justice Jackson warned in *West Virginia Bd. of Educ. v. Barnette,* 319 U.S. 624, 637, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943): "That [school boards] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *See also, e.g., Shelton v. Tucker,* 364 U.S. 479, 486, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1960) ("The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.").

It should be made clear that the Court does not pass on the District's ability to limit the forum for complaints for actual disciplinary action against teachers, custodians, cafeteria workers and other non-policymaking employees of the District alleging specific violations of the law or District policies and regulations. Whether the District may require such a complaint to be raised in closed session is not before the Court. The Bylaw at issue here as interpreted by the Defendants proscribes public criticism of all employees, including the Superintendent and other District employees who, at the public's expense and with the public's trust, create and execute policies ranging from public expenditures to everyday student affairs. The Plaintiffs have not sought to file actual complaints for discipline, nor do they allege they intend to, against non-policymaking District employees. Thus, the Court need not decide whether the District can create very narrow Bylaws relating to such complaints for disciplinary action.

Moreover, the Court does not pass on the District's ability to protect its students' right to privacy. *See, e.g.,* Cal. Educ.Code § 35146. The Bylaw in question here is not limited to precluding mentioning students by name. Whether a narrowly drawn bylaw safeguarding the privacy rights of students named at Board meetings would pass constitutional muster also is not before the Court today.

Finally, the Court reiterates that this decision does not invalidate § 54957 of the Brown Act. As discussed above, the Brown Act does not authorize the Bylaw's broad criticism ban, so the constitutionality of the Brown Act has never been at issue here.

IV. Prior approval of agenda items: Bylaw No. 9002 § A

Plaintiffs have standing to challenge Bylaw § A, the provision regulating the placement of agenda items,[6] notwithstanding the fact that Defendants have never denied any of the Plaintiffs' requests to add an item to a Board meeting agenda.[7] *See, e.g., Gaudiya Vaishnava Society v. City and County of San Francisco,* 952 F.2d 1059, 1062 (9th Cir.1990) (holding that plaintiffs have standing to pursue facial challenge to alleged prior restraint "without the necessity of first applying for, and being denied, a permit" (citing *City of Lakewood v. Plain Dealer Publishing Co.,* 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988))). Nonetheless, the Court holds that once the Bylaw is stripped of the criticism bans contained in ***962** §§ B and C, § A is not an unconstitutional prior restraint.

Read in light of the First Amendment principles outlined in this decision, the Superintendent's determination of whether a proposed agenda item is "appropriate for an open Board meeting" is limited to consideration of whether the item falls "within the subject matter jurisdiction of the legislative body." Cal. Gov't Code § 54954.3. As a matter of law, the Superintendent cannot factor into his or her decision any additional viewpoint– or content–based criteria. Moreover, § A contains sufficient procedural safeguards necessary to secure constitutional compliance. *See FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 227, 110 S.Ct. 596, 605–06, 107 L.Ed.2d 603 (1990) (noting three procedural safeguards required of prior restraints). While the Bylaw does not explicitly place time limits on the Superintendent's decision to grant or deny agenda requests, it does provide that requests be made "at least nine working days before any regular meaning." The Court reads into this language an implicit requirement that the Superintendent rule on the request within that nine-day period. Furthermore, § A affords members of the community the opportunity to contest any denials by the Superintendent in a prompt and public hearing. Bylaw, § A ("The appeal will be placed on the agenda of the next regular meeting for action by the Board."). While mindful of the dangers of prior restraints, the Court recognizes that the Board must have some authority to set its agenda or it would be unable to conduct its business. With the above limitations read into the Bylaw, then, § A does not rise to the level of a proscribed prior restraint.[8]

As a final note, each Board meeting features a "public comment period" apart from the regular agenda items. Thus, even if the Plaintiffs were unable to place a given issue on the Board's agenda, they could still raise their concerns during the public comment period.

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CONCLUSION

For the reasons stated above, the Court grants in part and denies in part Plaintiffs' motion for summary judgment and permanent injunction and grants in part and denies in part the Defendants' motion for summary judgment[9] The Court declares that the prohibitions on any criticism, "complaint or charge against an employee of the District" contained in Vista Unified School District Bylaw No. 9002, §§ B and C, violate the Plaintiffs' rights secured under the First and Fourteenth Amendments to the United States Constitution. Defendants David Hubbard, Jenny Vervynck, Lance Vollmer, Linda Rhoades and Barbara Donovan, acting in their official capacity as members of the School Board of the Vista Unified School District, and their agents, successors, *see* *Hafer v. Melo,* 502 U.S. 21, 24–25, 112 S.Ct. 358, 361–62, 116 L.Ed.2d 301 (1991) ("[W]hen officials sued in [their official capacity] in federal court die or leave office, their successors automatically assume their roles in this litigation"), and employees who have received notice of this order, are hereby permanently enjoined and restrained from enforcing the prohibitions on any criticism, "complaint or charge against an employee of the District" contained in Vista Unified School District Bylaw No. 9002, §§ B and C.

IT IS SO ORDERED.

All Citations

973 F.Supp. 951, 121 Ed. Law Rep. 95

Footnotes

1 The Plaintiffs have submitted numerous declarations in connection with the motions now before the Court. For the sake of simplicity, "Leventhal 1 Decl." and "O'Neill 1 Decl." refer to the declarations filed on May 19, 1997 in support of Plaintiffs' motion for summary judgment. "Leventhal 2 Decl." and "O'Neill 2 Decl." refer to the declarations filed on June 2, 1997 in support of Plaintiffs' opposition to Defendants' motion for summary judgment. "Leventhal 3 Decl." refers to Leventhal's supplemental declaration filed on June 9, 1997 in support of Plaintiffs' motion for summary judgment.

2 According to O'Neill, she omitted the following statement from her remarks: "It is my understanding that in the last two school districts Dr. Gyves has worked in, monies have been paid to him in order to break his contract, due to similar budget problems. In my opinion if this were the past history of Dr. Gyves it would suggest a pattern of behavior." (O'Neill 2 Decl., ¶ 4.)

3 For instance, Mary Bristol, mother of five former and two current students in the district, has submitted a declaration describing her participation in the March 20, 1997 Board meeting. At that meeting, Bristol expressed her concerns about Gyves's support for a proposal to redraw the District's boundary lines. (Bristol Decl., ¶ 5.) According to Bristol, Gyves denied that he had endorsed the proposal, "attack[ing]" Bristol's credibility and referring to her remarks as "bizarre" and "about typical of the accuracy of your statements historically." (*Id.* ¶ 6.) Bristol states that Hubbard, the Board President, made no effort to restrain Gyves's comments, "despite the fact that Mr. Hubbard has repeatedly silenced several members of the public who have attempted to criticize Dr. Gyves and various Board members at recent Board meetings." (*Id.* ¶ 9.) Bristol concludes, "Based on Mr. Hubbard's continuing enforcement of Bylaw No. 9002, I now refrain from speaking openly at public Board meetings about my concerns and criticisms regarding the District Superintendent's qualifications and performance." (*Id.* ¶ 10.)

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In addition, Leonard Rosen alleges in his declaration that at the March 20 Board meeting he attempted to respond to Vervynck's remarks about Leventhal, stating to the Board, "I have never been more horrified or shocked than I was at the last meeting of this Board. The way that you—Ms. Vervynck—used your office to attack a member of this community." (Rosen Decl., ¶ 7.) Hubbard stopped Rosen and warned him that "personally challenging a board member" was prohibited. Rosen refused to continue under those restrictions. (*Id.*) The Board has since declared that criticism of Board members, as opposed to employees of the District, is permitted under the Bylaw.

4 Although it conceivable that, on its face, the Bylaw regulates only formal charges filed against District employees, the District has read the Bylaw to cover even informal criticism about the employees. The Court will accept this interpretation of the Bylaw as accurate. *See, e.g.,* *Smiley v. Citibank,* 517 U.S. 735, ——, 116 S.Ct. 1730, 1733, 135 L.Ed.2d 25 (1996) (noting deference accorded to agency interpretation of its own regulations).

5 That section provides in relevant part:

> In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot by restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session.

Cal. Gov't Code § 54957.9.

6 That section reads in relevant part:

> Any member of the public who desires to place a matter for information or action on the agenda of an open Board meeting shall notify the Superintendent in writing at least nine working days before any regular meeting. The written notification shall specify the matter and include any relevant background information. The Superintendent shall determine whether the specific matter is directly related to the business of the district or is appropriate for an open Board meeting. The Superintendent will provide a written response to the person requesting the item with a copy to Board members. Any decision by the Superintendent not to place a requested matter on the agenda may be appealed in writing to the Board. The appeal will be placed on the agenda of the next regular meeting for action by the board.

Bylaw, § A.

7 The Court corrects its June 18, 1997 order and notes that the public's right to speak at open school board meetings includes the right to place school matters on the agenda of those meetings. Cal. Educ.Code § 35145.5. As discussed below, however, the Court still finds Bylaw § A to be a permissible mechanism for determining, prior to an open Board meeting, whether a proposed agenda item is "directly related to school district business." *Id.*

8 The Court notes that while a matter may be placed on the agenda for public comment, it may not necessarily be "appropriate" for the Board to discuss the comments raised. For example, the public may wish to be heard on pending litigation or contract negotiations, but the Board members may choose not to respond to protect lawyer-client privileged communications or bargaining positions.

9 Although the Court grants Defendants' motion in part by dismissing Defendant District and dismissing the supplemental state law claims as to all Defendants, the Court finds that Plaintiffs have overwhelmingly prevailed on the core elements of their action, and there will be no apportionment as to any costs and attorneys' fees the Plaintiffs seek to recover, except as to the time spent for researching and briefing the propriety of naming the District as a Defendant. *See* *Odima v. Westin Tucson Hotel,* 53 F.3d 1484, 1499 (9th Cir.1995). The Court having dismissed the District as a party, the Plaintiff is not entitled to fees in this regard. *See* *Hensley v. Eckerhart,* 461 U.S. 424, 434–37, 103 S.Ct. 1933, 1939–41, 76 L.Ed.2d 40 (1983).

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936 F.Supp. 719
United States District Court,
C.D. California,
Eastern Division.

Victoria BACA, Plaintiff,
v.
MORENO VALLEY UNIFIED SCHOOL DISTRICT; School Board President Frank M. West, in His Official and Individual Capacity, Defendants.

No. EDCV 96–0267 RT (VAPx).
|
Aug. 1, 1996.

Synopsis
Citizen sought preliminary injunction to prevent school district and president of school board from enforcing district's policy prohibiting, at open sessions of school board meetings, comments which include charges or complaints against any district employee, regardless of whether employee was identified. The District Court, Timlin, J., held that: (1) under California Constitution, board could not censor speech even if speech was, or might be, defamatory; (2) under California statutes, open session of school board meeting was a designated, limited public forum; (3) though state could limit subject matter to be discussed at limited public forum, it could not limit views which might be expressed on that subject matter, and regulation of speech in such a forum is subject to the same standard which applies to regulation of speech in a traditional public forum; (4) policy at issue contained content-based prohibitions; (5) district's interest in making sure that members of public could not complain about school district employees in a forum where comments would be privileged under California law did not outweigh public's interest in being able to freely express themselves to their elected officials; (6) district employees' right to privacy could not be used to justify the policy; (7) complaints by member of public about district employees, even if defamatory, legally could not cause deprivation of employees' protected liberty interest, so that policy could not be justified on ground of protecting that interest; (8) policy could not be upheld on ground of district's interest in regulating its own meetings, on ground of secondary effects of the prohibited speech, or on the ground of protecting unwilling listeners; and (9) policy was not justified on theory that there were alternative means of communication.

Motion granted.

Procedural Posture(s): Motion for Preliminary Injunction.

Attorneys and Law Firms

***724** Carol A. Sobel, Mark D. Rosenbaum, Los Angeles, CA, Douglas E. Mirell, Los Angeles, CA, for plaintiff.

Spencer E. Covert, Mark S. Williams, Parker, Covert & Chidester, Tustin, CA, for defendants.

ORDER GRANTING PLAINTIFF VICTORIA BACA'S MOTION FOR A PRELIMINARY INJUNCTION

TIMLIN, District Judge.

Plaintiff Victoria Baca's (plaintiff's) motion for a preliminary injunction (motion) to enjoin the Moreno Valley Unified School District (District), Frank M. West (West), the president of District's school board (collectively defendants), and defendants' agents and employees from enforcing certain provisions of District's policy related to speech at school board meetings, was heard by the Honorable Judge Robert J. Timlin.

The court having taken the matter under submission, and after consideration of oral argument and all papers presented to the court, the court grants plaintiff's motion for the reasons set forth in the following opinion.

I.

PROCEDURAL HISTORY

Plaintiff has filed a verified complaint for injunctive and declaratory relief and damages against defendants. The complaint seeks a declaration that:

(1) District's policy, which prohibits criticism of District employees during the open sessions of District's school board meetings (the policy), is an overbroad and impermissible prior restraint on plaintiff's and other citizens' rights of free speech and petition ***725** under the constitutions of the United States and California;

(2) the school board's (Board's) selective enforcement of the policy was a violation of plaintiff's right to be free of arbitrary and capricious enforcement of a governmental regulation under the constitution of the United States; and

(3) the policy is a violation of plaintiff's right publicly to share her criticisms of school administration with the Board and concerned community members pursuant to California Government Code section 54954.3, a code section found in California's open meeting law, commonly known as the Ralph M. Brown Act (Brown Act). Cal.Govt.Code, §§ 54950 et seq. [1]

Plaintiff also filed an ex parte application for a temporary restraining order and for an order to show cause re the issuance of a preliminary injunction enjoining defendants and their agents and employees from enforcing against plaintiff the provisions of District's policy which permitted West, as the Board president, "to deny permission to speak in the public session portion of the Board meeting to any person who mentions, by name or mere title, any public employee of the defendant school board."

This court filed an order (1) restraining defendants and their agents, employees and successors from applying and enforcing the policy during the public forum session of Board meeting and (2) requiring defendants to appear to show cause why they should not be so enjoined.

Following oral argument at the hearing on the order to show cause, the parties stipulated that the temporary restraining order could be extended until August 6, 1996, and that each side would provide the court with briefing on whether the policy applied to all public comments during the public, or open, as opposed to the executive, or closed, session of all District's Board meetings, or applied only to the public comment period of such open sessions, and whether the relief requested by plaintiff encompassed comments made during the open session of Board meetings, or only encompassed comments made during the public comment period.

Having considered such further briefing, the court concludes that the policy, by its terms, applies to all public comments during open sessions of the Board meetings. The court further concludes that the relief requested by plaintiff, i.e., a declaration that the policy suffers from the defects noted above, encompasses the policy as it applies to all such public comments.

II.

FACTUAL BACKGROUND

District's policy provides, in pertinent part:

"Open Session Charges or Complaints Against Employees ... Prohibited.

"1. Employees.

"No oral or written presentation in open session shall include charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee. If an attempt is made to include charges or complaints against an employee in any way, the Board President will order the presentation stopped at once, and the Board meeting will continue in accordance with the established agenda. All charges or complaints against employees must be submitted to the Board under provisions of Board policy.

"Any individual who violates this policy will be warned to discontinue his/her comments immediately. If the individual willfully interrupts the meeting by refusing to comply with the warning, the Board President may authorize the removal of the individual pursuant to Government Code section 54957.9." [2]

***726** According to plaintiff's declaration, plaintiff is the parent of a student in the MVUSD, and is president of the Mexican Political Association (MPA) a statewide community activist organization. On May 28, 1996, she attended an open meeting of District's Board. This meeting included a public comment period during which citizens could comment on matters not necessarily included on the Board's meeting agenda.

During the public time period allotted for her comments, plaintiff identified by name and by reference to position two District employees: David Kuzmich, principal of Vista Heights Middle School (Kuzmich), and David Andrews, District's superintendent (Andrews), and alleged that numerous complaints brought to them by parents of children at Vista Heights Middle School went unaddressed. As she spoke, plaintiff was informed by West that she could not mention either employee by position or by name, and that another violation of the policy would result in her removal from the meeting.

Plaintiff continued her remarks and again referred to Kuzmich by position and to Andrews by position and name. She was then physically removed from the meeting by a Riverside County sheriff's deputy at the request of West. Once removed from the meeting, she was watched over by two sheriff's deputies to ensure that she did not attempt to go back into the meeting room.

Plaintiff was the only speaker to be physically removed from the room. However, other members of the public who spoke before and after plaintiff did also identified District employees by name and/or position, sometimes in a critical manner. Although some of those who spoke after plaintiff did were warned by West not to violate the policy, they were not removed.

Plaintiff states that she desires to "learn of shared concerns from other speakers and to allow them to learn of mine through use of the public comment period of the school board meeting." (Plaintiff's Declaration, p. 4, ¶ 10.) She states that she believes she was singled out for expulsion because of her outspokenness and because of her political activities related to educational and other school-related issues.

III.

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DISCUSSION

A. *Criteria for Issuance of a Preliminary Injunction*

The traditional criteria which must be met before a preliminary injunction will issue are: (1) strong likelihood of success on the merits; (2) possibility of irreparable injury to plaintiff if relief is not granted; (3) a balance of hardships favoring plaintiff; and (4) advancement of the public interest in certain kinds of cases. *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1200–1201 (9th Cir.1980). In the Ninth Circuit, a party may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor. *Id.* at p. 1201.

These are not separate tests, but the outer reaches of a single continuum. *Id.* The moving party has the burden of proof on each element of either test. *Prescott v. County of El Dorado,* 915 F.Supp. 1080, 1084 (E.D.Cal.1996). Applying the traditional criteria for issuance of a preliminary injunction to the facts of this case, the court concludes, as discussed below, that the plaintiff has met all four criteria, and that a preliminary injunction should issue.

B. *Plaintiff Has Demonstrated a Strong Likelihood of Success on the Merits*

Plaintiff has demonstrated that there is a strong likelihood that she will succeed on the merits, i.e., that she will succeed in establishing that: (1) speech criticizing District employees is protected from prior restraint or ***727** censorship by the freedom of speech components of the United States and California constitutions; (2) the open session of a school board meeting is a designated and limited public forum pursuant to the Brown Act; (3) regulations of speech in such fora must meet the same constitutional standards as must regulations of speech in traditional public fora; and (4) the policy is content-based, not narrowly drawn to effectuate compelling state interests, and therefore is facially unconstitutional.

1. *Speech Criticizing a District Employee, Even If Later Proved to Be Defamatory, Is Protected by Both the California*[3] *and Federal Constitutions from Government Censorship and Prior Restraint*

Plaintiff contends that the policy is a prior restraint on protected expression, and as such it violates the California Constitution. Defendants suggest that plaintiff's speech "regarding child abusers and racists" is not protected by the First Amendment because it is slanderous and is a "false light utterance[ ]," and that therefore District has a right to prohibit these statements. (Defendants' Supp. Opposition, p. 3.)

Neither side is correct. Plaintiff is wrong because the policy, which merely prohibits certain speech by persons already admitted to and making use of a public forum, is not a true or classic prior restraint, because it does not give a public official the power to deny use of the forum in advance of the actual expression. *Westbrook v. Teton County School Dist. No. 1,* 918 F.Supp. 1475, 1481–1482 (D.Wyo.1996) (*Westbrook*). Instead, the policy is a species of censorship, i.e., a "present government interference with or suppression of expression" accomplished through a " 'regulatory, proscriptive or compulsory' exercise of governmental power." *Keene v. Meese,* 619 F.Supp. 1111, 1118 (E.D.Cal.1985), quoting *Laird v. Tatum,* 408 U.S. 1, 11, 92 S.Ct. 2318, 2324–2325, 33 L.Ed.2d 154 (1972). Defendant is wrong because neither the United States nor California constitution allows government to censor statements merely because they are false and/or defamatory.

The California Constitution, article I, section 2 provides, in relevant part: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." This provision provides an even broader guarantee of the right of free speech than does the First Amendment. *Blatty*

v. New York Times Co., 42 Cal.3d 1033, 1041, 728 P.2d 1177, 1182, 232 Cal.Rptr. 542, 546–547 (1986); *Wilson v. Superior Court,* 13 Cal.3d 652, 658, 532 P.2d 116, 119 Cal.Rptr. 468 (1975); *Gilbert v. National Enquirer, Inc.,* 43 Cal.App.4th 1135, 1145, 51 Cal.Rptr.2d 91 (1996). " 'The wording of this section is terse and vigorous, and its meaning so plain that construction is not needed. The right of the citizen[s] to freely speak, write and publish [their] sentiments is unlimited, but [they are] responsible at the hands of the law for an abuse of that right. [They] shall have no censor over [them] to whom [they] must apply for permission to speak, write, or publish, but [they] shall be held accountable to the law for what [they] speak[ ], what [they] write[ ], and what [they] publish [ ].' [Citation.]" *Aguilar v. Avis Rent–A–Car System, Inc.,* 45 Cal.App.4th 933, 973, 53 Cal.Rptr.2d 599 (1996), Peterson, P.J., concurring in part and dissenting in part, quoting *Dailey v. Superior Court,* 112 Cal. 94, 97, 44 P. 458, 459 (1896).

Thus, under the California Constitution, District's Board may not censor speech by prohibiting citizens from speaking, even if their speech is, or may be, defamatory. [4] Therefore, regardless of any lesser protection ***728** for speech provided by the United States constitution [5], there is a strong likelihood that plaintiff will establish that she is entitled to a declaration that District cannot prohibit speech on the ground that it is, or may be, false or defamatory, let alone on the the ground that it is negatively critical of District's employees. [6]

2. *The Open Session of a School Board Meeting Is a Designated, Limited Public Forum*

Traditional public fora are places such as parks and streets, which historically have been used for purposes of public assembly. *Perry Educ. Assn. v. Perry Local Educators' Assn.,* 460 U.S. 37, 45, 103 S.Ct. 948, 954–955, 74 L.Ed.2d 794 (1983) (*Perry*). A designated, as opposed to a traditional, public forum is a public forum created by government designation as "a place or channel of communication for use by the public at large...." *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.,* 473 U.S. 788, 803, 105 S.Ct. 3439, 3449, 87 L.Ed.2d 567 (1985) (*Cornelius*); *Perry,* 460 U.S. at 45 and 46, fn. 7, 103 S.Ct. at 955, fn. 7, 74 L.Ed.2d 794 (1983).

Access to a designated public forum may be limited by the government if it designates public property as available only for "use by certain speakers, or for the discussion of certain subjects, ..." *Cornelius,* 473 U.S. at 803, 105 S.Ct. at 3449, *supra;* *Perry,* 460 U.S. at 45, n. 7, 103 S.Ct. at 955, n. 7; *Widmar v. Vincent,* 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981) (forum limited to student groups); *City of Madison Joint Sch. Dist. v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976) (forum limited to subject matter of school board business). [7] If the state does limit access to the forum based on ***729** subject matter or speaker identity, access limitations must be reasonable in light of the purpose served by the forum and must be viewpoint neutral. *Lamb's Chapel v. Center Moriches Sch. Dist.,* 508 U.S. 384, 392–393, 113 S.Ct. 2141, 2147, 124 L.Ed.2d 352 (1993) (*Lamb's Chapel*).

The State of California has designated certain public property for use as public fora. Under the Brown Act, the meetings of certain public bodies must be open to the public, § 54953 [8], and the public must be allowed to speak at such meetings "on any item of interest to the public, ... that is within the subject matter of the legislative body, ..." § 54954.3. [9]

The Brown Act applies to school districts and to school boards. §§ 45951, 54952 [10]; see *Frazer v. Dixon Unified Sch. Dist.,* 18 Cal.App.4th 781, 790–791, 22 Cal.Rptr.2d 641, 648–649 (1993).

Thus, by opening school board meetings to public comment "on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body," Govt.Code, § 54954.3(a), the California Legislature has designated school board meetings as limited public fora, i.e., fora open to the public in general, but limited to comments related to the school board's "subject matter." Therefore, the open sessions of District's Board meetings are limited public fora, and any regulation of speech in such fora must be reviewed in light of the nature of the fora. [11]

3. *The Same Constitutional Standards of Scrutiny Apply to the Regulation of Speech in The Limited Public Forum of an Open Session of a School Board Meeting As Apply to the Regulation of Speech in a Traditional Public Forum*

Defendants contend that when a limited public forum is involved, the applicable standard of constitutional analysis is not the strict scrutiny or compelling interest test applied to traditional public fora, citing *White v. City of Norwalk,* 900 F.2d 1421, 1423 (9th Cir.1990). Notably, however, defendants never clearly state what test does apply when a court decides the constitutionality of a policy which regulates or prohibits certain speech in a limited public forum.

Defendants' lack of clarity can be traced to the fact that defendants have confused ***730** two different principles, i.e., they have confused the rule that when the state creates a limited public forum it properly may limit the subject matter to be discussed with the rule that once the particular subject matter which may be discussed in a particular limited forum has been designated, the government may not then also limit the views which may be expressed on that subject matter. *Lamb's Chapel,* 508 U.S. at 392–393, 113 S.Ct. at 2147, *supra.* Thus, in *White v. City of Norwalk,* the case cited by defendants, the court held that although city officials properly could restrict public speakers to the subject matter at hand, i.e., the particular agenda item being discussed, and could stop speech which was unrelated to the subject matter and hence irrelevant, the city officials could not cut off speech because the moderator disagreed with the view expressed. 900 F.2d at 1424–1425.

Thus, contrary to defendants' contention, the applicable standard of review for testing the constitutionality of regulations of speech in a designated, limited public forum is the same standard which applies to regulation of speech in a traditional public forum. *Perry,* 460 U.S. at 45–46, 103 S.Ct. at 955. This means that even in a limited public forum, before the state can enforce "[any] content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end," and that although "[r]easonable time, place and manner regulations are permissible," they must be "content-neutral, ... narrowly tailored to serve a significant government interest, and leave open ample channels of communication. [Citations.]" *Id.; Clark v. Burleigh,* 4 Cal.4th 474, 483, 841 P.2d 975, 980, 14 Cal.Rptr.2d 455, 460, *supra;* see also 4 Rotunda & Nowak, Treatise on Constitutional Law (2d ed. 1992) § 20.47 at p. 311.

4. *The Policy Contains Content–Based Prohibitions*

District's policy clearly contains content-based prohibitions on speech, despite defendants' assertions to the contrary. It forbids, at the risk of expulsion from the forum, speech which contains any "charges or complaints against any employee of the District, regardless of whether or not the employee is identified by name or by any reference which tends to identify the employee." (Emphasis added.) It is difficult to imagine a more content-based prohibition on speech than this policy, which allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject matter (District employees' conduct or performance). *Burson v. Freeman,* 504 U.S. 191, 197, 112 S.Ct. 1846, 1850, 119 L.Ed.2d 5, 13 (1992) ("[T]he First Amendment's hostility to content-based regulation extends ... to a restriction on a particular viewpoint.... [Citations]"); see also *Lamb's Chapel,* 508 U.S. at 392–393, 113 S.Ct. at 2147, *supra.* In fact, policies which attempt to suppress or burden only critical speech are regularly held to be content-based. See, e.g., *Westbrook*

v. Teton County School Dist. No. 1, 918 F.Supp. 1475, 1494, (D.Wyo.1996), holding that a school district's policy, which limited and restricted teachers' speech criticizing other staff members, administrators or school board members by restricting the audience to which such criticisms could be directed, was content-based because it distinguished between favored and disfavored speech on the basis of the views expressed; *Rubin v. City of Santa Monica,* 823 F.Supp. 709, 713 (C.D.Cal.1993), holding that an ordinance granting greater First Amendment rights to "speakers who support 'the human services objectives of the City' " (emphasis added) was impermissibly content-based. Cf. *Feminist Women's Health Center v. Blythe,* 32 Cal.App.4th 1641, 1662, 39 Cal.Rptr.2d 189, 199 (1995): "A restriction against activities within a given area is content neutral, as it makes no reference to the issues or viewpoints raised. [Citations.]" (Emphasis added.)

5. *The Policy Is Not Narrowly Drawn to Effectuate a Compelling State Interest*

Defendants contend that the policy serves three "important" and "significant" government interests: (a) the privacy interests of District's employees (Defendants' Opposition ***731** at p. 17), (b) the liberty interests of District's employees (Defendants' Opposition at p. 17–18), and (c) the right of the Board "to regulate its own meeting and structure the flow of information in a manner insuring that all concerned may participate and review the information in an informed and dispassionate manner." (Defendants' Opposition, p. 20.)

Notably, with one exception, defendants do not contend that these interests are "compelling." That exception is that defendants do contend that because defamatory statements made during open sessions of Board meetings are absolutely privileged under California Civil Code section 47(b)(3), and because its employees cannot maintain defamation actions to prevent such statements being made to the Board, it has a compelling interest in prohibiting such statements during open sessions, and instead requiring complaints and charges against employees to be made in writing, apparently as part of an administrative process, or to be made to the Board in closed session. (Defendants' Supp. Opposition at pp. 9–10.)

When, as here, a regulation is content-based, the governmental interest served by the regulation must be compelling, not merely important or significant, if the regulation is to withstand constitutional scrutiny. *Perry,* 460 U.S. at 45–46, 103 S.Ct. at 955. It is a well-known attribute of constitutional law that balancing tests use specific terms of art to express the nature and/or weight of the interests which must be balanced against each other. Cf., e.g., *Mississippi University for Women v. Hogan,* 458 U.S. 718, 724, 102 S.Ct. 3331, 3336, 73 L.Ed.2d 1090 (1982) (constitutionality of gender-based discrimination weighs "important" governmental interests); *Perry,* 460 U.S. at 45–46, 103 S.Ct. at 955 (content-based exclusion requires "compelling" state interest; content-neutral time, place and manner regulations must serve "significant" government interest). Therefore, defendants' failure to assert, save for the one exception noted above, that District's interests are "compelling" is significant.

As to this one exception, whether a particular governmental interest is "compelling" is never determined in a vacuum. Instead, it is measured in a particular context against the competing private interest at stake. See, e.g., *Wisconsin v. Yoder,* 406 U.S. 205, 214, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15 (1972) ("there [must be] a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause"); *National Treasury Employees Union v. Von Raab,* 489 U.S. 656, 672, 109 S.Ct. 1384, 1394, 103 L.Ed.2d 685 (1989) ("these [privacy] expectations [of certain Customs employees required to undergo drug-screening as a condition of transfer or promotion into certain types of positions] [do not] outweigh the Government's compelling interests in safety and the integrity of our borders." The circumstances of this case are such that the court concludes that District's interest in making sure that members of the public cannot complain about school district employees in a forum where their comments would be privileged does not outweigh the public's interest in being able freely to express themselves to their elected officials on all issues related to the operation of public schools without fear of being subjected to tort liability. That the public's interest outweighs District's claimed interest is made abundantly clear by these facts:

(1) the California Legislature enacted specific legislation providing members of the public with a privilege to protect them from the chilling effect of the threat of litigation in such fora; (2) the Brown Act provides that the public have a right to speak in such fora, so long as such speech is within the subject matter of the school board; and (3) the California Constitution, as discussed above, prevents censorship of even defamatory speech. [12]

a. *District's Employees' Right to Privacy*

Even assuming for the sake of argument that District were to characterize its interest in protecting its employees' right to privacy ***732** as compelling, such interest cannot be used to justify the policy for two reasons.

First, District's interest in protecting its employees' right of privacy is an interest it holds only as an employer, not as a government entity, e.g., a legislative body charged with permitting public comment at its meetings. Thus, its interest as an employer in protecting its employees' right to privacy cannot be characterized as a compelling governmental interest. [13] See *Waters v. Churchill,* 511 U.S. 661, ——, 114 S.Ct. 1878, 1887–1888, 128 L.Ed.2d 686 (1994) discussing difference between government's interest as a sovereign versus its mission as an employer.

Second, even if District's interest in protecting its employees' right to privacy could be characterized as a governmental interest, District's reliance on such interest presupposes that District's interest in asserting its employees' constitutional right to privacy is so compelling that it trumps the public's First Amendment right to make public comments, negative or otherwise, about such employees' behavior. This is a questionable supposition. See, e.g., *Carey v. Brown,* 447 U.S. 455, 466–467, 100 S.Ct. 2286, 2293, 65 L.Ed.2d 263 (1980), noting that there is a hierarchy of First Amendment values, and that " 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' [Citations.]" With due respect to the District's employees' right to privacy under both the California and federal constitutions, under these circumstances such right must give way to the more fundamental constitutional right of freedom of expression under both constitutions.

Third, even if District's policy is intended to protect a compelling governmental interest, it is not narrowly drawn to effectuate such interest, and is both over-inclusive and under-inclusive as to the speech it prohibits.

The policy is over-inclusive because it forbids all complaints against District employees, even when they are not identified by name or position [14] , and because it forbids all criticism of specific employees even when such criticism would not constitute an invasion of privacy. " '[A] crucial ingredient of the tort [of invasion of privacy] is a public disclosure of private facts [citations], that is, the unwarranted publication of intimate details of one's private life which are outside the realm of legitimate public interest [citation].... there can be no privacy with respect to a matter which is already public [citation] or which has previously become part of the public "domain" [citation]. Moreover, ... there is no liability when the [speaker] merely gives further publicity to information about the [person who is the ***733** subject of discussion] which is already public or when the further publicity relates to matters which the plaintiff leaves open to the public eye [citation].' [Citation.]" *Gilbert v. National Enquirer, Inc.,* 43 Cal.App.4th at 1149, 51 Cal.Rptr.2d at 99, *supra.* The policy forbids public disclosure of any criticism, regardless of whether the criticism reveals private facts about the employee, or merely expresses the speaker's opinion about the employee's performance or conduct as a public employee or involves matters which the employee has revealed in the classroom, administrative meetings, or other arenas open to public scrutiny.

The policy is under-inclusive because it does not forbid speech which does disclose intimate details of a District employee's private life but which does not do so in a critical or negative manner.

Because the policy does not forbid all speech which might invade District employees' right to privacy, and forbids other speech which would not constitute an invasion of privacy, it is clear that the policy is not narrowly drawn to effectuate District's alleged interest in protecting its employees' right to privacy.

b. *District's Employees' Liberty Interest*

District also contends that it has a compelling interest in protecting its employees' constitutional liberty interests, i.e., its employees' right to notice and an opportunity to be heard, although District is none too clear about what event triggers such right to notice and an opportunity to be heard in this particular case. As discussed below, the normal rule is that a public employee must be given notice and an opportunity to be heard before stigmatizing governmental action, e.g., dismissal or demotion, is taken; District's position seems to be that its employees are entitled to advance notice and an opportunity to be heard about any critical comment about an employee made by a member of the public to the Board.

Assuming for the sake of argument that District has a compelling governmental interest in protecting its employees' liberty interest, and assuming further that it can assert such interest as an employer to justify a regulation related to its legislative functions—debatable assumptions as discussed above—nonetheless its interest in protecting its employees' liberty interests cannot be used to justify a policy prohibiting speech by members of the public, because prohibiting such speech does not effectuate the desired purpose of protecting employees from a deprivation of their liberty interests.

To establish a deprivation of a protected liberty interest in the employment context, an employee must demonstrate that he or she was denied due process in connection with stigmatizing governmental action which action so negatively affects his or her reputation that it effectively forecloses the opportunity to practice a chosen profession. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 573–574, 92 S.Ct. 2701, 2707–2708, 33 L.Ed.2d 548 (1972); *Cafeteria & Rest. Wkrs. U., Local 473 v. McElroy,* 367 U.S. 886, 894–896, 81 S.Ct. 1743, 1748–1749, 6 L.Ed.2d 1230 (1961).

Because only the government, i.e., the employee's employer, can provide the employee with due process related to the government's threatened stigmatizing action, it follows that one who is not the employee's employer can not directly deprive the employee of due process. *Gini v. Las Vegas Metropolitan Police Dept.,* 40 F.3d 1041, 1044 (9th Cir.1994). Such a third party can only be liable to the employee if the employee can show that the third party could reasonably foresee that the third party's statements to the governmental employer would cause the employee to be terminated without a pre-termination or name-clearing hearing. *Id.* Critical or even defamatory statements about the employee by third parties, in and of themselves, also cannot constitute deprivation of a constitutionally-protected liberty interest because injury to one's reputation, without more, is not enough to state a claim for loss of liberty in violation of the constitution. *Siegert v. Gilley,* 500 U.S. 226, 233–234, 111 S.Ct. 1789, 1794, 114 L.Ed.2d 277 (1991); *WMX Technologies, Inc. v. Miller,* 80 F.3d 1315, 1319 (9th Cir.1996); *Gini v. Las Vegas Metropolitan Police Dept.,* 40 F.3d at 1045, *supra.*

***734** Therefore, because complaints by members of the public about District employees, even if defamatory, legally cannot cause a deprivation of the employees' protected liberty interest, a policy forbidding such complaints cannot be justified by merely claiming that the complaints have such effect.

c. *District's Interest in Regulating Its Own Meetings*

District also contends that the policy is justified because of its interest in regulating its meetings. Indeed, a school board can ensure an orderly discussion and exchange of information by regulating the time, place, and manner for speech at its meetings, and may also require speakers to confine themselves to comments within the school board's subject matter. See footnote 9, ante.

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Here, the Board has done so in a portion of its policy entitled "Agenda/Meeting Materials" as recited in pages 44 through 49 of Exhibit A to Defendants' Opposition. Such regulation of conduct, e.g., by setting time limits and providing that speakers who actually disrupt a meeting may be removed, without focusing on the content of speech, is reasonable. *Perry,* 460 U.S. at 45–46, 103 S.Ct. at 955. But the policy here, which focuses on content and not only conduct, is not narrowly drawn so as to achieve District's purported compelling interest without impinging upon the public's First Amendment rights, which rights include the right to be passionate and even uninformed in the expression of one's views. [15]

6. *The Policy Cannot Be Justified on the Ground of the Secondary Effects of the Prohibited Speech or on the Ground that "Unwilling Listeners" in the Audience Must Be Protected from Hearing Negative Comments about the District's Employees*

Defendants also contend they may regulate the content of speech at Board meetings because of the prohibited speech's secondary effects, citing *Aguilar v. Avis Rent–A–Car System, Inc.,* 45 Cal.App.4th 933, 53 Cal.Rptr.2d 599, *supra.* In *Aguilar,* the appellate court reversed an injunction enjoining a supervisory employee " 'from using any derogatory racial or ethnic epithets directed at, or descriptive of, Hispanic/Latino employees of Avis....' " 45 Cal.App.4th at 937, 53 Cal.Rptr.2d at 602. Although the court concluded that the injunction was not content-based and was constitutional because it targeted "conduct amounting to employment discrimination as a 'secondary effect' of such speech within the meaning of *R.A.V. v. St. Paul* (1992) 505 U.S. 377 [120 L.Ed.2d 305, 112 S.Ct. 2538]", and did not target the expressive content of the speech, 45 Cal.App.4th at 937, 53 Cal.Rptr.2d at 601–602, it also concluded the injunction was over-broad to the extent it attempted to enjoin conduct committed outside the workplace, and accordingly reversed and remanded the cause for modification. *Id.* at p. 938, 53 Cal.Rptr.2d at p. 602.

Notably, defendants never identify the conduct amounting to a secondary effect allegedly caused by the speech they seek to prohibit. For example, defendants do not contend that criticism of District employees by members of the public speaking at a Board meeting constitute employment discrimination, the secondary effect discussed in *Aguilar,* possibly because such comments do not involve "[f]requent or pervasive workplace use of ... slurs resulting in an abusive work environment...." 45 Cal.App.4th at 943, 53 Cal.Rptr.2d at 605, emphasis added.

Furthermore, even assuming that citizens' statements made in the open session of a Board meeting could be considered to involve "workplace use" of language, a questionable assumption at best, the policy here ***735** would be overbroad—it does not simply prohibit derogatory racial, sexual, ethnic and similar slurs related to categories protected under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e–2(a)(1)) and the Fair Employment and Housing Act (Cal.Govt.Code, §§ 12900 et seq.), but instead bans all criticism, no matter how politely phrased.

District also contends that it has an important interest in controlling complaints and charges against employees during its meetings because other persons attending Board meetings are "unwilling listeners," who do not have the option of refusing to listen to the speaker's negative comments. Defendants cite *Martin v. City of Struthers,* 319 U.S. 141, 147–148, 63 S.Ct. 862, 865–866, 87 L.Ed. 1313 (1943) for this proposition. *Martin v. City of Struthers* is of no assistance to defendants. In that case, a city adopted an ordinance which made it an offense to summon the inhabitant of a home to the door when distributing handbills, advertisements, or other circulars. The Supreme Court held that the ordinance violated the First Amendment, and noted that the decision as to whether a particular householder wished to discuss the information being disseminated by door-to-door canvassers should be left to the will of the individual occupant, not usurped by the government making a decision for all its inhabitants.

Here, District's policy, to the extent it is claimed to be justified as necessary to protect "unwilling listeners" at Board meetings, suffers from a similar infirmity. District has assumed that every person at its meetings does not want to hear complaints and criticisms about District employees, just as the City of Struthers assumed that all of its inhabitants did not want to be summoned to their doors for a possible exchange of information. There is no evidentiary basis for such an assumption here, any more than in *Martin v. City of Struthers.*

Furthermore, the concept of protecting the "unwilling listener" is tied to residential privacy. *Frisby v. Schultz,* 487 U.S. 474, 484–485, 108 S.Ct. 2495, 2502, 101 L.Ed.2d 420 (1988). In locations other than their private residences, individuals are expected "simply to avoid speech they do not want to hear, [citations], ..." *Id.* Thus, at a Board meeting, it is up to the individual members of the audience to decide whether they want to listen to complaints and criticisms of District employees, and, if they choose not to listen, they are free to leave.

7. *The Presence of Alternative Means of Communication Between Plaintiff and the Board, or Between Plaintiff and Other Members of the of Public, Does Not Justify or Validate the Otherwise Unconstitutional Policy*

Defendants contend that the policy does not prohibit plaintiff from addressing the Board, and that instead they are merely regulating when and how she may do so if she wants to express complaints against District employees. They contend that she may speak to them through District's complaint resolution process, and that she may speak to them during closed sessions. They also point out that she may address the public orally or in writing without recourse to the Board meeting as a forum. Based on these alternative channels of communication, and on their further contention that the regulation is content neutral and narrowly drawn, they contend the policy passes any constitutional test.

However, the court has determined that the Board's policy is not content-neutral and that it is not narrowly drawn to accomplish even District's purported compelling interests. It therefore is irrelevant whether or not plaintiff and speakers with a similar point of view have ample alternative channels of communication. "One is not to have the exercise of [one's] liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey,* 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939). In other words, "An otherwise invalid restriction on protected activity is not saved by the availability of other means of expression. [Citation.]" *Pref. Communications v. City of Los Angeles, Cal.,* 754 F.2d 1396, 1410 (9th Cir.1985), *cert. granted, City of Los Angeles v. Pref. Communications,* 474 U.S. 979, 106 S.Ct. 380, 88 L.Ed.2d 333 (1985), *jmt. aff'd and remanded,* ***736** *City of Los Angeles v. Pref. Communications,* 476 U.S. 488, 106 S.Ct. 2034, 90 L.Ed.2d 480 (1986), *appeal after remand, Pref. Communications v. City of Los Angeles,* 13 F.3d 1327 (1994), *cert. denied, Pref. Communications v. City of Los Angeles,* 512U.S. 1235, 114 S.Ct. 2738, 129 L.Ed.2d 859 (1994); *H–CHH Associates v. Citizens for Representative Government,* 193 Cal.App.3d 1193, 1213, 238 Cal.Rptr. 841 (1987), *cert. denied,* 485 U.S. 971, 108 S.Ct. 1248, 99 L.Ed.2d 446 (1988) ("A regulating authority may not adopt rules which preclude the exercise of free expression in an appropriate place, even on the ground another place is available. [Citations.]"). As discussed above, the open session of a school board meeting is a legally proper place for citizens to voice their complaints about a school district's employees. The policy is an invalid restriction on speech at such meetings, and the fact that plaintiff and others critical of District employees may speak in closed sessions, in public, or even on the schoolhouse steps, does not validate the otherwise invalid policy.

Furthermore, even if this court had concluded that the policy was content-neutral or content-based but narrowly drawn to achieve some compelling governmental interest, the proffered "alternative" channels of communication are not equivalent to the forum from which District seeks to exclude plaintiff and others with views critical of District's employees.

While no single case sets out a definitive list of the specific elements to be considered in determining what constitutes the requisite "ample alternative channels of communication," *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 293, 104 S.Ct. 3065, 3069, 82 L.Ed.2d 221 (1984), the cases do indicate that such channels must be equivalent to the proscribed forum, i.e., they should (1) give the speaker the same opportunity to communicate information to the audience about the speaker's

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identity (because the identity of the speaker is an important component of many attempts to persuade), *City of Ladue v. Gilleo,* 512 U.S. 43, ——, 114 S.Ct. 2038, 2046, 129 L.Ed.2d 36 (1994), (2) be similarly inexpensive and convenient as the proscribed channel, *id.,* (3) allow access to the same audience, and (4) be a similarly effective method for communicating the message. *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 517, 101 S.Ct. 2882, 2897, 69 L.Ed.2d 800 (1981), quoting *Linmark Associates, Inc. v. Willingboro,* 431 U.S. 85, 93, 97 S.Ct. 1614, 1618, 52 L.Ed.2d 155 (1977).

Additionally, although the cases do not specifically so state in the context of what constitutes ample alternative channels of communication, an alternative channel of communication is not sufficiently equivalent to the proscribed forum if forcing the speaker to resort to it is more likely to have a chilling effect on speech. *Lamont v. Postmaster General,* 381 U.S. 301, 309, 85 S.Ct. 1493, 1497, 14 L.Ed.2d 398 (1965) (conc. opn.) ("[I]nhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government"); *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 66, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963) (First Amendment violated when state attempts to achieve the suppression of speech it deems objectionable through means other than formal sanctions); *American Communications Ass'n v. Douds,* 339 U.S. 382, 402, 70 S.Ct. 674, 685, 94 L.Ed. 925 (1950) (indirect discouragements are fully capable of a coercive effect on speech).

In light of the above-noted elements related to alternative channels of communication, it is apparent that the alternative channels of communication suggested by District are not equivalent to the forum provided by the open session of the Board meeting. First, although the present administrative process provided by the Board for a person who files a complaint with District against a District employee appears to provide at some point in the process an opportunity for the complainant to address the Board about such complaint in closed session, the complainant could not reach the same audience which she or he could reach in an open session of the Board, i.e., other interested members of the general public. After all, closed sessions, by their very nature, are not open to the general public as are the open sessions of school board meetings. Furthermore, requiring all speech critical of District employees to occur ***737** during closed sessions not only tends to restrict the audience which the speaker may reach, but also restricts the information available to the general public, a result clearly contrary to that intended by the Brown Act. [16]

Second, although speakers have a right to speak in public or even on the sidewalk in front of the Board's meeting place, which right is unfettered by need to request permission from District or its board, any speech there, as opposed to speech in the Board meeting, is not protected by California Civil Code, section 47(b)(3), which provides that publications made in any official proceeding authorized by law are privileged. [17] Thus, comments made outside the Board meeting may subject the speaker to the threat of litigation, a threat which in turn has a chilling effect on speech. Because the traditional public fora do not provide speakers with the same protection from civil liability as is available for speech which occurs in a school board meeting, the traditional public fora are not equivalent channels of communication.

Therefore, even if the policy was not content-based, there are not ample alternative channels of communication which are the equivalent of the forum from which the speech in question is excluded.

C. *There Is a Possibility of Irreparable Injury to Plaintiff If Relief Is Not Granted*

As discussed above, there is more than a substantial likelihood that plaintiff will succeed on the merits of her case. That being so, plaintiff's First Amendment freedoms, as well as those of other members of the public who might wish to criticize District employees during the open session of a Board meeting, are in danger of impairment if a preliminary injunction does not issue to enjoin defendants from applying the policy to persons attending Board meetings pending a final determination on the merits. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *Elrod v. Burns,* 427 U.S. 347, 373–374, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976); *American–Arab Anti–Discrimination Committee v. Reno,* 70 F.3d 1045, 1057–1058 (1995). The duration of a trial is an " 'intolerably long' period during which to

permit the continuing impairment of First Amendment rights. [Citation.]" *American–Arab Anti–Discrimination Committee v. Reno,* 70 F.3d at 1058, *supra.*

D. ***The Balance of Hardships Favors Plaintiff***

If a preliminary injunction does not issue, plaintiff will be deprived of her fundamental First Amendment rights until trial on the merits. In contrast, there is no indication that defendants have any legitimate compelling interest, let alone a fundamental constitutional right, which will be adversely affected if a preliminary injunction does issue. Therefore, the balance of hardships clearly favors plaintiff.

E. ***Issuing a Preliminary Injunction Will Advance the Public Interest***

The policy affects not only plaintiff's First Amendment rights, but those of all other ***738** members of the public who may wish either to speak critically of a District employee's conduct or performance, or to hear such comments made by other members of the public at a public session of a Board meeting.

F. ***Conclusion***

Plaintiff has met all the traditional criteria for issuance of a preliminary injunction: (1) she has a strong likelihood of succeeding on the merits of this case; (2) there will be irreparable injury to plaintiff if relief is not granted; (3) the balance of hardships favors plaintiff; and (4) the public's interest will be advanced if an injunction is granted. *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d at 1200–1201, *supra.* Therefore, the motion is granted and the court orders that a preliminary injunction issue as follows:

IT IS ORDERED that pending hearing and determination of this cause on the merits, defendants Moreno Valley Unified School District and Frank M. West and their agents, employees and successors are hereby restrained and enjoined from applying and enforcing the policy during the open session of any Board meeting.

THE COURT HEREBY WAIVES the requirement of Federal Rules of Civil Procedure, Rule 65(c), that plaintiff give security before a preliminary injunction may issue, on the grounds that (1) the high probability of success on the merits favors exercising the court's discretion to dispense with such security, *People ex rel. Van de Kamp v. Tahoe Regional Planning Agency,* 766 F.2d 1319, 1326 (9th Cir.1985), (2) it appears unlikely that either defendant would incur any significant cost or damages as a result of the preliminary injunction, *U.S. v. State of Or.,* 675 F.Supp. 1249, 1253 (D.Or.1987), and (3) to require a bond would have a negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of the public affected by the policy. *Smith v. Board of Elections Com'rs for Chicago,* 591 F.Supp. 70, 71–72 (N.D.Ill.1984).

All Citations

936 F.Supp. 719, 112 Ed. Law Rep. 917, 96 Daily Journal D.A.R. 12,865

Footnotes

1 All further statutory references will be to the California Government Code except as otherwise noted.

2 Section 54957.9 provides: "In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by removal of the individuals

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who are willfully interrupting the meeting, the members of the legislative body may order the meeting room cleared and continue in session....”

Although the policy purports to allow the Board to order the meeting room cleared if a speaker persists in making critical comments by such reference to section 54957.9, the parties apparently have assumed that the consequence of engaging in proscribed speech is that the speaker alone may be removed from the room.

3 In the court's analysis of plaintiff's constitutional challenges, it is mindful of the principle that if the California Constitution provides independent support for plaintiff's claims, there is no need for a decision on the federal constitutional issue. *Carreras v. City of Anaheim,* 768 F.2d 1039, 1042–1043 (9th Cir.1985).

4 The court's conclusion therefore closes the possibility left open by the California Attorney General that a legislative body might be able to prohibit remarks “which it believes to be slanderous or which might invade an individual's personal privacy.” Office of the California Attorney General, The Brown Act: Open Meetings for Local Legislative Bodies 19 (1994). (See Defendants' Supp. Opposition at p. 25.)

5 Under the United States constitution the government may regulate speech because of its constitutionally proscribable content. However, although defamatory content is constitutionally proscribable, the government “may not make the further content discrimination of proscribing only [defamation] critical of the government,” *R.A.V. v. City of St. Paul, Minnesota,* 505 U.S. 377, 384, 112 S.Ct. 2538, 2543, 120 L.Ed.2d 305 (1992), nor may it regulate the use of defamatory speech based on “hostility—or favoritism—towards the underlying message expressed.” 505 U.S. at 386, 112 S.Ct. at 2545, *supra.* Here, the policy proscribes only speech critical of District employees, not speech critical of anyone else, and does not proscribe only defamatory criticism.

6 Even if the policy proscribed only defamatory speech, it would still contain a fatal flaw. Under either the United States or California constitutions, the government may not restrain speech before there has been a judicial determination (in connection with which determination the speaker received all proper procedural safeguards) that the speech is actually harmful. *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 559, 95 S.Ct. 1239, 1246–1247, 43 L.Ed.2d 448 (1975); *Adult Video Ass'n v. Barr,* 960 F.2d 781, 789 (9th Cir.1992); *People ex rel. Busch v. Projection Room Theater,* 17 Cal.3d 42, 57, 550 P.2d 600, 130 Cal.Rptr. 328, *cert. denied,* 429 U.S. 922, 97 S.Ct. 320, 50 L.Ed.2d 289 (1976). District's policy would leave the determination of what is “slanderous” or “false” up to one person—in this case, West as president of the Board—apparently without regard for such niceties as whether the statement, though critical, is true, or whether, though false, is privileged, or whether, though couched as fact (e.g., “X is a racist”), is legally an expression of opinion rather than a statement of fact and hence not actionable as slander. This is the very evil the rule against censorship and prior restraint of speech seeks to prevent. *Dailey v. Superior Court,* 112 Cal. 94, 98, 44 P. 458, 460, *supra* (Article I, section 2, subdivision (a) of the California Constitution forbids prior restraint or censorship, even by judges, because this “ ‘subject[s] all freedom of sentiment to the prejudices of one man, and make[s] him the arbitrary and infallible judge of all controverted points in learning, religion, and government.’ ”).

Furthermore, even courts will not grant injunctive relief against future speech save in the most exceptional and grave circumstances, e.g., to prohibit the disclosure of military secrets during time of war. *Near v. Minnesota,* 283 U.S. 697, 716, 51 S.Ct. 625, 631, 75 L.Ed. 1357 (1931); *Gilbert v. National Enquirer, Inc.,* 43 Cal.App.4th 1135, 1145, 51 Cal.Rptr.2d 91, 97, *supra.* Defendants do not contend that complaints about and criticisms of public school employees, even if scurrilous and untrue, constitute the kind of exceptional and grave circumstances which might justify an injunction against speech.

7 Public property may also be designated by the government for use as an unlimited public forum, i.e., for use by all groups and for the discussion of all subject matters. See, e.g., *Clark v. Burleigh,* 4 Cal.4th 474, 483 n. 8, 841 P.2d 975, 980, 14 Cal.Rptr.2d 455, 460 (1992); Cal.Ed.Code, § 40041(a).

8 "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." § 54953.

9 "(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless action is otherwise authorized by subdivision (b) of Section 54954.2....

"(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

"(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law." § 54954.3.

10 "As used in this chapter, 'local agency' means a ... school district, ..." § 54951.

"As used in this chapter, 'legislative body' means:

"(a) The governing body of a local agency....

"(b) A ... board, ... of a local agency, ..." § 54952.

11 Although defendants concede that such sessions are limited public fora, they contend that such sessions are "highly regulated" and "similar to a non-public forum." Describing a forum as "highly regulated" begs the question of whether a particular regulation applicable to the forum is constitutional; describing a forum as "similar to a non-public forum" is irrelevant in the absence of any explanation of how the alleged similarity affects the level of constitutional scrutiny to which any regulation of speech in such forum must be subjected. Furthermore, to the extent that defendants rely on *Kindt v. Santa Monica Rent Control Bd.,* 67 F.3d 266, 270 (9th Cir.1995) to argue that a California school board meeting is a "non-public forum," such reliance is misplaced, because the Brown Act specifically creates a public forum, albeit one limited to comments related to school boards' "subject matter."

12 Based on the California Constitution's prohibition on censorship, the employees themselves legally could not prevent members of the public from making defamatory statements; why then should District be able to accomplish on such employees' behalf that to which they themselves have no legal right?

13 When a school board holds open sessions of its meetings and is addressed by members of the public pursuant to the Brown Act, it is not functioning as an employer, but as a legislative body. See §§ 54952, 54952.6, 54953, 54954.3. Legislative bodies declare policy and make provisions for the ways and means of accomplishing declared policy. *California Radioactive Materials Management Forum v. Dept. of Health Services (Senate Rules Committee),* 15 Cal.App.4th 841, 870, 19 Cal.Rptr.2d 357, 377 (1993). In connection with adopting policies and making provisions

for carrying out policies, one aspect of the legislative body's function is to listen to public testimony, including public criticism of those persons implementing the policies, i.e., school district employees. § 54954.3.

In contrast, as defendants themselves recognize, Defendants' Opposition at pp. 25–26, matters related to District's duties as an employer are considered in closed session. See, e.g., § 54956.95 (workers' compensation liability and claims considered in closed session); § 54954.5 (public employee appointment, public employment, public employee performance evaluation, public employee discipline/dismissal/release, conference with labor negotiator are all topics which may be discussed in closed session); § 54957.6 (salaries, salary schedules, and fringe benefits to be considered in closed session). These matters involve applying already determined policies to particular situations, which is an administrative or executive function. *California Radioactive Materials Management Forum v. Dept. of Health Services (Senate Rules Committee),* 15 Cal.App.4th at 870, 19 Cal.Rptr.2d at 377, *supra.*

14 It is difficult to discern how a statement which does not identify by name or position any particular employee can violate any particular employee's right to privacy.

15 District also tried to justify its resort to content-based regulation by claiming it has an interest in ensuring that participation and review is "informed and dispassionate." However, the policy does not prohibit "uninformed" or "passionate" speech; it prohibits only speech critical of District employees, regardless of how informed or dispassionate such speech may be. And even if the policy were directed at only passionate or uninformed speech, it would not pass constitutional muster. The First Amendment protects speech which is uninhibited, robust, wide-open, vehement, caustic, and sharp, as well as speech which lacks truth, social utility or popularity or which exaggerates or vilifies. *New York Times Co. v. Sullivan,* 376 U.S. 254, 270–271, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964).

16 "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of the State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (Govt.Code, § 54950, emphasis added.)

17 See *Frisk v. Merrihew,* 42 Cal.App.3d 319, 323–324, 116 Cal.Rptr. 781, 783 (1974) (school board meetings are official proceedings within the meaning of California Civil Code section 47(b)(3)); see also *Brody v. Montalbano,* 87 Cal.App.3d 725, 731–732, 151 Cal.Rptr. 206, 211 (1978), *cert. denied,* 444 U.S. 844, 100 S.Ct. 87, 62 L.Ed.2d 57 (1979) (absolute privilege applies to parents' communication with school board which is intended to prompt official action by board regarding school administrator's conduct); *Martin v. Kearney,* 51 Cal.App.3d 309, 311, 124 Cal.Rptr. 281, 282 (1975) (absolute privilege applies to parents' communication with school board which is intended to prompt official action by board regarding school teacher's conduct).

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