

Part 2 includes the following items

4.0 PUBLIC HEARINGS

Oakley City Council

4.1 Approval of Subdivision Improvement Agreement, Subdivision Annexation and Assessment Deferral Agreement, Phase 1 Final Map and Modification of Conditions of Approval for [Subdivision 9033 Gilbert Property](#) (Northeast Corner of East Cypress Road and Sellers Avenue) (Kevin Rohani, Public Works Director / City Engineer)

Staff recommendation:

- ❑ Open the Public Hearing
- ❑ Receive the Staff Report
- ❑ Receive Comments from the Applicant
- ❑ Receive Public Testimony
- ❑ Close the Public Hearing
- ❑ Deliberate
- ❑ Summarize the Deliberation
- ❑ Adopt the Resolutions Authorizing the City Manager to Execute the Subdivision Improvement Agreement, Subdivision Annexation and Assessment Deferral Agreement, approve the Final Map for Subdivision 9033 Gilbert Property and adopt the Resolution approving the Modification of Conditions of Approval 104, 105, 106, 108, 109 & 110



STAFF REPORT

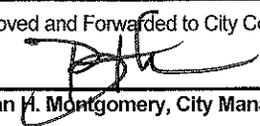
Date: Tuesday, August 9, 2016

To: Bryan H. Montgomery, City Manager

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

Subject: Approval of Subdivision Improvement Agreement, Subdivision Annexation and Assessment Deferral Agreement, Phase 1 Final Map and Modification of Conditions of Approval for Subdivision 9033 Gilbert Property (Northeast Corner of East Cypress Road and Sellers Avenue)

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

Background and Analysis

On November 13th, 2007 the City Council adopted Resolution 117-07 conditionally approving the tentative map for Subdivision 9033 Gilbert Property located at the northeast corner of East Cypress Road and Sellers Avenue. The Developer, Contra Costa County Communities, LLC, A California Limited Liability Company, desires to record the phase 1 final map for Subdivision 9033 Gilbert Property, with 222 residential lots, Parcel A (9.23 acres with a park and stormwater pond), Parcel B (61.89 acres for Phase 2 development), Parcels C, E, F & G (Landscape parcels ranging from 3,997 square feet to 5,875 square feet) and Parcel D (Landscaped pedestrian access to Sellers Avenue).

In order to satisfy all remaining conditions of approval, the Developer has requested that the City enter into a Subdivision Improvement Agreement. The Subdivision Improvement Agreement requires the Developer to complete the public improvements as required by the conditions of approval for Subdivision 9033. As part of this agreement, the Developer is required to provide securities for the amount of the estimated cost of phase 1 grading (\$1,975,352), phase 1 in-tract public improvements (\$3,936,000), phase 1 off-site public improvements (\$887,000) and landscaping (\$196,000).

None of these improvements have been completed and accepted at this time. The applicant is required to complete the public improvements within twenty four months in accordance with the Subdivision Map Act (Government Code §66410) and the Subdivision Improvement Agreement. The City Engineer and City Surveyor have reviewed the tentative map approval documents and the final map, and have found the final map to be technically correct, in substantial compliance with the conditionally

approved tentative map, and all final map conditions of approval have been met (or are being secured by way of this agreement).

The conditions of approval that remain to be satisfied include annexation of the property to the City of Oakley Street Lighting and Landscape Assessment District No. 1 (Conditions 104, 105 & 106), participating in the special police tax area (Condition 108), forming a district to fund the operations and maintenance for storm drainage (Condition 109) and participating in the formation of an assessment district for the construction of off-site improvements (Condition 110). Those items take several months to complete, and are more efficient when grouped with other projects.

With the formation of the Citywide Community Facilities District, (CFD 2015-2), Conditions 104, 105, 106, 109 and 110 can be satisfied by annexing into this CFD. Staff is also requesting the Council to approve a modification of the original conditions of approval to allow the Development to annex into CFD 2015-2, in lieu of annexing into the City of Oakley Street Lighting and Landscape Assessment District No. 1, to satisfy the requirements of Conditions 104, 105 & 106. This would also be in lieu of forming a district to fund the operations and maintenance for storm drainage and participating in the formation of an assessment district for the construction of off-site improvements to satisfy the requirements of Conditions 109 and 110.

The City Council has been receptive to recording final maps prior to the completion of the annexation process for other projects, so staff prepared a similar agreement to those used in the past. The agreements used previously allowed the map to record, but prohibited the sale of lots until the annexation was complete.

The City Council should be aware that by approving the Final Map without approving the Subdivision Annexation and Assessment Authorization Agreement, it is possible that additional voters could be introduced into the assessment district formation process, or that the applicant would not cooperate with the district formation. Staff recommends that if the Resolution approving the Subdivision Annexation and Assessment Authorization Agreement is not adopted, the Resolution approving the Final Map should not be adopted either.

Fiscal Impact

There is no fiscal impact associated with this action.

Staff Recommendation

Staff recommends that the City Council adopt the Resolutions authorizing the City Manager to execute the Subdivision Improvement Agreement, the Subdivision Annexation and Assessment Deferral Agreement, approve the Final Map for Subdivision 9033 Gilbert Property and adopt the Resolution approving the modification of Conditions of Approval 104, 105, 106, 108, 109 & 110.

Attachments

- 1) City Council Resolution 117-07

- 2) Subdivision Improvement Agreement (SIA)
- 3) Resolution for SIA
- 4) Subdivision Annexation and Assessment Deferral Agreement (SAAADA)
- 5) Resolution for SAAADA
- 6) Resolution Approving the Final Map titled Subdivision 9033 Gilbert Property
- 7) Resolution Approving the Modification of Conditions of Approval 104, 105, 106, 109 and 110 of City Council Resolution 117-07
- 8) Reduction of Subdivision 9033 Gilbert Property Final Map

CITY OF OAKLEY

RESOLUTION NO. 117-07

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING SUBDIVISION 9033 BY DUTCH SLOUGH, INC, INCLUDING A VESTING TENTATIVE MAP, TREE PERMIT, AND DESIGN REVIEW LOCATED AT THE NORTHEAST CORNER OF CYPRESS ROAD AND SELLERS AVENUE**FINDINGS**

A. Dutch Slough, Inc., on behalf of the property owner, (together, "Applicants"), has submitted applications to develop approximately 120.01-acres, at the northeast corner of Cypress Road and Sellers Avenue, within the Dutch Slough Planning Area (the "Project"). The Project application includes requests for approval of the following:

- Vesting Tentative Map 9033, which would subdivide 120.01 acres into 506 single-family lots;
- Tree Permit to remove 14 trees;
- Design Review to approve four models within Neighborhood 4 of the subdivision; and a

B. The City prepared a Draft Environmental Impact Report dated April 2007 and a Final Environmental Impact Report dated September 2007, which reflected the independent judgment of the City as to the potential environmental effects of the project.

C. On September 17, 2007, 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 continued the Public hearing to October 15, 2007. On October 15, 2007 the Planning Commission continued the public hearing, receiving a report from 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 expressed its recommendation that the City Council should approve the project, subject to the conditions recommended by staff and as revised by the Commission during its deliberations.

D. On November 13, 2007, the City Council 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 Council took a vote and adopted this Resolution to approve the project, subject to the conditions recommended by staff and as revised by the Council during its deliberations.

These Findings are based on the City's General Plan, the City's Zoning and Subdivision Ordinances, the Residential Design Guidelines, and the information submitted to the City Council at its November 13, 2007 meetings, both written and oral,

including oral information provided by the Applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the Subdivision (hereafter the "Record").

NOW, THEREFORE, 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:

1. Regarding the approval of Vesting Tentative Map 9033, the Council finds that the proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan. The number of units, layout of lots and streets, identified improvements and dedications, and other technical requirements comply with the density prescribed by the General Plan and its applicable policies.

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

2. Regarding the Tree Permit to remove 14 trees the Council finds:

a. Reasonable development of the property would require the removal of the trees and this development could not be reasonably accommodated on another area of the lot. ***Due to the location of the trees and the mass grading needed on site, the saving of the trees is unreasonable to accommodate the development.***

3. Regarding the Design Review of Neighborhood 4 (Z Lots within Subdivision 9033), the Council finds that:

a. The proposed development of 126 single-family homes is consistent with the proposed General Plan designation. ***The residential land use designations on this site include single-family low, medium and multi-family low. The General Plan allows for flexibility in development standards which allows for blending of densities over the site. The development of Neighborhood 4 along with the rest of the project area meets the General Plan land use designation.***

b. The proposed development of 126 single-family homes complies with all applicable Zoning regulations. ***The applicant is proposing P-1 zoning. This designation allows for flexibility in development standards. As proposed and conditioned the development meets the intent of the Zoning Ordinance and Residential Design Guidelines.***

c. The proposed design and materials of the single-family homes are compatible with the surrounding area. ***The proposed development provides thoughtful design and quality materials which will blend and enhance the existing neighborhoods surrounding this development.***

BE IT FURTHER RESOLVED THAT, on the basis of the foregoing Findings and the entire Record, the City Council, subject to the conditions listed below, approves the following entitlements:

- Approve Vesting Tentative Map;
- Approval of the Tree Permit; and
- Approves the Design Review.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves f the Applicant's request for the Rezone, Vesting Tentative Map and Design Review with the following conditions:

Conditions of Approval

Applicant shall comply with the requirements of Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the site plan received by the Community Development Department dated July 25, 2007.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. This Rezone, Tentative Subdivision Map and Design Review is approved, as shown on the revised plans, dated July 25, 2007, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.
2. This approval shall be effectuated by pulling a building permit and if not effectuated shall expire on August 14, 2013, as provided in the approved Development Agreement. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.
3. All construction drawings submitted for plan check shall be in substantial compliance with the plans presented to and approved by the City Council on November 13, 2007.
4. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
5. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday, and shall be prohibited on City, State and Federal Holidays. The restrictions on allowed working days and times may be modified on prior written approval by the Community Development Director.
6. Should archaeological materials be uncovered during grading, trenching or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.

7. All mitigation measures addressed in the environmental document shall be complied with and addressed as outlined in the Mitigation Monitoring Program approved for this project (incorporated as Exhibit A), per the review and approval of the Community Development Director.
8. The applicant shall participate in the East Contra Costa County Habitat Conservation Plan and pay any applicable fee as required per the MOA between the developers and the Habitat Conservation Plan Association.
9. The applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court), except as otherwise provided in Section 20 of the Development Agreement.

Development Standards:

10. The Planned Development (P-1) zone district shall have the following standards:

Neighborhood 1 (80' x 100')

- Minimum lot area: 7,800 square feet;
- Minimum lot frontage: 30' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space, porches or side loaded garages, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 15', corner lots shall maintain a street side yard setback of 10'; fireplaces may project into the required side yard setback a maximum of two feet (2');
- Minimum rear yard: 15';
- Maximum wall/fence height: 8'.

Neighborhood 2 (50' & 60' x 100')

- Minimum lot area: 5,000 square feet;
- Minimum lot frontage: 30' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space, porches or side loaded garages, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10'; fireplaces may project into the required side yard setback a maximum of two feet (2');
- Minimum rear yard: 15'.
- Maximum wall/fence height: 8'.

Neighborhood 3 (50' x 90')

- Minimum lot area: 4,000 square feet;
- Minimum lot frontage: 30' at the front property line;
- Minimum front yard setback: 20' to garage, 15' to any living space or side loaded garage and 10' porches, all measured perpendicular to the structure;
- Minimum side yard setback: 5' minimum, sum of both sides 10', corner lots shall maintain a street side yard setback of 10'; fireplaces may project into the required side yard setback a maximum of two feet (2');
- Minimum rear yard: 15';
- Maximum wall/fence height: 8'.

Neighborhood 4 (Z Lots)

- Minimum lot area: 3,500 square feet;
- Minimum lot frontage: 20' at the front property line;
- Minimum front yard setback: 20' to garage, 10' to any living space, side loaded garage or porches, all measured perpendicular to the structure;
- Minimum side yard setback: 4' minimum, sum of both sides 8', corner lots shall maintain a street side yard setback of 10'; fireplaces may project into the required side yard setback a maximum of two feet (2');
- Minimum rear yard: 10';
- Maximum wall/fence height: 8'.

Parks and Landscaping:

11. This project has a park requirement of 9-acres (neighborhood, community and trails). The applicant shall provide approximately 4 acres of neighborhood parks on-site, 1.5 acre of trails on site and shall pay in-lieu fees for the remainder to meet the community park obligation.
12. The applicant shall work with the Community Development Department with the design, construction and completion of the park concurrent with the development of the subdivision. As part of the plan check process for the park, the applicant shall develop a park construction schedule approved by the Community Development Director to provide for the timely completion of the park concurrent with development.
13. A mix of evergreen and deciduous trees as well as shrubs and ground cover shall be planted along the street frontage as specified in the Residential Design Guidelines per the review and approval of the Community Development Director.
14. A landscaping and irrigation plan for all areas shown on the landscape plan shall be submitted for review and approval of the Community Development Director prior to the issuance of building permits. Landscaping shall conform to the Oakley Landscape Guidelines and the City's Water Conservation Landscape Ordinance 82-26 and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance.

15. California native drought tolerant plants shall be used as much as possible. All trees shall be a mix of fifteen-gallon and 24" box; all shrubs shall be a minimum five-gallon size, except as otherwise noted.
16. All landscaped areas not covered by shrubs or groundcover shall be covered with bark or acceptable alternative as reviewed and approved by the Community Development Director. On slopes greater than 3 to 1, the applicant shall use an alternative to bark per the review and approval of the Community Development Director.
17. Each residential lot shall have a minimum of two different types of trees along the street frontage, with the exception of corner lots, which shall have four.
18. ***The applicant shall install front yard landscaping on all residential lots per the Residential Design Guidelines.*** The applicant shall maintain all private landscaping until occupancy.
19. A street tree plan shall be submitted for review prior to issuance of Building Permits. The street trees shall be inter-mixed throughout the subdivision, so there are a variety of trees on every street, per review of the Community Development Department.
20. The landscape plan along the levees shall be revised to ensure no trees or incompatible plant materials are planted within the levee prism per the approval of the Community Development Director and City Engineer.
21. Parcel H shall be fully landscaped with trees, shrubs and ground cover per the review and approval of the Community Development Director.

Fences and Walls:

22. Within the subdivision good neighbor fences shall be constructed of six-foot high wood fences with metal posts or acceptable alternative as reviewed and approved by the Community Development Director. Corner lots or any good neighbor fence facing a street shall provide an enhanced wood fence with two feet of lattice along the top. 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.
23. ***Fences that adjoin the trail system adjacent to the CCWD canal and Dutch Slough shall be constructed to provide for greater durability and enhanced appearance. If wood fencing is used, it shall be reinforced and stained or painted on both sides to prevent water damage to the satisfaction of the Community Development Director.***
24. A 9-foot masonry wall shall be located along the perimeter of the site adjacent to Cypress Road and Sellers Avenue, per the acoustical analysis. A wall/berm combination could be provided to achieve the 9' requirement. The wall shall be of pre-cast concrete construction per the review and approval of the Community

Development Director. In the locations where cul de sacs or front loaded streets are adjacent to the arterial and collector streets, wrought iron or 42" picket fences shall be constructed to provide open views per the review and approval of the Community Development Director.

25. Sound walls shall attenuate, not just deflect sound. The use of sound absorbing material should be used for the construction of sound walls per the review and approval of the Community Development Director.
26. Anti-graffiti techniques and/or materials shall be used on sound walls.
27. The copper on the entry monolith shall be treated to ensure the copper does not patina.

Subdivision Design:

28. The neighborhood entries shall be identified by accent paving, project monument signage and accent planting per the review and approval of the Community Development Director.
29. Driveway openings shall be a maximum 18' in width or up to 25% of a lot's frontage (except on cul de sacs).
30. The street names shall be approved by the Community Development Department and the East Contra Costa Fire District.
31. A life saving device shall be provided along the trail adjacent to the storm water pond to provide assistance for a drowning victim.
32. The corner of Cypress Road and Sellers Avenue is a highlighted intersection. The design of the landscaping at the northeast corner of Cypress Road and Sellers Avenue shall be designed to meet the requirements of highlighted intersections per the Residential Design Guidelines.

Subdivision Disclosures:

33. 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.

34. 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."

Design Review:

35. All windows and doors shall be trimmed on all four sides.
36. Sixty percent of the garage doors throughout the subdivision, that face the street, shall have windows.
37. All houses that side or back onto a road shall have additional architectural embellishments on the side and rear elevations.
38. The front yards for plans 2, 3 and 4 shall include scored concrete driveways and walkways separated from the driveways per the review and approval of the Community Development Director.
39. Stone accents provided on plans 1 & 2 shall be balanced across the front elevations and shall end at a change in building plane or at the side yard fence, per the review and approval of the Community Development Director.
40. The developers shall provide color schemes to the Community Development Director for review prior to the issuance of building permits for neighborhood 4.

Energy Efficiency:

41. Water heaters shall provide an energy efficiency factor of 0.84 or better.
42. Dual zone air conditioning shall be provided on all two-story residential units.

43. 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.
44. Subdivisions design shall take into consideration passive solar energy and house orientation should take advantage of this.
45. High efficiency furnaces shall be used with a 90% AFUE and compressors shall have a SER rating of greater than 13 per the review and approval of the Community Development Director.
46. Low E glass windows should be used with wood, fiberglass or vinyl frames per the review and approval of the Community Development Director.

Tree Permit

47. The applicant is approved to remove the 14 black cotton wood trees on site. The trees shall be replaced at a comparable value to the trees lost as determined by industry standards or a certified arborist or the applicant shall pay an in-lieu fee per the review and approval of the Community Development Director.

Building Division Conditions

48. 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.
49. An Automatic Life Safety Sprinkler System shall be required in all new residential occupancies pursuant to Ordinance 22-06. The Automatic Life Safety Sprinkler Systems in one-family and two-family dwellings and attached and detached garages shall be designed and installed to the standards and requirements found in the most recent version of the NFPA (National Fire Protection Association), Standard 13D. A minimum of two sprinkler pilot heads shall be installed in a dwelling's attic area, if applicable.
50. Prior to requesting a *Final Inspection* from the Building Division all Conditions of Approval required for occupancy must be completed.

Public Works and Engineering Conditions

General:

51. Submit improvement plans prepared by a registered civil engineer to the City Engineer for review and approval and pay the appropriate processing costs in accordance with the Municipal Code and these conditions of approval. The plans shall be consistent

with the Stormwater Control Plan for the project, include the drawings and specifications necessary to implement the required stormwater control measures, and be accompanied by a Construction Plan C.3 Checklist as described in the Stormwater C.3 Guidebook.

52. Submit a final map prepared by a licensed land surveyor or qualified registered civil engineer to the City Engineer and pay appropriate fees in accordance with the Code and these conditions of approval.
53. Submit grading plans including erosion control measures and revegetation plans prepared by a registered civil engineer to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
54. Submit levee plans including related geotechnical studies and landscaping within and adjacent to the levee prism prepared and/or endorsed by a registered civil engineer to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
55. Submit landscaping plans for publicly maintained landscaping, including planting and irrigation details, as prepared by a licensed landscape architect to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
56. Execute any agreements required by the Stormwater Control Plan which pertain to the transfer of ownership and/or long term maintenance of stormwater treatment mechanisms required by the plan prior to the final inspection of the first house within the subdivision.
57. Building permits for house construction shall not be issued until the subdivision streets serving the lots have been paved.
58. ***The developer shall provide a safe route to school plan for the review and approval of the City Engineer prior to recordation of the final map. The developer shall be responsible for constructing safe route to school improvements, including interim improvements located offsite, if a school is not located within the Gilbert Ranch subdivision.***

Roadway Improvements:

59. Construct the frontage of Cypress Road to City public road standards for an ultimate 104-foot wide roadway within a 164-foot right-of-way (the right of way shall include a minimum of 35 feet from the face of curb to the right of way line on the north side of the road and 25 feet on the south side of the road). The project shall be responsible for constructing curb, eight-foot detached sidewalk (meandering within the landscape area so that the minimum landscape width is no less than six feet), right of way landscaping, and 44 feet of pavement on the north side of the road, a sixteen foot wide landscaped median, 20 feet of pavement on the south side of the road, necessary longitudinal and transverse drainage, and

conforms to existing improvements. The face of curb on the north side shall be located 52 feet from the centerline and any conforms to existing improvements must take place outside of the limits of the project.

60. Construct the frontage of Sellers Avenue to City public road standards for an ultimate 80-foot wide roadway within a 140-foot right-of-way (the right of way shall include a minimum of 30 feet from the face of curb to the right of way line on both sides of the road). The project shall be responsible for constructing curb, eight-foot detached sidewalk (meandering within the landscape area so that the minimum landscape width is no less than six feet), right of way landscaping, and 32 feet of pavement on the east side of the road, a sixteen foot wide landscaped median, necessary longitudinal and transverse drainage, and conforms to existing improvements. The face of curb on the east side shall be located 40 feet from the centerline and any conforms to existing improvements must take place outside of the limits of the project. The roadway shall be widened in the vicinity of Cypress Road to allow for the southbound traffic to shift to the west side of the median.

61. Construct C Street to City public road standards for a 36-foot wide roadway within a 70-foot right of way, including curb, five-foot detached sidewalk (parallel to the curb face and offset from the face of curb by twelve feet), right of way landscaping, necessary longitudinal and transverse drainage. The face of curb shall be located 18 feet from the centerline. The right of way shall be widened to 80-feet between D Street and Sellers Avenue and the additional right of way behind the sidewalk shall be landscaped.

62. Construct bus turnouts along the north side of Cypress Road consistent with Mitigation Number 4.5-4 including one at a location just west of Knightsen Avenue. The turnouts shall be consistent with Tri Delta Transit and City standards and shall include any necessary shelters and appurtenances. The right of way adjacent to the turnouts shall be widened so that the landscaping widths are consistent with the remainder of the frontage.

63. Construct the project streets 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.

64. Install traffic signals at the following locations. The design and construction of the signals is subject to the review and approval of the City Engineer and the traffic signals shall be interconnected where appropriate. When placement of curb

returns, poles and equipment is not feasible at the ultimate location the improvements will not be eligible for Traffic Impact Fee (TIF) credits.

- A. Cypress Road at Sellers Avenue (this project is on the TIF project list and is eligible for reimbursement based on the policies and procedures of that program);
 - B. Cypress Road at A Street/Franklin Lane (this project is not on the TIF project list and is not eligible for reimbursement); and
 - C. Cypress Road at Knightsen Avenue (this project is on the TIF project list and is eligible for reimbursement based on the policies and procedures of that program).
65. Install traffic calming measures consistent with the City's Neighborhood Traffic Management Program. Special attention shall be paid to C Street and the applicant should consider a combination of raised intersections, bulb-outs, stop signs, and other appropriate measures. The traffic calming measures shall be included on the improvement plans and are subject to the review and approval of the City Engineer.
66. Install traffic control devices such as stop signs and other signing and striping on the project streets to the satisfaction of the City Engineer.
67. Construct emergency vehicle accesses from H Circle to Sellers Avenue. The design and configuration of the accesses shall be per the current City standard and shall be subject to the review and approval of the City Engineer.
68. Design all public and private pedestrian facilities in accordance with Title 24 (Handicap Access) and the Americans with Disabilities Act.
69. Submit a phasing plan for the project streets to the City Engineer for review if the street improvements will be phased. The plan shall include provisions for emergency vehicle access, temporary turn-around facilities, and access to the occupied lots.

Road Alignment/Sight Distance:

70. Submit a preliminary plan and profile to the City Engineer for review showing all required improvements to Cypress Road and Sellers Avenue. The sketch plan shall be to scale, show horizontal and vertical alignments, transitions, curb lines, lane striping and cross sections and shall provide sight distance for a design speed of 45 miles per hour. The plan shall extend a minimum of 150 feet ± beyond the limits of the proposed work.

Road Dedications:

71. Convey to the City, by Offer of Dedication, the right of way for the project streets.
72. Convey to the City, by offer of dedication, the right of way for Cypress Road for the planned interim width of 120-feet along the project frontage.

73. Convey to the City, by offer of dedication, the right of way for Sellers Avenue for the planned interim width of 95-feet along the project frontage.
74. Relinquish abutter's rights of access along all non-primary frontages to the satisfaction of the City Engineer.
75. Furnish necessary rights of way, rights of entry, permits and/or easements for the construction of off-site, temporary or permanent, public and private road, utility and drainage improvements.

Street Lights:

76. Install streetlights along all project streets and the project Cypress Road and Sellers Avenue frontage. The City Engineer shall determine the final number and location of the lights, and the lights shall be on an LS2-A rate service. The lights on the project streets shall be decorative per City standards, and the lights along Cypress Road and Sellers Avenue shall be General Electric spun aluminum "cobra head" style and shall be located in the medians.

Grading:

77. Submit a geotechnical report to the City Engineer for review that substantiates the design features incorporated into the subdivision including, but not limited to grading activities, compaction requirements, utility construction, slopes, retaining walls, levees, and roadway sections.
78. 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 of the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be kept current at all times 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.
79. Dust control measures shall be provided for all stockpiling per the review and approval of the City Engineer.
80. Grade all pads so that they drain directly to the public street at a minimum of one percent without the use of private drainage systems through rear and side yards.

81. Grade any slopes with a vertical height of four feet or more at a slope of 3 to 1. Retaining walls that may be installed to reduce the slope must be masonry and comply with the City's building code.
82. Submit a dust and litter control plan to the City Engineer prior to beginning any construction activities. The dust and litter control plan shall address all items identified and shall be consistent with Mitigation Number 4.5-1.
83. 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 Engineer 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.
84. Prior to commencement of any site work that will 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.
85. Submit an updated erosion control plan reflecting current site conditions to the City Engineer for review and approval no later than September 1st of every year while the Notice of Intent is active.
86. Submit a Letter of Map Revision application or the appropriate application to FEMA to remove the building pads that are currently within the Special Flood Hazard Area Zone AE from the flood zone and reflecting the required project levee system. FEMA must issue no less than a Conditional Letter of Map Revision prior to the City issuing building permits for the lots affected by the Zone AE designation or protected by the levee. The applicant should be aware of the requirements of the Federal Flood Insurance Program and the City Floodplain Management Ordinance as they pertain to future construction of any structures on this property.
87. Grade all pad elevations or install levees to satisfy Chapter 914-10 of the City's Municipal Code, including the degree of protection provisions.
88. The burying of any construction debris is prohibited on construction sites.

Utilities/Undergrounding:

89. Underground all new and existing utility distribution facilities, including those along the frontage of Cypress Road and Sellers Avenue. 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.

90. 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.
91. Above ground utility boxes shall be camouflaged per the review and approval of the City Engineer.

Drainage Improvements:

92. Collect and convey all stormwater entering and/or originating on these properties, 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, in accordance with Division 914 of the Ordinance Code. The applicant should be aware that the nearest planned public storm drainage facility is north of the Sellers Avenue terminus. The City is currently preparing a storm drain master plan for the drainage area roughly bounded to the west by the BNSF railroad tracks, the east by Sellers Avenue, and the north by the Contra Costa Canal. This project shall cooperate with the preparation of that master plan and shall comply with the plan once adopted. The project shall stub the necessary facilities to the Burroughs property (currently referred to as Subdivision 9034) to allow that property to utilize the stormwater pond being constructed on site. The project may be eligible for reimbursement from future development for upsizing the pond and/or storm drain main lines based on the final master plan.
93. 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.
94. Design and construct all storm drainage facilities in compliance with the Municipal Code and City design standards.
95. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.
96. Dedicate a public drainage easement over the drainage system that conveys storm water run-off from public streets.
97. Submit a long-term operational and maintenance plan for the stormwater pond and pump stations to the City Engineer for review. The plan must include a level of effort estimate for staffing and maintenance requirements as well as an operational and life cycle budget analysis.

98. Convey to the City, by offer of dedication, Parcel A for open space and flood control purposes.

Landscaping in the Public Right of Way:

99. Install public right of way landscaping along Cypress Road and Sellers Avenue and trail corridors. The applicant shall work with the Community Development Department and City Engineer for the design, construction and completion of the public landscaping concurrent with the development of the subdivision. As part of the plan check process for the landscaping, the applicant shall develop a construction schedule approved by the Community Development Director to provide for the timely completion of the landscaping concurrent with development.
100. Maintain all landscaping within the public right of way until such time that the adjacent roadway improvements have been accepted for maintenance.

National Pollutant Discharge Elimination System (NPDES):

101. Comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (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.

Fees/Assessments:

102. Comply with the requirements of the development impact fees listed below, in addition to those noticed by the City Council in Resolution 00-85 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 (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. Child Care Facilities "In Lieu" Fee (adopted by Ordinance Nos. 18-99 and 23-99);
- G. Fire Facilities Impact Fee, collected by the City on behalf of the Oakley Fire Protection District;
- H. East Contra Costa County Habitat Conservation Plan Fee per the East Cypress HCP MOA.

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.

- 103. 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.
- 104. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for citywide landscaping and park maintenance, subject to an assessment for maintenance based on the assessment methodology described in the Engineer's Report. The assessment 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. Any required election and/or ballot protest proceedings shall be completed prior to approval of the final map. The Applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of annexation shall be paid by Applicant.
- 105. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for citywide street lighting costs and maintenance, subject to an assessment for street light maintenance based on the assessment methodology described in the

Engineer's Report. The assessment 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. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of annexation shall be paid by Applicant.

106. Annex the property to the City of Oakley Landscape and Lighting District No. 1 for project specific landscaping maintenance, subject to an assessment for landscape operation and maintenance based on the assessment methodology described in the Engineer's Report. The assessment 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. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of annexation shall be paid by Applicant.

107. Participate in the formation of a mechanism to fund the additional police protection and park maintenance that will be required in the Cypress Corridor area. This annual assessment is pursuant to Section 4 of the Memorandum of Understanding between the City of Oakley and the Emerson, Gilbert and Burroughs Families dated September 23, 2002. The assessment shall initially be \$120 per parcel annually and shall include appropriate future cost of living adjustments for police services and park maintenance as established at the time of voting by the City Council. Any required election and/or ballot protest proceedings shall be completed prior to filing of the final map. The applicant shall apply for the formation and provide all information and documents required by the City. All costs shall be paid by Applicant.

108. Participate in the provision of funding to maintain police services by voting to approve a special tax for the parcels created by this 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. Should the homes be occupied prior to the City receiving the first disbursement from the tax bill, the project proponent shall be responsible for paying the pro-rata share for the remainder of the tax year prior to the City conducting a final inspection.

109. Participate in the formation of a mechanism to fund the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting, stormwater ponds and any proposed pump stations, as well as any levees proposed to be maintained by the City. The appropriate funding mechanism shall be determined by the City and may include, but not be limited to, an assessment district, community services district, or community facilities district. The funding mechanism shall be formed prior to filing of any final or parcel map, and the project proponent shall fund all costs of the formation.

110. Participate in the formation of an assessment district for the construction of off-site improvements and/or the pre-payment of all or a portion of eligible development impact fees should the City deem such a mechanism necessary. The assessment district shall be formed prior to the filing of any final or parcel map, and the project proponent shall fund all costs of formation.
111. Comply with the storm drainage master plan and associated fees for drainage shed roughly bounded to the west by the BNSF railroad tracks, the east by Sellers Avenue, and the north by the Contra Costa Canal should that plan be adopted by the City and/or the Contra Costa County Flood Control and Water Conservation District. The applicant shall pay the fee in effect at the time of building permit issuance. Certain improvements required by the Conditions of Approval for this development or the Code may be eligible for credit or reimbursement against the drainage area fee. The developer should contact the City Engineer to personally determine the extent of any credit or reimbursement for which he might be eligible. Any credit or reimbursements shall be determined prior to filing 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 Ironhouse Sanitary District.
- D. The applicant shall comply with the requirements of the Diablo Water District.
- E. Comply with the requirements of the East Contra Costa Fire Protection District.
- F. Comply with the requirements of the Building Inspection Division. Building permits are required prior to the construction of most structures.
- G. This project may be subject to the requirements of the Department of Fish and Game. It is the applicant's responsibility to notify the Department of Fish and Game, P.O. Box 47, Yountville, California 94599, of any proposed construction

within this development that may affect any fish and wildlife resources, per the Fish and Game Code.

- H. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.
- I. The applicant shall obtain an encroachment permit for construction within existing City rights of way.
- J. The applicant shall obtain an encroachment permit from Caltrans for construction within the State right of way.

PASSED AND ADOPTED by the City Council at a meeting held on the 13th Day of November, 2007, by the following vote:

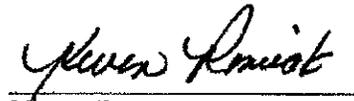
AYES: Anderson, Rios, Romick

NOES: Connelley, Nix

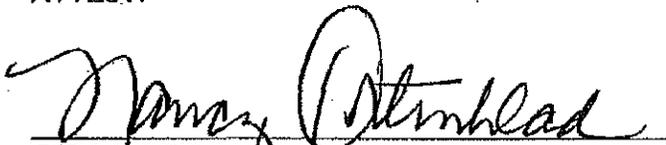
ABSTENTIONS: None

ABSENT: None

APPROVED:


MAYOR

ATTEST:


CITY CLERK

**CITY OF OAKLEY
SUBDIVISION IMPROVEMENT AGREEMENT
SUBDIVISION 9033 GILBERT PROPERTY**

This agreement is made and entered into this 9th day of August, 2016 by and between the City of Oakley, a municipal corporation, hereinafter referred to as "CITY", and Contra Costa County Communities, LLC, A California Limited Liability Company hereinafter referred to as "DEVELOPER".

RECITALS

WHEREAS, it has been determined by the City Council of the City of Oakley, State of California, that DEVELOPER, the sub-divider of Subdivision 9033 Gilbert Property desires to improve and dedicate those public improvements (hereafter "The Improvements") required by the conditions of approval for the project as adopted by the City of Oakley City Council via Resolution Number 117-07 in accordance with the requirements and conditions set forth in approvals, the requirements of the Subdivision Map Act of the State of California, and those certain plans and specifications for said development approved by CITY and titled: Grading Plans "Gilbert Property Phase 1 Grading Plan" and improvement plans "Gilbert Property Phase 1 Improvement Plan" now on file in the office of the City Engineer, which are hereby referred to for a more definite and distinct description of the work to be performed under this Agreement as though set forth at length herein; and

WHEREAS, DEVELOPER and CITY acknowledge that not all conditions of approval ("COA") contained in Resolution Number 117-07 have been satisfied, but nevertheless, DEVELOPER desires to file a final map. The satisfaction of all COA is the subject of this Agreement. DEVELOPER's agreement to satisfy all COA including the aforementioned COA and construct the Improvements identified in the aforementioned COA is a material part of the consideration for this Agreement; and

WHEREAS, DEVELOPER intends to satisfactorily complete The Improvements within the time hereinafter specified, and CITY intends to accept DEVELOPER's offer(s) of dedication of The Improvements in consideration for DEVELOPER's satisfactory performance of the terms and conditions of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants herein contained, the parties agree as follows:

1. Improvements.

DEVELOPER agrees to install the road improvements (both public and private), sewer and drainage improvements, signs, street lights, fire hydrants, landscaping, and such other improvements (including appurtenant equipment) as required as Conditions of Approval of Tentative Map 9033 as set forth in Exhibit A to this Agreement, which is incorporated herein as if set forth at this point, or as otherwise required in the subdivision ordinance. In the event that any provision of this Agreement conflicts with

the provisions of Exhibit A the provisions of Exhibit A shall prevail to the extent that the conflicting provision in Exhibit A requires a greater or more extensive improvement or expenditure, or to the extent that that provision extends DEVELOPER's obligations over a greater period of time than the specific provision set forth herein. Such improvements shall also be made in conformance with the City of Oakley Municipal Code and Contra Costa County Ordinance Code as adopted and enforced by the City of Oakley.

DEVELOPER will commence construction of The Improvements within twenty four months following the date on which CITY executes this Agreement. DEVELOPER shall complete said work not later than twenty four months following the date of commencing construction in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City of Oakley Municipal Code and Contra Costa County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the City Municipal Code or County Ordinance Code, the stricter requirements shall govern. It is understood that the City of Oakley was incorporated effective July 1, 1999, and as such continues to rely on certain laws, ordinances and design standards of the County of Contra Costa. References herein to the County Code or County Ordinance Code are understood to refer to such ordinances and codes as if adopted by the City of Oakley.

Time is of the essence in this Agreement. Upon completion, DEVELOPER shall furnish CITY with a complete and reproducible set of final as-built plans of The Improvements, including any authorized modifications.

All deadlines, cure periods and periods for DEVELOPER'S performance under this Agreement shall be extended as applicable by occurrences of Unavoidable Delay. "**Unavoidable Delay**" shall mean any prevention, delay or stoppage in the performance of DEVELOPER's obligations under this Agreement, which prevention, delay or stoppage is caused by: (a) CITY's actions or CITY's failure to take any action that the CITY is required to take under the express terms of this Agreement, (b) acts of God, war, inability to obtain labor or materials or reasonable substitutes therefor due to conditions generally applicable in the location of the Property, (c) moratoria, regulations, or controls imposed, or lack of action taken, by any governmental or quasi-governmental agency, (d) the inability to obtain permits or other necessary governmental approvals, (e) rain or other inclement weather, or (f) other similar matters or causes beyond DEVELOPER's reasonable control. DEVELOPER shall give written notice to CITY within fifteen (15) business days after DEVELOPER becomes aware of the occurrence of an Unavoidable Delay specifying the nature of the Unavoidable Delay. DEVELOPER will use commercially reasonable efforts to minimize the impact of any Unavoidable Delay.

2. Estimated Cost of Improvements and Possible Future Cash Deposit.

The estimated cost of constructing The Improvements required by this Agreement as adjusted for inflation is agreed to be a total of \$6,994,352 of which:

Grading is \$1,975,352, In-tract improvements are \$3,936,000, off-site improvements are \$887,000 and Landscaping is \$196,000. Said amount includes costs and reasonable expenses and fees which may be incurred in enforcing the obligation secured.

3. Bonds Furnished.

Concurrently with the execution of this Agreement, DEVELOPER shall furnish CITY with the following security in the forms specified in Government Code sections 66499.1 and 66499.2 or in a form satisfactory to the CITY Attorney if different from said Government Code forms:

- a. Faithful Performance. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that The Improvements will be satisfactorily completed.
- b. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to fifty percent (50%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that DEVELOPER'S contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.
- c. If required by CITY, a cash deposit, corporate surety bond, or instrument of credit sufficient to assure CITY that the surface water drainage of the subdivision shall not interfere with the use of neighboring property, including public streets and highways.

CITY shall be the sole indemnitee named on any instrument required by this Agreement. Any instrument or deposit required herein shall conform to the provisions of Chapter 5 of the Subdivision Map Act. DEVELOPER may request that portions or all of the bonds may be substituted by other parties in the event that portions or all of the Subdivision is sold to other parties, and such substitution shall not be unreasonably withheld by CITY.

4. Insurance Required.

Concurrently with the execution hereof, DEVELOPER shall obtain or cause to be obtained and filed with the CITY, all insurance required in this paragraph and as set forth in Exhibit C, and such insurance shall have been approved by the Finance Director of CITY, or his designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, DEVELOPER's general contractor shall obtain or cause to be obtained and filed with the Finance Director, all insurance

required under this paragraph and as set forth in Exhibit C, evidenced herein as Exhibit D, and such insurance shall have been approved by the Finance Director of CITY, as to form, amount and carrier. DEVELOPER shall not allow any contractor or subcontractor to commence work on this contract or subcontract until all insurance required for DEVELOPER and DEVELOPER's general contractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by CITY. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier. CITY acknowledges and agrees that DEVELOPER has provided to CITY the evidence of insurance required to be maintained under this Section 5 and such insurance has been previously approved by the Finance Director of CITY, as to form, amount and carrier.

5. Work Performance and Guarantee.

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DEVELOPER guarantees all work executed by DEVELOPER and/or DEVELOPER's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after initial acceptance of the entire work by CITY. DEVELOPER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to CITY. DEVELOPER further covenants and agrees that when defects in design, workmanship and materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended (but only as to such corrected defects) for an additional year to insure that such defects have actually been corrected.

In the event the DEVELOPER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and DEVELOPER shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, DEVELOPER shall pay, in addition to actual costs and expenses of such repair or work, twenty five percent (25%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

6. Inspection of the Work.

DEVELOPER shall guarantee free access to CITY through its City Engineer and his designated representative for the safe and convenient inspection of the work throughout its construction. Said CITY representative shall have the authority to reject all materials and workmanship which are not in accordance with the plans and specifications, and all such materials and or work shall be removed promptly by DEVELOPER and replaced to the satisfaction of CITY without any expense to CITY in strict accordance with the improvement plans and specifications.

7. Agreement Assignment.

This Agreement shall not be assigned by DEVELOPER without the written consent of CITY which shall not be unreasonably withheld, conditioned or delayed.

8. Abandonment of Work.

Neither DEVELOPER nor any of DEVELOPER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of DEVELOPER's obligations under this Agreement.

If DEVELOPER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if DEVELOPER should be adjudged as bankrupt, or should make a general assignment for the benefit of DEVELOPER's creditors, or if a receiver should be appointed, or if DEVELOPER, or any of DEVELOPER's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the CITY through its Public Works Director may serve written notice on DEVELOPER and DEVELOPER's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of DEVELOPER.

In the event of any such notice of breach of this Agreement, DEVELOPER's surety shall have the duty to take over and complete The Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of DEVELOPER and

DEVELOPER's surety shall be liable to CITY for any damages and/or reasonable and documented excess costs occasioned by CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary therefor.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

City Manager and City Engineer
City of Oakley
3231 Main Street
Oakley, CA 94561

Notices required to be given to DEVELOPER shall be addressed as follows:

Contra Costa County Communities, LLC,
A California Limited Liability Company
c/o De Nova Homes
Attn: Michael Evans
1500 Willow Pass Court
Concord, CA 94520

Notices required to be given surety of DEVELOPER shall be addressed as follows:

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

Concurrently with the execution of this Agreement, DEVELOPER has executed and has caused to be acknowledged an abstract of this Agreement. DEVELOPER agrees CITY may record said abstract in the Official Records of Contra Costa County.

9. Use of Streets or Improvements.

At all times prior to the final acceptance of the work by CITY, the use of any or all streets and improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of DEVELOPER. The issuance of any building or occupancy permit by CITY for dwellings located within the tract shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such improvements by CITY. DEVELOPER agrees that CITY's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health and safety.

10. Safety Devices.

DEVELOPER shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the tract site as may be necessary to prevent accidents to the public and damage to the property. DEVELOPER shall furnish, place, and maintain such lights as may be necessary for illuminating the said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such safety items as may be shown on the plans and included in the items of work) shall be removed from site of the work by the DEVELOPER, and the entire site left clean and orderly.

11. Acceptance of Work.

Upon notice of the completion of the work covered by this agreement and the delivery of a set of final as-built plans to CITY by DEVELOPER, CITY, through its City Engineer or his designated representative, shall examine the work without delay, and, if found to be in accordance with said plans and specifications and this Agreement, shall recommend acceptance of the work to the City Council and, upon such acceptance, shall notify DEVELOPER or his designated agents of such acceptance.

12. Patent and Copyright Costs.

In the event that said plans and specifications require the use of any material, process or publication which is subject to a duly registered patent or copyright, DEVELOPER shall be liable for, and shall indemnify CITY from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of said patented or copyrighted material, process or publication.

13. Alterations in Plans and Specifications.

Any alteration or alterations made in the plans and specifications which are a part of this Agreement or any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to said bonds hereby waive the provisions of Section 2819 of the Civil Code of the State of California.

14. Liability.

- a. DEVELOPER Primarily Liable. DEVELOPER hereby warrants that the design and construction of The Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. DEVELOPER agrees to indemnify, defend, release, and hold harmless CITY, and each of its elective and appointive boards, commissions, officers agents and

employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description, directly or indirectly arising from an act or omission of DEVELOPER, its employees, agents, or independent contractors in connection with DEVELOPER'S actions and obligations hereunder; provided as follows:

1. That CITY does not, and shall not, waive any rights against DEVELOPER which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by CITY, or the deposit with CITY by DEVELOPER, of any of the insurance policies described in Paragraph 4 hereof.
 2. That the aforesaid hold harmless agreement by DEVELOPER shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied, or approved of plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- b. Design Defect. If, in the opinion of the CITY, a design defect in the work of improvement becomes apparent during the course of construction, or within one (1) year following acceptance by the CITY of the improvements, and said design defect, in the opinion of the CITY, may substantially impair the public health and safety, DEVELOPER shall, upon order by the CITY, correct said design defect at his sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the CITY for the corrective work required.
- c. Litigation Expenses. In the event that legal action is instituted by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If CITY is the prevailing party, CITY shall also be entitled to recover its attorney's fees and costs in any action against DEVELOPER's surety on the bonds provided under paragraph 3.

Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate at Oakley, California, the day and year first above written.

CITY OF OAKLEY

Developer

By: _____
Bryan H. Montgomery
City Manager

By: _____
David B. Sanson

APPROVED AS TO FORM:

Derek P. Cole
City Attorney

ATTEST:

Libby Vreonis, City Clerk

Exhibits: Exhibit A – City of Oakley, City Council, Resolution 117-07
 Exhibit B – Insurance Requirements
 Exhibit C - Verification of Required Insurance

EXHIBIT A
(RESOLUTION 117-07)

EXHIBIT B

INSURANCE REQUIREMENTS

CONSTRUCTION CONTRACTS

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (i.e., \$10,000,000)
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk (Course of Construction)** insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Contractor shall procure and maintain for the duration of the contract, and if Contractor has a claims-made policy, Contractor shall maintain for two years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide notice will be provided to City in the event that the policy is terminated. Contractor shall immediately notify City of any insurance cancellation or termination and shall provide replacement insurance policy documentation to the City.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **Worker's Compensation policies shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 10 10 01 and CG 20 37 10 01.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City reserves right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

EXHIBIT C
VERIFICATION OF INSURANCE

RESOLUTION NO. __-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING THE SUBDIVISION IMPROVEMENT AGREEMENT WITH CONTRA COSTA COMMUNITIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, FOR SUBDIVISION 9033 GILBERT PROPERTY AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT

WHEREAS, the City Council of the City of Oakley, California, wishes to enter into a Subdivision Improvement Agreement with Contra Costa County Communities, LLC, A California Limited Liability Company for the development of a residential subdivision known as Subdivision 9033 Gilbert Property; and

WHEREAS, this agreement will require the developer to complete approximately \$6,994,352 in public improvements and drainage infrastructure in accordance with the project conditions of approval and City standard construction design.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley that the Subdivision Improvement Agreement with Contra Costa County Communities, LLC, a California Limited Liability Company is hereby approved and the City Manager is hereby authorized to execute the Subdivision Improvement Agreement for the development of Subdivision 9033 Gilbert Property in the form attached hereto as Exhibit A and is made part of this resolution.

PASSED AND ADOPTED by the City Council of the City of Oakley, California, on this 9th day of August 2016 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

Recording Requested By:

Contra Costa Communities, LLC
c/o De Nova Homes
1500 Willow Pass Ct.
Concord, CA 94520

When Recorded Mail To:

City Clerk
City of Oakley
3231 Main Street
Oakley CA 94561

**SUBDIVISION ANNEXATION AND ASSESSMENT
AUTHORIZATION DEFERRAL AGREEMENT
SUBDIVISION 9033 GILBERT PROPERTY**

This agreement ("Agreement") is made at Oakley, California, effective as of the 9th day of August, 2016 by and between the CITY OF OAKLEY, a municipal corporation ("City") and Contra Costa Communities, LLC, a California Limited Liability Company ("Developer").

Recitals

A. On November 13th, 2007 the City Council of the City of Oakley adopted Resolution 117-07 which conditionally approved the tentative map for Subdivision 9033, an 222 lot subdivision along with 7 parcels ("Subdivision") located within the City of Oakley, which Subdivision is further described in the map and legal description attached hereto and incorporated herein as Exhibits A and B respectively.

B. Conditions of Approval 104, 105, and 106 require annexation to City of Oakley Street Lighting and Landscape Assessment District No. 1 ("District") and approval of assessments for Citywide parks, Citywide street lighting, and landscaping operation and maintenance.

C. Condition of Approval 108 requires participation in the provision of funding to maintain police services by voting to approve a special tax ("Special Tax") for the parcels created by this subdivision approval.

D. Condition of Approval 109 requires participation in the formation of a mechanism to fund the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting ("Funding Mechanism").

E. Condition of Approval 110 requires participation in the formation of an assessment district for the construction of off-site improvements should the City deem such a mechanism necessary ("Assessment District").

F. City and Developer, by this Agreement, are implementing conditions of approval Numbers 104, 105, 106, 108, 109 and 110.

AGREEMENT

With reference to the foregoing Recitals and in consideration of the mutual provisions, obligations and covenants herein contained, City and Developer agree as follows:

1. Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

2. Support for Annexation.

Developer shall support and take any and all actions necessary to annex the Subdivision into the District for the future maintenance and costs of Citywide parks, Citywide street lighting, and landscaping and irrigation facilities in median islands, parkways and other areas designated in the District.

Developer shall support and take any and all actions necessary to participate in the provision of funding to maintain police services.

Developer shall take any and all actions necessary to participate in the formation of a Funding Mechanism for the operation and maintenance of the storm drain system, including Citywide stormwater management and discharge control activities.

Developer shall support and take any and all actions necessary to participate in the formation of an assessment district for the construction of off-site improvements should the City deem such a mechanism necessary.

3. Submission of Assessment Ballots in Favor of Assessment, Special Tax Ballot in Favor of Special Tax, Ballot for Storm Drain and Levee Maintenance Funding Mechanism; and

Upon receipt of an assessment ballot regarding the assessments that shall be annually imposed by the District and/or a special tax ballot regarding the special tax annually imposed for maintenance of police services and/or a ballot or written request from the City regarding the participation in the formation of a mechanism to fund the operation and maintenance of the storm drain system, and/or a ballot or written request from the City regarding participation in the

formation of an assessment district for construction of offsite improvements, Developer shall promptly indicate its support for such assessments and/or special taxes by marking the ballot(s) and submitting it as instructed in the ballot materials. Developer specifically understands that the current assessments levied by the District and the current special taxes for maintenance of police services and the current special taxes for the Funding Mechanism may increase due to inflation and Developer agrees to pay any such increase.

4. Restrictions on Conveyances and Transfers of Title.

Developer shall not convey or otherwise transfer of title to any residential parcel in the Subdivision until the annexation to District, approval of the Special Tax, formation of the Funding Mechanism and formation of the Assessment District including the completion of the ballot proceedings are finalized, and the assessments and special taxes are authorized to be levied on all the residential parcels in the Subdivision. Developer may, however, enter into reservation contracts with potential purchasers of residential parcels within the Subdivision, provided that such contracts include a prominent warning that shall be reviewed by and acceptable to the City identifying the existence of this Agreement and summarizing its critical requirements.

5. Restrictions on Issuance and Processing of Building Permits.

Developer shall not request, and City shall neither issue nor process, any building permits for any parcel or structure in the Subdivision until approval of the Special Tax, formation of the Assessment District and formation of the Funding Mechanism including the completion of the ballot proceedings is finalized and the assessments and special taxes are authorized to be levied on all the residential parcels in the Subdivision.

6. Recordation of Agreement.

Prior to issuance of the Final Map, Developer shall record this Agreement in the chain of title for all the residential parcels in the Subdivision, such that this Agreement will be identified in any title report prepared for a potential purchaser of a residential parcel in the Subdivision.

7. Issuance of Final Map.

City shall not withhold approval of the final map for the Subdivision prior to completion of the approval of the Special Tax, formation of the Assessment District and formation of the Funding Mechanism on residential parcels in the Subdivision on account of failure to complete approval of the Special Tax, formation of the Assessment District and formation of the Funding Mechanism provided that the Subdivision is in substantial compliance with all other conditions of approval and full compliance with applicable laws.

8. Severability and Integration of Agreement.

This Agreement is an integrated agreement containing the entire understanding of the Parties regarding the matters addressed herein. No amendment or variation of the terms of this Agreement shall be effective unless made in writing and executed by both parties. In the event that any provision of this agreement is finally held or determined to be illegal or void by a court having jurisdiction, the remaining portions of the Agreement remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

APPROVED AS TO FORM:

CITY OF OAKLEY

Derek P. Cole, City Attorney

Bryan H. Montgomery, City Manager

ATTEST:

DEVELOPER

Libby Vreonis, City Clerk

By: _____
David B. Sanson

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Contra Costa

On the _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____
Signature of Notary Public

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Contra Costa

On the _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____
Signature of Notary Public

EXHIBIT A
MAP OF SUBDIVISION

EXHIBIT B
LEGAL DESCRIPTION AND PLAT OF SUBDIVISION

RESOLUTION NO. __-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY, CALIFORNIA, APPROVING A SUBDIVISION ANNEXATION AND ASSESSMENT AUTHORIZATION DEFERRAL AGREEMENT WITH CONTRA COSTA COMMUNITIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY FOR SUBDIVISION 9033 GILBERT PROPERTY

WHEREAS, On November 13th, 2007 the City Council adopted Resolution 117-07 conditionally approving the tentative map for Subdivision 9033 Gilbert Property; and

WHEREAS, Conditions of Approval 104, 105 & 106 require annexation to City of Oakley Street Lighting and Landscape Assessment District No. 1 ("District") and approval of assessments for Citywide landscaping and park maintenance, Citywide street lighting costs and maintenance and project specific landscaping maintenance; and

WHEREAS, Condition of Approval 108 requires the Subdivision's participation in the provision of funding to maintain Police Services by voting to approve a special tax ("Special Tax") (P6) created by this minor subdivision approval; and

WHEREAS, Condition of Approval 109 requires the Subdivision's participation in the formation of a mechanism to fund the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting, storm water ponds and any proposed pump stations as well as any levees proposed to be maintained by the City. The appropriate funding mechanism shall be determined by the City and may include, but not be limited to, an assessment district, community services district, or community facilities district. Condition of Approval 109 further requires that the funding mechanism shall be formed prior to filing of any final or parcel map, and the project proponent shall fund all costs of formation; and

WHEREAS, Condition of Approval 110 requires participation in the formation of an assessment district for the construction of off-site improvements if deemed necessary by the City; and

WHEREAS, Contra Costa Communities, LLC, a California Limited Liability Company (Contra Costa Communities) is requesting that the Final Map for Subdivision 9033 Gilbert be filed, and is willing to enter into an agreement that,

among other things, will allow Contra Costa Communities to file the map but will prohibit Contra Costa Communities from selling any lots until the assessment district annexations are complete.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that the Subdivision Annexation and Assessment Authorization Deferral Agreement with Contra Costa Communities is hereby approved and the City Manager is hereby authorized to execute the Subdivision Annexation and Assessment Authorization Deferral Agreement for Subdivision 9033, subject to review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 9th of August, 2016 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

ATTEST:

Kevin Romick, Mayor

Libby Vreonis, City Clerk

Date

RESOLUTION NO. __-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
APPROVING THE FINAL MAP OF SUBDIVISION 9033 GILBERT PROPERTY**

WHEREAS, Costa County Communities, LLC, A California Limited Liability Company has satisfied the necessary conditions of approval for Subdivision 9033 Gilbert Property, as approved by the City Council on November 13th, 2007 by Resolution Number 117-07; and

WHEREAS, the City Engineer has determined that the conditions of approval for the project have been satisfied; and

WHEREAS, the City Surveyor has determined that the final map is technically correct.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley that the final map labeled "Subdivision 9033 Gilbert Property", as prepared by Carlson, Barbee & Gibson, Inc. be approved.

PASSED AND ADOPTED by the City Council of the City of Oakley, California, this 9th day of August 2016 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

RESOLUTION NO. __-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY, CALIFORNIA, MODIFYING CONDITIONS OF APPROVAL 104, 105, 106, 109 AND 110 OF COUNCIL RESOLUTION 117-07 FOR SUBDIVISION 9033 GILBERT PROPERTY

WHEREAS, Conditions of Approval 104, 105 & 106 require annexation to City of Oakley Street Lighting and Landscape Assessment District No. 1 ("District") and approval of assessments for Citywide landscaping and park maintenance, Citywide street lighting costs and maintenance and project specific landscaping maintenance; and

WHEREAS, Condition of Approval 109 requires the Subdivision's participation in the formation of a mechanism to fund the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting, storm water ponds and any proposed pump stations as well as any levees proposed to be maintained by the City. The appropriate funding mechanism shall be determined by the City and may include, but not be limited to, an assessment district, community services district, or community facilities district. Condition of Approval 109 further requires that the funding mechanism shall be formed prior to the filing of any final or parcel map, and the project proponent shall fund all costs of formation; and

WHEREAS, Condition of Approval 110 requires participation in the formation of an assessment district for the construction of off-site improvements if deemed necessary by the City; and

WHEREAS, on December 8, 2015 the City Council adopted Resolution 144 -15 which resulted in the formation of Community Facilities District 2015-2; and

WHEREAS, Community Facilities District 2015-2 was formed to provide an alternative funding mechanism that satisfies the requirements of Conditions of Approval 104, 105 and 106 related to Citywide landscaping and park maintenance, Citywide street lighting costs and maintenance and project specific landscaping maintenance and Conditions of Approval 109 and 110 related to the operation and maintenance of the storm drain system, including storm water quality monitoring and reporting, storm water ponds and any proposed pump stations as well as any levees proposed to be maintained by the City and

participation in the formation of an assessment district for the construction of off-site improvements if deemed necessary by the City; and

WHEREAS, on or about July 26 , 2016, the Notice of Public Hearing for the project was published in the Contra Costa Times, and on July 26, 2016 it was posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, and outside the library at Freedom High School located at 1050 Neroly Road, and at the project location, and mailed out to all owners of property within 500 feet of the project boundaries, outside agencies, and parties requesting such notice; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that Contra Costa Communities, LLC, a California Limited Liability Company as the Developer of Subdivision 9033 Gilbert Property may opt to annex into CFD 2015-2 in lieu of annexing into the City of Oakley Street Lighting and Landscape Assessment District No. 1, participation in the formation of a mechanism to fund the operation and maintenance of the storm drain system and participation in the formation of an assessment district for the construction of off-site improvements.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 9th of August, 2016 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

ATTEST:

Kevin Romick, Mayor

Libby Vreonis, City Clerk

Date

**SUBDIVISION NO. 9033
GILBERT PROPERTY
PHASE 1**

CONSISTING OF 16 SHEETS
BEING A SUBDIVISION OF SERIES NUMBER 2015-0179205,
CONTRA COSTA COUNTY RECORDS.
CITY OF OAKLEY, CONTRA COSTA COUNTY, CALIFORNIA

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON, CALIFORNIA

SCALE: 1" = 200' MAY 2016

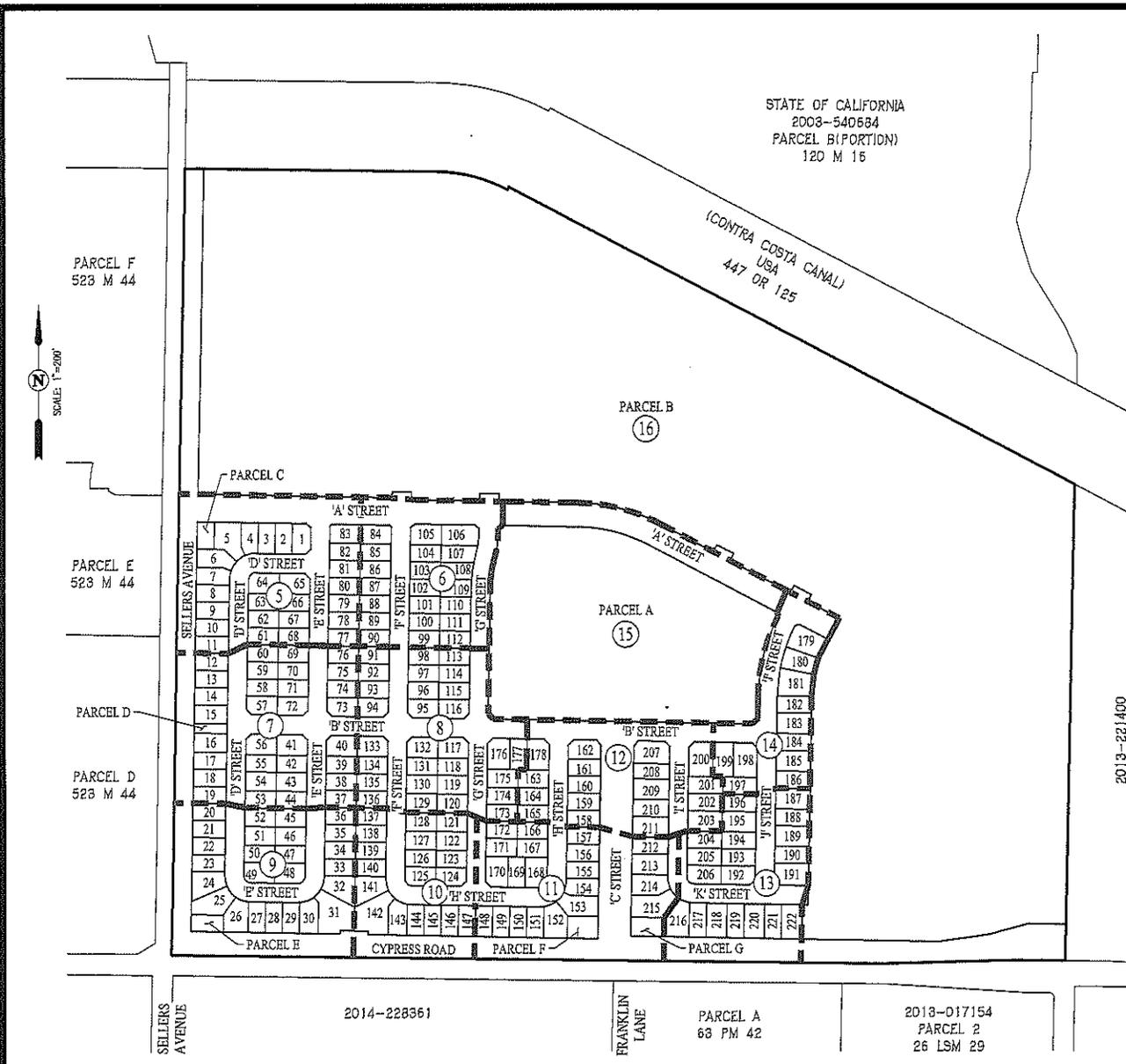


BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N89°15'39"E BETWEEN TWO MONUMENTS ON THE CENTER LINE OF CYPRESS ROAD PER 120 P4 17, CALIFORNIA COORDINATE SYSTEM, ZONE 3 (NAD 27). MULTIPLY DISTANCES SHOWN BY 0.9999379 TO OBTAIN GRID DISTANCES.

LEGEND

- SUBDIVISION BOUNDARY LINE
- ==== RIGHT OF WAY LINE
- LOT LINE
- EASEMENT LINE
- CENTERLINE
- ////// RELINQUISHED ABUTTER'S RIGHTS
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- (M-PL) MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- SET STANDARD STREET MONUMENT, LS 7960
- FOUND IRON PIPE OR REBAR AS NOTED
- LE LEVÉE EASEMENT
- PUE PUBLIC UTILITY EASEMENT
- SHEET LIMITS
- (14) SHEET NUMBER



PRELIMINARY