



Agenda Date: 02/10/2015

Agenda Item: 7.1

## WORKSESSION MEMO

**Date:** February 10, 2015  
**To:** City Council  
**From:** Bryan Montgomery, City Manager 

**SUBJECT:** **Worksession regarding Community Garden**

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### **Background and Analysis**

In May of last year the City Council approved a lease agreement with Slow Foods Delta Diablo to establish a community garden on portions of the City-owned property located at 1250 O'Hara Avenue.

Attached is the Staff Report from May of last year, the Lease Agreement, and some communication with Slow Foods Delta Diablo following the approval of the Agreement.

Councilmember Higgins requested that this work session be held as an update to the project and to specifically discuss the lease term and access to potable water at the Oakley Recreation Buildings (ORB).



## STAFF REPORT

**Date:** May 27, 2014  
**To:** City Council  
**From:** Bryan Montgomery, City Manager   
**Subject:** Lease Agreement with Slow Foods Delta Diablo to establish a Community Garden program on portions of City-owned property located at 1250 O'Hara Avenue (APN 035-211-002).

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### Summary and Background

Some months back, a group of local residents presented to the City Council the idea of establishing a community garden program on City-owned property (the Moura Property), as depicted in the attached aerial photo (Exhibit A). Slow Foods Delta Diablo has agreed to serve as the fiscal sponsor for this group of local residents and is the proposed signator to the lease agreement.

There are a number of elements of the program that have not yet finalized; however, the proposed lease agreement calls for that coordination to take place prior to operations commencing. The proposed agreement calls for a lease term of three years. Staff does not recommend a longer term, due to the other possible plans for the property (other plans could including ballfields, community center, recreation center, library, or other public uses).

### Fiscal Impact

Slow Foods Delta Diablo is not asking for any financial participation from the City, other than a subsidized lease rate, proposed to be \$1 per month.

### Recommendation

Adopt the resolution approving the Lease Agreement with Slow Foods Delta Diablo to establish a community garden program at 1250 O'Hara Avenue and authorize the City Manager to execute the Agreement.

### Attachments

1. Resolution
2. Proposed Lease Agreement with Exhibit A
3. Agreement between Slow Foods Delta Diablo and Oakley Community Gardens

LEASE AGREEMENT

City of Oakley/Slow Food and Oakley Community Gardens

Portions of 1250 O'Hara Avenue, Oakley, CA

THIS LEASE AGREEMENT is entered into this 29<sup>th</sup> day of May, 2014 by and between the City of Oakley, a municipal corporation ("CITY") and Slow Foods Delta Diablo, a California nonprofit organization, acting as fiscal sponsor to Oakley Community Gardens (collectively "LESSEE").

Recitals

- A. CITY owns real property at 1250 O'Hara Avenue, Oakley, California, portions of which are currently surplus to the CITY's immediate needs ("the site" or "the property").
- B. LESSEE desires to develop and conduct community garden activities on the subject site.
- C. CITY is willing to make the site available on a contingent and interim basis, depending upon variables including the intensity of uses desired by LESSEE and future governmental needs for the property.

Now, therefore, the parties agree as follows:

- 1. The property which is the subject of this Lease is generally depicted on the attached Exhibit "A", being a portion of 1250 O'Hara Avenue, Oakley, California, portion of APN 035-211-002. The portions designated for LESSEE's use are limited to the areas identified on Exhibit "A".
- 2. The term of this Lease is 36 months, commencing on June 15, 2014 and terminating on June 15, 2017. Any extension of this Lease shall be subject to the sole discretion of CITY, which makes no representation that the property will be available for LESSEE's continued operations following the termination date, the parties understanding that other governmental priorities for the property may develop. CITY is under no obligation to provide relocation assistance in any form or amount.
- 3. Rent shall be the sum of Twelve (\$12.00) Dollars per year, payable prior to the commencement date established herein and prior to the commencement of the second year of the term.
- 4. Because LESSEE's development plan and specific intended uses for the property are not fully established at this time, the City Council directs the City Manager to supervise and monitor the scope and operation of LESSEE's proposed activities. Prior to commencing

operations, LESSEE shall submit to the City Manager or his/her designee and receive his/her approval for the following:

- a) A site plan, showing location of proposed planting areas and any improvements, all of which shall be of a temporary nature;
- b) A financial plan, indicating fees or dues to be collected and anticipated expenses and revenues;
- c) An irrigation plan, indicating the source of water. CITY makes no representation that water is available from its sources.
- d) Access driveway and parking area plan.

The City Council grants the City Manager supervisory authority over any and all rules and regulations for the use of the site, and may promulgate directives to LESSEE from time to time regarding operations on the property. Such directives shall be aimed at preserving the integrity and appearance of the property, avoiding public or private nuisances, and protecting the CITY's other operations on the city-developed portions of the site. LESSEE shall comply with any and all such directives, subject to its right to appeal any such directive to the City Council for final determination.

5. The premises are leased for the purpose of establishing community garden plots, which shall be available to members of the general public and Oakley community pursuant to reasonable rules and regulations which LESSEE may adopt subject to the City's approval. Any cultivation of cannabis/marijuana or any crop/product prohibited or regulated by federal law is strictly prohibited, violation of which shall result in the immediate termination of this Lease. LESSEE is under an affirmative duty to patrol plots of community members to ensure compliance with this prohibition.
6. LESSEE acknowledges that the adjacent Oakley Recreation Buildings are rented to private parties and are also utilized by various independent and City instructors of recreation and community programs. These uses shall have priority for the utilization of the existing parking lot. Further, public restrooms are not available on an ongoing basis, but are only open for the use of these rental and recreational programs.
7. No utilities are provided as part of this Lease by the CITY unless the City determines to allow the provision of water, which would be at LESSEE's expense.
8. LESSEE shall make no alterations to the property without consent of the City Manager and, due to the potentially short term of this Lease, make no improvements of significant value for which it would seek compensation upon termination of this Lease.
9. LESSEE understands that some expansion of use of scope of the operations may require land use approvals and/or environmental review by the City of Oakley. CITY does not make any representations about whether such approvals would be granted.

10. Any violation of the terms and conditions of this Agreement shall be justification for the immediate termination of this Lease.
11. Upon termination, LESSEE shall return the property to CITY in a vacant, clean and presentable condition. If LESSEE violates this provision, the CITY may, without liability to LESSEE, remove and/or destroy and such property and may recover from LESSEE its costs of cleanup.
12. LESSEE shall keep the subject property free from any and all liens or security arising from its operations and use of the property.
13. LESSEE shall comply with all governmental regulations regarding operations on the property.
14. There shall be no subletting of this Lease without CITY approval. In the event of any unapproved subletting or assignment, this Lease shall be voidable by the CITY.
15. LESSEE shall be responsible for any possessory interest tax which may be levied by Contra Costa County, as well as payment of any and all other taxes, liens or assessments which may be attributable to its operations.
16. LESSEE shall at all times during the effectiveness of this Lease maintain at its cost and expense satisfactory liability and property damage insurance in amount of at least \$1,000,000. The CITY shall be named additional insured under such policy. LESSEE shall defend, hold harmless, and indemnify the CITY, its officers, agents and employees from any claim, damage or liability associated with its use and/or operations on the property. LESSEE shall notify CITY at least ten (10) days prior to the cancellation or expiration of such insurance policy.
17. LESSEE shall not permit any public nuisance or violation of law, ordinance or regulation to occur on the property.
18. CITY is hereby granted the right to enter the property and to inspect same from time to time to determine compliance with this Lease. If the property is secured, CITY shall be granted access as reasonable times.
19. Unless otherwise approved by the City Council, a disaffiliation between Slow Food Delta Diablo and Oakley Community Gardens shall be construed to be a material breach of this Lease.
20. Any notice, demand or communication from one party to the other shall be deemed to have been properly given if delivered by personal service upon, or by mailing the same, postage fully prepaid thereon, and addressed as follows:

To City:           City of Oakley  
                          c/o City Manager  
                          3231 Main Street  
                          Oakley, CA 94561

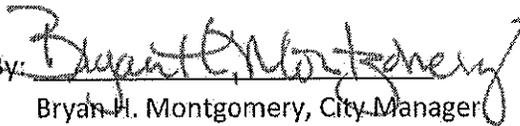
To Lessee: Slow Food Delta Diablo  
c/o Shelley Somersett  
3 Oak Knoll Loop  
Walnut Creek, CA. 94696

An emergency telephone number and email address for Lessee shall be:  
Paul Seger (714) 504-0838

21. LESSEE shall not vacate or abandon the property. If the property takes on the appearance of being abandoned, the City Manager shall notify LESSEE of his/her determination and may thereafter declare this Lease to be cancelled and of no further force or effect.
22. Given the temporary and interim nature of this Lease, there shall be no relocation benefits, nor compensation for any improvements, interference with business or any other claim for reimbursement or damage upon the termination of this Lease or CITY's unwillingness to extend it.

CITY OF OAKLEY, a municipal corporation

Slow Food Delta Diablo, a non-profit

By:   
Bryan H. Montgomery, City Manager

By:   
Shelley Somersett, Chair

ATTEST:

By:   
Libby Vreonis, City Clerk

APPROVED AS TO FORM:

By:   
William R. Galstan, Special Counsel



## Bryan Montgomery

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**From:** Bryan Montgomery  
**Sent:** Wednesday, June 18, 2014 9:02 AM  
**To:** 'Paul Seger'  
**Cc:** CityAttorney; 'Shelley Somerset'; Gail Wadsworth; 'Diane Burgis'; Len Morrow  
**Subject:** RE: Agreement  
**Attachments:** 20140617112840291.pdf; code of conduct and liability release.pdf

Hi Paul:

Thank you again for the documents. Staff has had a chance to review as summarized below:

1. **Front fencing:** a quality split-rail fence is fine. (My comment about your inference of the Mayor approving the fence type was a reminder that we need to keep a single point of contact and one member of the Council saying “yeah” or “nay” doesn’t mean approval). It looks like the split-rail would need to be installed to both the north and south sections of the entryway. Is split rail proposed going east and west on the north and south area of the parking lot? Will the plots be fenced? The chain at the entry will work, though it must have some reflective tape or flag every 6-8’. Any solid posts (not the split rail) to hold the two ends of the chain should have a reflective button or component to it as well. Please do provide the combination on the lock.
2. **Rear Fencing:** The pallet fencing can work, though it isn’t clear on the parking site map where that is to be installed. (There are 4-5 solid lines – two that are prior to the rear fencing). Please provide detail.
3. **Shed:** Your email didn’t include a photo, but a natural/muted tone is best. Under 120 sq ft doesn’t require a building permit.
4. **Bees:** Let us know well in advance of locating bees there. The proximity issue to the school and youth activities at the ORB might preclude many areas of the parcel.
5. **Compost:** The farthest away is best and we reserve the right to request it be moved, if it causes any problems.
6. **Financial Plan:** I know you are just starting, but what you attached is pretty thin. Perhaps SlowFoods has a template that they could assist you with? What you submitted is a blend of a budget and a current snap shot of where you are at. I think both are helpful, though the Agreement contemplates a budget, which is an estimate of what you would expect to spend over the year and what you expect to bring in for revenues. Of course, revenues should equal or exceed the anticipated expenditures. A stronger budget/financial plan helps demonstrate that the operations are viable. It is nominal, but the rent payment is to be paid prior to operations.
7. **Irrigation Plan:** the location of the lines as you propose look good, assuming they are underground. I’m sure the School District will have specifications for you to follow with connections to the well.

8. **Parking Area:** Attached is a quick mark-up on the parking lot area providing by Engineering. There needs to be a few tweaks on the dimensions. The mention of wheel stops would be to help protect fencing – not a hard fast requirement, but a good idea – especially up against the School fencing. (The mark-up also asks questions about the rear fencing as I do in #1 above) The amount of traffic will likely carry dirt and some rock on to and damage the parking lot asphalt over time. Engineering recommends pervious pavers that could be placed the first 6-8' at the driveway from the asphalt. The rest of the parking lot should be a few inches of clean crushed rock on a compacted base. (I recall you had a volunteer and a donor for this?). Even with the rock, the parking area would likely need some watering from time to time ahead of any times when a lot of traffic is expected. We reserve the right to request further improvements and watering if dust, vehicle leakage, or other concerns arise. (As a reminder, the parking lot is considered temporary and, as proposed, does not meet the City, Storm Water, and other Regional standards).
9. **Signage:** The main sign would be the one that would need a sign permit. When I suggested to an "overall signage plan" it would mean anything in the parking lot to guide pattern of travel and its use, posted rules of use near the plots, contact information, etc. These signs wouldn't need a permit as long as they are smaller in nature. The main entrance sign location and compliance with Code is all we need, but I'd suggest you have the "overall" plan to assist your patrons.
10. **Insurance:** Do let us know when this is ready and we'd need the certificate with the City listed as an additional insured.
11. **Code of Conduct & Liability Release:** I've attached the document you sent a couple weeks back. I believe these rules and the waiver would be good to post and promulgate to your patrons. Copies of the Liability Releases would be good to have on file both with you and with us.

Please let me know if you have any questions. There are just a few items above that ask for a little more detail/follow up.

*Bryan H. Montgomery*

CITY MANAGER

3231 MAIN STREET

OAKLEY, CA 94561

PHONE 925-625-7025

[montgomery@ci.oakley.ca.us](mailto:montgomery@ci.oakley.ca.us)



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**From:** Paul Seger [mailto:paceoakley@gmail.com]

**Sent:** Monday, June 16, 2014 5:02 PM

**To:** Bryan Montgomery

**Cc:** CityAttorney; 'Shelley Somerset'; Gail Wadsworth; PACE Oakley; 'Diane Burgis'

**Subject:** Re: Agreement

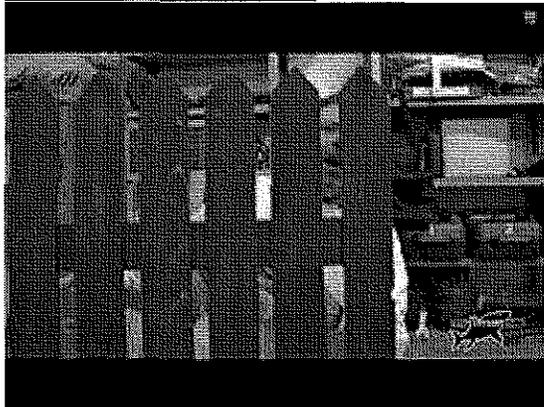
Greetings Bryan,

this mail regards the information you required Oakley Community Gardens/Farm provide in the recent lease agreement.

### **a) site plan:**

**Front-Fencing:** Mayor Pope and I discussed that split rail fencing at the entrance to the additional parking will look attractive. OCGF will go in that direction. We had discussed using a chain across the actual entrance and make use of a heavy duty combination lock. the combination will be provided to all emergency services.

**Rear-parking Fencing:** we will make use of recycled pallets. Cut as such:



**Shed:** The shed will be no more than 120 square feet. It will not have a poured foundation. It will have much the design as photo and will be in muted tones until fashioned with old barn-wood.

I will submit a blueprint prior to construction.

**Bees:** Bees are a future phase and we will approach the city to receive direction with how to proceed when the time comes.

**Compost:** we will provide composting bins at the furthest reaches of our garden plot allotment.

### **b) financial plan:**

find our simple financial plan is attached [ocgf\_financial\_plan.doc]

### **c) irrigation plan:**

find a general irrigation plan attached [moura\_irrigation\_plan.pdf]

You received a notice from the school district this afternoon. Of course we will be finalizing this in time, but there is much work to complete prior to water installation. This conversation shall remain ongoing.

The attached plan will morph as we seek further reliable resources... however, plans will be submitted to the city prior to commencing changes, and least-obstructive development will remain the rule.

### **d) parking area:**

find additional parking-lot expansion proposal attached [moura\_parking\_expansion.pdf]

We recognize your concerns and believe that the provided proposal is well thought out and fair. Of, course we would like to meet with the city, on site, to determine certain elements of the parking area... such as entrance to the farm site.

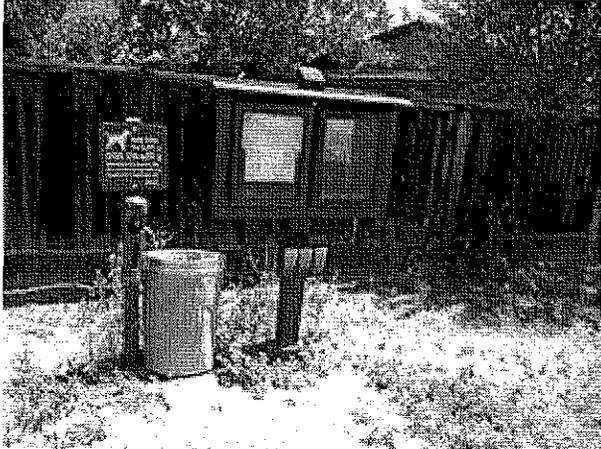
Regarding emergency vehicles, a combination would be provided to any gate/chain, and note that area in the eastern portion of the parking area allows for emergency vehicles to turn around [needing 40' the proposed area allows 44']

**signage:**

while this element is not provided for in the initial lease agreement, of course we'll file a sign permit and will follow all city code regarding footing. We will file a signage permit application... further, perhaps you can enlighten me regarding what an "overall signage plan" looks like.

We are planning on putting one sign [more like kiosks] each at the entrances to parking-lot trailheads... Community Garden & Moura Farm. The will be well set back from the road and will be placed as to not "startle" drivers' attentions.

such as:



**INSURANCE**

We will have an insurance certificate to the city asap. We have only to fill out a few forms and will NOT move forward, nor convene at the property with the intent to conduct OCGF activities until then.

Please let me know of anything else you might need.

Thanks!

Paul Seger

Oakley Community Gardens/Farm Task Force!

714-504-0838

On 5/28/2014 5:36 PM, Bryan Montgomery wrote:

Paul:

Congrats on the approval last night. To finalize the Agreement document we would just need to confirm the name and address of the signator and also an emergency cell phone number (those were the blanks in the Agreement). It would also be time to have the insurance certificate ready to go, with the City named as an additional insured (we'll attach that to the Agreement for our file).

The plan elements that still need detail prior to operations are in Section 4 of the Agreement:

a) SITE PLAN: The last version I saw is the attached. I think it would be helpful to provide the detail of what fence and gate material you are suggesting, the size of the shed (over 120 sq ft needs a building permit). Is the shed new, or something used? Snapping a quick picture of the shed would help. If it is painted, the colors should be muted and blend well with the color of the ORB buildings.

I see a "bees" area on the proposed site plan and those aren't allowed yet. In fact, the Council has directed Staff to work on an ordinance that addresses Residential areas, that wouldn't specifically apply to this property. I think it is best that if and when you want to do bees, that it be a matter that goes back to the City Council.

We would prefer the composting area be as far away from the ORB buildings as possible within that garden plot area -- just in case there are some stragglng smells. We would reserve the right to have you move it even farther away, if smells ever become an issue.

b) FINANCIAL PLAN: The "Code of Conduct" document you sent late last week does include much of the information for this section -- the price of dues and plots. What would be left to send us is a real simple budget that shows the anticipated revenue items and anticipated expenditure items, as mentioned in the Agreement.

c) IRRIGATION PLAN: please do confirm the arrangement with the School District (I'd suggest you have those details in writing so both parties are clear). Also, we'd want to confirm the proposed location of the irrigation lines and guide you on placing them in the least obtrusive locations as possible. If it is a potable water meter arrangement, we'd want to guide you on the placement location of the meter and the main service line(s).

d) PARKING AREA: I suggest we meet out there one day soon to mark out (spray paint) the area designated for the parking lot and entry drive, and your proposed location for the chained entry. It would be wise to see allow a space that, if ever really needed, and emergency vehicle could get around the chained area -- we can jointly figure that out. You mention some grading. I doubt you would want to move that much dirt, but a grading permit is required if over 100 cubic yards is moved, (a pickup truck can hold 3-4 yards), or if there would be swells left after grading that would hold water (mosquito concerns). We wouldn't want any dirt hauled off site without our prior approval.

The main signage for the project does require a sign permit. Depending on the footings, it could need a building permit. Attached is the simple sign permit application. It would be best to just prepare an overall signage plan so that we know what is planned and where.

As mentioned during the Council Meeting, I'll like have our Parks team monitoring things over time -- after this initial phase that is a part of the Agreement is set up. For now, please continue to use me as the main point of contact.

Thanks!

Bryan H. Montgomery  
CITY MANAGER  
3231 MAIN STREET  
OAKLEY, CA 94561  
PHONE 925-625-7025  
[montgomery@ci.oakley.ca.us](mailto:montgomery@ci.oakley.ca.us)



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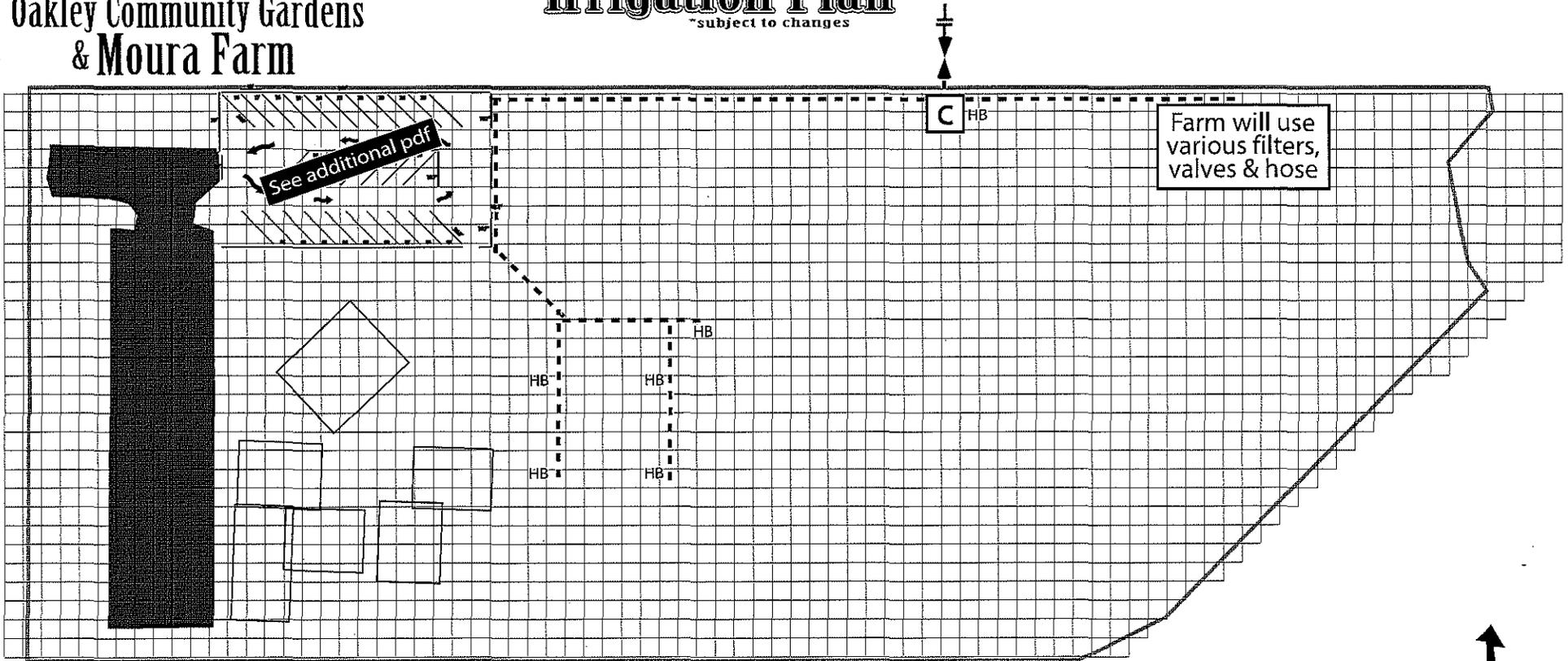


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# Oakley Community Gardens & Moura Farm

## Irrigation Plan \*subject to changes



### Irrigation Legend

- water line
- ⊥ point of connection
- ⚡ backflow prevention
- HB hosebib
- C controller



**2014 BUDGET FOR THE OAKLEY COMMUNITY GARDENS/FARM**

**ANNUAL EXPENSES:**

- ▶ Total annual insurance premium \$ 954.00
- ▶ Rent for property at 1250 O'Hara at \$1/month \$ 12.00
- ▶ Utilities from School District at \$50/month \$ 600.00

**Subtotal of Annual Expenses to date: \$1566.00**

**INCOME:**

- ▶ **Community Garden plot rentals [12 plots @ 10'x20' x\$35] \$ 420.00**

**TOTAL ESTIMATED ANNUAL EXPENSES [as of 20140616]: \$1566.00**

**TOTAL ESTIMATED INCOME TO DATE [20130616]: \$420.00**