

## STAFF REPORT

**Date:** September 8, 2015  
**To:** City Council  
**From:** Bryan Montgomery, City Manager  
Dwayne Dalman, Economic Development Manager  
Joshua McMurray, Planning Manager

**SUBJECT: Authorization of an Invitation for Bids to Purchase the Real Property located at 1420-1480 Neroly Road, also known as Parcel 3 within the Neroly Commercial Center (APN 034-040-017-5) for the Development of a Child Care Facility.**

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### Summary and Background

The Neroly Commercial Center was approved in 2007 and the anchor of the Center, the Diamond Hills Sports Club and Spa, was developed and began operations on Parcel 1 of the Center. In 2011, the City purchased Parcels 2 & 3, which are both designated for commercial use (retail and office).

In April of 2013, an invitation to bid was published and the City received and later approved a proposal from Seeker Development to construct a child care facility. The time frame within which Seeker Development was to perform has now long since passed and Staff believes it is a good time to once again seek a developer for this project, utilizing the available Child Care Impact Fee grand funds.

As you recall, in years past the City has collected Child Care Impact Fee funds from new development for the specific purpose of mitigating new development's impact on child care. While the City no longer collects this particular impact fee, approximately five hundred and \$525,000 are available as grant funds to assist with the overall costs of the construction of the child care facility project contemplated with this Invitation to Bid. (These funds are not eligible for use as operational funds, but can be used to defray the design and construction of the actual child care facility). It is important to note that these funds cannot be used for any other purpose other than toward the capital costs of a child care facility.

Attached is the proposed Invitation to Bid packet. As required by Title 2, Chapter 8 of the Oakley Municipal Code, we will publish the Invitation to Bid in the newspapers (both *Oakley Press* and *Contra Costa Times*), include the notice on the City's website and in the *Oakley Outreach* email blast, and we will provide it to area real estate agents and developers (and specifically to child care facility developers and franchisees). A key component of the Invitation to Bid is that the bidders propose an actual development plan, rather than just submit a price for purchase. It is not recommended that the property be sold just for someone else to speculate on.

Bids are to be received prior to 2:00pm on Friday, October 9<sup>th</sup> and bids received will be presented to the City Council at the October 27<sup>th</sup> City Council Meeting. The Invitation to Bid packet clearly indicates that the City Council may reject any and all bids.

**Fiscal Impact**

Approximately \$350 in publication costs.

**Recommendation**

Authorize an Invitation for Bids to Purchase the real property located at 1420-1480 Neroly Road, also known as Parcel 3 within the Neroly Commercial Center for the development of a child care facility.

**Attachment**

1. Title 2, Chapter 8 of the Oakley Municipal Code
2. Invitation to Bid packet

## CHAPTER 8 DISPOSAL AND LEASE OF REAL PROPERTY

### Article 1 SALE OF SURPLUS REAL PROPERTY

#### **2.8.102 Applicability.**

The procedure set forth in this section shall be applicable to the disposal of real property owned by the City of Oakley and determined to be surplus and excess property no longer necessary for public purposes. The provisions of these rules shall not apply to the abandonment of streets or the vacation of easements owned by the City of Oakley and governed by the statutes of the State of California, nor shall the provisions of these rules apply to the termination, rejection or abandonment of offers of dedication pursuant to Section 66477.2 of the Government Code.

#### **2.8.104 Determination of Surplus Property.**

- a. All departments within the City of Oakley shall submit to the City Manager a report showing any real property in the possession, custody or control of such department that is no longer used and is otherwise surplus and excess for the needs of the department. If the City Manager finds that such real property is not required for any other public use, he/she shall so report to the City Council and the City Council may declare it surplus and cause to be prepared a written estimate of its market value.
- b. Prior to disposal of surplus real property by public sale, the City Manager shall provide written notice to public agencies in the manner prescribed by Section 54220 et seq. of the Government Code.
- c. The following procedures apply if the property is not purchased by a public agency pursuant to Section 54222 et seq. of the Government Code.

#### **2.8.106 Manner of Disposal.**

- a. The City Manager may dispose of any surplus real property which has an estimated market value of less than \$5,000 without advertising for bids.
- b. If the surplus real property has an estimated market value of \$5,000 or more, the City Manager shall dispose of the property in the manner set forth herein and shall require City Council approval for final agreement of the sale.
- c. If the parcel which is surplus real property is an uneconomic remnant such that it is not buildable by itself under the current zoning, then the City Manager may renegotiate a sale price with the adjoining property owner(s) without advertising for bids.
- d. If the parcel which is surplus real property is a buildable parcel under the current zoning, and the combining of the parcel to an adjacent parcel would provide better development from a planning perspective than development of the surplus property by itself, then the City Manager may negotiate a sale with the adjoining property owner(s). If an acceptable price (to the City) is not reached, then the City shall dispose of the property in the manner set forth herein.

**2.8.108 City Personnel Prohibited.**

No City official, officer or employee shall bid or be financially interested in any bid for surplus real property sold in accordance with these rules.

**2.8.110 Sale Procedures.**

The conveyance of surplus real property by the City shall be made to the highest responsible bidder who most closely meets the terms and conditions of the notice inviting bids pursuant to the following procedures:

- a. A notice inviting bids shall be published at least once ten (10) days before the opening of the bids in a newspaper of general circulation in the City printed and published within Contra Costa County. The notice inviting bids shall include a legal description of the subject property, a vicinity map showing the general location of the subject property, the time and place of opening bids, and the terms and conditions for bids.
- b. Sealed bids, including a bid deposit of ten percent (10%) of the bid price, but not exceeding \$10,000, shall be submitted to the City Clerk. Said bid deposit shall be in the form of cashier's check, certified check or bidder's bond executed by an authorized surety company.
- c. At the time and place fixed in the notice to bidders, all sealed proposals which have been received shall be publicly opened, examined and declared by the City Clerk. Of the proposals submitted which conform to all terms and conditions of the sale, the proposal which is the highest shall be referred to the City Council unless a higher oral bid is received or the City Manager rejects all bids, or if the Council determines that a lower bid is more responsive for the reasons specified in subsection (e) of this section.
- d. The City Manager may set a minimum acceptable bid amount and may reject any and all bids presented.
- e. In cases where the City wishes the surplus property to be developed or used in a manner to support specified economic development, retail, industrial or housing goals and policies, the notice inviting bids shall require bidders to specify end-uses for the property and the City may specify deadlines for the accomplishment of the end-use. Preference shall be given to the bid with the highest monetary purchase price which most closely accomplishes the end-use goals. As to all cases, the City and the purchaser shall enter into a purchase agreement approved by the City Council.
- f. After opening bids, the City Clerk shall call for oral bids from those bidders tendering written proposals. If, upon the call for oral bidding, any responsible person offers to purchase the property, upon the terms and conditions specified and for a price exceeding the highest written proposal by at least five percent, then the responsible oral bid shall be received for presentation to the City Council if it meets the after-use criteria specified in subsection (e) of this section. Final receipt by the City Clerk shall not be made, however, until the oral bid is reduced to writing and signed by the offeror and an additional deposit in the amount of ten percent (10%) over the offeror's original written bid is tendered, though not to exceed an additional \$10,000. This reduction of the bid to writing and submittal of deposit shall be completed

within one business day (banking) after determination of the highest bidder has been announced by the City Manager, or the offeror shall forfeit his/her bid deposit.

g. Unless otherwise specified in the notice to bidders, sale of surplus property shall be completed in an escrow of the City's choice. All successful bids shall be incorporated into a sale and purchase agreement to be approved by the City Council.

h. The successful bidder shall close escrow as specified in the purchase agreement.

i. All bidders' deposits shall be retained until escrow closes. If the apparent purchaser fails to complete the transaction and to close escrow, then the City may enter into a purchase agreement with the next lowest monetary bidder who most closely meets the requirements of subsection (e) of this section and retain the original apparent purchaser's deposit.

(Sec. 2, Ordinance No. 02-12, adopted May 8, 2012)

**2.8.112 Deed – Additional Costs.**

(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.114 Funds.**

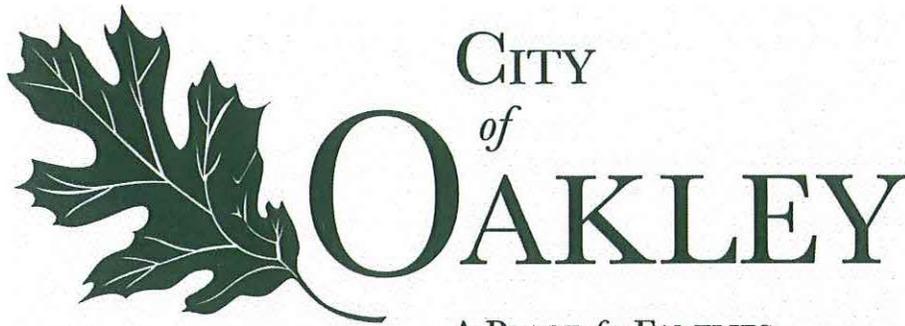
(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.116 Effect On Validity.**

(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.118 Forms.**

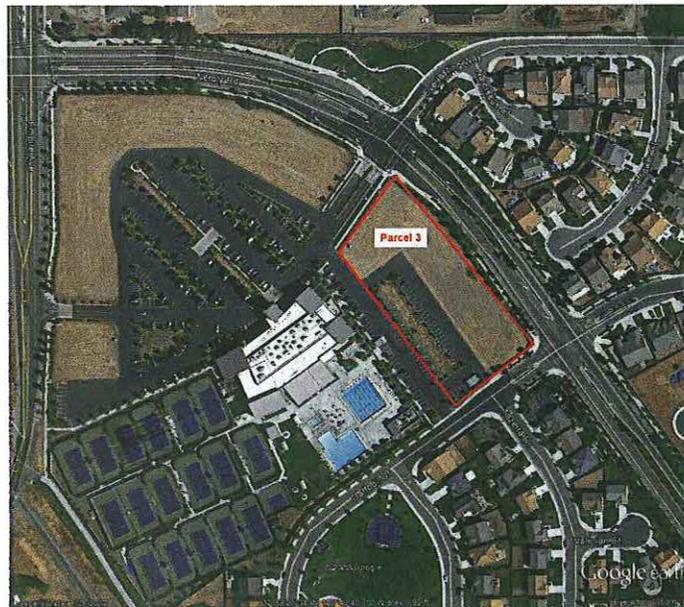
(Repealed by Ordinance No. 02-12, on May 8, 2012)



A PLACE *for* FAMILIES  
*in the* HEART *of the* DELTA

**INVITATION TO BID PACKET**  
*for the Purchase of Property to  
Develop a Child Care Facility at*

1420-1480 Neroly Road  
(APN 034-040-017-5)





## INVITATION TO BID ON PROPERTY

The City of Oakley invites sealed bids for the purchase of real property located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California (APN 034-040-017-5) adjacent to the Diamond Hills Sports Club for the purpose of developing a Child Care Facility. Grant funds in the amount of \$525,000 are available to assist with the project. The property includes 2.366 acres; however, bids will be accepted for all or part of the parcel.

The bid packet that includes a vicinity map and other relevant information can be obtained by contacting Dwayne Dalman at [dalman@ci.oakley.ca.us](mailto:dalman@ci.oakley.ca.us).

Bids must be received at 3231 Main Street, Oakley, CA 94561 **no later than 2:00 pm. October 9, 2015** at which time they will be publicly opened by the City Clerk.

The City of Oakley, at its sole discretion, reserves the right to reject any and all bids.



## **DESCRIPTION OF THE PROPERTY**

The City of Oakley offers for purchase up to 2.366 acres located at 1420-1480 Neroly Road, just north of the Diamond Hills Sports Club, in Oakley, Contra Costa County, California. The subject property is identified in the Contra Costa County Tax Assessor's Records as APN 034-040-017-5 (see Exhibit "A").

### **Site improvements**

The vacant parcel is a part of the Neroly Commercial Center site that has adjacent frontage improvements including curb, gutter, sidewalk and landscaping improvements on the west, north and east sides. The southern portion of the property has some asphalt parking (see aerial photograph as Exhibit "B").

### **Utilities**

Utilities including water, sewer, electricity, natural gas, and telephone are available on or adjacent to the site (see Exhibit "C"). Coordination with the specific utilities is recommended to determine what final connections, extensions and development fees would be required for the bidder's project. A site visit to the property is strongly encouraged.

### **Zoning**

The parcel is within a P-1 Planned Unit Development (The Neroly Commercial Center) with the uses conditioned to follow the "commercial" regulations of the zoning code. A Conditional Use Permit has already been granted on the property for a child care facility. This Conditional Use Permit will expire on June 10, 2016 and substantial construction must commence prior to that time.

### **Tentative Parcel Map**

A Tentative Parcel Map (see Exhibit "D") has already been approved on the site; however, adjustments to this parcel map will be considered. (It is most likely that the child care facility would only need one of the identified parcels in the Tentative Map).

### **Design Review**

There is also Design Review approval on the site (see the approved elevations in Exhibit "E"). Modifications to this design will be considered.

## **CHILD CARE GRANT FUNDS**

In years past the City of Oakley has collected Child Care Impact Fee funds from new development for the specific purpose of mitigating new development's impact on child care. While the City no longer collects this particular impact fee, approximately five hundred and twenty-five thousand dollars (\$525,000) are available as grant funds to assist with the overall costs of the construction of the child care facility project contemplated with this Invitation to Bid. (These funds are not eligible for use as operational funds, but can be used to defray the design and construction of the actual child care facility).

## **SPECIAL CONDITIONS**

1. The subject property will be sold "as is."
2. The City will pay no broker's fee, finder's fee, commission, or other compensation to any party claiming to counsel or represent any proposer regarding the sale of the subject property or consummation of the lease hereinafter described.
3. No representations will or have been made by the City that the subject property meets all the ordinances, regulations or laws governing bidders' proposed development of the property.
4. Any adjustments to the Tentative Parcel Map or lot line adjustment to adjust the size of the proposed parcels would be done at Buyers' expense.
5. Because the City's Child Care Impact Fee funds will be used to help construct the project, the selected developer will be required, pursuant to California Labor Code Sec. 1771 et seq. to require workers in the design, preconstruction and construction phases that are paid by developer's use of grant funds herein to be paid prevailing wages, as defined and required by the Labor Code. Developer shall comply with all requirements of the Labor Code for the payment and documentation of prevailing wages. The selected developer must notify all bidders that prevailing wages are required for this project.
6. The site also has a recorded Project Labor Agreement which requires coordination with the Plumbers & Steamfitters Union, Local 159, the International Brotherhood of Electrical Workers, Local 302, and the Sheet Metal Workers, Local 104 on those three trades as part of the overall construction of the project.
7. Any use of the subject property will be in compliance with all relevant laws and regulations, including Title VI of the Federal Civil Right Act of 1964, as amended, i.e., without discrimination as to race, color, or national origin.
8. No billboard, sign, or other outdoor advertising devices shall be erected upon the subject property other than those indicating ownership or on-premise advertising

and shall be subject to reasonable restrictions with respect to number, size, location, and design by regulation of the City of Oakley, subject to local zoning ordinances.

9. Any public utilities or municipalities having facilities under, over, or through the subject property as of the date of its conveyance to the selected bidder shall have the right and easement to continue to maintain, operate, and renew their facilities within the subject property.
10. This Invitation to Bid is based upon the requirements of Title 2 Article 8 of the Oakley Municipal Code.
11. Sale of this property is subject to and contingent upon the execution of a Purchase Agreement and a Child Care with the City of Oakley.
12. Eventual owner of the property will be subject to common area maintenance (CAM) charges that include the upkeep and maintenance of the parking lot, landscaping and lighting. The fee has been approximately \$600 per month for the entire Parcel 3.
13. The child care facility contemplated with this Invitation to Bid must be substantially complete within 18 months of closing on the property.

## INSTRUCTIONS TO BIDDERS

### General

Sealed bids will be accepted no later than **2:00 pm. on October 9, 2015**. Emailed or faxed bids will *not* be accepted. All bids must be delivered in a sealed envelope and *clearly marked* as follows:

City of Oakley  
Attn: Dwayne Dalman  
3231 Main Street  
Oakley, CA 94561  
"Neroly Child Care Facility"

While no minimum bid is set forth, the Contra Costa County Assessor has placed a value of approximately seven dollars (\$7) per square foot, which is believed to be *considerably below* its market value due to its location and the existing improvements. It should be noted that if a bid is for only a portion of the parcel, the location of the desired portion would likely justify a higher per square foot bid than if the entire parcel is to be purchased. The City reserves the right to reject any and all bids and for any reason.

The City may consider a long-term lease; however, the preference is to sell all or a portion of the property for the proposed child care facility. It is important to note that the City does not desire to sell any of the land for "speculation," but only for impending vertical development. In other words, it is not likely that the City will sell more any portion of the parcel that is not needed for the actual child care facility).

### **Bid Surety and Closing**

The bid must be accompanied by the enclosed Offer to Purchase form, duly executed, and a cashier's or certified check in the amount of Ten Thousand Dollars (\$10,000) made payable to the "City of Oakley" as a good faith deposit to be credited towards the final purchase price. This check will be forfeited if the winning bidder fails to execute a Purchase and Sales Agreement with the City of Oakley within forty-five (45) days from the date the winning bidder is notified in writing that the bid was accepted by the City Council. Should the City Council reject the bids, the bidders' deposit checks will be promptly returned.

### **Development Plans and Timeline for Improvements**

In addition to the proposed purchase price, the City shall evaluate and consider the bid and proposal that best meets the City's desire for a successful, attractive development at the property after the sale. *The purpose of this sale is not for buyers' land speculation, but for some near-term (completion within 18 months) vertical development of a child care facility.* Restated, the City Council intends on awarding a contract to the bidder with the highest price offered *but also that* closest meets the City's expectations of quality economic development. A bidder's qualifications and experience are important factors.

### **Questions and Information**

Any questions or requests for additional information *must be submitted by email* to dalman@ci.oakley.ca.us by October 7, 2015. Responses will be distributed to all parties who requested bid packets by 5:00pm on October 8, 2015.

### **Bid Deadline**

Any Bids must be received at 3231 Main Street, Oakley, CA 94561 **no later than 2:00 pm, October 9, 2015** at which time they will be publicly opened by the City Clerk.

**THANK YOU FOR YOUR INTEREST  
IN THIS DEVELOPMENT OPPORTUNITY !!!**



**OFFER OF PURCHASE FORM**

On this date and in accordance with the terms and conditions set forth in the Invitation to Bid, this offer is submitted to purchase all or a portion of the real property known as APN 034-040-017-5 located at 1420-1480 Neroly Road in Oakley, Contra Costa County, California.

<b>Amount:</b>	\$
<b>Written Amount:</b>	
<b>Square footage of proposed purchase:</b>	

Also, as required by the terms of the offering, a bid surety in the amount of Ten Thousand Dollars (\$10,000) in the form of a cashier's or certified check made payable to "The City of Oakley" is enclosed.

**REQUIRED:** *Attach to this form a description of no more than seven (7) pages that details what your plans are to develop the property for a child care facility and that outlines a timeline for those improvements. You may include company information and references and any other information that demonstrate your capacity to successfully complete the development proposal.*

**This offer is made and surety submitted on behalf of:**

Name of Individual, Business, or Corporation: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip Code \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_  
 Email: \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Date

**Witness:**

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

## EXHIBIT A

### PROPERTY DESCRIPTION

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

PARCEL 3 IS THE 2.366 ACRE PARCEL AS SHOWN ON THE PARCEL MAP MS 07-976, FILED NOVEMBER 14, 2007, IN BOOK 201 OF PARCEL MAPS PAGE 28, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS RIGHTS 500 FEET BELOW THE SURFACE OF THE PROPERTY, WHICH RIGHTS ARE RESERVED BY APRICOT LAND COMPANY, A CALIFORNIA GENERAL PARTNERSHIP AND SHALL EXCLUDE THE RIGHT OF SURFACE ENTRY AS RESERVED IN DEED RECORDED DECEMBER 24, 2004 AS INSTRUMENT NO. 2004-0497318 OFFICIAL RECORDS.

APN: 034-040-017-5

*See attached Parcel Subdivision Map MS 07-976 and Assessors Parcel Map*

J-24,25

POR S 1/2 SEC 35 T2N R2E MDBM

~~61PM24~~  
~~72PM30~~  
~~163PM27~~  
 4-201PM28 11/14/07  
~~PCL "C" TR 9199~~

040  
 TR 9274  
 8/14/10

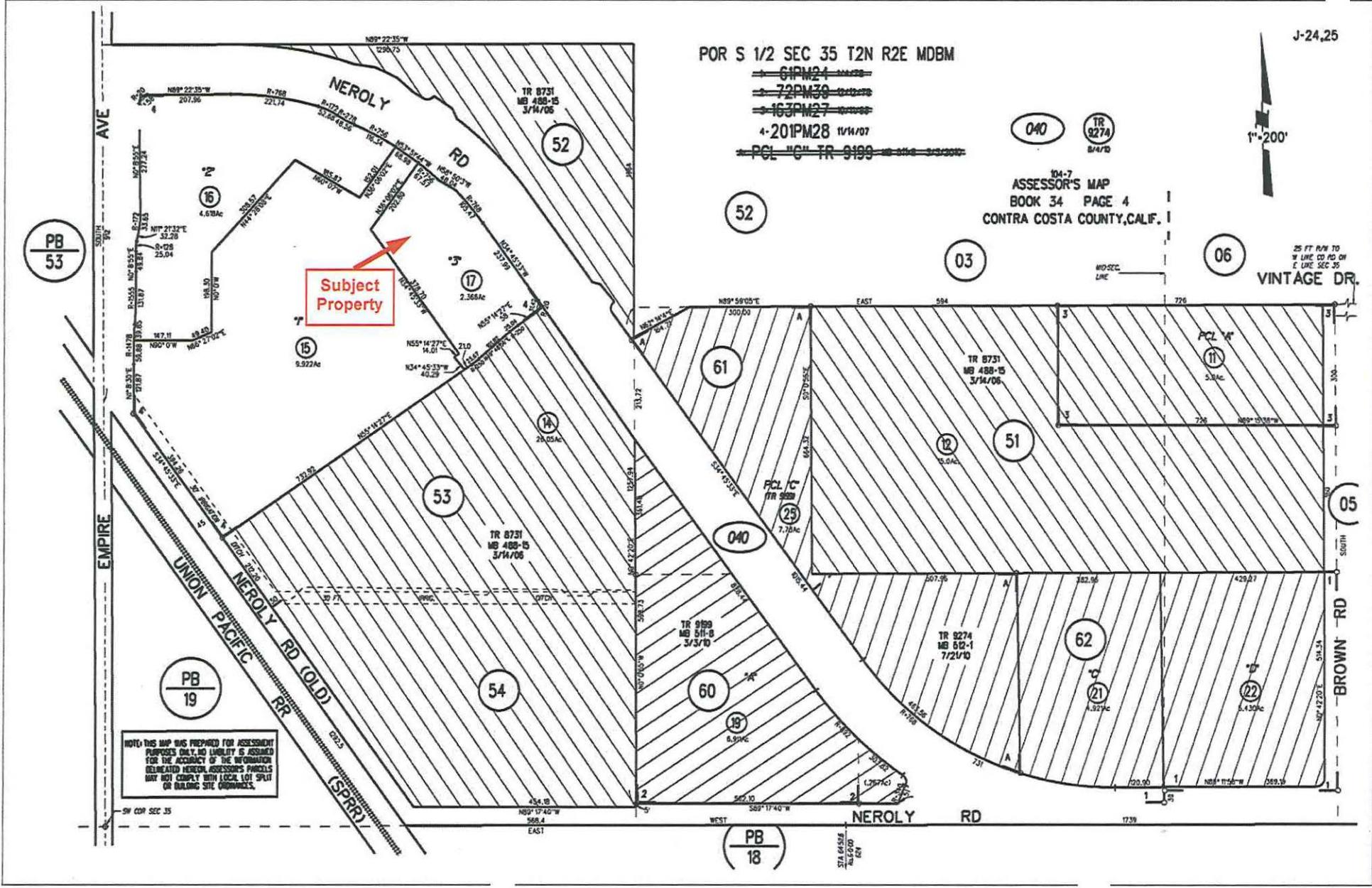
104-7  
 ASSESSOR'S MAP  
 BOOK 34 PAGE 4  
 CONTRA COSTA COUNTY, CALIF.



25 FT R/W TO  
 W LINE CD RD OF  
 E LINE SEC 35  
 VINTAGE DR.

Subject Property

NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT  
 PURPOSES ONLY. NO LIABILITY IS ASSUMED  
 FOR THE ACCURACY OF THE INFORMATION  
 DELINEATED HEREON. ASSESSOR'S PARCELS  
 MAY NOT COMPLY WITH LOCAL LOT SPLIT  
 OR BUILDING SITE ORDINANCES.



PB 53

PB 19

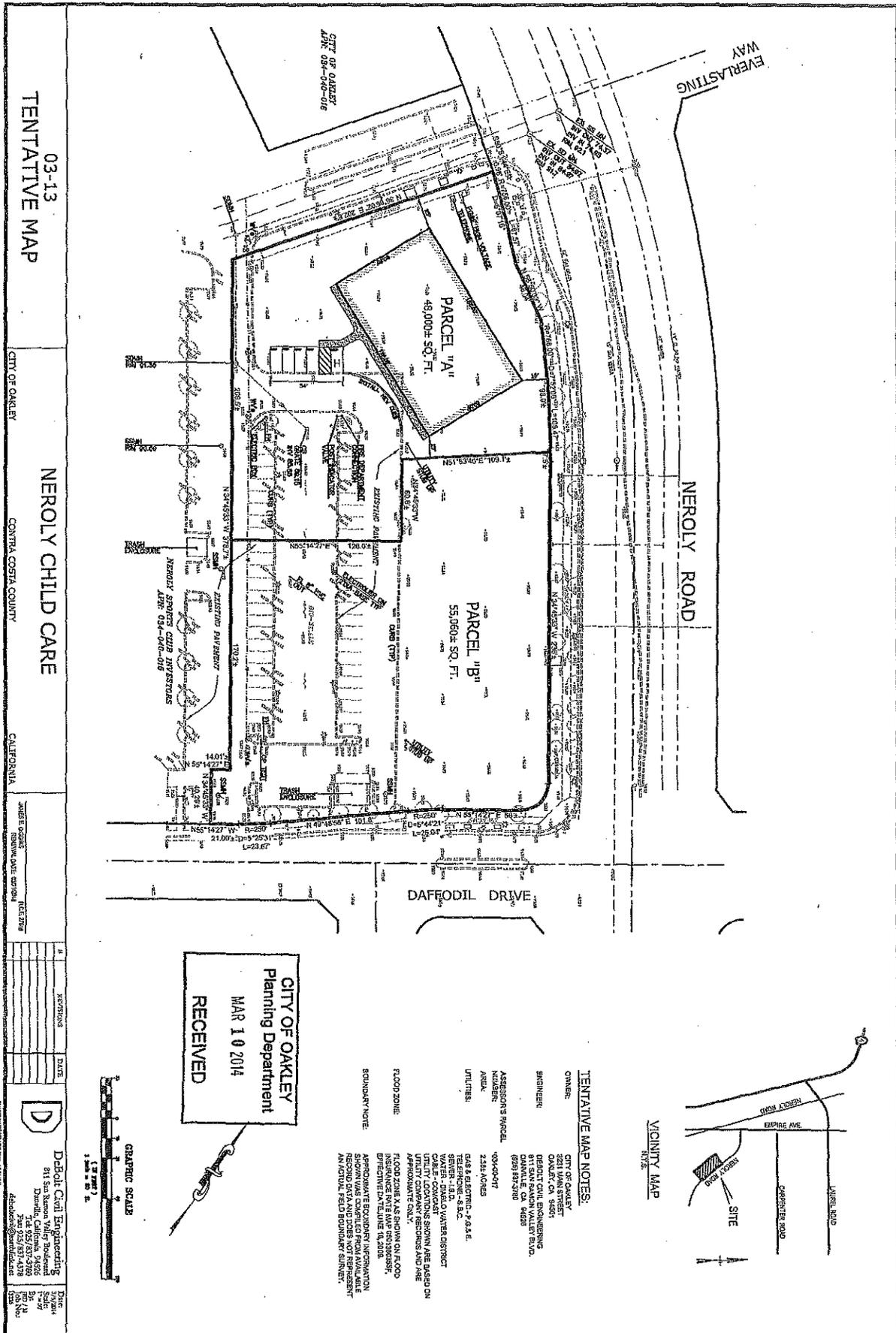
PB 18

EXHIBIT B





# EXHIBIT D



03-13  
TENTATIVE MAP

CITY OF OAKLEY

NEROLY CHILD CARE

CENTRAL COSTA COUNTY  
CALIFORNIA

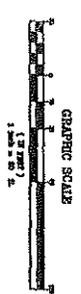
SECTION	DATE

**D**

Dabot Civil Engineering  
811 San Ramon Valley Boulevard  
Daly City, California 94024  
Phone: (415) 981-4378  
Fax: (415) 981-4379  
www.dabotcivil.com

Drawn: J. S. S. / J.S.S.  
Checked: J.S.S. / J.S.S.  
Date: 03/10/2014

**CITY OF OAKLEY**  
Planning Department  
RECEIVED  
MAR 10 2014



**TENTATIVE MAP NOTES:**

OWNER:  
CITY OF OAKLEY  
3821 MAIN STREET  
OAKLEY, CA 94621

ENGINEER:  
DABOT CIVIL ENGINEERING  
811 SAN RAMON VALLEY BLVD  
DALY CITY, CA 94024  
(925) 982-2780

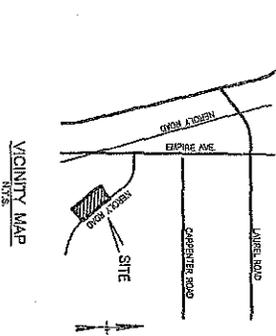
APPLICANT'S PARCEL NUMBER:  
108-04-007

AREA:  
228,428 S.F.

UTILITIES:  
24" & 18" WATER, 8" GAS, 6" SEWER, 18" D.I.D. WATER - DUCO WATER DISTRICT  
18" D.I.D. WATER - DUCO WATER DISTRICT  
UTILITY LOCATIONS SHOWN ARE BASED ON UTILITY COMPANY RECORDS AND ARE APPROXIMATE ONLY.

FLOOD ZONE:  
APPROXIMATE FLOOD INFORMATION SHOWN WAS COMPILED FROM AVAILABLE INSURANCE RATE MAP (5010000000). ELEVATION DATA FROM 10/14/2008.

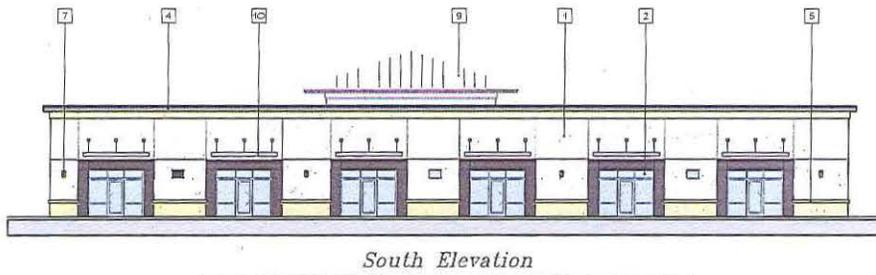
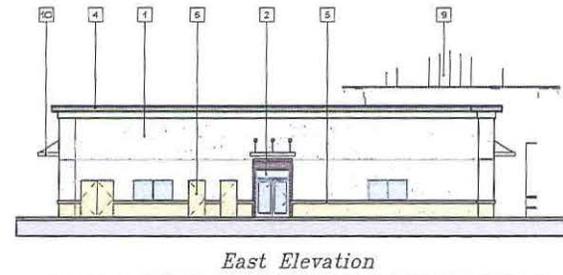
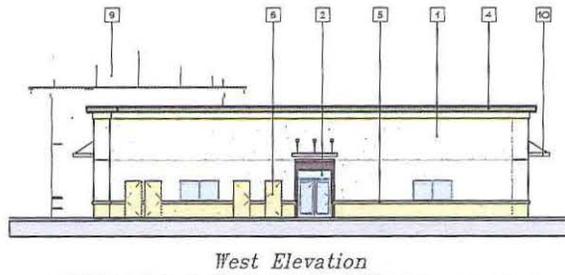
BOUNDARY NOTE:  
APPROXIMATE BOUNDARY INFORMATION SHOWN WAS COMPILED FROM AVAILABLE INSURANCE RATE MAP (5010000000). AN ACTUAL FIELD BOUNDARY SURVEY





**TYPICAL KEY NOTES**

1	PANED TEXTURE CEMENT PLASTER FINISH - LIGHT SAND TEXTURE
2	CLEAR ANODIZED ALUMINUM - BLUE-GREEN GLASS
3	STANDING SEAM METAL ROOF BERRIDGE - ZINC GRAY
4	CORNICE ELEMENT
5	INTERMEDIATE CORNICE ELEMENT
6	METAL MAN-DOOR
7	DECORATIVE LIGHT FIXTURE
8	SIGNAGE LOCATION
9	ROOF BEYOND
10	METAL CANOPY



*Child Care Center  
Neroly Road & Empire Ave.  
Oakley, California*

**EXHIBIT E**

**PERKINS, WILLIAMS & COTTERILL**  
**A·R·C·H·I·T·E·C·T·S**  
10480 WHITE ROCK RD., STE. 200 RANCHO CORDOVA, CA 95670  
916-433-1400 FAX 916-851-1400  
perkins@perkinswill.com

*Elevations  
Child Care Center*

Project: SEEKER DEVELOPMENT

Job No. 14352 Date: 4-14-2014

Scale: AS NOTED

**A1.0**