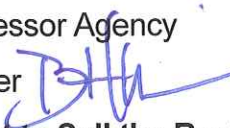


### STAFF REPORT

**Date:** October 11, 2016  
**To:** City Council, acting as the Successor Agency  
**From:** Bryan Montgomery, City Manager   
**SUBJECT:** Resolution declaring the Intent to Sell the Real Property located at 3201 Main Street, Oakley (APN 035-090-078) to James and Brenda D'Amico (dba Delta Black Bear Diner, Inc and/or D'Amico Investments, LLC)

---

#### Summary and Background

This property of the former Oakley Redevelopment Agency is leased by the owners of the Black Bear Diner and was identified in the Long Range Property Management Plan (LRPMP), approved by the State Department of Finance in December of 2015, as a property to be sold with proceeds being distributed to the various taxing entities.

An appraisal on the property has been obtained that declares a market value of \$2,100,000 (see attached). This appraisal and various other terms were discussed with the Oversight Board at its September meeting and are now presented to the Successor Agency Board to initiate the sale process.

It is proposed that the property be sold to the existing tenants of the property, James and Brenda D'Amico, doing business as the Delta Black Bear Diner, Inc. for the appraised value of \$2,100,000. Further, it is recommended that any and all costs associated with the closing of the purchase be borne by the D'Amico's. Because the parking area for the Diner is owned and maintained by the City, it is also proposed that the D'Amico's enter into a "Parking Lot and Public Spaces Maintenance Agreement" as part of the transaction. This Maintenance Agreement calls for the Diner property to pay for a share of the maintenance of the parking area on a monthly basis. While this amount may change from year to year, the current estimate is \$340 per month. The Diner already pays \$40 per month to the City for irrigation water for the landscaping on the Diner parcel (north of the building); and it is proposed that amount continue to be paid. Finally, because the Diner parcel is essentially part of the Civic Center Plaza, a provision is included that the City be granted the first right of refusal to purchase the property should the D'Amico's decide to sell it at a future date.

The D'Amico's have agreed to purchase the Diner parcel with these terms and conditions and they are outlined in the draft purchase and sales agreement which is attached.

The Oversight Board and City staff believe that the sale of the property directly to the D'Amico's to continue the operations of the Black Bear Diner is in the best interests of the City and all taxing entities; however, we are proposing that any other interested party may submit a bid for the property prior by 12 Noon on November, 1, 2016. Any other proposals received could be reviewed by the Successor Agency Board at its November 8, 2016 meeting, whereat a final draft of a purchase and sales agreement could be considered for approval. If the Successor Agency Board approves the agreement, it then must go to the Oversight Board for final approval. After those approvals, the actual sale of the property could take place.

### **Fiscal Impact**

The sale of this property requires the distribution of the sales proceeds to the various taxing entities. A list of the entities that includes the proportionate share of the 1% property tax is attached. Upon sale of the property there will be the loss of rental income to the Successor Agency, though that was expected and is required by the LRPMP.

### **Recommendation**

Adopt a resolution declaring the intent to sell the Black Bear Diner property to D'Amico Investments, LLC for the terms described above and invite any other interested parties to make a sealed bid offer prior to 12:00pm on November 1, 2016.

### **Attachments**

1. Aerial Map of the Property
2. Appraisal document
3. Taxing Entities
4. Draft Purchase and Sales Agreement
5. Resolution

3201 Main St.



**Dunn & Associates**  
REAL ESTATE APPRAISERS AND CONSULTANTS

VALUATION REPORT

Of

**SINGLE TENANT RESTAURANT BUILDING**

**6,096 Square Feet  
3201 Main Street  
Oakley, California**

For

Bryan H. Montgomery  
City Manager  
City of Oakley  
3231 Main Street  
Oakley, California 94561  
montgomery@ci.oakley.ca.us

and

U.S. Small Business Administration  
San Francisco District Office  
455 Market Street, 6<sup>th</sup> Floor  
San Francisco, California 94105

and

Capital Access Group  
150 California Street  
San Francisco, California 94111

As of

August 17, 2016

August 29, 2016

16-08-120

Bryan H. Montgomery  
City Manager  
City of Oakley  
3231 Main Street  
Oakley, California 94561  
montgomery@ci.oakley.ca.us

and

U.S. Small Business Administration  
San Francisco District Office  
455 Market Street, 6<sup>th</sup> Floor  
San Francisco, California 94105

and

Capital Access Group  
150 California Street  
San Francisco, California 94111

Re: SINGLE TENANT RESTAURANT BUILDING  
6,096 Square Feet  
3201 Main Street  
Oakley, California

Dear Mr. Montgomery:

At your request and authorization, we have prepared an appraisal of the above referenced property.

The purpose of the appraisal assignment is to estimate the "as-is" market value of the leased fee interest of the subject property, as defined within this report. The client for this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group. The intended use of this appraisal is to assist in establishing value for use by Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group for loan underwriting purposes. The intended user of this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group. This appraisal is reported in an Appraisal Report that complies with the reporting requirements set forth in Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP).

In the course of our investigation we have personally inspected the subject property, including the site and the general environment in which it is located. To estimate the "as-is" market value of the leased fee interest of the subject property, we have used the Sales Comparison and Income Approaches to value. The following pages summarize the data we have used and describes our methodology.

**NOTE NO. 1:** This analysis has been made under the assumption that the subject property has reciprocal parking and access agreements with the adjacent parcels. This assumption may affect the assignment results.

Based on our investigation and analysis, it is our opinion that the estimated "as-is" market value of the leased fee interest of the subject property, based on an estimated marketing and exposure time of three months, as of August 17, 2016, is:

**TWO MILLION ONE HUNDRED THOUSAND DOLLARS**  
**(\$2,100,000)**

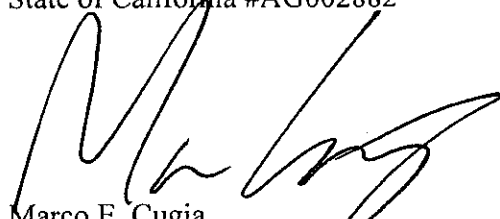
The conclusions contained herein are subject to the limiting conditions attached. This report has been made in conformity with and is subject to the requirements of the Code of Ethics and the Standards of Professional Practice of the Appraisal Institute, Uniform Standards of Professional Appraisal Practice ("USPAP"), and Title IX of the Federal Financial Institutions Reforms Recovery and Enforcement Act of 1989 ("FIRREA").

Respectfully submitted,

**DUNN & ASSOCIATES**



Michael E. Dunn, MAI, CCIM  
Certified General Real Estate Appraiser  
State of California #AG002882



Marco E. Cugia  
Trainee Real Estate Appraiser  
State of California #AT3001717

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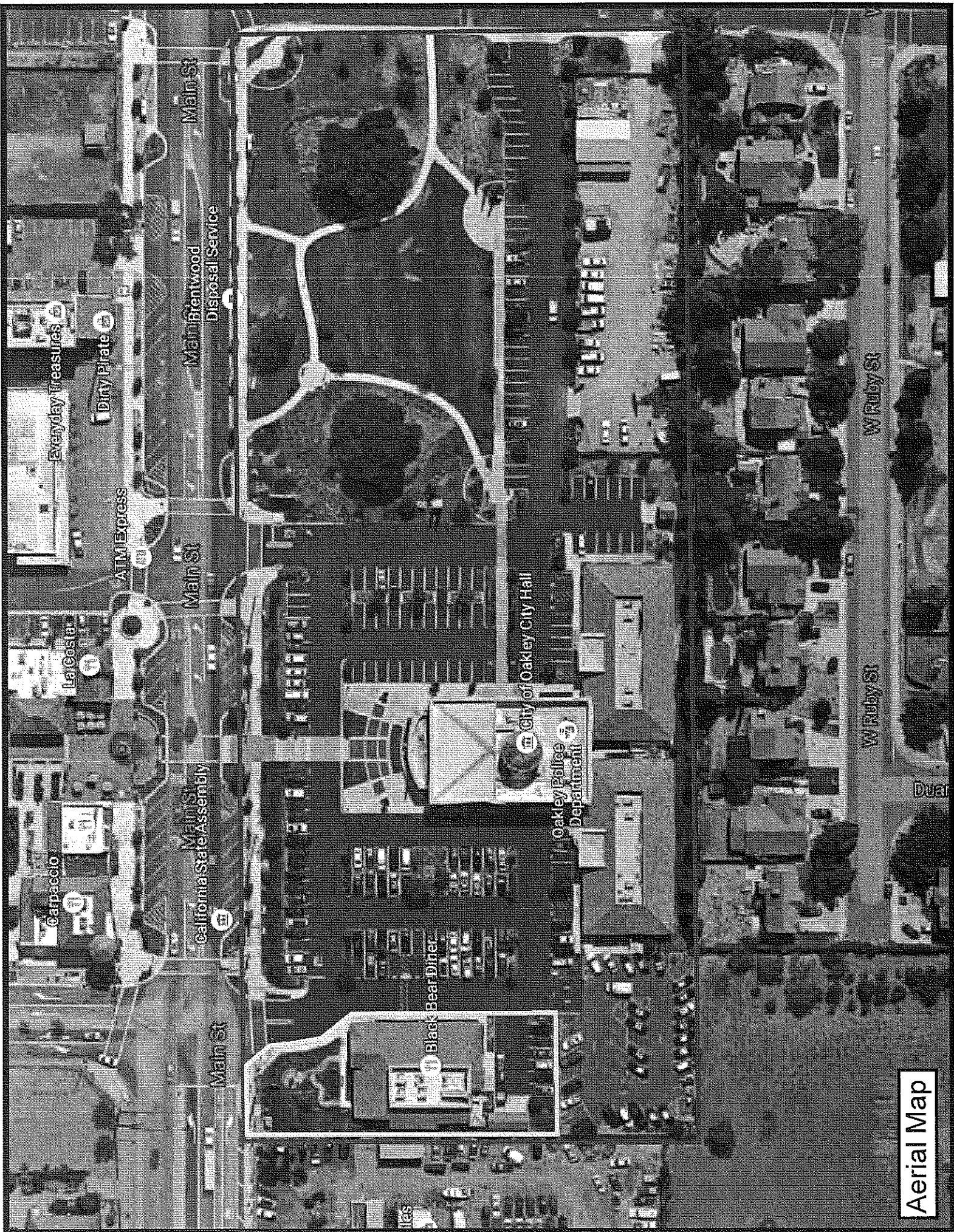
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**ADDENDUM**

- Exhibit A. Photographs of Comparable Building Sales
- Exhibit B. Photographs of Comparable Leases
- Exhibit C. Engagement Letter
- Exhibit D. Grant Deed Conveying Subject Property
- Exhibit E. Zoning Ordinance
- Exhibit F. Replacement Cost Estimate
- Exhibit G. Qualifications





Everyday Treasures

Dirty Pirate

ATM Express

Main St

Main Brentwood  
Disposal Service

Main St

Main St  
California State Assembly

Main St

Black Bear Diner

City of Oakley City Hall

Oakley Police  
Department

W Ruby St

W Ruby St

Aerial Map

**EXECUTIVE SUMMARY**

**Assignment:** Estimate the “as-is” market value of the leased fee interest of the subject property, as of August 17, 2016.

**Property Type:** The subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor’s parcel, is improved with a 6,096 square foot, single story, wood frame restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area. An aerial map on the facing page outlines the subject property in yellow and the complex in blue. The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California.

**Location:** 3201 Main Street  
Oakley, California

**Date of Valuation:** August 17, 2016

**Contra Costa County Assessor's Parcel No:** 035-090-078-3

**Client:** The client for this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.

**Intended Use of the Appraisal:** The intended use of this appraisal is to assist in establishing value for use by Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group for loan underwriting purposes.

**Intended Users:** The intended user of this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.

**Zoning:** DSP-DC: Downtown Specific Plan: Downtown Core

Appraisal: 3201 Main Street, Oakley, California

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**Census Tract:** 4040.00

**Flood Zone:** According to the Federal Emergency Management Agency (FEMA), the subject property is located in Flood Zone X, which is identified as an area outside of the 100 and 500 year flood plains. Panel No.035-090-078-3, dated August 3, 2009.

**Seismic Zone:** According to the California Emergency Management Agency (CEMA), the subject property is located outside the earthquake fault zone seismic study area; however, it is located in the seismic hazard zone of liquefaction.

**Land Area:** 0.53 acres, or 23,261 square feet

**Highest & Best Use:**

**As Vacant:** Hold for future development of a retail use

**As Improved:** Current use

**Rights Appraised:** Fee Simple and Leased Fee

**Toxic Contamination:** No evidence of toxic contamination or hazardous waste was observed during our on-site inspection. However, no report on contaminants or hazardous waste was available concerning the subject site, and the appraisers are unqualified to detect or advise on such matters and offer no warranty nor opinion. This appraisal assumes that there is no toxic contamination on the subject site.

**Marketing & Exposure Times:** Three months

**Hypothetical Stabilized Valuation Analysis:**  
(Fee Simple)

**Sales Comparison Approach:** \$1,700,000

**Income Approach:** \$1,700,000

**Hypothetical Final Value Estimate:** \$1,700,000  
(Fee Simple)

**“As-Is” Market Value:** \$2,100,000  
(Leased Fee)

### **EXTRAORDINARY ASSUMPTIONS**

1. This analysis has been made under the assumption that the subject property has reciprocal parking and access agreements with the adjacent parcels. This assumption may affect the assignment results.
2. We have not been provided with a preliminary title report, therefore we are unable to determine if there are any easements or encumbrances negatively affecting the subject property. This appraisal has been made under the assumption that the subject property is not negatively affected by any easements nor encumbrances.

### **HYPOTHETICAL CONDITIONS**

1. The Hypothetical Stabilized Analysis assumes that the subject property is at a stabilized occupancy level at a market rental rate.

### **STATEMENT OF GENERAL LIMITING CONDITIONS**

1. Date and definitions of value, together with other definitions and assumptions on which our analysis is based, are set forth in appropriate sections of this report. These are to be considered part of the following limiting conditions as if included here in their entirety.
2. The conclusions stated herein, including values which are expressed in terms of the U. S. Dollar, apply only as of the date of value and are based on prevailing physical and economic conditions and available information at that time. No representation is made as to the effect of subsequent events.
3. Title to the property is assumed to be marketable and free and clear of all liens, encumbrances, easements and restrictions except those specifically discussed in the report. The property is appraised assuming it to be under responsible ownership and competent management, and available for its highest and best use.
4. All facts and data set forth in this report are true and accurate to the best of the appraiser's knowledge and belief. The appraisal is based upon the assumption that data which is of public record, or which has been secured through interviews with owners, agents or other informed persons is true and correct. The appraisers reserve the right to make appropriate revisions in the event of discovery of additional or more accurate data.
5. The appraisers reserve the right to make such adjustments to the analysis, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.
6. The appraisers assume no responsibility for hidden or unapparent conditions of the property,

- subsoil, or structures that render it more or less valuable. No responsibility is assumed for arranging for engineering studies that may be required to discover them.
7. The property is appraised assuming it to be in full compliance with all applicable federal, state, and local environmental regulations and laws, unless otherwise stated.
  8. The property is appraised assuming that all applicable zoning and use regulations and restrictions have been complied with, unless otherwise stated.
  9. The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, unless stated.
  10. No engineering survey was made available to the appraisers. Except as specifically stated, data relative to size and area was taken from sources considered reliable and no encroachment of real property improvements is considered to exist.
  11. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraisers. The appraisers have no knowledge of the existence of such materials on or in the property. The appraisers, however, are not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
  12. Since earthquakes are not uncommon in the area, no responsibility is assumed due to their possible effect on individual property.
  13. This appraisal covers only the real property described herein. Unless specifically stated to the contrary, it does not include consideration of mineral rights or related right of entry, nor personal property or the removal thereof. Values reported herein are not intended to be valid in any other context, nor are any conclusions as to unit values applicable to any other property or utilization than that specifically identified herein.
  14. By reason of this assignment, testimony or attendance in court or at any government or other hearing with reference to the property is not required without prior arrangements having been made relative to such additional employment.
  15. No opinion is expressed as to the value of subsurface oil, gas or mineral rights or whether the property is subject to surface entry for the exploration or removal of such materials except

as is expressly stated.

16. Maps, plats and exhibits included in this part are for illustration only as an aid in visualizing matters discussed within the report. They should not be considered as surveys or relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from the report.
17. No opinion is intended to be expressed for matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers.
18. The distribution, if any, of the total valuation in this report between land and improvements applied only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
19. Disclosure of the contents of this report is governed by the By-Laws and Regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially the conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication, without prior written consent and approval of the author.
20. The Americans with Disabilities Act (ADA) became effective January 26, 1992. Dunn & Associates has not made a specific compliance survey nor analysis of the subject property to determine whether or not it is in conformity with the requirements of the ADA. A compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with the requirements of the act. If so, this fact could have a negative effect upon the value of the property. The appraisers, however, are not qualified to evaluate such conditions and unless otherwise stated in this report, we did not consider noncompliance in our valuation.
21. It is the client's responsibility to read this report and to inform the appraisers of any errors or omissions of which he/she is aware prior to utilizing this report or making it available to any third party.

**CERTIFICATION OF VALUE**

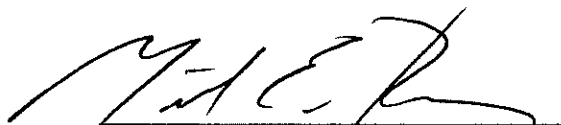
We certify to the best of our knowledge and belief, . . .

- \* the statements of fact contained in this appraisal report are true and correct.
- \* the reported appraisal analysis, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analysis, opinions and conclusions.
- \* we have no present nor prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved.
- \* we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- \* our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- \* our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- \* our analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, Uniform Standards of Professional Appraisal Practice ("USPAP"), and Title IX of the Federal Financial Institutions Reforms, Recovery and Enforcement Act of 1989 ("FIRREA").
- \* Michael E. Dunn, MAI, CCIM and Marco E. Cugia have made a personal exterior and interior inspection of the property that is the subject of this report.
- \* no one has provided assistance to the persons signing this report.
- \* the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- \* as of the date of this report, Michael E. Dunn, MAI, CCIM has completed the continuing education program for Designated Members of the Appraisal Institute.
- \* we have performed no services, as appraisers or in any other capacity, regarding the

Appraisal: 3201 Main Street, Oakley, California

- \* we have performed no services, as appraisers or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- \* the appraisal assignment was not based on a requested minimum valuation, a specific valuation, nor the approval of a loan.
- \* the estimated "as-is" market value of the leased fee interest of the subject property, based on an estimated marketing and exposure time of three months as of August 17, 2016, is:

**TWO MILLION ONE HUNDRED THOUSAND DOLLARS**  
**(\$2,100,000)**



Michael E. Dunn, MAI, CCIM  
Certified General Real Estate Appraiser  
State of California #AG002882

August 17, 2016

Date



Marco E. Cugia  
Trainee Real Estate Appraiser  
State of California #AT3001717

August 17, 2016

Date



TENANT SUMMARY

SPACE NO.	TENANT	TOTAL SF	BASE RENT/MO.	RENT/SF	START DATE	EXPIR. DATE
2950	Black Bear Diner	6,096	\$12,500	\$2.05	12/1/2007	3/1/2022
<b>Total</b>		<b>6,096</b>	<b>\$12,500</b>	<b>\$2.05</b>		

## **INTRODUCTION**

### **Property Identification**

The subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor's parcel, is improved with a 6,096 square foot, single story, wood frame restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area. The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California.

A summary of the present occupancy of the subject property is shown on the facing page. The subject property is currently 100% occupied by Black Bear Diner at a monthly contract rent of \$12,500, or \$2.05 per square foot on a triple net expense basis with a remaining lease term of 66 months. The current monthly rent is based on a negotiated rental rate reduction which ends in November of 2016. Beginning on December 1, 2016, the tenant will begin paying monthly contract rent of \$17,950, or \$2.94 per square foot on a triple net expense basis.

We have estimated a market rental rate of \$1.80 per square foot on a triple net expense basis and a 5% market vacancy rate. The current occupancy status shall be discussed in the "As-Is" Analysis section following the Hypothetical Stabilized Analysis.

### **Purpose of the Appraisal**

The purpose of the appraisal assignment is to estimate the "as-is" market value of the leased fee interest of the subject property, as defined within this report.

### **Client**

The client for this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.

**Intended Users**

The intended user of this report is Bryan H. Montgomery, U.S. Small Business Association, and Capital Access Group.

**Date of Appraised Value**

The effective date of value is the date of inspection on August 17, 2016. The date of the report is August 29, 2016.

**Property Rights Appraised**

The property rights appraised are described as the fee simple and leased fee interest, as defined in the Definitions section of this report.

**Competency**

Michael E. Dunn MAI, CCIM and Marco E. Cugia have experience in the appraisal of retail buildings throughout California.

**Scope of the Work**

This appraisal is reported in an Appraisal Report that complies with the reporting requirements set forth in Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser has gathered and analyzed elements about the client and any other intended users; the intended use of the report; the type, definition, effective date of value and conclusions; market research; and the relevant characteristics and conditions of the subject property in order to properly perform this appraisal. The site and legal data for the subject property were obtained based on a physical inspection of the site and from the various City of Oakley and Contra Costa County agencies. As previously indicated, Michael E. Dunn, MAI, CCIM and Marco E. Cugia have made a personal inspection of the subject property including the site and the general environment in which it is located. We have utilized the Sales Comparison and Income Approaches to value. We have disregarded the Cost Approach due to the lack of comparable land sales in the subject's area and the subjectivity associated with estimating accrued depreciation of a 9 year old structure. All of the comparable improved sales and the comparable leases were verified with principals, agents, or participating brokers.

**Marketing and Exposure Times**

For commercial properties in the subject's market, marketing and exposure times are considered equal. To estimate the marketing and exposure times for the subject property, we have analyzed indications provided by the comparable sales, which ranged from one to nine months, as well as considered the opinions of knowledgeable brokers. A general perception of participants in the market is marketing and exposure times of three to nine months. Our estimate of value is considered to be competitive with the market and we have estimated the marketing and exposure times at three months for the estimated "as-is" market value.

## **DEFINITIONS**

### **Market Value**

"Market value" means the most probable price which a property should bring in a competitive open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."<sup>1</sup>

### **Market Value "As-Is"**

"Market Value as-is" on appraisal date means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualification as of the date the appraisal is prepared."<sup>2</sup>

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<sup>1</sup> Federal Register, Vol. 55, No. 165, Friday, August 24, 1990, Rules and Regulations, 12 CFR Part 34.42(f).

<sup>2</sup> Appraisal Policies and Practices of Insured Institutions and Services Corporation, Federal Home Loan Bank Board, "Final Rule", 12 Parts 563 and 571, December 21, 1987.

Market Value "as-is" means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. When an "AS-IS" valuation premise is used, the property is valued as of a specified date, assuming the property is in precisely the condition or status it actually was (is) in on the effective date of value. This condition must be accurately described in the appraisal report.

One proper approach in estimating the market value of an "AS-IS" condition is to first estimate the market value of the completed or "stabilized" condition. The AS-IS condition should consider (deduct) all of the anticipated costs incurred to achieve full completion and/or stabilized occupancy of an income property. Included might be leasing commissions, rent concessions typical of the existing market, sales concessions, estimated costs to complete construction or tenant improvements, and lost opportunity, etc. along with appropriate discount for time, etc.

In summary, an appraisal of the "AS-IS" condition will estimate the defined value of a property while precisely reflecting its actual physical, legal, economic, and political status on the effective date of valuation.

#### **Fee Simple Interest**

The term "fee simple interest" as used in this report is defined:

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."<sup>3</sup>

#### **Leased Fee Interest**

The term "leased fee interest" as used in this report is defined:

"A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual landlord-tenant relationship."<sup>4</sup>

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<sup>3</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fifth Edition, Chicago: Appraisal Institute, 2010, Page 78.

<sup>4</sup> Ibid, Page 111.

**Leasehold Interest**

The term "leasehold interest" as used in this report is defined:

"The tenant's possessory interest created by a lease."<sup>5</sup>

**Prospective Value**

The term "prospective value" as used in this report is defined:

"A value opinion effective as of a specified future date. The term does not define a type of value. Instead, it identifies a value of opinion as being effective at some future date. An opinion of value as of a prospective date is frequently sought in connection with projects that are proposed, under construction, or under conversion to a new use, or those that have not yet achieved sellout or a stabilized level of long-term occupancy."<sup>6</sup>

**Easement**

The term "easement" as used in this report is defined:

"The right to use another's land for a stated purpose."<sup>7</sup>

**Hypothetical Conditions**

The term "hypothetical condition" as used in this report is defined:

"That which is contrary to what but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."<sup>8</sup>

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<sup>5</sup> Ibid, Page 111.

<sup>6</sup> Ibid, Page 153.

<sup>7</sup> Ibid, Page 63.

<sup>8</sup> Ibid, Page 97.

**Extraordinary Assumptions**

The term “extraordinary assumption” as used in this report is defined:

“An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis.”<sup>9</sup>

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<sup>9</sup> Ibid, Page 73.



**LEGAL DATA**

**Ownership:** City of Oakley  
*Source: Grant Deed*

**Contra Costa County  
Assessor's Parcel No.:** 035-090-078-3

**Zoning:** DSP-DC: Downtown Specific Plan: Downtown Core

**Easements:** We have not been provided with a preliminary title report, therefore we are unable to determine if there are any easements or encumbrances negatively affecting the subject property. This appraisal has been made under the assumption that the subject property is not negatively affected by any easements nor encumbrances.

**Planning:** According to Joshua McMurray, Planner with the City of Oakley Planning Department, there are no anticipated changes in the General Plan nor rezoning detrimentally affecting the subject property.

**Sales History:** According to the Contra Costa County Recorder's Office, the last transfer of the subject property occurred on February 28, 2011 when Oakley Redevelopment Agency granted its interest in the subject property to City of Oakley, a municipal corporation. A copy of the Grant Deed reflecting the last transfer of the subject property is included in the Addendum section of this report.

**Listing Status:** We have no knowledge the subject property is being actively marketed for lease or sale as of the date of this analysis.

ASSESSMENT DATA

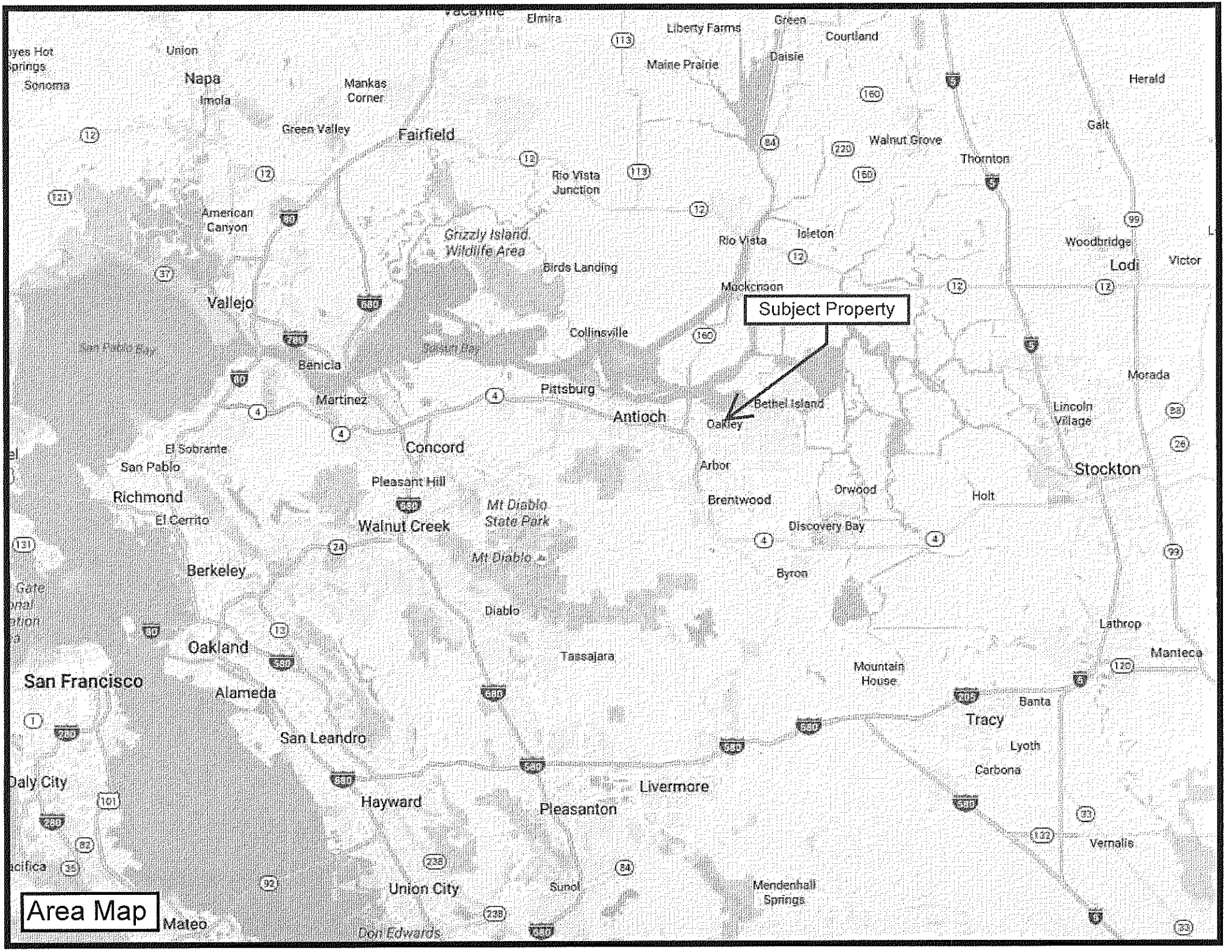
The subject property consists of one assessor's parcel with an assessed value as follows:

Land	\$446,335
Improvements	<u>1,441,024</u>
Total	\$1,887,359

The current assessed value of the subject property is above both the estimated hypothetical stabilized value of the fee simple interest and the "as-is" market value of the leased fee interest of the subject property in this report.

The subject property is exempt from current City of Oakley base tax rates due to the subject property being owned by the City of Oakley. The current taxes for 2015-2016, including special assessments/service charges, are \$11,415.28, which equates to an actual tax rate of 0.6%. The difference between the base and actual tax rates are special assessments/service charges as follows:

ISD Sewer Use Fee	\$11,383.40
Oakley Parks Z1	<u>31.88</u>
Total	\$11,415.28



Subject Property

Area Map

Napa  
Fairfield  
Vallejo  
Concord  
Antioch  
Oakley  
Stockton  
San Francisco  
Oakland  
Hayward  
Pleasanton  
Livermore  
Union City  
San Leandro  
Walnut Creek  
Pittsburg  
Collinsville  
Rio Vista  
Isleton  
Thornton  
Woodbridge  
Lodi  
Victor  
Herald  
Galt  
Walmart  
Liberty Farms  
Maine Prairie  
Green  
Courtland  
Daisie  
Mankas Corner  
Green Valley  
American Canyon  
Rio Vista Junction  
Birds Landing  
Mocknesson  
Bethel Island  
Arbor  
Brentwood  
Orwood  
Holt  
Discovery Bay  
Byron  
Diablo  
Tassajara  
Mountain House  
Banta  
Tracy  
Lyoth  
Carbona  
Vernalis  
Mendenhall Springs  
Sunol  
Don Edwards  
Mateo  
El Cerrito  
El Sobrante  
San Pablo  
Richmond  
Berkeley  
Alameda  
Daly City  
Pacific  
Vacaville  
Elmira  
El Cerrito  
El Sobrante  
San Pablo  
Gate National  
San Francisco  
Daly City  
Pacific  
Mateo  
Don Edwards

### AREA DESCRIPTION

The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California. In analyzing this region, four major influential factors must be considered: geographic, economic, social, and political. These four factors influence property values and identify trends in the market.

#### Geographic:

Contra Costa County is one of the nine counties comprising the metropolitan San Francisco Bay Area and lies to the east of the San Pablo and San Francisco Bays. Hill ranges divide the county into three distinct regions: the west, the east, and the central. The western portion, with its water access, contains much of the county's heavy industry. The eastern portion, consisting primarily of rural and agricultural land, is gradually undergoing a change to a more suburban region. The central portion is developing from a suburban area into a major commercial and financial center.

Transportation facilities in Contra Costa County include a freeway network, Bay Area Rapid Transit (BART), rail and water facilities. The county's freeway network consists of Interstate 680, which is the major north/south route through the central portion of the county, and Interstate 880, which is the major north/south route for the west portion of the county. Highways 4 and 24 act as east/west connecting routes to other portions of the county and the greater Bay Area. Access to the Bay Area Rapid Transit (BART) system is available in the cities of Concord, Pleasant Hill, Lafayette, Orinda, Walnut Creek, Pittsburg, and Richmond, enabling commuters better access to the major employment hubs in Oakland and San Francisco. The county has adequate rail and water transportation facilities and docking capabilities, and there are various marinas in the west and north portions of the county.

Although the transportation systems in Contra Costa County are extensive, freeway traffic congestion is viewed as one of the most serious problems in the area. In an effort to help reduce traffic congestion in the county, the California Department of Transportation (CalTrans) is currently working on several projects. Highway 4 in the eastern and western portions of the county is currently being widened to allow an easier flow of commuter traffic. Freeway construction was recently completed on the Interstate 680 and Highway 24 interchange which is the county's most congested traffic area. The construction included widening of the existing roadways and a new connector between Interstate 680 and Highway 24. Even with these ongoing expansions and upgrades of the county's transportation systems, due to the scattered residential areas and limited

access, as well as an apparent unwillingness to use public transportation, the automobile remains the principal means of transportation.

### **Economic:**

#### **Average Unemployment Rates 2000 - 2016**

<b>Year</b>	<b>Contra Costa County</b>	<b>Alameda County</b>	<b>Santa Clara County</b>	<b>State</b>
2000	3.5%	3.6%	3.1%	4.9%
2001	4.1%	4.8%	5.1%	5.4%
2002	5.7%	6.7%	8.4%	6.7%
2003	6.1%	6.9%	8.3%	6.8%
2004	5.4%	5.9%	6.4%	6.2%
2005	4.9%	5.1%	5.3%	5.4%
2006	4.3%	4.4%	4.5%	4.9%
2007	4.7%	4.7%	4.7%	5.3%
2008	6.2%	6.2%	6.0%	7.2%
2009	10.3%	10.7%	11.0%	11.4%
2010	11.2%	11.3%	11.1%	12.4%
2011	10.4%	10.4%	9.7%	11.7%
2012	9.0%	9.0%	8.4%	10.5%
2013	7.4%	7.4%	6.8%	8.9%
2014	6.1%	5.9%	5.2%	7.5%
2015	5.0%	4.7%	4.2%	6.2%
January '16	4.5%	4.3%	3.7%	5.8%
February '16	4.5%	4.3%	3.7%	5.7%
March '16	4.5%	4.3%	3.8%	5.6%

*Source: State of California Employment Development Department*

The most recent unemployment rate as of March of 2016 was 4.5% in Contra Costa County. The county has a higher unemployment rate in comparison to the neighboring counties of Santa Clara and Alameda of 3.8% and 4.3%. The unemployment rate in Contra Costa County and the greater Bay Area have historically been well below the state and national levels. Contra Costa County along with the greater Bay Area is recognized as an incubator for technology and innovation and serves as corporate headquarters for many international companies. The Bay Area's highly educated workforce, three international airports, international shipping ports, and moderate climate have contributed to the regions superior unemployment rate compared to the state over the past nine years.

Through 2015 the unemployment rate in Contra Costa County decreased from 5.7% in January to 4.5% at the end of the fourth quarter. Prior to this, from 2007 and through 2010, job losses in the East Bay were dominated by the construction and finance sectors while the financial panic on Wall Street and in Washington resulted in a drop in retail consumption. Nervous households and businesses reduced spending and began to conserve cash as the Troubled Asset Relief Program (TARP) appeared to create more confusion and the new administrations massive bail-out plan began to take shape. Ultimately the Bay Area was not only negatively affected by a steep drop in construction and finance employment through 2010, but the subsequent forecast included minimal to no growth in the retail, leisure and hospitality, and consumer related sectors, as businesses and consumers continue to hold back on spending.

As part of our analysis of the region, we have reviewed the Beacon Economics, "California Economic Outlook" for Spring of 2016, authored by Robert Kleinhenz. According to the report, California's economy outpaced the nation in job growth and output. The state experienced broad-based gains across its key industries ranging from agriculture to high tech and nearly everything in between. The top three positive trends throughout the state include employment, real estate, and improvement in state revenue's. Employment in California declined steadily during the last three and a half years to 5.9%, the lowest since late 2007 while job creation in the Health Care, Leisure and Hospitality, and Construction combined to produce nearly 45% of the state's total job gains last year. For the fourth year in a row, California added wage and salary jobs at a faster pace than the United States as a whole. Another hot spot in the economy is California's housing market which maintained an upward trajectory last year in terms of prices, sales, and new construction. The statewide median price of a home was \$403,600 in final quarter of 2015, an increase of 5.5% from one year earlier. Nonresidential real estate has shown considerable improvement in recent years especially for office properties, while industrial real estate is in very short supply with vacancy rates among the lowest in the country. The third positive trend for the state includes improvement in California's fiscal standing. Concern about California's fiscal situation is a recurring theme in the state's economic cycles with the state's revenue stream heavily dependant on personal income tax, particularly taxes collected on those in the top tax bracket which have high, but volatile, incomes tied to the performance of the stock market. As such, the state's revenues are especially procyclical, rising sharply when the economy and financial markets are on the rise, but falling precipitously when the economy heads south. Overall, the report indicated optimism with the States ability to face challenges with housing and it's budget, which if tackled appropriately, would help the state become an even greater economic success.

**Social Influences:**

According to the State of California Employment Development Department, Contra Costa County had an estimated population of 1,123,429 people as of January 1, 2016. Over the last year, the population has increased 0.8%. The chart as shown below indicates the population changes within the county and a breakdown by incorporated cities. According to the Association of Bay Area Governments (ABAG) 2009 projections; from 2010 to 2025 the most dramatic percentage change of increased household growth will occur in the Cities of Brentwood, Hercules and San Ramon. These cities' population are projected to increase by 30% to 43% during the time period from 2010 to 2035. Other cities anticipated to have considerable growth are expected to occur in Oakley, Pinole, Richmond, and Pittsburg.

**Contra Costa County Population 1980 - 2016**

	1980*	1990*	2000*	2016
Contra Costa County	656,331	803,732	955,900	1,123,429
Antioch	42,683	62,195	96,700	112,968
Brentwood	4,434	7,563	29,650	58,784
Clayton	4,325	7,317	11,000	11,209
Concord	103,763	111,348	123,900	129,707
Danville	26,143	31,306	43,000	42,865
El Cerrito	22,731	22,869	23,500	24,378
Hercules	5,963	16,829	20,150	24,791
Lafayette	20,837	23,501	24,400	24,924
Martinez	22,582	31,808	36,700	37,057
Moraga	15,014	15,852	16,500	16,513
Oakley	**	**	26,150	40,141
Orinda	**	16,642	17,850	18,749
Pinole	14,253	17,460	19,450	18,739
Pittsburg	33,465	47,564	59,900	67,817
Pleasant Hill	25,500	31,583	32,802	34,077
Richmond	74,676	87,425	101,100	110,378
San Pablo	19,846	25,158	30,900	30,829
San Ramon	20,511	35,303	46,250	78,363
Walnut Creek	54,033	60,569	65,900	70,018

\*Census of Population, January 1980, January 1990, and January 2000.

\*\*Not incorporated as of this date

According to ABAG, Contra Costa County is projected to have the fifth highest median income level in comparison to the nine county Bay Area as of 2010. The mean household income (in constant 2000 dollars) is expected to reach \$133,200 in 2035. This represents an increase of 31% over the 2010 figure of \$102,000. The primary reason for the expected increase in household income is because more people in each household have to work to pay expenses. This is directly related to the

area's expensive housing, and a continual diminishment of the middle class ranks.

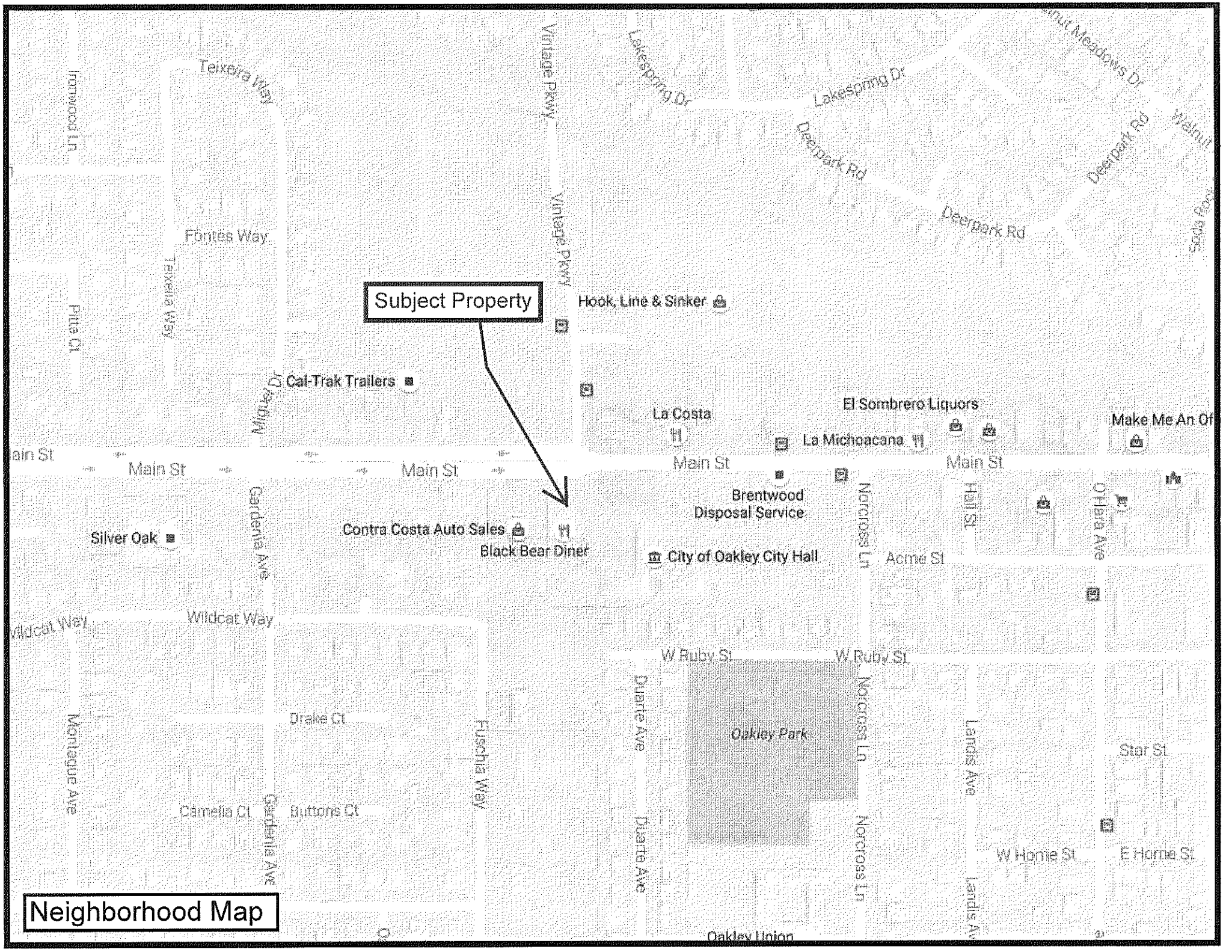
**Political:**

The regional government is composed of nine counties with their constituent cities, many with differing objectives. The region's large and continually expanding population has created such problems as traffic congestion and a lack of affordable housing. The physical limitations of the region, changes in the economic base, and social pressures brought on by diverse interest groups as reflected in attitudes of population and, ultimately, in laws they enact, make for a complex social environment. Laws are also influenced by growing sensitivity to the environment. The increased demand for public service, including concerns for health and safety, conflict with taxpayers' resistance to higher taxes. As a result of these attitudes and concerns, public agencies have responded by enacting environmental regulations, increasing developmental fees and protecting revenue sources. As mandated by state law, the primary governmental control over land is afforded by the General Plan. The General Plan broadly outlines land use as desired by local jurisdictions in keeping with community goals. Zoning ordinances designate specific uses and regulate in greater detail. California law requires that zoning districts be consistent with adopted general plans. According to the League of California Cities and Counties Supervisor's Association in California, nearly 75% of all local governments in the state have implemented some form of growth control. This growth control affects approximately 78% of the land in California.

**Conclusion**

In summary, Contra Costa County benefits from its extensive freeway system and good public transportation with an economic base including both traditional service related and high tech industries. Over the last four years, the housing market has improved, since the downturn when the economy stalled and the predatory mortgage industry negatively affected the economy. The overall Bay Area economy is strengthening as a result of the recovery in the San Francisco and Peninsula markets. The East Bay Area market has improved in more centralized locations, although has yet to stabilize in secondary locations, while improvement is expected to continue through 2016. The short and long term outlook for the subject property is one of stable to increasing values.





Subject Property

Neighborhood Map



Hook, Line & Sinker

Cal-Trak Trailers

La Costa

El Sombrero Liquors

Make Me An Of

La Michoacana

Main St

Main St

Main St

Main St

Brentwood Disposal Service

Silver Oak

Contra Costa Auto Sales

Black Bear Diner

City of Oakley City Hall

Acme St

Wildcat Way

Wildcat Way

W Ruby St

W Ruby St

Oakley Park

Star St

Camelia Ct

Buttons Ct

W Home St

E Home St

Oakley Union

### **NEIGHBORHOOD DESCRIPTION**

The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California. The neighborhood boundaries are roughly defined by the Sacramento-San Joaquin River Delta to the north, Rose Avenue to the southeast, Laurel Road to the South, and Highway 160 to the west. The subject property is located in a good condition mixed-use neighborhood that is approximately 75% developed and has a high concentration of highway commercial uses that serve the commute traffic through eastern Contra Costa County.

Land uses immediately surrounding the subject property include Oakley City Hall adjacent to the east, a ACE Hardware and Grocery Outlet anchored retail center across Main Street to the north, an auto sales yard adjacent to the west, and single tenant residences adjacent to the south. Land uses further surrounding the subject property consist of residential uses to the west and residential uses to the north and east across the railroad tracks, and the Oakley Park and the Oakley Unified School District buildings to the south. A majority of the retail uses in the City of Oakley are located within the Cypress Shopping Center and the Oakley Town Shopping Center located approximately one mile to the west along Main Street and retail and service commercial uses consisting of various "mom and pop" tenants are located along Highway 4/Main Street to the east.

Highway 4 is recognized as an inadequate transportation route through east Contra Costa County. The highway is atypically congested during peak driving times due to the narrow two lane portions and increase in residential development in the Cities of Pittsburg, Antioch, Oakley and Brentwood during the last decade. The State Route 4 Bypass project has eased traffic congestion along Highway 4/Main Street in the Cities of Brentwood and Oakley; and provides access to the growing areas of Antioch and western Brentwood. The first phase of the Highway 4 bypass was completed in the first quarter of 2008 and is located approximately three miles to the southwest of the subject property. New regional retail development has occurred to the south of the subject in the Cities of Brentwood and Antioch on the east and west sides of the Highway 4 bypass and Lone Tree Way interchange which has negatively affected commuter traffic in the subject neighborhood. Prior to the Highway 4 bypass, Main Street traffic counts averaged 30,000 to 40,000 cars daily and current traffic counts indicate an average daily traffic count of 19,000 cars.

Access to the subject property is considered good from Main Street which is the original Highway 4. Main Street is a main east-west thoroughfare through the subject's neighborhood and connects to the Highway 4 Bypass via Highway 160 one mile to the south. Highway 4 is the main east/west connector route for Northern Contra Costa County beginning at Hercules west of the subject property and traversing through the cities of Martinez, Concord, Pittsburg, Antioch, Oakley, Brentwood, and Stockton. Highway 4 connects to Interstate 680 approximately 20 miles west of the subject property and provides access to major employment centers in Concord, Walnut Creek, San Ramon, and Pleasanton. In addition the subject is adjacent to Highway 160 which is a connector route for the Delta communities to the north of the subject and provides access to Highway 4. Highway 4 and Main Street continue southeast of the subject providing access to the communities of Knightsen and Discovery Bay and continues east to the City of Stockton.

**Market Analysis:**

Commercial property uses in the subject's area consist primarily of retail uses serving the commute traffic along Highways 4 and 160, and residents who reside within the surrounding community. Tenants include local non-credit "mom and pop" to national credit tenants. Local brokers in the subject market indicated the demand for commercial space in East Contra Costa County declined prior to the recession while recovery has been slow especially in perimeter locations. Tighter lending restrictions and increased unemployment has decreased the demand for commercial space in East Contra Costa County.

As part of our investigation of the subject retail market, we have considered the Cushman and Wakefield Retail Snapshot for the First Quarter of 2016. The overall market posted a vacancy of 5.7% in the first quarter of 2016, which is a slight increase from 5.2% the prior quarter. Total net absorption was down for the quarter at negative 192,000 square feet. Only 46,000 square feet of new retail space was added during the first quarter of 2016, and 423,000 square feet of retail space were under construction.

The subject property is located in the Highway 4 Corridor sub-market which is improved with 8.67 million square feet of inventory. The Highway 4 sub-market finished the second quarter with a vacancy rate of 8.6% which is higher than the overall East Bay vacancy rate of 5.7%. The Highway 4 Corridor sub-market finished the second quarter with an average asking rental rate of \$1.77 per square foot, on a triple net expense basis, which is lower than that of the overall market.

The table below summarizes the subject and competing submarkets characteristics:

Sub-market	Inventory	Vacancy	Average Asking Rent (NNN)/sf
680 Corridor	10,036,528	4.6%	\$2.08
<b>Highway 4</b>	<b>8,666,982</b>	<b>8.6%</b>	<b>\$1.77</b>
Overall Market	51,515,922	5.7%	\$1.97

In addition, we have reviewed the PwC Investors Survey for the First Quarter of 2016, which indicates investor requirements ranging from 4.75% to 9.50% for the National Strip Shopping Center Market with an average of 6.41%, a decrease of 59 basis points from one year ago. Consistent improvement in vacancy rates and growth continues to draw investors to the national strip shopping center market in search of acquisition and development opportunities. According to the survey, the national shopping center market is showing signs of a recovery with declining vacancy rates and an increase in new construction.

Financing for commercial buildings is generally available from both local and national banks as of the date of this appraisal. Typical financing terms include an interest rate in the high 4% to low 5% range for five year loans, and mid 5% to low 6% range for 7 and 10 year loans. Debt coverage ratios are approximately 1.25 to 1.40. The report indicates that seller and assumable financing have been critical to closing many deals.

### Conclusion

In summary, the subject property is located in an established mixed-use neighborhood in the northwestern portion of the City of Oakley. The subject has good frontage and access to Main Street (Highway 4) which provides direct access to and employment centers in Central Contra Costa County. The subject neighborhood caters to commute traffic and the surrounding residential uses with a concentration of national retailers. The subject represents a secondary market in comparison to more centralized Bay Area markets to the west. More recently, the overall Bay Area economy has strengthened as a result of the recovery in the San Francisco, Peninsula, and South Bay markets. The surrounding more centralized East Bay Area markets have stabilized and are expected to continue improving through 2016. The short term and long term outlook for the subjects area is one of stable to increasing values.

**PROPERTY DESCRIPTION**

**Site Description:**

**Location:** 3201 Main Street  
Oakley, California

**Size:** 0.53 acres, or 23,261 square feet

**Shape:** Rectangular

**Topography:** Level

**Utilities:** All standard utilities are available to the site delivered above and underground by the following:

<u>Utility</u>	<u>Provider</u>
Electricity	Pacific Gas & Electric
Gas	Pacific Gas & Electric
Water	Diablo Water District
Sewer	Iron House Sanitary District
Telephone	AT&T
Police	City of Oakley
Fire	East Contra Costa Fire Protection District

**Street**

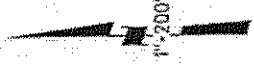
**Improvements:** The subject property is located on the south side of Main Street, three parcels west of Norcross Lane, in the northwest portion of the City of Oakley, Contra Costa County, California. Main Street consists of two lanes of the traffic with one lane in each direction. The street is asphalt paved and improved with concrete curbs, gutters and sidewalks on both sides. There is parallel and perpendicular parking available on either side of the street.

**Site Improvements:** The subject improvements cover 26% of the site and the balance consists of a concrete paved walkways with landscaping along the perimeter of the building consisting of and groundcover, shrubs, and trees. The landscaping is irrigated by an automatic sprinkler system.

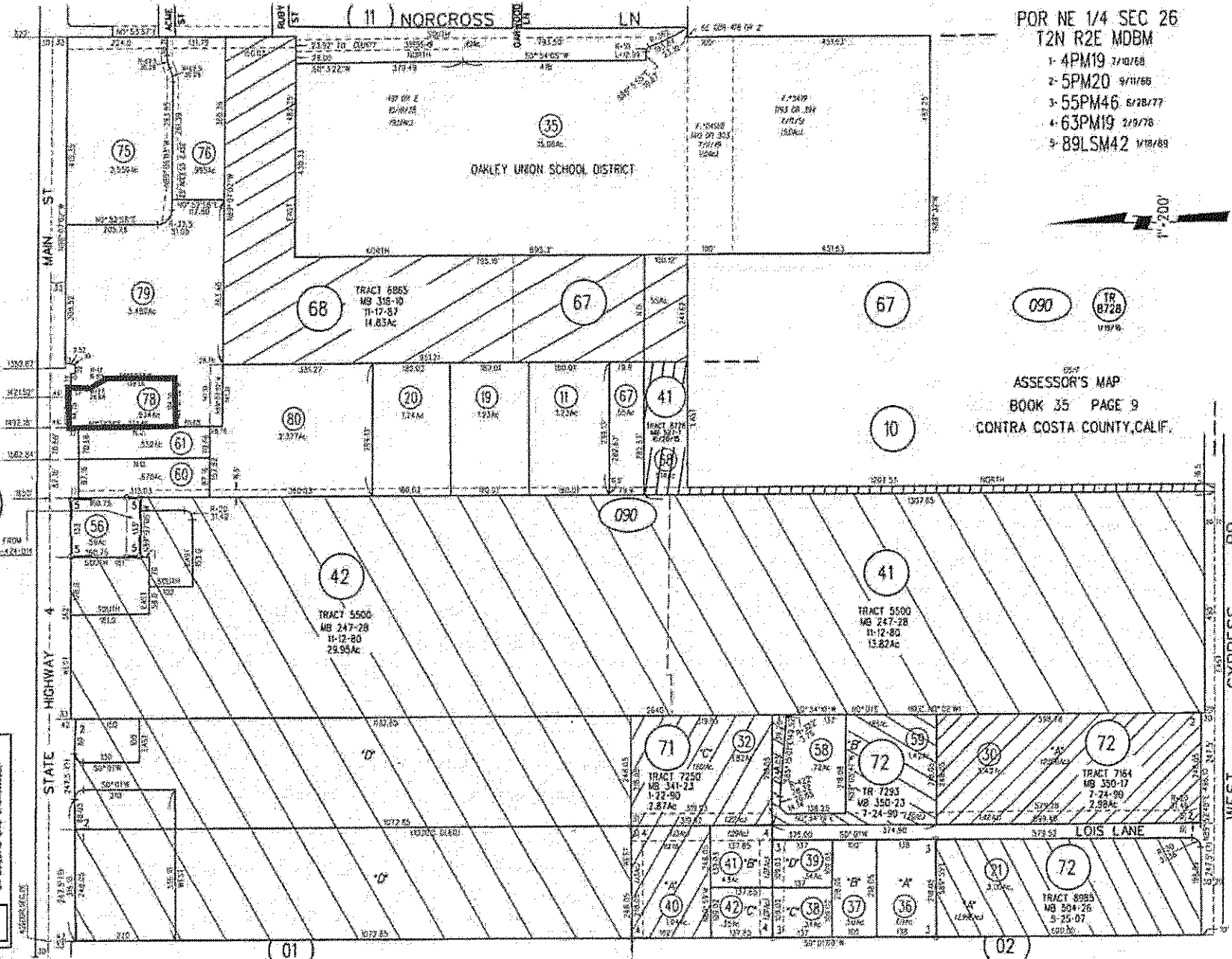
**Flood Zone:** According to the Federal Emergency Management Agency (FEMA), the subject property is located in Flood Zone X, which is identified as an area outside of the 100 and 500 year flood plains. Panel No.035-090-078-3, dated August 3, 2009.

**Seismic Zone:** According to the California Emergency Management Agency (CEMA), the subject property is located outside the earthquake fault zone seismic study area; however, it is located in the seismic hazard zone of liquefaction.

POR NE 1/4 SEC 26  
T2N R2E MDBM  
1- 4PM19 7/10/68  
2- 5PM20 9/11/68  
3- 55PM46 6/28/77  
4- 63PM19 2/9/78  
5- 89LSM42 1/18/89



ASSessor's MAP  
BOOK 35 PAGE 9  
CONTRA COSTA COUNTY, CALIF.

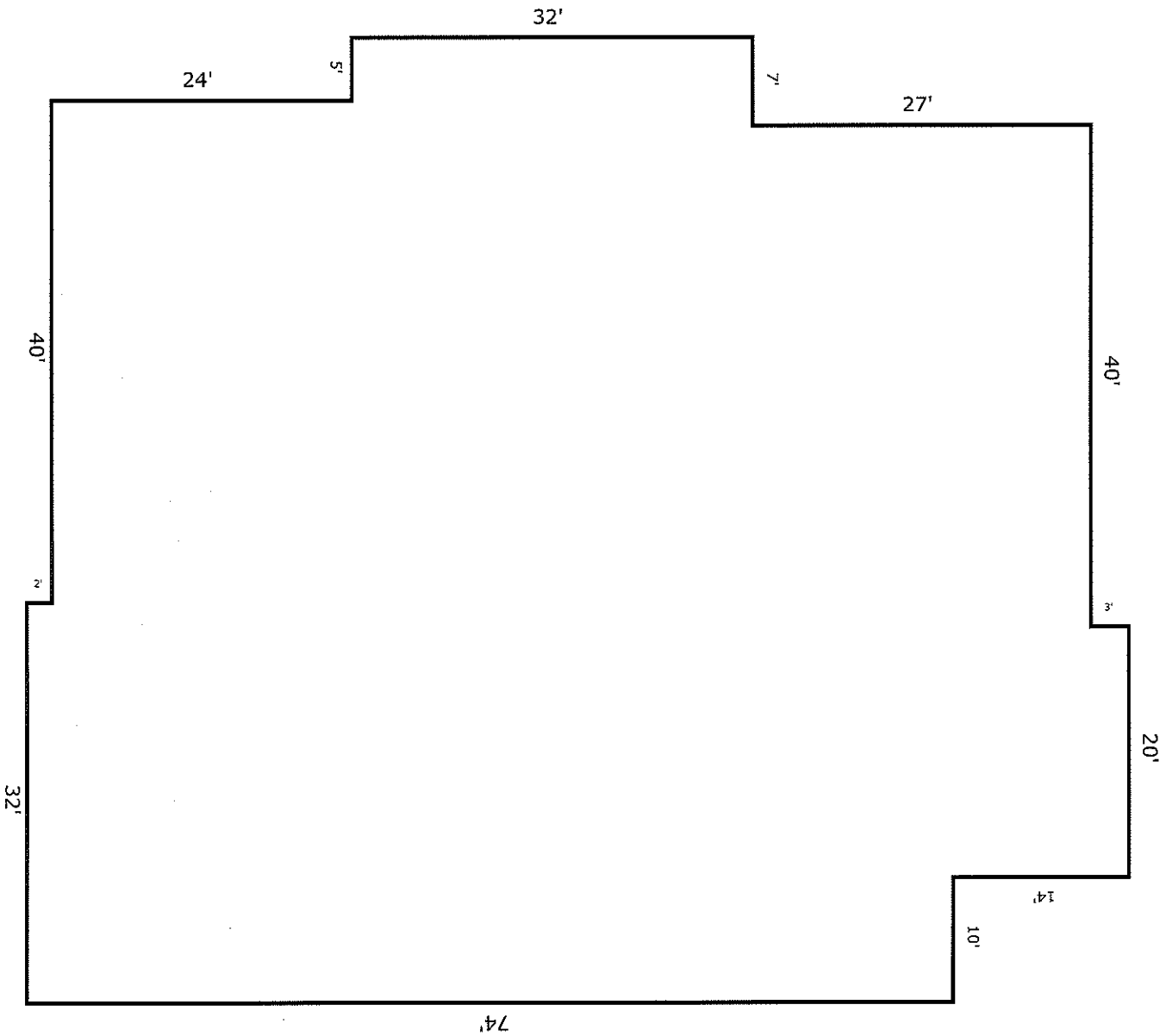


THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR ERRORS OR OMISSIONS. LOCAL OFFICIALS SHOULD VERIFY THIS MAP WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

Parcel Map

( 01 )

( 02 )



TOTAL Sketch software by a la mode, inc. 1-800-alamode



### **BUILDING DESCRIPTION**

The subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor's parcel, is improved with a 6,096 square foot, single story, wood frame restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area. The pertinent building measurements are as follows:

Building Area:	6,096 square feet
Site Area:	0.53 acres, or 23,261 square feet
Site Coverage:	26%
Parking(complex):	177 spaces or 6.0/1,000 sf

#### **Exterior Improvements:**

The subject property consists of a single story, wood frame building built on a concrete slab foundation, and a flat and gable roof with composition shingle and built up composition covering. No roof report was provided for this appraisal and the roof is assumed to be in good condition. The exterior of the building consists of stucco siding painted brown in color with green trim and stone veneer. The main entrance to the building is provided from a double, wood frame entry doors on the north side of the building facing the parking lot. The exterior of the building is improved with single pane, wood frame windows providing ample natural light. There are two additional entrances located at the northern and southern sides of the structure through double, wood frame entry doors.

#### **Interior Improvements:**

The interior of the subject property is built-out for a single tenant for use as a restaurant. The interior is divided into an entry, main dining area, side dining area, bar, kitchen and two, four fixture restrooms. The interior improvements consist of carpet and tile floors, wood panel and painted sheetrock walls, and wood and painted sheetrock ceilings with overhead incandescent lighting. The subject building is built-out with two, four fixture restrooms improved with linoleum floors, painted sheetrock walls and ceilings with florescent lighting.

**HVAC:**

The building is fully equipped with central heating and air conditioning.

**Sprinklers:**

The subject building is not fire sprinklered.

**Restrooms:**

The subject building is built-out with two, four fixture restrooms improved with linoleum floors, painted sheetrock walls and ceilings with florescent lighting.

**Condition/Utility:**

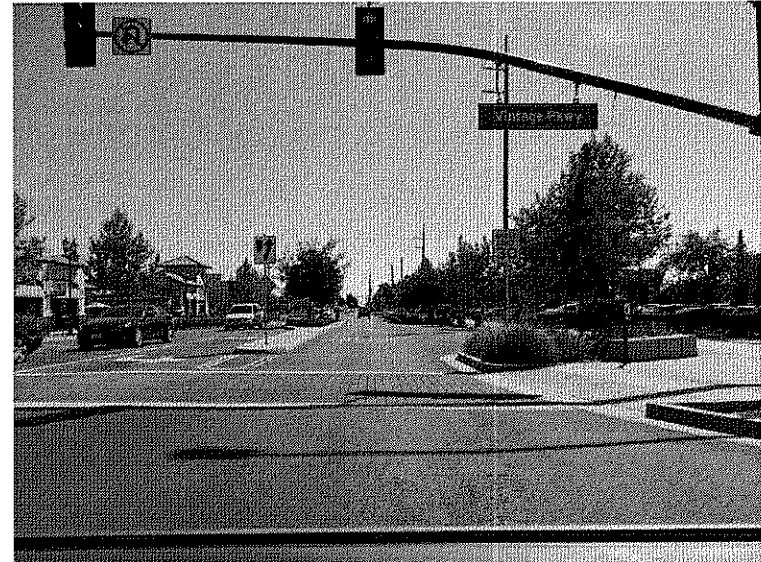
The subject building was originally built in 2007, and has an actual age of 9 years. The structure including the floors, walls and roof represent good quality condition construction. The interior improvements of the structure also consist of average to good quality restaurant improvements. The existing improvements are considered to be in overall good condition.

**Effective Age/Remaining Economic Life:**

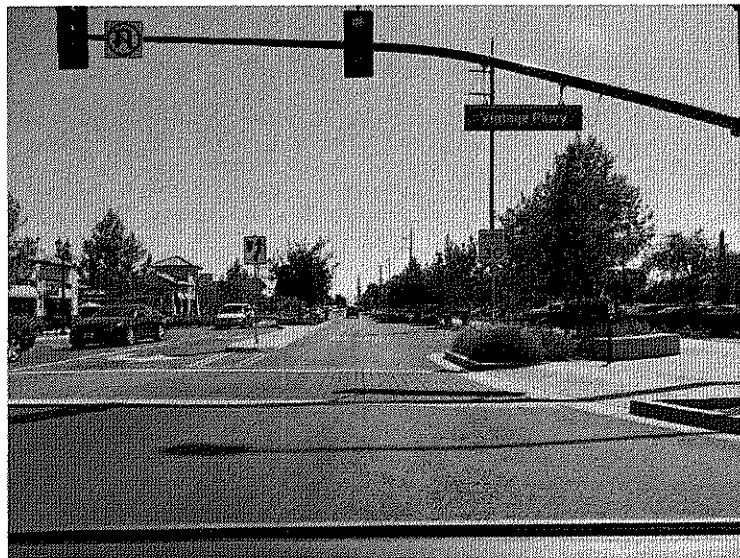
The subject building was originally built in 2007, and has an actual age of 9 years. According to Marshall and Swift Valuation Service, a good quality Class D, restaurant building has an economic life of 35 years. Based on the age and good condition of the improvements, the estimated effective age is 5 years, therefore indicating a remaining economic life of 30 years.



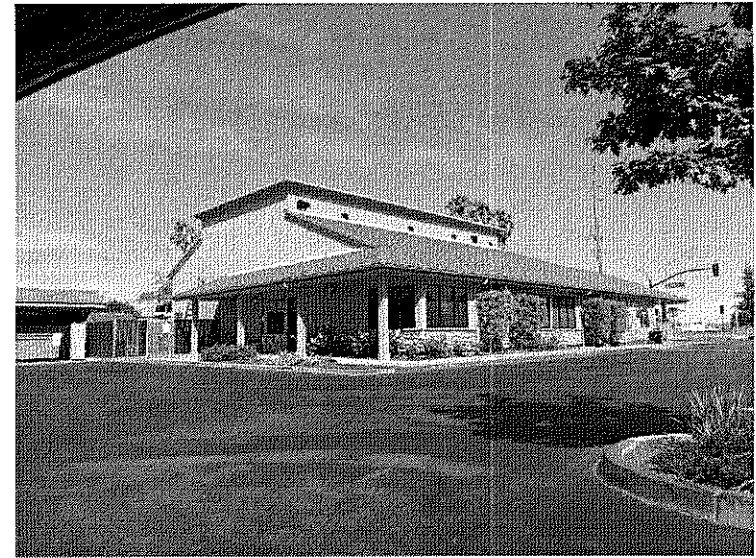
View of subject property looking south from Main Street  
(Photo No. 1)



View of Main Street looking east from the subject property  
(Photo No. 2)



View of Main Street looking west from the subject property  
(Photo No. 3)



Rear view of subject property  
(Photo No. 4)



Interior view of retail space  
(Photo No. 5)



Interior view of retail space  
(Photo No. 6)



Interior view of retail space  
(Photo No. 7)



Interior view of retail space  
(Photo No. 8)

## **HIGHEST AND BEST USE**

### **Highest and Best Use Defined:**

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legally permissible, physically possible, financially feasible and maximally profitable."

The highest and best use of the site as if vacant is determined first, and serves principally as the basis for estimating the subject's land value, as well as the basis for certain depreciation items of the improvements. Next, the highest and best use of the subject as improved is determined, to ascertain that use which would maximize value, such as: continued use as improved, renovation, or expansion. The Highest and Best use will be that which is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive.

### **HIGHEST AND BEST USE AS THOUGH VACANT:**

In determining the highest and best use of the subject site as though vacant and available for development, consideration is given to the site's existing zoning classification, location, physical characteristics and demand for various types of uses.

### **Legally Permissible:**

The subject property is zoned DSP-DC, Downtown Specific Plan, Downtown Core by the City of Oakley Planning Department. The intent of the DSP-DC zone is planned as a walkable, high amenity area with specialty-oriented development. The Downtown Core Area requires pedestrian oriented development. Permitted uses include: retail sales, eating and drinking establishments, nighttime entertainment, performing arts theaters and cultural facilities, public and quasi public uses, hotels, mixed use developments, personal services, and parking facilities. Development regulations include: a maximum FAR of 1.0, maximum building height of 50 feet, no front yard setback, 10 foot rear yard setback. The parking requirement for a retail and restaurant use is 6.67 spaces per 1,000 square feet of building area. The most probable legal use of the subject site, as though vacant, is a retail use which would be compatible with the existing surrounding uses and would benefit from the subject property's location with good frontage and exposure from Main Street.

**Physically Possible:**

It is assumed that the shape of the subject site, as well as its topography and soil condition make it amenable to all legally permissible uses. The subject property is located in an approximately 75% developed mixed use neighborhood in the City of Oakley. The site is fully supplied with all necessary utilities and public services, and appears capable of supporting many different types of construction.

**Financially Feasible:**

In consideration of the size and location of the subject property with frontage and exposure from a main thoroughfare, a retail use is deemed the most appropriate allowable use of the subject site, as vacant. Therefore, we have estimated that the most appropriate retail development on the subject site would be a single story, wood frame retail building which is reflective of the market and meets the minimum zoning and parking requirements. Based on current fair market conditions, speculative development of a retail use is not warranted at this time. Therefore, the highest and best use of the subject property, as vacant, is to hold for future development of a retail use, once economic conditions improve. Therefore, the highest and best use of the subject property, as vacant, is to hold for future development of a retail use.

**Maximally Profitable:**

In consideration of the current market conditions, we believe the highest and best use of the subject property, as if vacant, is to hold for future development of a retail use, built in compliance with the DSP-DC, Downtown Specific Plan, Downtown Core district zoning requirements.

**Conclusion:**

We believe the highest and best use of the subject property, as if vacant, is to hold for future development of a retail use.

**HIGHEST AND BEST USE AS IMPROVED:**

Analysis of the highest and best use of the subject property as improved provides the standard from which comparables are selected and value is ultimately determined. Inappropriate improvements are identified by comparing the ideal improvements of the vacant site with the existing improvements.

**Legally Permissible:**

According to Joshua McMurray, Planner with the City of Oakley Planning Department, the improvements represent a legal, conforming use under the DSP-DC, Downtown Specific Plan, Downtown Core zoning.

**Physically Possible:**

Due to the subject site's shape, topography, site coverage and parking, we do not believe it is physically nor functionally possible that the site could be developed to a higher density than the proposed improvements.

**Financially Feasible:**

The existing improvements make a significant contribution to the overall value of the subject property and their demolition would only diminish value. Expansion and modification are also ruled out given the current site coverage and parking requirements.

**Conclusion:**

The subject's existing improvements contribute significantly to the overall value of the property and represent a legal, conforming use. The existing improvements as a restaurant use represent the highest and best use of the subject property, as improved.

### **HYPOTHETICAL STABILIZED VALUATION ANALYSIS**

In our valuation analysis we have considered the three standard approaches to value. We have adopted the Sales Comparison and Income Approaches to estimate the hypothetical stabilized value of the fee simple interest of the subject property. We have disregarded the Cost Approach due to the limited number of comparable land sales in the area and the subjectivity associated with estimating accrued depreciation of a 9 year old structure.

Following the Hypothetical Stabilized Analysis is the "As-Is" Analysis section which will adjust the estimated stabilized value for the current occupancy status in order to conclude with the estimated "As-Is" market value of the leased fee interest of the subject property.

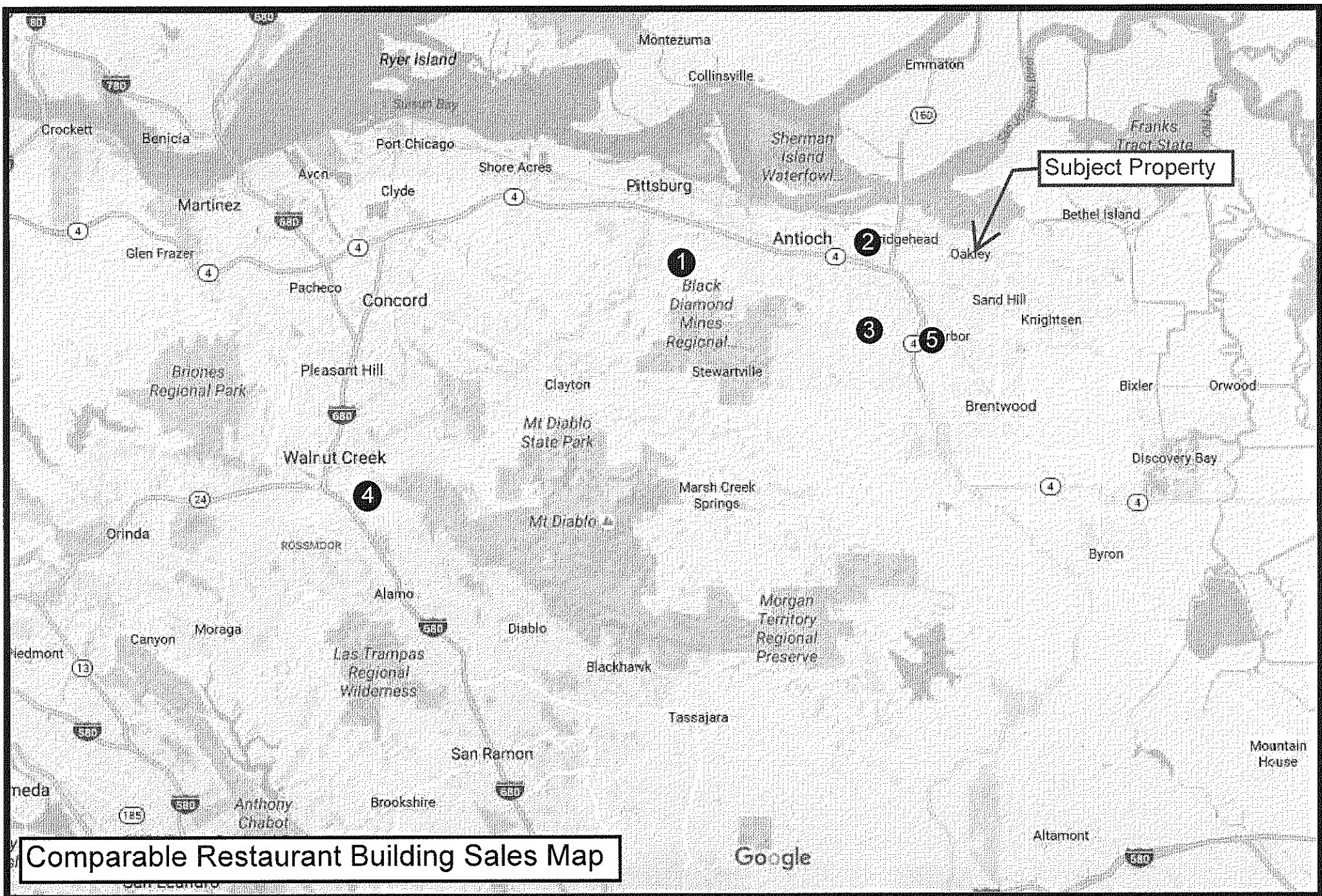
### **SALES COMPARISON APPROACH**

The Sales Comparison Approach is an estimate of market value based on an analysis of recent sales of similar properties. This approach is based on the principle of substitution. According to the principle of substitution, an informed purchaser would pay no more for a property than the cost of acquiring an equally desirable substitute property. The Sales Comparison Approach is applicable when an active market produces a sufficient number of comparable sales.

In the Highest and Best Use section of this report, it was determined that the highest and best use of the subject property, as improved, is for the current restaurant use. Numerous sales were investigated and five sales were selected. The comparables are summarized on the following page with a location map.

The most relevant unit of comparison is the price per square foot. This unit of comparison is the most widely used multiplier by participants in the market. The comparable sales have occurred over the last 28 months, range in size from 1,064 to 6,886 square feet and reflect an unadjusted unit price range from \$239.40 to \$505.37 per square foot.





**Subject Property**

**Comparable Restaurant Building Sales Map**

Google

**COMPARABLE RESTAURANT BUILDING SALES**  
**Contra Costa County, California**

<b>NO.</b>	<b>LOCATION APN</b>	<b>SALE DATE DOC. #</b>	<b>BLDG. SIZE (SF) COVERAGE</b>	<b>SALE PRICE PRICE/SF</b>	<b>YEAR BUILT</b>	<b>OAR NOI/SF</b>	<b>GRANTOR GRANTEE</b>	<b>COMMENTS</b>
1.	2921 Harbor Street <u>Pittsburg, California</u> 088-300-020	<u>5/16</u> 089880	<u>4,000</u> 16%	<u>\$1,400,000</u> \$350.00	1988	<u>6.0%</u> \$21.00	Mikael Thomas Family Trust LLC Michael Chua Family Trust	One, single story, wood frame building Condition: Average to good Parking: 5.5/1,000 sf <i>Confirmed: Dan Hoady, seller</i>
2.	212 East 18 <sup>th</sup> Street <u>Antioch, California</u> 068-042-024-00	<u>6/15</u> 129883	<u>1,064</u> 8%	<u>\$285,000</u> \$267.86	1969	<u>est.7.1%</u> est.\$18.95	Miriam Roland Trust Vinh Nguyen	One, single story, brick building Condition: Average Parking: 11.3/1,000 sf <i>Confirmed: Cynthia Wheeler, listing broker</i>
3.	4827 Lone Tree Way <u>Antioch, California</u> 056-011-054	<u>5/15</u> 091505	<u>6,370</u> 15%	<u>\$1,525,000</u> \$239.40	2005	<u>est. 7.9%</u> est.\$18.95	AG Realty Corp JDN Properties LLC	One, single story, concrete tilt-up building Condition: Average to Good Parking: 6.3/1,000 sf <i>Confirmed: John Polyzoides, listing broker</i>
4.	1602-1604 Locust Street <u>Walnut Creek, California</u> 178-220-17-2	<u>10/14</u> 187123	<u>5,100</u> 82%	<u>\$2,200,000</u> \$431.37	1964	<u>est. 6.9%</u> est.\$29.78	Brookman Family Trust 1604 Locust Property LLC	One, single story, brick building Condition: Good Parking: 0.98/1,000 sf <i>Confirmed: Max Wolfe, buyer</i>
5.	5705 Lone Tree Way <u>Antioch, California</u> 056-340-001	<u>4/14</u> 054927	<u>6,886</u> 12%	<u>\$3,480,000</u> \$505.37	2003	<u>6.5%</u> \$32.85	AG Realty Corp JDN Properties LLC	One, single story, concrete tilt-up building Condition: Good Parking: 6.3/1,000 sf <i>Confirmed: John Polyzoides, listing broker</i>
	Subject		<u>6,096</u> 26%		2007	<u>---</u> Est. \$21.66		One, single story, concrete block building Condition: Good Parking: 6.0/1,000

**Discussion:**

The following is a brief discussion of the adjustments made to the comparable building sales in comparison to the subject property. As previously described, the subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor's parcel, is improved with a 6,096 square foot, single story, wood frame retail building built out as a restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area.

**Explanation of Adjustments:**

For comparison, the sales are analyzed on the basis of price per square foot, which is the typical unit comparison for buyers and sellers in this market. The sales are first adjusted for the Property Rights Conveyed, Financing Terms, Condition of Sale, Buyer's Expenditure, and Market Conditions at the Time of Sale. After the comparables are adjusted for the above mentioned items, the comparables are adjusted for physical characteristics.

**Comparable Building Sale No. 1** is located at 2921 Harbor Street in the City of Pittsburg, Contra Costa County, California. This 4,000 square foot restaurant building sold in May of 2016 for \$1,400,000, or \$350.00 per square foot. The terms of the loan were unavailable. This comparable represents the sale of a 28 year old, wood frame building that was in average to good condition at the time of sale. According to the seller, the building was occupied by Country Skillet which had just signed a new 10 year lease at a monthly rental rate of \$1.75 per square foot on a triple net expense basis at the time of sale.

In comparison to the subject property, this smaller size comparable has a superior location in the City of Pittsburg. This comparable was in inferior condition, has inferior on-site parking, and sold under similar market conditions. Overall, this comparable warrants a downward adjustment.

**Comparable Building Sale No. 2** is located at 212 East 18<sup>th</sup> Street in the City of Antioch, Contra Costa County, California. This 1,064 square foot restaurant building sold in June of 2015 for \$285,000, or \$267.86 per square foot. The terms of the loan were unavailable. This comparable represents the sale of a 47 year old, brick building that was in average condition at the time of sale.

This comparable has an average interior location on a main thoroughfare. According to the listing broker, the property was vacant at the time of sale and purchased by an owner user.

In comparison to the subject property, this smaller size comparable has an overall similar location in the City of Antioch. This comparable was in inferior quality/condition, has superior on-site parking, and sold under similar market conditions. Overall, this comparable has offsetting adjustments.

**Comparable Building Sale No. 3** is located at 4827 Lone Tree Way in the City of Antioch, Contra Costa County, California. This 6,370 square foot restaurant building sold in May of 2015 for \$1,525,000, or \$239.40 per square foot. The terms of the loan were unavailable. This comparable represents the sale of a 11 year old, concrete tilt-up building that was in average to good condition at the time of sale. This comparable has a good location on a main thoroughfare. According to the listing broker the property was vacant and the time of sale and the buyer planned to open a franchised restaurant.

In comparison to the subject property, this similar size comparable has a similar location in Antioch. This comparable was in similar quality/condition, has similar on-site parking, and sold under similar market conditions. Overall, this comparable warrants an upward adjustment.

**Comparable Building Sale No. 4** is located at 1602-1604 Locust Street in the City of Walnut Creek, Contra Costa County, California. This 5,100 square foot building sold in October of 2014 for \$2,200,000, or \$431.37 per square foot. The terms of the loan were unavailable. This comparable represents the sale of a 51 year old, single story brick retail building which was in good condition at the time of sale. According to the buyer, the building was 100% occupied, was operated as a restaurant, and was purchased by the tenant.

In comparison to the subject property, this smaller size comparable has a superior location in the downtown portion of the City of Walnut Creek. This comparable was in similar good condition, has inferior on-site parking, and sold under inferior market conditions. Overall, this comparable warrants a downward adjustment.

## COMPARABLE BUILDING SALES ADJUSTMENT GRID

	NO. 1	NO. 2	NO. 3	NO. 4	NO. 5
<b>PRICE/SF</b>	\$350.00	\$267.86	\$236.40	\$431.37	\$505.37
<b>PROPERTY RIGHTS TRANSFERRED</b>	=	=	=	=	-30%
Adjusted Value	\$350.00	\$267.86	\$236.40	\$431.37	\$353.76
<b>FINANCING</b>	=	=	=	=	=
Adjusted Value	\$350.00	\$267.86	\$236.40	\$431.37	\$353.76
<b>CONDITION OF SALE</b>	=	=	=	=	=
Adjusted Value	\$350.00	\$267.86	\$236.40	\$431.37	\$353.76
<b>MARKET CONDITIONS (TIME)</b>	=	=	=	5%	5%
Adjusted Value	\$350.00	\$267.86	\$236.40	\$452.94	\$371.45
<b>LOCATION</b>	-10%	=	=	-30%	-20%
<b>SIZE</b>	-10%	-15%	=	-5%	5%
<b>QUALITY/CONDITION</b>	5%	20%	5%	=	=
<b>PARKING/SITE COVERAGE</b>	5%	-5%	=	5%	=
<b>LISTING STATUS</b>	N/A	N/A	N/A	N/A	N/A
<b>NET ADJUSTMENTS</b>	-10%	0%	5%	-30%	-15%
<b>ADJUSTED PRICE/SF</b>	\$315.00	\$267.86	\$248.22	\$317.06	\$315.73

=: Equal  
 —: Superior  
 +: Inferior  
 N/A: Not Applicable

**Comparable Building Sale No. 5** is located at 5705 Lone Tree Way in the City of Antioch, Contra Costa County, California. This 6,886square foot restaurant building sold in April of 2014 for \$3,480,000, or \$505.37 per square foot. The terms of the loan were unavailable. This comparable represents the sale of a 11 year old, wood frame building that was in good condition at the time of sale. According to the listing broker the property was occupied by MiMi's Café at a monthly rental rate of \$3.00 per square foot on a triple net expense basis at the time of sale.

In comparison to the subject property, this larger size comparable has a superior location in the City of Antioch in a large retail center. This comparable was in similar good condition, has similar on-site parking, and sold under inferior market conditions. In addition, this comparable warrants a downward adjustment for property rights transferred for being leased long term to a national credit tenant. Overall, this comparable warrants a downward adjustment.

**Conclusion:**

The adjustment grid on the facing page summarizes the adjustments made to the comparable sales to the subject property. Overall, Comparable Nos. 1, 4, and 5 are superior to the subject and warrant downward adjustment, Comparable No. 2 has off-setting adjustments, and Comparable No. 3 is inferior to the subject and warrants an upward adjustment.

After adjusting the comparable building sales for their various differences in comparison to the subject property, we have concluded with an adjusted sale price range from \$248.22 to \$317.06 per square foot. In consideration of the subject property's size, location in downtown Oakley, interior location, good quality/condition of improvements, single story build out, on-site parking, and income potential versus the comparables, we have concluded with a value in the middle of the adjusted range, or \$280.00 per square foot.

The estimated hypothetical stabilized value of the fee simple interest of the subject property by the Sales Comparison Approach, as of August 17, 2016, is calculated:

$$\begin{array}{r r r r r r} 6,096 \text{ sf} & \times & \$280.00/\text{sf} & = & \$1,706,880 \\ & & & & \\ \text{Rounded} & & & & \text{\$1,700,000} \end{array}$$

### INCOME APPROACH

The Income Approach is based on the income generating capabilities of a property. This approach is based on the principle of anticipation which means that the value is created by the expectation of benefits to be derived in the future.

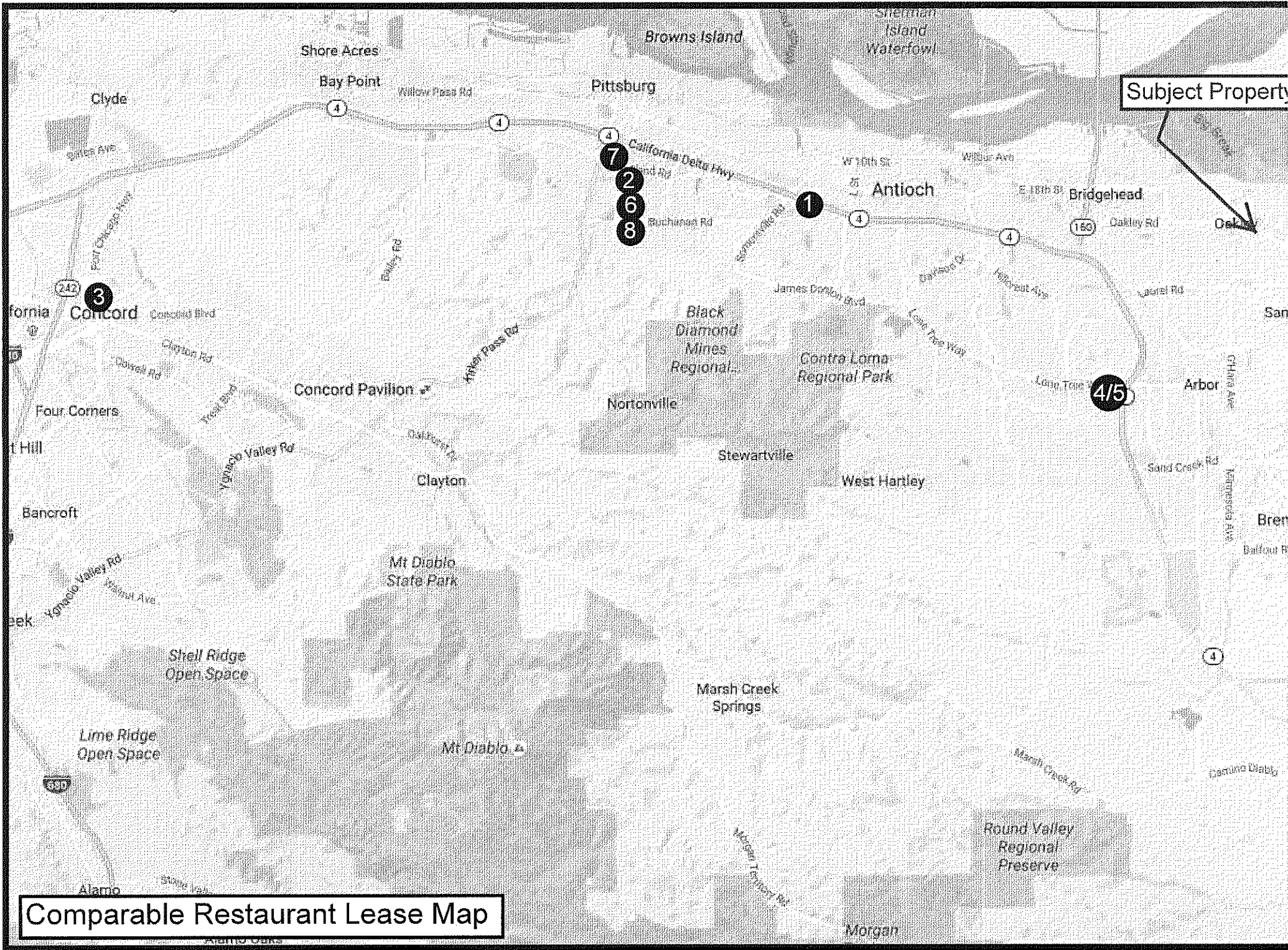
The Income Approach is the procedure by which anticipated future benefits are converted into a value estimate by use of the Direct Capitalization method. Estimated rents are at market and the building would thus sell on the basis of an overall rate applied to first year income. The primary steps in the Income Approach are:

1. Analyze and estimate economic rent
2. Estimate an allowance for vacancy and credit loss
3. Analyze and deduct typical operating expenses
4. Select an appropriate overall rate to convert annual net income into a value estimate.

These steps are discussed in the following sections.

#### **Economic Rent:**

In the Highest and Best Use section of this report, it was determined that the highest and best use of the property, as improved, is for the current use. To estimate the economic rent we have obtained seven executed leases and one listing from similar restaurant space within the subject market. The comparable leases have occurred over the last 20 months, range in size from 1,647 to 4,000 square feet and reflect an unadjusted rental rate range from \$1.30 to \$4.61 per square foot, on a triple net expense basis. The rental data is summarized on the following page with a location map.



**Comparable Restaurant Lease Map**



**COMPARABLE RESTAURANT LEASES**  
**Contra Costa County, California**

<b>NO.</b>	<b>LOCATION TENANT</b>	<b>DATE</b>	<b>TERM (MONTHS)</b>	<b>SIZE (SF)</b>	<b>STARTING RENT/SF ESCALATION</b>	<b>EXPENSE BASIS</b>	<b>TI'S/SF FREE RENT PARKING</b>
1.	2430 Mahogany Way <u>Antioch, California</u> The Habit	8/16	180	2,800	<u>\$4.61</u> 3% Annually	NNN	<u>None</u> <u>None</u> 10.0/1,000 sf
2.	2921 Harbor Street <u>Pittsburg, California</u> Country Skillets	3/16	120	4,000	<u>\$1.75</u> 2% Annual	NNN	<u>None</u> <u>None</u> 5.5/1,000 sf
3.	2066-2072 Salvio Street <u>Concord, California</u> Cream	12/15	120	1,674	<u>\$3.00</u> 3% Annual	NNN	<u>\$35.00</u> <u>None</u> None
4.	5401 Lone Tree Way <u>Brentwood, California</u> Sushi Holic	11/15	60	2,172	<u>\$2.63</u> 3% Annual	NNN	<u>None</u> <u>1 month</u> 6.0/1,000 sf
5.	5401 Lone Tree Way <u>Brentwood, California</u> Bluefin Restaurant	11/15	60	2,959	<u>\$3.08</u> 3% Annual	NNN	<u>None</u> <u>1 month</u> 6.0/1,000 sf
6.	2931-2951 Harbor Street <u>Pittsburg, California</u> Bulacan Bakery	1/15	60	1,800	<u>\$1.30</u> Annual \$0.05/sf	NNN	<u>\$5.00</u> <u>2 months</u> 5.5/1,000 sf
7.	2227 Railroad Avenue <u>Pittsburg, California</u> California Culinary Concepts	12/14	60	1,647	<u>\$1.64</u> Annual 3%	NNN	<u>\$9.00</u> <u>3 months</u> 3.5/1,000 sf
8.	2941 Harbor Street <u>Pittsburg, California</u> Available	Listing	Neg.	3,750	<u>\$1.65</u> neg.	NNN	<u>Neg.</u> <u>Neg.</u> 10.0/1,000 sf

### COMPARABLE LEASE ADJUSTMENT GRID

	NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7	NO. 8
RENT/SF	\$4.61	\$1.75	\$3.00	\$2.63	\$3.08	\$1.30	\$1.64	\$1.65
CONDITION OF LEASE	-10%	=	=	=	=	=	=	N/A
MARKET CONDITIONS (TIME)	=	=	=	=	=	10%	10%	N/A
TENANT IMPROVEMENTS	=	=	-10%	=	=	=	=	N/A
LOCATION	-10%	-10%	-20%	-20%	-20%	-5%	-5%	-5%
SIZE	-5%	-10%	-10%	-5%	-5%	-10%	-10%	-5%
QUALITY/CONDITION	-20%	5%	=	=	=	5%	5%	5%
PARKING/SITE COVERAGE	-5%	5%	5%	=	=	5%	5%	5%
LISTING STATUS	N/A	N/A	N/A	N/A	N/A	N/A	N/A	-5%
NET ADJUSTMENTS	-50%	-10%	-35%	-25%	-25%	5%	5%	-5%
ADJUSTED RENT/SF	\$2.31	\$1.58	\$1.95	\$1.97	\$2.31	\$1.37	\$1.72	\$1.57

=: Equal  
 —: Superior  
 +: Inferior  
 N/A: Not Applicable

**Discussion:**

The following discussion relates the comparable leases to the subject property. As previously described, the subject 0.53 acre, or 23,261 square foot site, consisting of one rectangular shaped interior assessor's parcel, is improved with a 6,096 square foot, single story, wood frame retail building built out as a restaurant. The subject structure was originally built in 2007 and is considered to be in good condition. The improvements cover 26% of the site. The subject property is located within the Oakley Civic Center which consists of four parcels and four buildings, three civic buildings and the subject structure. The center is improved with 29,339 square feet of total building area and 177 on-site surface parking spaces, indicating a parking ratio of 6.0 spaces per 1,000 square feet of building area.

Comparable Nos. 1 through 7 consist of arms-length transactions with 5 to 12 year lease terms and typical annual escalations, therefore warranting no adjustments. Comparable No. 8 represents a current listing, therefore this adjustment is not applicable. Comparable Nos. 1 through 5 were leased in the past 12 months under similar market conditions and warrant no adjustments. Comparable Nos. 6 and 7 were leased under inferior market conditions over one year ago and warrant upward adjustments. Comparable No. 8 represents a current listing, therefore this adjustment is not applicable.

Restaurant space in the subject's market is typically leased with tenant improvement allowances from none to \$10.00 per square foot and include free rent periods of up to one month for every year of lease term. Comparable Nos. 1, 2, 4, 5, 6, and 7 were leased with tenant improvement allowances up to \$10.00 per square foot and market free rent which is typical of the market, and therefore warrant no adjustments. Comparable No. 3 was leased with an above market tenant improvement allowance therefore warranting a downward adjustment. Comparable No. 8 represents a current listing, therefore this adjustment is not applicable.

The subject property is located on the south side of Main Street in the downtown portion of the City of Oakley. All of the Comparables have superior locations in more desirable retail locations and/or within shopping centers with stronger pedestrian foot traffic in comparison to the subject property, therefore warranting downward adjustments. Typically smaller spaces lease for higher price per square foot values in comparison to larger spaces. The subject property consists of a 6,096 square foot space built out for a single tenant and the comparables range in size from 1,647 to 4,000 square feet. All of the comparables are smaller in size in comparison to the subject property, therefore

warranting downward adjustments. The subject property consists of a 9 year old, single story, wood frame retail building built out for a restaurant use, and is considered to be in good condition. Comparable No. 1 consists of a newer, superior quality building in comparison to the subject property, therefore warranting a downward adjustment. Comparable Nos. 2, 6, 7, and 8 consist of average to good condition buildings which are inferior in comparison to the subject property, therefore warranting upward adjustments. Comparable Nos. 3, 4, and 5 consist of similar, good quality buildings in comparison to the subject property, therefore warranting no adjustment. The subject property has on-site parking available at a ratio of 6.0 spaces per 1,000 square feet of building area. Comparable Nos. 1 through 7 represent executed leases, therefore an adjustment for listing status is not applicable. Comparable No. 8 represents a current listing and the rental rates represent the asking rate, therefore warranting downward adjustments.

**Conclusion:**

After adjusting the comparable leases for their various differences in comparison to the subject retail space, we have concluded with an adjusted rental rate range of \$1.37 to \$2.31 per square foot on a triple net expense basis. In consideration of the subject property's size, location in downtown Oakley, interior location, good quality/condition of improvements, single story build out, and on-site parking, we have concluded with a rental rate in the middle of the adjusted range, or \$1.80 per square foot on a triple net expense basis.

Therefore, the total gross income for the subject property is calculated as follows:

$$6,096 \text{ sf} \quad \times \quad \$1.80/\text{sf} \quad \times \quad 12 \text{ mos.} \quad = \quad \$131,674$$

**Vacancy and Collection Loss:**

Vacancy and collection loss is an income deduction to account for losses in income during periods of vacancy and non-payment of rent. As previously discussed, market participants have estimated the vacancy rate for retail space in the subject's neighborhood ranging from none to 10% at this time. In consideration of our conversations with local brokers, owners, and property managers, we feel that an overall stabilized vacancy rate of 5% is reasonably supported for the subject property.

**Operating Expenses:**

The market is presently leasing similar retail space on a triple net expense basis. In a triple net lease, the lessee is responsible for the majority of the expenses associated with the operation of the property. The only expenses incurred by the lessor are management, reserves, and miscellaneous expenses. To estimate the operating expenses for the subject property we have considered the expenses from similar buildings in the subjects market.

**Management:**

Professional management fees tend to range between 3% to 6% of effective gross income depending on the management intensity of the property, which includes the number of tenants, condition of the property, lease expense basis, and the management responsibilities. In consideration that the subject property consists of a single tenant retail building, which is in good condition, we have concluded with a management fee in the lower end of the range at 3% of effective gross income, or \$3,753 per year.

**Reserve for Replacement:**

Reserve for replacement is allowance for replacement of building components that wear out more rapidly than the building itself. Reserve for replacement is allocated based on an annual depreciation of short-lived items which is calculated by dividing the estimated replacement cost by the economic life expectancy. After speaking with local investors, property managers and brokers, we have concluded that the market is not as sophisticated as to calculate the reserves based on short-lived items, but the market typically indicates reserves of 1% to 3% of effective gross income. In consideration of the age, and good condition of the subject property, we have estimated the reserve for replacement expense in the lower end of the range at 1% of effective gross income, or \$1,251 per year.

**Miscellaneous Expense:**

The miscellaneous expense category, which includes accounting, legal expense, and licenses, has been estimated at 1% of effective gross income, or \$1,251 per year, which is reflective of the market.

Total operating expenses for the subject property, excluding vacancy but including allowances for replacement, are \$6,255 per year, which equates to 5.00% of effective gross income.

**COMPARABLE RESTAURANT BUILDING SALES**  
**Contra Costa County, California**

<b>NO.</b>	<b>LOCATION APN</b>	<b>SALE DATE DOC. #</b>	<b>BLDG. SIZE (SF) COVERAGE</b>	<b>SALE PRICE PRICE/SF</b>	<b>YEAR BUILT</b>	<b>OAR NOI/SF</b>	<b>GRANTOR GRANTEE</b>	<b>COMMENTS</b>
1.	2921 Harbor Street <u>Pittsburg, California</u> 088-300-020	<u>5/16</u> 089880	<u>4,000</u> 16%	<u>\$1,400,000</u> \$350.00	1988	<u>6.0%</u> \$21.00	Mikael Thomas Family <u>Trust LLC</u> Michael Chua Family Trust	One, single story, wood frame building Condition: Average to good Parking: 5.5/1,000 sf <i>Confirmed: Dan Hoady, seller</i>
2.	212 East 18 <sup>th</sup> Street <u>Antioch, California</u> 068-042-024-00	<u>6/15</u> 129883	<u>1,064</u> 8%	<u>\$285,000</u> \$267.86	1969	<u>est.7.1%</u> est.\$18.95	Miriam Roland Trust Vinh Nguyen	One, single story, brick building Condition: Average Parking: 11.3/1,000 sf <i>Confirmed: Cynthia Wheeler, listing broker</i>
3.	4827 Lone Tree Way <u>Antioch, California</u> 056-011-054	<u>5/15</u> 091505	<u>6,370</u> 15%	<u>\$1,525,000</u> \$239.40	2005	<u>est. 7.9%</u> est.\$18.95	AG Realty Corp JDN Properties LLC	One, single story, concrete tilt-up building Condition: Average to Good Parking: 6.3/1,000 sf <i>Confirmed: John Polyzoides, listing broker</i>
4.	1602-1604 Locust Street <u>Walnut Creek, California</u> 178-220-17-2	<u>10/14</u> 187123	<u>5,100</u> 82%	<u>\$2,200,000</u> \$431.37	1964	<u>est. 6.9%</u> est.\$29.78	Brookman Family Trust 1604 Locust Property LLC	One, single story, brick building Condition: Good Parking: 0.98/1,000 sf <i>Confirmed: Max Wolfe, buyer</i>
5.	5705 Lone Tree Way <u>Antioch, California</u> 056-340-001	<u>4/14</u> 054927	<u>6,886</u> 12%	<u>\$3,480,000</u> \$505.37	2003	<u>6.5%</u> \$32.85	AG Realty Corp JDN Properties LLC	One, single story, concrete tilt-up building Condition: Good Parking: 6.3/1,000 sf <i>Confirmed: John Polyzoides, listing broker</i>
	Subject		<u>6,096</u> 26%		2007	<u>---</u> Est. \$21.66		One, single story, concrete block building Condition: Good Parking: 6.0/1,000

**Overall Rate:**

With the expected net operating income established, this is converted to a value estimate by direct capitalization. In this process, the net operating income (NOI) expected in year one following the date of the value is divided by an overall rate of return (OAR). This overall rate is derived from the market sales and represents their expected NOI divided by the appropriate adjusted sale price.

To select an overall rate for the subject property, we have examined rates indicated by the comparable building sales which reflect a range of 6.0% to 7.9%, as shown on the facing page. In addition to the overall rates indicated by the comparable sales, we have reviewed the PwC Investors Survey for the First Quarter of 2016, which indicates investor requirements ranging from 4.75% to 9.50% for the National Strip Shopping Center Market. In consideration of the subject property's size, location in downtown Oakley, interior location, good quality/condition of improvements, single story build out, on-site parking, and income potential versus the comparables, we have concluded with an overall rate range from 6.75% to 7.25%, which we believe offsets the risk associated with the subject property.

For the Direct Capitalization method of the Income Approach, we have applied market income and subtracted market vacancy and expenses, concluding with a net income which is capitalized with a rate derived from the market into the estimated hypothetical stabilized value of the fee simple interest of the subject property, as of August 17, 2016, as shown on the following page.

The direct capitalization indicates a total value range from \$1,639,108 to \$1,760,523, as shown on the following page. In consideration of the subject property's size, location in downtown Oakley, interior location, good quality/condition of improvements, single story build out, on-site parking, and current market conditions, we have concluded with a value by the Income Approach in the middle of this range, or \$1,700,000.

**DIRECT CAPITALIZATION METHOD**  
**HYPOTHETICAL STABILIZED OPERATING STATEMENT**

<b>Gross Income</b>			\$131,674
Vacancy & Collection Loss (5%)			<u>-6,584</u>
<b>Effective Gross Income</b>			<b>\$125,090</b>
	<u>6.75%</u>	<u>7.00%</u>	<u>7.25%</u>
Management (3%)	\$3,753	\$3,753	\$3,753
Reserves (1%)	1,251	1,251	1,251
Miscellaneous (1%)	1,251	1,251	1,251
Total Operating Expenses	<u>-6,255</u>	<u>-6,255</u>	<u>-6,255</u>
<b>Net Operating Income</b>	<b>\$118,835</b>	<b>\$118,835</b>	<b>\$118,835</b>
Value	\$1,760,523	\$1,697,647	\$1,639,108



### FINAL VALUE RECONCILIATION

The final step in the appraisal process is the reconciliation and final estimate of value. The reconciliation process is defined as "a step in the valuation process in which an appraiser considers alternative value indications and selects a final value estimate."<sup>10</sup> The Sales Comparison and Income Approaches to value were used to estimate the hypothetical stabilized value of the fee simple interest of the subject property. We have disregarded the Cost Approach due to the limited number of comparable land sales in the area and the subjectivity associated with estimating the accrued depreciation of a 9 year old building. The following is a brief description of each method and the value indication provided by each.

<b>Sales Comparison Approach:</b>	<b>\$1,700,000</b>
<b>Income Approach:</b>	<b>\$1,700,000</b>

The Sales Comparison Approach is used by measuring the actions of buyers and sellers in the market place. This approach is considered most reliable when there is closely comparable and consistent data. Adjustments were made for property rights transferred, financing, condition of sale, market conditions (time), location, quality/condition of improvements, size, parking, and listing status. Overall, there was a sufficient number of small, single tenant retail building sales in the subjects market. Based on the quantity and quality of the data obtained, this approach provides a good indication of value for the subject property.

The Income Approach to value was considered by use of the Direct Capitalization method. Projected net operating income was determined through a comprehensive rental survey of the subject market of similar age and type of construction retail buildings within the surrounding market. Adjustments were made for condition of lease, location, size, quality/condition of improvements, tenant improvements, parking, and listing status. Operating expenses were based on comparable buildings in the market. The overall rate was derived from the comparable building sales and the Price Waterhouse Coopers Real Estate Investors Survey. Because this property is income producing, and in regard to the quantity and quality of the data obtained for this approach, we feel that it provides a good indication of value for the subject property.

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<sup>10</sup> Ibid., Page 296.

Two of the comparable sales were purchased by owner-users and three of the comparable sales were purchased by investors. Typically, investors are the primary buyers of single-tenant retail buildings similar to the subject property. Therefore, we have placed most weight on the Income Approach which is supported by the Sales Comparison Approach.

Based on the foregoing, the estimated hypothetical stabilized value of the fee simple interest of the subject property, as of August 17, 2016, is:

**ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS**  
**(\$1,700,000)**

**TENANT SUMMARY**

<b>SPACE NO.</b>	<b>TENANT</b>	<b>TOTAL SF</b>	<b>BASE RENT/MO.</b>	<b>RENT/SF</b>	<b>START DATE</b>	<b>EXPIR. DATE</b>
2950	Black Bear Diner	6,096	\$12,500	\$2.05	12/1/2007	3/1/2022
<b>Total</b>		<b>6,096</b>	<b>\$12,500</b>	<b>\$2.05</b>		

### "AS-IS" ANALYSIS

The difference between the hypothetical stabilized value and the "as-is" market value is accounting for the current occupancy status of the subject property. Factors in determining the risk associated with a single tenant retail building such as the subject are current occupancy versus market occupancy, current rent versus market rent, remaining term of existing leases, quality of space, re-usability of existing tenant improvements, and the creditworthiness of the tenants. The overall condition and general floor plan of the improvements are considered to be in good condition and typical quality of the market.

A summary of the present occupancy of the subject property is shown on the facing page. The subject property is currently 100% occupied by Black Bear Diner at a monthly contract rent of \$12,500, or \$2.05 per square foot on a triple net expense basis with a remaining lease term of 66 months. The current monthly rent is based on a negotiated rental rate reduction which ends in November of 2016. Beginning on December 1, 2016, the tenant will begin paying monthly contract rent of \$17,950, or \$2.94 per square foot on a triple net expense basis.

We have estimated a market rental rate of \$1.80 per square foot on a triple net expense basis and a 5% market vacancy rate.

The overall condition and general floor plan of the tenant improvements of the subject property are considered to be in good condition, and the majority of the tenant improvements are situated in such a manner that they could easily be re-leased to new tenants.

#### Leasehold Analysis

The subject property is currently 100% occupied by Black Bear Diner at a contract rent of \$12,500 per month, on a triple net expense basis. Market rent has been estimated at \$1.80 per square foot, or \$10,973 per month for this space. This indicates a total above market rent of \$1,527 per month ( $\$12,500 - \$10,973$ ) with 3 months remaining on reduced rent. Beginning December 1, 2016 the contract will be \$17,950 per month on a triple net expense basis. This indicated a total above market rent of \$6,977 per month ( $\$17,950 - \$10,973$ ) with 63 months remaining on the lease. The above market rent per month multiplied by the number of months remaining on the lease indicates total above market rent of \$444,132 [ $(\$1,527 \times 3) + (\$6,977 * 63)$ ].

Black Bear Diner is a regional restaurant chain in the Western United States. The first location was opened in Mount Shasta in 1994 and the chain now has 81 locations in eight states with 48 locations in California.

In order to determine the present value of the above market rent for the remaining 66 months of the lease, we must select a discount rate. In order to select a discount rate for the subject property, we have considered the PwC Real Estate Investors Survey for the First Quarter of 2016. According to this survey, discount rates range from 6.00% to 10.75% for the National Strip Shopping Center Market.

In consideration of the risk associated with the above market rents of \$1,527 and \$6,977 per month for 66 months and the credit associated with a regional tenant, as well as considering the current demand and supply of single tenant retail properties in this market, we have chosen a rate in the lower end of the range of the PwC Survey, or 7% for the remaining 3 months of reduced rent and 9% for the remaining 63 months of contract rent beginning in December of 2016, which we believe is reflective of a typical investor in the market. Therefore, the present value of the above market rent associated with this space for the remaining 66 months of the lease, discounted at 7% and 9%, is \$353,804, which is added to the estimated hypothetical stabilized value of the fee simple interest of the subject property.

#### **Rent Loss and Lease-up Costs**

As previously discussed, the subject property is currently 100% occupied by Black Bear Diner with a remaining lease term of 66 months. Therefore, there is no rent loss nor lease up costs associated with the subject property.

The estimated "as-is" market value of the leased fee interest of the subject property is calculated as follows:

Hypothetical Stabilized Value	\$1,700,000
Plus: Discounted Leasehold	<u>353,804</u>
Total	\$2,053,804
<b>Rounded</b>	<b>\$2,100,000</b>

Therefore, the estimated “as-is” market value of the leased fee interest of the subject property, based on marketing and exposure times of three months, as of August 17, 2016, is:

**TWO MILLION ONE HUNDRED THOUSAND DOLLARS**  
**(\$2,100,000)**

**Tax Rate Area 19029  
Allocation of Basic 1% Property Tax  
Fiscal Year 2015-2016**

COUNTY GENERAL	11.65515 %
COUNTY LIBRARY	1.90316 %
C C FLOOD CONTROL	0.22342 %
FLOOD CONTROL Z-1	2.12243 %
EAST CO CO FIRE	4.98072 %
CC RES CONSV	0.02065 %
CO CO MOSQUITO ABA	1.97079 %
IRONHOUSE SANITARY	1.02127 %
CONTRA COSTA WATER	0.35671 %
BART	0.80512 %
BAY AREA AIR MGMNT	0.23478 %
CITY OF OAKLEY	6.88294 %
OAKLEY POLICE SVC	1.20553 %
LIBERTY HIGH	17.31306 %
BRENTWOOD ELEM	2.55845 %
BYRON ELEMENTARY	1.49893 %
KNIGHTSEN ELEM	1.06947 %
OAKLEY ELEM	16.61274 %
CO SUPT SCHOOLS	2.15981 %
K-12 SCHOOLS ERAF	17.33358 %
CO CO COMM COLLEGE	5.49042 %
COMM COLLEGE ERAF	2.58087 %
TOTAL	100.00000 %

[Frequently Asked Questions](#)

Close Window

**RECORDING REQUESTED BY  
AND RETURN TO:**

City of Oakley, California  
Attn: Libby Vreonis, City Clerk  
3231 Main Street  
Oakley, CA 94561

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**PURCHASE AND SALE AGREEMENT  
(APN 035-090-078)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between the CITY OF OAKLEY, acting as Successor Agency to the Oakley Redevelopment Agency (hereinafter referred to as "SELLER") and D'AMICO INVESTMENTS, LLC, (hereinafter referred to as "BUYER"). This Agreement is made with reference to the following facts:

**WHEREAS**, SELLER is the legal owner of real property, a former Oakley Redevelopment Agency property, located at 3201 Main Street, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Number 035-090-078 (hereinafter referred to as "Seller's Parcel"); and

**WHEREAS**, SELLER is also the designated legal owner of a certain building and related improvements on Seller's Parcel, and

**WHEREAS**, a Long Range Property Management Plan required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of Seller's Parcel; and

**WHEREAS**, officers of D'Amico Investments, LLC are the owner and operators of the Delta Black Bear Diner that is currently a tenant of the Seller's Parcel; and

**WHEREAS**, pursuant to the Long Range Management Plan and subject to the final approval of the Oversight Board to the Successor Agency of the Oakley Redevelopment Agency, SELLER desires to sell to, and BUYER desires to purchase, for the price and under the terms and conditions specified herein, the Seller's Parcel and all improvements thereon as described in Exhibit "A".

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

**1. Entire Contract**

The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the purchase of Seller's Parcel and shall relieve Seller of all further obligations or claims on account of the sale of the property as set forth herein.



**2. SELLER shall**

- A. At the close of escrow SELLER shall convey by grant deed to BUYER marketable fee simple title to the Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, leases and taxes, in the form set forth in Exhibit "A".
- B. Convey to BUYER clear title to the building and all rights and interests to the existing water and sewer hook-ups located at the Seller's Parcel.
- C. Agree to execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations.

**3. BUYER shall**

- A. Pay the total sum of TWO-MILLION, ONE-HUNDRED THOUSAND DOLLARS and NO CENTS (\$2,100,000) ("Land Purchase Price") to SELLER for the Seller's Parcel. BUYER shall deliver Land Purchase Price to SELLER within ten (10) working days after the SELLER delivers the Grant Deed in accordance with Paragraph 2A above.
- B. Pay one-hundred percent (100%) of all recording and title insurance charges and other escrow charges, if any, incurred in this transaction.
- C. Pay one hundred percent (100%) of all closing costs including recording and title insurance charges, if any, incurred in this transaction.
- D. Execute a Parking Lot and Public Space Maintenance Agreement, a copy of which is set forth in Exhibit "B". The initial cost for the monthly maintenance charges is three-hundred and eighty dollars (\$380), but shall be adjusted from time to time per the terms and conditions of the Parking Lot and Public Space Maintenance Agreement.
- E. Agree to execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations.
- F. Hereby grants to the City of Oakley a first right of refusal and first option to purchase the building and property (Seller's Parcel) if ever sold by Buyer at a future date, as further explained in Section 16 of this Agreement.

**4. Parcel sold "As-Is"**

The acquisition price for Seller's Parcel and Other Improvements reflects the fair market value of Seller's Parcel and Other Improvements in its current "as-is" condition. BUYER indemnifies, defends, saves and holds harmless the SELLER from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death to persons or property arising directly or indirectly from or connected with the existence of any perceived or real defect and of any toxic or hazardous material on Seller's Parcel.

BUYER further agrees as part of the consideration herein that BUYER will not, use, generate, manufacture, store, dump, bury, leak or dispose of any flammable, explosive or radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent on the Seller's Parcel, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter "Hazardous Substance"). In such event BUYER will, at its sole expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify SELLER from any and all liability arising from such problem.

**5. Escrow; Escrow Instructions.**

Within five (5) business days following the Effective Date, the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of Old Republic Title Company located at Concord, California ("Title Company" or "Escrow Agent") or such other title company as may be mutually agreed upon by the Parties. Upon the opening of escrow, the Parties shall deposit with the Escrow Agent an executed copy of this Agreement, which collectively shall serve as the joint escrow instructions of Buyer and Seller for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.

**6. Title Review.**

**(a) Title Documents.**

(1) Within seven (7) days following the opening of escrow, Seller shall deliver or cause to be delivered to Buyer a preliminary title report ("Preliminary Report") on the Property issued by the Title Company, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters of record affecting Seller's title to the Property, together with copies of all documents relating to exceptions listed in the Preliminary Report ("Title Exceptions") and complete and legible copies of all instruments referred to therein, as requested by Buyer.

(2) Within ten (10) calendar days following Buyer's receipt of the Preliminary Report, Buyer shall notify Seller (the "Disapproval Notice") in writing of Buyer's disapproval of any Title Exception (the "Disapproved Exceptions"). All other Title Exceptions shall be referred to as "Permitted Exceptions". Buyer's failure to deliver a Disapproval Notice in accordance with the foregoing shall be deemed (i) Buyer's acceptance of the Preliminary Report and all Title Exceptions shall be deemed Permitted Exceptions and (ii) Buyer's waiver of its right to terminate this Agreement.

(3) Within (5) calendar days after receipt of the Disapproval Notice, Seller shall notify Buyer in writing which Disapproved Exceptions, if any, will be removed by Seller prior to the Closing. If Seller so elects to cure any such Disapproved Exceptions, the same shall be removed from record title by Seller at Seller's expense (or otherwise rendered acceptable to Buyer) prior to the Closing and such Disapproved Exceptions shall not constitute Permitted Exceptions. If Seller does not notify Buyer that Seller will remove all Disapproved Exceptions, Buyer shall deliver written notice to Seller and Escrow Agent within ten (10) calendar days of the date of delivery of the Disapproval Notice of Buyer's election to either:

(i) terminate this Agreement; or (ii) waive its right to terminate this Agreement pursuant to this Section 5(a)(3) and consummate the purchase of the Property subject to the Disapproved Exceptions that Seller has not agreed to remove without reduction in the Purchase Price and such Disapproved Exceptions shall thereafter be deemed additional Permitted Exceptions. Buyer's failure to provide the foregoing notice shall be deemed (A) Buyer's waiver of Buyer's right to terminate this Agreement under Section 5(a)(3)(i) and (B) Buyer's election to consummate the purchase in accordance with Section 5(a)(3)(ii).

(4) It shall be a condition of the Closing that Title Company shall deliver to Buyer, within five (5) days after Buyer has waived or deemed to have waived its right to terminate the Agreement under this Section 5(a)(3), and in no event later than seven (7) days prior to the Closing, a title commitment for an CLTA Title Insurance Policy ("Title Policy") to be issued by Title Company in the amount of the Purchase Price for the benefit and protection of Buyer, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions, including such endorsements as may reasonably be requested by Buyer, and committing Title Company to issue the Title Policy to Buyer upon the Closing.

## **7. Closing Documents and Funds.**

### **(a) SELLER.**

(1) Within five (5) days prior to Closing, Seller shall deposit into escrow all of the following:

(i) a grant deed ("Grant Deed") duly executed and acknowledged, conveying to BUYER good and marketable fee simple title to the Property, subject only to the Permitted Exceptions;

(ii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) Unless Seller elects to have the following charges deducted from the funds to be distributed to Seller at Closing, no later than five (5) business days prior to Closing, Seller shall deposit into escrow immediately available funds in the amount necessary to pay all governmental conveyance fees and transfer taxes.

### **(b) BUYER.**

(1) Within five (5) days prior to Closing, Buyer shall deposit into escrow such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transaction contemplated hereby.

(2) No less than five (5) business days prior to the Closing, Buyer shall deposit into escrow immediately available funds in an amount is equal to:

- (i) the Purchase Price as adjusted by any prorations between the Parties; and
- (ii) the premium for the Title Policy;
- (iii) the recording fees;
- (iv) its respective notary fees; and
- (v) escrow fees.

**8. Close of Escrow.**

Unless this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, the Closing shall occur within seven (7) days of the expiration of the Inspection Period provided that in no event shall Closing occur later than December 31, 2015. The Escrow Agent shall close escrow by: (i) causing the Grant Deed to be recorded in the official records of Contra Costa County, California; (ii) issuing the Title Policy and delivering same to Buyer; (iii) delivering to Seller the monies constituting the Purchase Price less prorated amounts and charges to be paid by or on behalf of Seller; and (iv) delivering to Buyer the original Grant Deed, together with a conformed copy thereof indicating recording information thereon. Possession of the Property shall be delivered to Buyer at the Closing.

**9. Default.**

The failure of either party to meet, comply with or perform any material covenant, agreement or obligation hereunder, within the time limits and in the manner required, either prior to or at Closing, for any reason other than the termination of this Agreement pursuant to a right to so terminate expressly set forth in this Agreement or if any representation, warranty or covenant set forth herein of either party is untrue or inaccurate in any material respect shall constitute a default under this Agreement. In the event of a default hereunder by Seller or Buyer, the defaulting party shall have five (5) days after receipt of written notice from the non-defaulting party to fully cure or remedy such default. If the defaulting party fails to cure a default within such 5-day period, the non-defaulting party as its sole remedy shall be entitled to (i) terminate this Agreement (by delivering notice to the non-defaulting party and Title Company); or (ii) treat this Agreement as being in full force and effect and pursue the specific performance of this Agreement.

**10. Prorations.**

At the Closing, the Escrow Agent shall make the following prorations: property taxes shall be prorated as of the Closing based upon the most recent tax bill available, including any property taxes which may be assessed after the Closing but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered. Buyer shall pay all escrow fees and premiums for the Title Policy and Seller shall pay any documentary transfer taxes. All other closing costs shall be apportioned according to prevailing local custom in Contra Costa County, California.

**11. Buyer's Conditions to Closing.**

The Closing and Buyer's obligation to purchase the Property are conditioned upon: (i) the performance by Seller of each obligation to be performed by Seller under this Agreement within the applicable time period, or the waiver by Buyer of such obligation; and (ii) the commitment by Title Company to issue and deliver the Title Policy, subject only to the Permitted Exceptions.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Buyer, Buyer shall have the right, exercisable by giving written notice to Seller, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Buyer

to Seller or deposited with the Escrow Agent by or on behalf of Buyer. The exercise of this right by Buyer shall not constitute a waiver by Buyer of any other rights Buyer may have at law or in equity.

**12. Seller's Conditions to Closing.**

The Closing and Seller's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) the performance by Buyer of each obligation to be performed by Buyer under this Agreement within the applicable time period, or waiver by Seller of such obligation; and (ii) Buyer's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the Closing.

**13. Seller's Representations.**

Seller is the owner of the Property and has all right, title and interest to transfer the same to Buyer.

**14. Seller's Covenants.**

Seller covenants that from the Effective Date and through the Closing, Seller: (i) shall not permit any liens, encumbrances, or easements to be placed on the Property, other than Permitted Exceptions; (ii) shall not enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Buyer or the Property after the Closing without the prior written consent of Buyer; (iii) shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the Property in its condition as of the Effective Date, ordinary wear and tear excepted, and shall manage the Property substantially in accordance with Seller's established practices.

**15. Buyer's Representations, Warranties and Covenants.**

Buyer represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the Closing: (i) have been duly authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) do not violate the provisions of any agreement to which Buyer is a party. Buyer further represents and warrants that the persons who have executed this Agreement on behalf of Buyer have are duly authorized to do, that Buyer has the legal right to enter into this Agreement and to perform all of its terms and conditions, and this Agreement is enforceable against Buyer in accordance with its terms.

**16. First Right of Refusal and First Option to Purchase Granted to the City of Oakley by Buyer.**

Before Buyer may sell the Seller's parcel (the property and building at 3201 Main Street in Oakley, California) to a third party, Buyer shall first offer the property to the City of Oakley (hereinafter "CITY") following the procedures set forth in this Section, granting CITY the "first right of refusal" and "first option to purchase."

- (a) This right of first refusal or first option to purchase may only be exercised by CITY within thirty (30) days from notification by Buyer that the Buyer desires to sell the subject property. The Buyer is obligated to provide such notice in writing to CITY prior to offering the subject property to a third party. Notice shall be given to the City Manager at 3231 Main Street, Oakley, CA 94561.
- (b) In the event Buyer elects to sell and CITY desires to exercise his first refusal rights granted under the terms of this agreement, the terms of purchase shall be \$1.00 more than any bona fide offer to purchase received by Buyer from any third party.
- (c) Within fifteen (15) days after the CITY has exercised his or her right of first refusal, the Buyer shall deliver to CITY a Certificate of Title or title abstract covering the property which shall reflect that marketable fee simple title to the subject property is vested in Buyer and that same is insurable by a title insurance company licensed to do business in the State of California. Said Certificate or abstract shall be subject only to taxes for the current year, easements, and rights of way of record, and prior mineral reservations. Should said Certificate or Abstract reflect any other exceptions to the title unacceptable to CITY, the CITY shall notify the Buyer in writing of any defects within fifteen (15) days (the title review period) and the Buyer shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence the Buyer is unable to make the title acceptable to CITY within such reasonable time, it shall be the option of the CITY either to accept the title in its existing condition with no further obligation on the part of the Buyer to correct any defect, or to formally decline the first right of refusal and option to purchase. If title is acceptable to CITY, the closing shall occur within ninety (90) days after expiration of the "title review period". At closing Buyer shall convey title to CITY by Warranty Deed subject only to exceptions acceptable to Purchaser.

#### **17. Damage and Destruction.**

In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the Closing in an amount not exceeding \$25,000, Buyer shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that Seller shall: (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the Closing the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the Closing in an amount in excess of \$25,000, Buyer may elect either to terminate this Agreement upon written notice to Seller, or to consummate the purchase of the Property, in which case Seller shall (i) assign and transfer to Buyer all of Seller's rights under any insurance policy covering the damage or loss, and all claims for monies payable from Seller's insurer(s) in connection with the damage or loss, and (ii) pay to Buyer at the Closing the amount of Seller's deductible under the insurance policy or policies covering the damage or loss. In the event Buyer elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Buyer shall be returned to Buyer, and all rights and obligations hereunder shall terminate.

**18. Brokers.**

Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement, except for commission to be paid to George Cardinale with The Cardinale Company by Seller pursuant to a separate agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The parties acknowledge that Seller's general partner, Roy A. Cunha, holds a California real estate brokerage license; however, the parties further acknowledge and agree that Mr. Cunha is not acting in any capacity, or assisting any party hereto, as a broker in relation to this transaction. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

**19. Assignment.**

Buyer shall not have the right to assign any rights and obligations under this Agreement to any party without the prior written approval by Seller.

**20. Notices.**

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

**BUYER:**

D'Amico Investments, LLC

XXXXXX

Oakley, California 94561

Attn: James D'Amico

Telephone: (925) XXXX

Facsimile: (925) XXX

**SELLER:**

Successor Agency/City of Oakley

3231 Main Street

Oakley, California 94561

Attn: Executive Director

Telephone: (925) 625-7000

Facsimile: (925) 625-9194

**21. Litigation Costs.**

If any legal action or any other proceeding, including arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged breach or default in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs, in addition to any other relief to which such Party may be entitled.

**22. Waivers; Modification.**

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

**23. Successors.**

This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assignees of the Parties.

**24. Provisions.**

Not Merged With Deeds. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by the Grant Deed, and neither the Grant Deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein. Without limiting the generality of the foregoing, Seller's representations, warranties and covenants contained herein shall survive the Closing.

**25. Construction.**

The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be



construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

**26. Action or Approval.**

Where action and/or approval by Buyer is required under this Agreement, Buyer's Executive Director may act on and/or approve such matter unless the Executive Director determines in his or her discretion that such action or approval requires referral to Buyer's Board for consideration. The time periods afforded Buyer for any event, inspection, feasibility, due diligence, escrow closing or otherwise shall not be extended by any such referral to Buyer's Board.

**27. Entire Agreement.**

This Agreement, including Exhibits A and B attached hereto and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter thereto.

**28. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

**29. Severability.**

If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

**30. No Third Party Beneficiaries.**

Nothing in this Agreement is intended to or shall confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

**31. Parties Not Co-Venturers.**

Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

**32. Non-Liability of Officials, Employees and Agents.**

No member, official, employee or agent of Buyer shall be personally liable to Seller or its successors in interest in the event of any default or breach by Buyer or for any amount which may become due to Seller or its successors in interest pursuant to this Agreement.

**33. Time of the Essence.**

Time is of the essence for each condition, term, obligation and provision of this Agreement.

**34. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

**35. Time for Performance.**

When the time for performance of any obligation under this Agreement is to be measured from another event, such time period shall include the day of the other event. If the day of the time for performance is not a regular business day, then the time for such performance shall be by the regular business day following such day.

**IN WITNESS WHEREOF**, the Successor Agency to the Oakley Redevelopment Agency, a public body, corporate and politic, has authorized the execution of this Agreement in duplicate by its Executive Director and attestation by its Agency Secretary under authority of Resolution No. \_\_\_\_\_, adopted by the Oakley Redevelopment Agency on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and SELLER has executed this Agreement in duplicate.

**SELLER:**

**BUYER:**

Successor Agency to the Oakley Redevelopment Agency, a public body, corporate and politic

By: \_\_\_\_\_  
Bryan H. Montgomery, Executive Director

By: \_\_\_\_\_  
James D'Amico, XXX

By: \_\_\_\_\_  
Brenda D'Amico, XXX

ATTEST:

\_\_\_\_\_  
Libby Vreonis, Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
William R. Galstan, Special Counsel

**NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED**

**EXHIBIT "A"**

**EXHIBIT "A"**

EXHIBIT A  
LEGAL DESCRIPTION  
RESULTANT PARCEL 2  
LLA 06-07

REAL PROPERTY SITUATE IN THE CITY OF OAKLEY, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHEAST 1/4, SECTION 26, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN AND BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE GRANT DEED FROM HAROLD AND BARBARA RODRIGUES TO THE CONTRA COSTA COUNTY REDEVELOPMENT AGENCY RECORDED OCTOBER 14, 1997, INSTRUMENT NO. 97-0194100 AND ALSO BEING A PORTION OF THOSE CERTAIN PARCELS OF LAND DESCRIBED AS PARCELS 2 AND 4 OF "LOT LINE ADJUSTMENT LLA 04-02", RECORDED ON JUNE 10, 2004, AS INSTRUMENT NO. 2004-0221168. ALL ARE OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 2 AS SAID PARCEL IS SHOWN ON SAID LOT LINE ADJUSTMENT (2004-0221168);

THENCE FROM SAID POINT OF BEGINNING ALONG THE WESTERLY LINE OF SAID PARCEL 2, SOUTH 0° 52' 58" WEST, 233.40 FEET;

THENCE LEAVING SAID LINE THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 89° 07' 02" EAST, 104.50 FEET;
2. NORTH 0° 52' 58" EAST, 159.66 FEET;
3. NORTHWESTERLY ALONG THE ARC OF A 17.00-FOOT RADIUS, TANGENT CURVE TO LEFT THROUGH A CENTRAL ANGLE OF 56°37'33", AN ARC DISTANCE OF 16.80 FEET, TO A POINT OF REVERSE CURVE;
4. NORTHWESTERLY ALONG THE ARC OF A 27.00-FOOT RADIUS, TANGENT CURVE TO LEFT, THROUGH A CENTRAL ANGLE OF 56°37'33", AN ARC DISTANCE OF 26.68 FEET; AND
5. NORTH 0° 52' 58" EAST, 37.00 FEET TO A POINT IN THE NORTHERLY LINE OF SAID PARCEL 2;

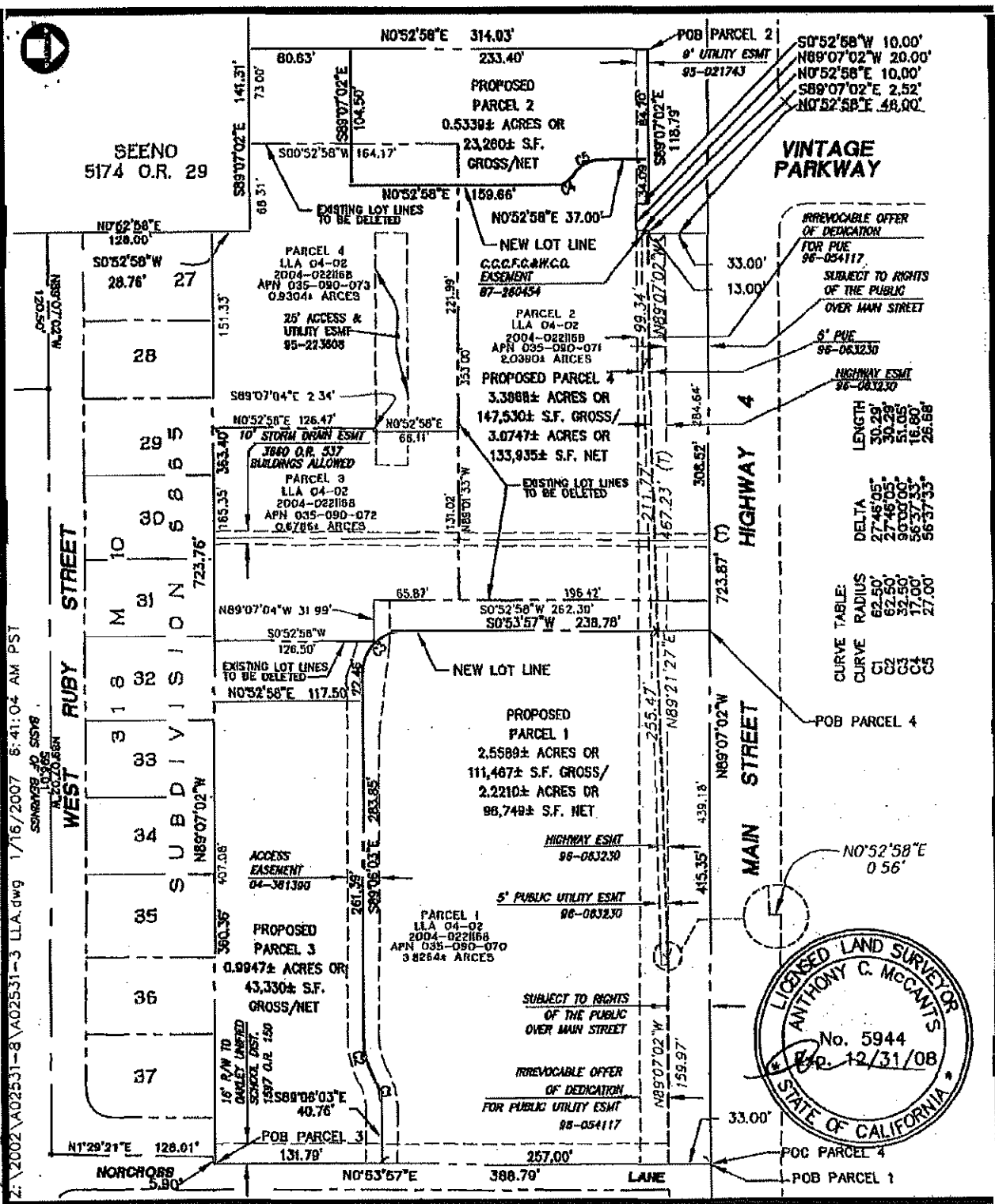
THENCE ALONG SAID LINE NORTH 89° 07' 02" WEST, 84.70 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.5339 ACRES OR 23,260 SQUARE FEET OF LAND MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION PURSUANT TO THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT.

  
ANTHONY C. McCANTS, L.S. 5944  
LICENSE EXPIRATION DATE: 12/31/08

1/16/07  
DATE





Z:\2002\A02531-8\A02531-3 LLA.dwg 1/16/2007 8:41:04 AM PST  
S:\MCCANTS\A02531-3\A02531-3 LLA.dwg  
1/16/2007 8:41:04 AM PST

**KIER & WRIGHT**  
CIVIL ENGINEERS & SURVEYORS, INC.  
1233 Quarry Lane, Suite 143 (R22) 248-8593  
Pleasanton, California 94568 Fax (925) 248-8583

**EXHIBIT "E"**  
**LLA 0 -07**  
HERNIMWOOD CALIFORNIA

**SCALE 1" = 100'**  
**DATE JAN. 2007**  
**BY ACM/KTS**  
**JOB NO. A02531-8**

**Recorded at the Request of:**

**EXHIBIT "B"**

City of Oakley

**And When Recorded Mail To:**

Oakley City Clerk

3231 Main Street

Oakley, CA 94561

**PARKING LOT AND PUBLIC SPACE  
MAINTENANCE AGREEMENT  
(APN 035-090-078)**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Oakley, a municipal corporation ("CITY") and D'Amico Investments, owners of certain real property adjacent to the Oakley Civic Center Plaza ("OWNERS").

Recitals

- A. The Oakley Civic Center Plaza ("Plaza") is generally located south of Main Street a east of Norcross Drive, consisting of Contra Costa County Assessor's Parcels \_\_\_\_\_ and is the real property subject to this Agreement.
- B. Within the Plaza is an asphalt surface parking lot owned by City, lighting, landscaping and irrigation, all of which are referred to herein generally as "the improvements" and are the subject of this Agreement.
- C. The CITY owns the improvements, although they are provided in part for the use, enjoyment and benefit of OWNERS and their customers. CITY intends to continue owning and managing the improvements so that OWNERS will not have any independent and private obligation to provide off-street parking for their customers. CITY also intends to retain ownership of the improvements for the use and enjoyment of the improvements by the public in general.
- D. The OWNERS currently pay \$40 per month to the CITY for the use of irrigation water for the landscaping on the OWNER'S parcel.
- E. Because of the mixture of public and private benefits to be enjoyed by the parties from the maintenance of the improvements, the parties hereto have entered into this Agreement.

**WHEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1. CITY will continue to own and to maintain the improvements. The term "maintain" shall generally include, but not be limited to, the following:

- a) Keeping the asphalt paving of the parking lot and its access lanes in a safe and good condition;
  - b) Keeping the striping of the parking spaces and other painted surfaces in good condition;
  - c) Paying the electrical costs of providing energy to the light fixtures and repairing or replacing poles, fixtures and ancillary lighting facilities;
  - d) Keeping the landscaping provided for the improvements in a good and attractive condition, replacing dead or diseased plants, mowing, weeding, and watering same, and paying for such water;
  - e) Towing of abandoned or illegally parked vehicles;
  - f) Picking up litter and debris;
  - g) Replacement of the improvements;
  - h) Maintaining, repairing and/or replacing Plaza identification and directional signage, although OWNER shall have responsibility for placement, maintenance and replacement of store identification signs on its property;
  - i) Such other maintenance efforts as the parties may, from time to time, agree to include as provided for in this Agreement.
2. CITY shall prepare an initial document which shall detail the improvements to be maintained, the cost of maintaining and servicing those improvements, the methodology for spreading those costs among the parties, and establishing a budget for the following fiscal year. This document shall be referred to herein as an "Engineer's Report" for simplicity of reference, but does not imply that the report will necessarily be drafted by a registered civil engineer.
  3. Each year following the preparation of the initial Engineer's Report, the CITY shall prepare an annual Engineer's Report. Copies of the Report shall be made available to OWNERS at least 30 days prior to the date established in the Report for its effectiveness for that year.
  4. The OWNERS shall have the opportunity to review and comment upon each Engineer's Report, and to interact with CITY staff regarding the amounts allocated for each element of maintenance, cost and work to be accomplished. The OWNERS shall also have the ability to request that additional items of work or maintenance, or increased or decreased levels of maintenance, to be included in the Report(s). If OWNER is dissatisfied with the result of such interaction with staff, such OWNER shall have the ability to appeal the issue to the City Council, which shall make the final determination. In no event shall the Council dissolve this Agreement, or remove elements of maintenance or work that are fundamental to the effective operation and use of the improvements, without approving and providing some alternative method of financing the cost of the work and maintenance.



5. The Engineer's Report may include an amount to be recovered by the CITY for its administration of the program which is the subject of this Agreement, but such amount shall not exceed three (3%) percent of the total cost.
6. The Engineer's Report shall identify the amount of cost to be applied on an annual basis. Each OWNER shall have the option of making payment to CITY for its allocated portion of cost annually, quarterly or monthly and shall make written arrangements with the CITY's Finance Department accordingly. If no such arrangement is made, the annual cost identified in the Report shall be paid in one annual lump sum to the CITY within thirty (30) calendar days of the due date as indicated in the Engineer's Report. If any payment is delinquent, irrespective of whether being made on an annual, quarterly or monthly basis, such delinquency shall be subject to a penalty of ten (10%) percent of the amount due for each month that such payment remains delinquent.
7. The CITY retains all rights and privileges for the collection and recovery of unpaid amounts due under the Engineer's Reports, including the right to sue to collect such delinquent amounts and late payment penalties.
8. This Agreement shall run with the land and shall be binding upon the successors and assigns of the OWNERS and to all future owners of said properties.
9. The parties shall indemnify, defend, and hold each other harmless from and against any and all liability, demands, claims, losses, damages, recoveries, settlements, and expenses (including without limitation reasonable attorney fees) arising from or in connection with this Agreement, unless the liability arises from the action or negligence of a specific party, who shall bear the costs and liability of the claim.
12. This Agreement constitutes the entire agreement between CITY and OWNER pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings between the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
14. An action at equity or law arising out of the subject matter of this Agreement shall be filed and tried in Contra Costa County, State of California.

- 15. The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.
- 16. Should either party breach this Agreement, the non-breaching party shall be entitled to pursue any and all remedies available to it against breaching party, including, without limitation, claims for all damages attributable to the breach, and specific performance of this Agreement.
- 17. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 18. Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement and that the party will be bound by such signature.

IN WITNESS WHEREOF, CITY and OWNER have executed this Agreement on the day and year first above written.

**CITY**

City of Oakley, a municipal corporation

By: \_\_\_\_\_  
 Bryan H. Montgomery  
 City Manager

**OWNER**

D'Amico Investments, LLC

By: \_\_\_\_\_  
 XXXX

**Attest:**

By: \_\_\_\_\_  
 Libby Vreonis, City Clerk

**Approved as to Form:**

By: \_\_\_\_\_  
 William R. Galstan, Special Counsel

SA RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO  
THE OAKLEY REDEVELOPMENT AGENCY DECLARING THE INTENT  
TO SELL RESOLUTION DECLARING THE INTENT TO SELL THE REAL  
PROPERTY LOCATED AT 3201 MAIN STREET, OAKLEY (APN 035-090-078)  
TO JAMES AND BRENDA D'AMICO (DBA DELTA BLACK BEAR DINER, INC  
AND/OR D'AMICO INVESTMENTS, LLC) ACCORDING TO THE THE TERMS  
AND CONDITIONS LISTED HEREIN**

**WHEREAS**, the Successor Agency is the owner of real property, a former Oakley Redevelopment Agency property, located at 3201 Main Street, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Number 035-090-078 ("the Property"); and

**WHEREAS**, the Successor Agency is also the designated legal owner of a certain building and related improvements on the Property, and

**WHEREAS**, a Long Range Property Management Plan, required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of the Property; and

**WHEREAS**, officers of D'Amico Investments, LLC are the owner and operators of the Delta Black Bear Diner that is currently the tenant of the Property; and

**WHEREAS**, the Board of the Successor Agency makes a finding that the sale of the Property to the current owner and operators of the Delta Black Bear Diner to be in the best interests of the Successor Agency and all Taxing Entities and pursuant to the terms and conditions set forth below; and

**WHEREAS**, the Board of the Successor Agency also desires to provide opportunity for any other interested party to present a sealed bid offer before 12:00pm on November 1, 2016; and

**WHEREAS**, the Board of the Successor Agency will consider approving a purchase and sales agreement at its November 8, 2016 regular meeting.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Successor Agency to the Oakley Redevelopment Agency that it intends to sell the former Oakley Redevelopment Agency property located at 3201 Main Street, Oakley, California pursuant to the approved Long Range Property Management Plan and subject to the following terms and conditions:

1. The purchase price shall be at least the appraised value of \$2,100,000;

2. Buyer shall enter into a Parking Lot and Public Spaces Maintenance Agreement prior to closing;
3. Buyer shall execute a mutual and reciprocal easement agreement to confirm the existing roadway access from Main Street and the existing storm water, water and sanitary sewer line locations;
4. The Buyer shall pay any and all closing costs;
5. Buyer shall grant a first right of refusal and first option to the City of Oakley.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Board of the Successor Agency to the Oakley Redevelopment Agency invites any other offers to purchase the Property with a sealed bid received by the office of the City Clerk before 12:00pm on November 1, 2016

The foregoing resolution was introduced at a regular meeting of the Board of the Successor Agency to the Oakley Redevelopment Agency held on the 11th day of October 2016, by Board member \_\_\_\_\_, who moved its adoption, which motion being duly seconded by Board member \_\_\_\_\_, was upon voice vote carried and the resolution adopted by the following vote:

AYES:  
NOES:  
ABSTENTION:  
ABSENT:

**APPROVED:**

\_\_\_\_\_  
Kevin Romick, Chair

**ATTEST:**

\_\_\_\_\_  
Libby Vreonis, Secretary

\_\_\_\_\_  
Date