

Agenda Date: _____

Agenda Item: _____



Approved and Forwarded to
Redevelopment Agency

**Bryan H. Montgomery, Executive
Director**

MEMORANDUM

Date: September 9, 2008

To: Bryan Montgomery, Executive Director

From: Barbara Mason, Economic/Redevelopment Director

Subject: Resolution to Approve the Purchase Agreement with Arturo and Audelia Ordaz, a Married Couple, Related to Vacant Parcel APN 035-161-003 Located at 3667 Main Street, for Construction of a Downtown Parking Lot

Summary and Recommendation

As part of the issuance of the 2008 Redevelopment Bond, one of the projects identified was a downtown parking lot at 3667 Main Street, which is located between Fourth and Fifth Streets. The vacant parcel has been on the market for some time and is represented by a real estate agent. With the approval of the Agency Board, staff presented a statutory offer to purchase the site and the offer has been accepted by the owners, Arturo and Audelia Ordaz. Staff recommends purchasing the parcel and is seeking approval of the Purchase Agreement.

Fiscal Impact

The Redevelopment Agency would purchase the parcel from the 2008 Bond proceeds in the amount of \$155,000 plus closing costs.

Background and Analysis

The Redevelopment Agency Board, when considering the issuance of bonds to provide funding for Redevelopment Projects within the Project Area, discussed many infrastructure projects including projects that would assist in the development of the downtown. One of the projects identified was a downtown parking lot on the east end of Main Street. A vacant

Date: September 9th, 2008

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parcel was available for sale in a block that needed off street parking to assist the merchants. The parcel, APN 035-161-003, is located at 3667 Main Street between Kit 'N Kaboodle Hobby Shop and State Farm Insurance and is 6,202 square feet. The current condition of the site is unimproved with a large tree at the northwest corner. At the direction of the Agency Board, a statutory offer of \$155,000 was made to the owners, Arturo and Ordalia Ordaz, a married couple. The amount of the offer was the appraised value. In addition, the Agency has requested the owners remove the large tree prior to the close of escrow. The owners have accepted the offer and the terms and have requested a short escrow, which would be proposed to close on September 30th, 2008. Agency staff is seeking approval of the Purchase Agreement to consummate the purchase.

Conclusion

Staff recommends approval of the Resolution to Approve the Purchase Agreement with Arturo and Audelia Ordaz, related to APN 035-161-003, located at 3667 Main Street, for construction of a downtown parking lot.

Attachments

- 1) Resolution to Approve the Purchase Agreement with Arturo and Audelia Ordaz, related to APN 035-161-003, located at 3667 Main Street, for construction of a downtown parking lot.
- 2) Copy of the statutory offer letter to Arturo and Audelia Ordaz.
- 3) Oakley Redevelopment Agency Purchase Agreement (APN 035-161-003)
- 4) Grant Deed, Ordaz to Oakley Redevelopment Agency (APN 035-161-003)

RESOLUTION NO. __-08

A RESOLUTION OF THE OAKLEY REDEVELOPMENT AGENCY APPROVING
A PURCHASE AGREEMENT FOR THE ACQUISITION OF 3667 MAIN
STREET (APN 035-161-003), AUTHORIZING THE EXECUTIVE DIRECTOR
TO EXECUTE THE AGREEMENT

WHEREAS, the Oakley Redevelopment Agency issued a tax-exempt bond in May of 2008; and

WHEREAS, one of the priority projects identified by the Oakley Redevelopment Agency Board was the development of a downtown public parking lot; and

WHEREAS, the City has agreed to purchase and the Ordazs have agreed to sell the property located at 3667 Main Street to be used as a future public parking lot to serve the downtown area.

NOW, THEREFORE, BE IT RESOLVED, by the Redevelopment Agency of the City of Oakley that the Purchase Agreement with the Ordazs for the acquisition of real property located at 3667 Main Street in the amount of \$155,000.00 plus any associated costs required by the Agreement, is hereby approved. A copy of the Agreement is attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Oakley Redevelopment Agency held on the 9th day of September, 2008, 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:
ABSTAIN:
ABSENT:

Bruce Connelley, Chairman

ATTEST:

Nancy Ortenblad, Agency Secretary



3231 Main Street
Oakley, CA 94561
925 625 7000 tel
925 625 9859 fax
www.ci.oakley.ca.us

August 19, 2008

MAYOR
Bruce Connelley

Ramona Aguilar
Coldwell Banker – Amaral and Associates
598 Valmore Place
Brentwood, CA 94513

VICE MAYOR
Carol Rios

COUNCILMEMBERS
Pat Anderson
Brad Nix
Kevin Romick

**Re: 3667 Main Street, Oakley, CA
APN 035-161-003**

Dear Ms. Aguilar:

As we discussed, the City is interested in acquiring the above-referenced property for use as a future public parking lot. It is our understanding that the property is owned by Arturo and Audelia Ordaz, that the property currently listed for sale and that you are the Seller's agent for this property. Although the City does not have an immediate need for this property, if the parties can promptly agree to a purchase price, the City would be interested in proceeding at this time.

As required by law, the City has retained a qualified appraiser to establish the fair market value of the property. This value has been determined by Dean Chapman of Danville, an independent MAI-certified appraiser. A written statement of, and summary of the basis for, the amount offered is enclosed with this letter, together with an Appraisal Information Statement and an Appraisal Summary Statement.

The City hereby offers to purchase the above-referenced property for the sum of One Hundred Fifty-Five Thousand Dollars (\$155,000.00). This offer is subject to the following conditions:

- Prior to close of escrow, at Seller's expense, the large tree located on the eastern side of the property will be removed and the parcel will be restored to a safe and usable condition at its current grade.
- Seller will deliver fee simple title to the property to the City, free and clear of any liens or encumbrances.
- Seller will pay all fees, commissions or other amounts owed to Seller's real estate agent, broker or other representatives for services rendered in connection with this transaction.
- The City will pay all other reasonable and customary escrow and closing costs.

- The parties will close escrow within a reasonable time period, not to exceed 90 days.

If the Ordaz' and the City reach agreement regarding terms and conditions for the purchase of this property, the City will prepare a written purchase agreement setting forth the specific terms and conditions of this transaction along with a Grant Deed, and submit it to you for review. The purchase agreement will be subject to final review and approval by the City Council.

Thank you for your prompt attention to this matter. Once you have reviewed the enclosed documents, please do not hesitate to contact me at 625-7016 to discuss any questions or concerns you may have regarding this matter, or to respond to this offer.

Very truly yours,



Barbara Mason
Economic and Redevelopment Director

Attachments

**RECORDING REQUESTED BY
AND RETURN TO:**

City of Oakley
City Clerk
3231 Main Street
Oakley, CA 94561

**OAKLEY REDEVELOPMENT AGENCY
PURCHASE AGREEMENT
(APN 035-161-003)**

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the OAKLEY REDEVELOPMENT AGENCY, (hereinafter referred to as AGENCY) and ARTURO AND AUDELIA ORDAZ, a married couple, (hereinafter referred to as GRANTOR). This Agreement is made with reference to the following facts:

WHEREAS, GRANTOR is the legal owner of real property located at Main Street, Oakley, California and commonly known as 3667 Main Street, Assessor's Parcel Number 035-161-003 ("Seller's Parcel"); and,

WHEREAS, AGENCY desires to purchase the Seller's Parcel for use as a downtown parking lot; and,

WHEREAS, AGENCY desires to purchase and GRANTOR is willing to sell and convey to AGENCY for the price and under the terms and conditions specified herein, fee simple interest of Seller's Parcel, as described in Exhibit "A" and shown in Exhibit "B," attached hereto and incorporated herein by this reference ("Property") at the rate of \$25.00 per square foot; and,

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT 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 Grant Deed and Easement and shall relieve AGENCY of all further obligations or claims on account of the acquisition of the property interests as set forth herein or on account of the location, grade, construction or operation of the proposed public improvements to be constructed thereon.

GRANTOR: Arturo & Audelia Ordaz
Project Name: DOWNTOWN PARKING LOT

APN: 035-161-003

2. GRANTOR shall

- A. Deposit in an escrow designated by the AGENCY, a Grant Deed suitable for recordation and conveying from GRANTOR to AGENCY, fee simple title to the Property in the form set forth in Exhibit "A". GRANTOR shall deposit the Grant Deed and Easement into escrow on or before thirty (30) calendar days after the Effective Date of this Agreement. GRANTOR shall be responsible for payment of all property taxes, assessments and liens, if any, up to the Close of Escrow. The Grant Deed and Easement shall be delivered to AGENCY upon Close of Escrow.
- B. Clear any title exceptions not acceptable to AGENCY prior to Close of Escrow.
- C. Maintain all improvements behind the constructed sidewalk, including weed and trash removal as required by City of Oakley code until escrow has closed.
- D. Removal of the tree located at the driveway on the north side of the property, including removal of the stump and filling of the resultant hole at grade level.

3. AGENCY shall

- A. Pay the total sum of \$155,000 (one hundred fifty-five thousand dollars) for the Property and any improvements contained thereon to the Old Republic Title Company (Brentwood) or any title company selected by the AGENCY, for the account of the GRANTOR and conditioned upon the Property vesting in AGENCY free and clear of all liens, leases, encumbrances whether recorded or unrecorded, and all assessments and taxes and the Easement being available and ready for its intended use by AGENCY. Said sum represents full compensation to GRANTOR for the original appraised value of the Property.
- B. Pay all escrow, recording and title insurance charges, if any, incurred in this transaction.
- C. Have the authority to deduct and pay from the amount shown in Paragraph 3A above any amount necessary to satisfy any liens, bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non delinquent assessments, which may have become a lien at the Close of Escrow. Current taxes, if unpaid, shall be segregated and prorated as of the Close of Escrow and paid from the amount shown in Paragraph 3A above. Close of Escrow for this transaction shall be contingent upon the title company receiving deeds of reconveyance from any deed of trust or mortgage holder trustees and beneficiaries.
- E. Taxes for the tax year in which escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the at the close of escrow.
- F. Except as expressly provided in this Agreement, pay for and construct any and all improvements to the Property necessary for the installation of a downtown parking lot including paving, landscaping and lighting.

G. Ensure that all AGENCY construction activities occur within the boundaries of the Property.

4. Payment of Deed of Trust

If the Property is secured by a mortgage(s) or deed(s) of trust, GRANTOR is responsible for payment of any demand under authority of said mortgage or deed of trust out of GRANTOR'S proceeds. Such amounts may include, but not be limited to, payments of unpaid principal and interest.

5. Escrow Instructions

GRANTOR hereby authorizes AGENCY to prepare and file escrow instructions in accordance with this Agreement on behalf of both parties. Close of Escrow shall be the date on which the Grant Deed, as described in Paragraph 2A above, is delivered to AGENCY and the payment for purchase of the Property, the Easement and any improvements located thereon has been deposited into escrow as set forth in Paragraph 3A above. Close of Escrow shall occur on or before September 30th, 2008. The date for Close of Escrow may be extended in writing by mutual agreement of the parties in accordance with Paragraph 3A above.

6. Hazardous Wastes

The acquisition price for the Property reflects the fair market value of the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, AGENCY may in its sole discretion elect to recover its clean-up costs from those who caused or contributed to the contamination or to terminate this Agreement immediately without further obligation to GRANTOR. GRANTOR shall further indemnify, defend, save and hold harmless the AGENCY 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 toxic or hazardous material on the Property, save and except claims, costs or litigation arising through the sole willful misconduct of the AGENCY, its agents or employees.

GRANTOR further agrees as part of the consideration herein that GRANTOR will not, during any occupancy before or after the close of escrow, 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 Property, 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 GRANTOR will, at its sole

expense, remove, cleanup or otherwise mitigate such problem, and will further release and indemnify AGENCY from any and all liability arising from such problem.

7. Right of Possession and Use

It is agreed and confirmed by the parties hereto that, notwithstanding any other provisions in this Agreement, the right of possession and use of the subject property by AGENCY, and/or its designees or assignees including the right to remove and dispose of improvements, and install and connect utilities shall commence thirty (30) calendar days after the Effective Date of this Agreement or Close of Escrow, whichever occurs first, and that the amount shown in Paragraph 3A herein includes, but is not limited to, full payment for such possession and use, including interest and damages if any, from said date.

8. AGENCY Performed Work

All work done under this Agreement shall conform to all applicable building, fire, and sanitary laws, ordinances, and regulations relating to such works, and shall be done in a good and workmanlike manner.

9. Binding on Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the respective heirs, successors and assigns of the parties to this Agreement.

10. No Leases

GRANTOR warrants that there are no oral or written leases on all or any portion of the property, and GRANTOR further agrees to hold AGENCY harmless and reimburse AGENCY for any and all of its losses and expenses occasioned by reason of any lease of said Property held by any tenant of GRANTOR for a period exceeding one month.

11. Quitclaim Deeds

If any lessee interests are identified in Paragraph 12 herein, as a condition precedent to approval of this Agreement by the AGENCY Council, Quitclaim Deeds or similar releases sufficient to clear any possessory rights from the subject Property or Easement will be required. GRANTOR agrees to secure said Quitclaim Deeds or releases. Close of Escrow shall be contingent upon the title company receiving said Quitclaim Deeds or releases, if required by AGENCY.

12. Release of All Claims

GRANTOR hereby acknowledges and agrees that the receipt and acceptance by GRANTOR for the payment set forth in Paragraph 3 and 4 of this Agreement constitutes full and complete satisfaction of all claims, cost, expenses including relocation expenses, demands,

damages, compensation for acquisition of property in total. Any claimed severance damages, loss of business goodwill, all damage as a result of ordinary construction activities associated with the installation of landscaping improvements, pavement and lighting or the purpose of a parking lot on the Property, interest, litigation expenses, and attorney fees, and all claims, whether asserted or alleged by GRANTOR or not, for other losses or damages recognized under law which GRANTOR could assert or allege against the AGENCY, as a result of the AGENCY's acquisition of the Property described herein, including but not limited to relocation expenses and/or benefits pursuant to existing Federal and/or HCD guidelines or any other law, regulation, or guideline. GRANTOR hereby waives and releases all rights, claims, costs, expenses, demands, damages or causes of action the GRANTOR has or may have in the future against the AGENCY as a result of or arising out of the AGENCY's acquisition of the Property described herein. In furtherance of the intentions set forth herein, GRANTOR acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

GRANTOR hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or non-statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Paragraph 14.

13. Approval of AGENCY and Effective Date

GRANTOR understands that this Agreement is subject to approval by the AGENCY Council of the AGENCY of Oakley and this Agreement shall have no force or effect unless and until such approval has been obtained. The effective date of this Agreement shall be the date on which the AGENCY Council approves this Agreement (“Effective Date”).

14. Warranties

- A. GRANTOR and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and easements, and that no other authorizations are required to implement this Agreement on behalf of GRANTOR.
- B. GRANTOR represents that it has or will have at the time of Close of Escrow the power to sell, transfer and convey all right, title and interest in the Property and Easement to AGENCY save and except for AGENCY approved exceptions. GRANTOR further represents that to the best of its current knowledge, the Property is not subject to any litigation proceedings, or investigation and contain no easements or interests of other parties which, if revealed or known, might materially affect the obligations or intentions of either party with respect to the objects of this Agreement. GRANTOR further

represents that there are no contracts, agreements or understandings with other parties concerning the Property that GRANTOR has not disclosed in writing to AGENCY.

- C. GRANTOR warrants that it shall not allow any liens, encumbrances, assessments, easements, leases or taxes to accrue on the Property during the pending of its transfer to the AGENCY except as provided in this Agreement, nor shall GRANTOR attempt to resell the Property to any other person or entity whatsoever, during the pendency of its sale to the AGENCY.
- D. The parties warrant that they are represented by a real estate agent in this transaction, and that there are no commissions due as a result of its completion by the AGENCY.

15. Notices

All notices pertaining to this Agreement shall be in writing delivered to the parties hereto by facsimile transmission, personally by hand, by courier service or express mail, or by first-class mail postage prepaid, to the addresses set forth below. All notices shall be deemed given or delivered (a) if sent by mail, when deposited in the mail, first-class postage prepaid, addressed to the party to be notified, (b) if delivered by hand, courier service or express mail, when delivered, or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

TO GRANTOR:

ARTURO & AUDELIA ORDAZ
Address: 1089 Mill Creek Way
Brentwood, CA 94513

TO AGENCY:

EXECUTIVE DIRECTOR
Address: 3231 Main Street
Oakley, CA 94561
Facsimile: (925) 625-4745

With a copy to:

AGENCY ATTORNEY
Address: 3231 Main Street
Oakley, CA 94561
Facsimile: (925) 625-4745

16. Entire Agreement

This Agreement constitutes the Entire Agreement between GRANTOR and the AGENCY 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.

17. Time of the Essence

Time is of the essence in this Agreement. In the event that any date specified in this Agreement falls on a Saturday, Sunday or public holiday, such date shall be deemed to be the succeeding day on which the public agency and major banks are open for business.

18. Governing Law

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

19. Venue

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.

20. Headings

The captions to the paragraphs of this Agreement are inserted for convenience only and shall not affect the intent of this Agreement.

21. Language Construction

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.

22. Exercise of Discretion

Where the terms of this Agreement require approval or the exercise of discretion by GRANTOR or by the AGENCY, discretion shall not be exercised in an unreasonable, arbitrary, or capricious manner.

23. Specific Performance

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.

24. Recordation

This Agreement shall be recorded and shall constitute obligations running with the land described in Exhibit "A" and shown in Exhibit "B", and shall be binding upon all future owners, tenants, and holders of any interest in such land, or any portion thereof.

25. Counterparts

This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the AGENCY OF OAKLEY, a municipal corporation, has authorized the execution of this Agreement in duplicate by its AGENCY Manager and attestation by its Agency Secretary under authority of Resolution No. __-08, adopted by the Redevelopment Agency of the City of Oakley on the ____ day of _____, 2008, and GRANTOR has executed this Agreement in duplicate.

OAKLEY REDEVELOPMENT AGENCY:

GRANTOR:

By: _____
Bryan Montgomery, Executive Director

By: _____
Arturo Ordaz, Owner

Date: _____

Date: _____

By: _____
Audelia Ordaz, Owner

Date: _____

ATTEST:

By: _____
Nancy Ortenblad, Agency Secretary

APPROVED AS TO FORM:

By: _____
Alison Barratt-Green, Agency Attorney

NO OBLIGATION OTHER THAN SET FORTH HEREIN WILL BE RECOGNIZED

RECORDING REQUESTED
AND WHEN RECORDED MAIL TO

CITY OF OAKLEY
CITY CLERK
3231 MAIN STREET
OAKLEY, CA 94561

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

SPACE ABOVE THIS LINE FOR RECORDERS USE

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Arturo Ordaz and Audelia Ordaz, a married couple, as **owner**

hereby GRANT to the Oakley Redevelopment Agency, the following described real property in the City of Oakley, County of Contra Costa, State of California: commonly known as 3667 Main Street, APN 035-161-003, Oakley and as described in the attached Exhibit A and shown in Exhibit B

Date: _____

Arturo Ordaz

Date: _____

Audelia Ordaz

**STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA} SS.**

On _____, before me,

A Notary Public in and for said County and State personally appeared

_____ and

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

Date My Commission Expires

FOR NOTARY SEAL OR STAMP

This is to certify that the interest in real property conveyed by this Deed is hereby accepted by authority of Resolution No. 2008-____, adopted September 9, 2008, and the grantee consents to recordation thereof.

Date:

By:
Bryan H. Montgomery, Executive Director, Oakley Redevelopment Agency

EXHIBIT A

The land referred to is situated in the County of Contra Costa, City of Oakley, State of California, and is described as follows:

Lots 3, in Block 11, as shown on the "Map of O'Hara Addition of the Town of Oakley", filed September 5, 1906, in Book C of Maps, Page 60, Contra Costa County Records.

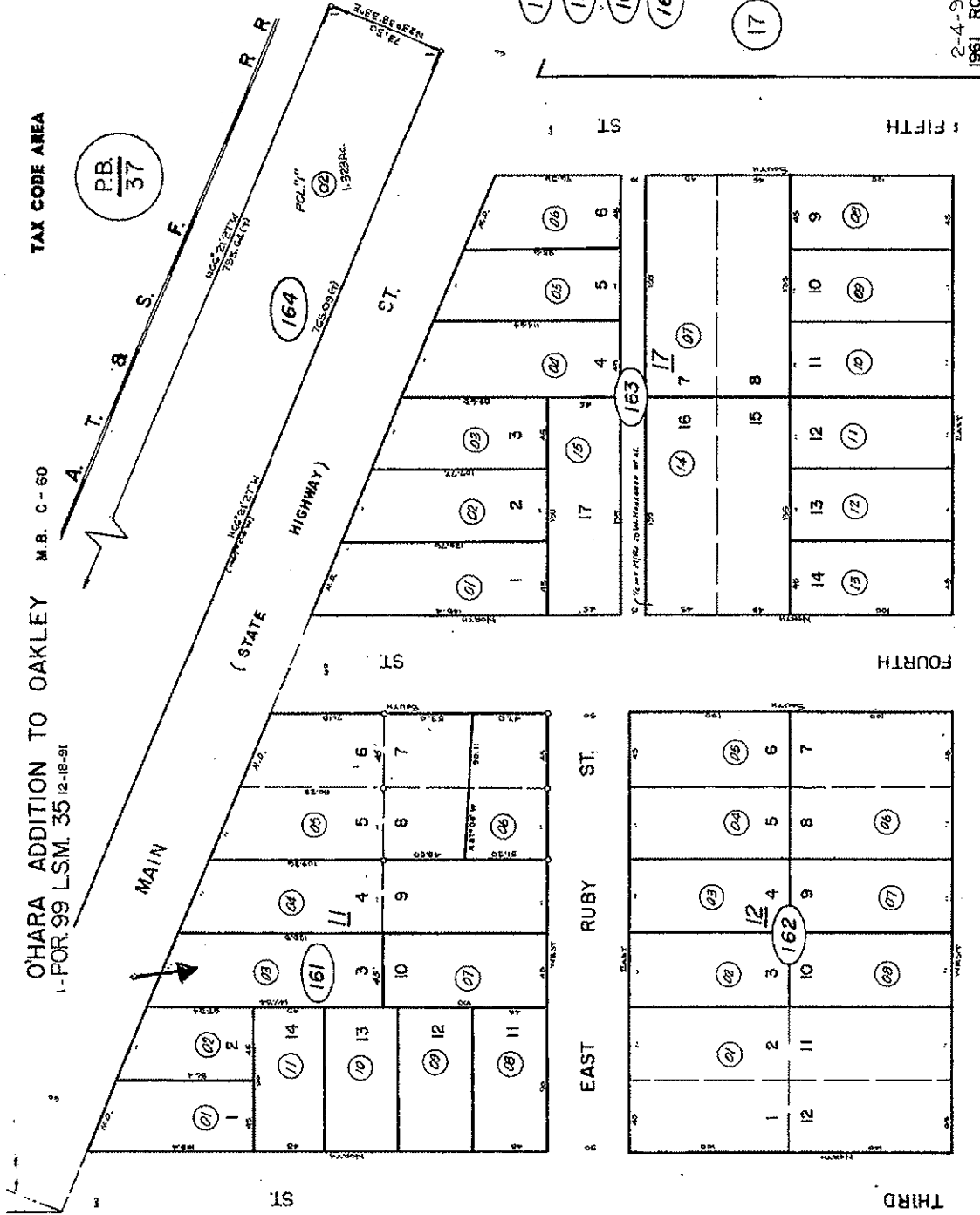
EXCEPTING THEREFROM all oil, gas, minerals and hydrocarbon substances below a depth of 500 feet from the surface of said land, but without the right to enter upon any portion of the surface above a depth of 500 feet for any purpose whatsoever, as reserved in the deed from David T. Owenson, et ux, recorded September 5, 1985, in Book 12498, Page 116, Series No. 85-121329, Contra Costa County Records.

APN 035-161-003

TAX CODE AREA

O'HARA ADDITION TO OAKLEY M.B. C-60
1-POR 99 L.S.M. 35 12-18-81

P.B.
37



- 161
- 162
- 163
- 164

17

2-4-92 1.B.
1961 ROLL

ASSESSOR'S MAP
BOOK 35 PAGE 16

CONTRA COSTA COUNTY, CALIF
10/25/81

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13

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EXHIBIT B