# *DRAFT FOCUSED ENVIRONMENTAL IMPACT REPORT*

for the

## Kenilworth Project

File #: ER040006
PUD 04-195
TPM 8228
CP 04068
State Clearinghouse Number 2005092011

December 5, 2005

*Lead Agency:*


**Community and Economic Development Agency**
250 Frank Ogawa Plaza, Suite 2114
Oakland, California 94612

**COMBINED NOTICE OF RELEASE AND AVAILABILITY OF THE**

**DRAFT FOCUSED ENVIRONMENTAL IMPACT REPORT AND**

**NOTICE OF PUBLIC HEARINGS ON THE KENILWORTH RESIDENTIAL PROJECT**

**PROJECT TITLE: Kenilworth Residential Planned Unit Development Project**

**CASE NO.** PUD 04-195, TPM 8228, CP 04068

**PROJECT SPONSOR:** Eva Gero , David McDonald

**PROJECT LOCATION: Kenilworth Road** (off Strathmoor Drive), approximately 2.9 acres

**DESCRIPTION OF PROJECT: :** The proposed project is located in the Oakland hills, on Kenilworth Road, off of Strathmoor Drive, in the general area between Drury Road and Norfolk Road. The proposed project would provide for the construction of seven single-family dwellings by means of a Planned Unit Development (PUD). The proposed PUD includes the following components: (1) a tentative parcel map to subdivide four existing lots as follows: existing lot nos. 1 and 2 would be merged into one lot, existing lot no. 3 would remain, and existing lot no. 4 would be divided into four lots and a designated remainder for a total of seven lots: (2) development of the project site and footprints for seven custom-built, single-family residences, including parking, landscaping; (3) roadway improvements, including widening and paving the unpaved portion of Kenilworth Road and a deed restriction to prevent its further extension; (4) wildland fire protection; (5) geotechnical stabilization of the site and of upslope properties; (6) post-construction stormwater management facilities; and (7) enhancement and protection of a small on-site wetland and drainage course, including establishment of a creek deed restriction ("Kenilworth Project") The site is located in the North Hills Planning Area of the *Oakland General Plan* with a land use designation of Hillside Residential). The Zoning District is R-30, One-Family Residential Zone, S-18, Mediated Design Review Overlay Zone, S-14 Community Restoration Development Combining Zone.

**ENVIRONMENTAL REVIEW:** Based on an Initial Study, it was determined that the project may have significant environmental impacts. A Draft Focused Environmental Impact Report (DFEIR) was then prepared for the project, under the requirements of the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21000 *et. seq*. The DFEIR analyzes potentially significant environmental impacts in the following environmental categories: aesthetics, biological resources, geology and soils, hydrology and water quality, and noise. The Draft Focused EIR identifies no significant unavoidable environmental impacts. Copies of the DFEIR are available for review or distribution to interested parties at no charge at the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m.

**PUBLIC HEARINGS The City of Oakland Planning Commission will conduct a public hearing on the Draft Focused EIR and the planning and creek protection zoning permits on January 4, 2006 at City Hall, 1 Frank H. Ogawa Plaza, Hearing Room 1, Oakland California. Public hearings will be held to certify the Final EIR and consider the approval of the Tentative Map, Planned Unit Development and Creek Protection Permit at a meeting date to be scheduled and noticed separately.**

The City of Oakland is hereby releasing this Draft Focused EIR, finding it to be accurate and complete and ready for public review. Members of the public are invited to comment on the EIR and the zoning permits. There is no fee for commenting, and all comments received will be considered by the City prior to finalizing the EIR and making a decision on the project. Comments on the Draft Focused EIR should focus on the sufficiency of the EIR in discussing possible impacts on the environment, ways in which adverse effects might be minimized, and alternatives to the project in light of the EIR's purpose to provide useful and accurate information about such factors. Comments may be made at the public hearing described above or in writing. Please address all written comments to Leigh McCullen, Planner II, City of Oakland, Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612. Comments should be received no later than 4:00 p.m. on January 19, 2006. If you challenge the environmental document or discretionary zoning permits in court, you may be limited to raising only those issues raised at the Planning Commission public hearing described above, or in written correspondence received by the Community and Economic Development Agency on or prior to 4:00 p.m. on January 19, 2006. After all comments are received, a Final EIR will be prepared and the Planning Commission will consider certification of the Final EIR and render a decision on the zoning permits for the project at a later meeting date to be scheduled. If you have any questions, please telephone Leigh McCullen at (510) 238-4977.

CLAUDIA CAPPIO, Development Director

Date: December 5, 2005

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# I. SUMMARY

## A. INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA), the City of Oakland analyzes the environmental effects of the proposed Kenilworth Residential Project to construct seven residences along with a range of site and infrastructure improvements. In compliance with CEQA, the results of that analysis are presented in this Draft Focused Environmental Impact Report (DFEIR). CEQA requires environmental analysis to identify and minimize the potentially significant environmental impacts that a project would have. All technical studies and reference materials used to prepare this Draft Focused EIR are available from the City of Oakland, Community Development Agency.

## B. PROJECT HISTORY AND ENVIRONMENTAL REVIEW PROCESS

Applications for the Kenilworth Project were submitted in 2003 and deemed complete by the City in July 2004. An Environmental Evaluation was prepared, and on April 20, 2005 and May 4, 2005, the Planning Commission determined that the project qualified for a Categorical Exemption with no modifications to the project or the staff's proposed Conditions of Approval. The Planning Commission's CEQA determination was appealed, and on July 19, 2005, the City Council granted the appeal, and directed that an Initial Study be prepared to determine whether a (Mitigated) Negative Declaration or focused EIR should be prepared. No decisions on permits will be made until the Planning Commission certifies this additional CEQA evaluation and reauthorizes PUD 04-195, TPM 8228 and CP 04068. The City determined that a Focused EIR should be prepared, and this document is the public Draft Focused EIR for public review and comment that specifically addresses the environmental areas of aesthetics, biological resources, geology and soils, hydrology and water quality, and noise.

The Initial Study prepared for the project, along with the conditions for approval that have been incorporated into the proposed project in the analysis for this EIR constitute Appendix A. The Initial Study assessed the proposed project's potential impacts in the following areas: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and circulation, and utilities and service systems. The Initial Study identified the

City's proposed, standard conditions of approval that would apply to the Project, regardless of whether an EIR was prepared (Attachment A of the Initial Study) ("Improvement Measures"). The applicant has agreed to voluntarily add all such Improvement Measures to the Mitigation Monitoring and Reporting Plan ("MMRP") developed for this EIR, which will be enforceable as mitigation measures through the conditions of approval. It also identified a set of specific potential impacts measured against a baseline set in July 2005 that would be discussed further in this EIR, including changes in the project site after the baseline was set. Those impacts were indicated in the Initial Study with a "TBD" code in the table listing each potential impact under each environmental topic and indicating whether the impact would be significant, less than significant, or no impact. Those impacts were in the broader environmental topics of aesthetics, biological resources, geology and soils, hydrology and water quality, and noise, and they are discussed in this EIR.

The purpose of this EIR is to inform the public, responsible and trustee agencies, and other interested parties of potentially significant environmental effects of the proposed project. The EIR also identifies ways to minimize potentially significant effects and describes reasonable alternatives to this project of seven residences. Three project alternatives are analyzed, the No Project Alternative (site remains vacant), the Reduced Density Full-Project Site Alternative (four instead of seven residences on seven lots), and the Reduced Density Original Four-Lot Alternative (four residences on four lots).

This Draft EIR will be circulated for a 45-day public comment period. The City will then prepare a Final EIR containing copies of the comments, responses to those comments, and any necessary revisions to the EIR. With certification of the EIR, the City acknowledges its satisfaction that the Final EIR fully addresses the received public comments and is adequate and complete under CEQA. After certification of the Final EIR the City will consider approval or denial of the proposed project.

Appendix B of this Draft EIR contains the letters and comments received by the City of Oakland Community and Economic Development Agency (City) in response to the Notice of Preparation of the EIR that was sent to the State Clearinghouse on August 1, 2005, along with copies of the Initial Study. The City received five comment letters during the 30-day scoping period from agencies and individuals. The letters are set forth in Appendix B and discussed in Section II.A.

## C. PROJECT PROPOSAL

The proposed project is located in the hills of the City of Oakland, in the heart of the San Francisco Bay Area, on Kenilworth Road, off of Strathmoor Drive, in the general area between Drury Road and Norfolk Road. The site is located in the North Hills Planning Area of the *Oakland General Plan*. The land use designation is Hillside Residential (single unit structures). The Zoning District is R-30, a one-family residential zone. The site is approximately 2.9 acres in size, has moderately steep to steep slopes ranging from 3:1 (horizontal: vertical) to 1.5:1. Land uses in the vicinity of the project site are low density, hillside residential, and have been for some time.

The proposed project would construct seven single-family dwellings by means of a Planned Unit Development (PUD) No. 04-195 and a Tentative Parcel Map No 8228 to create seven lots. The proposed project includes the following components:

1) Development of project site for the footprints of seven single-family dwellings and construction of the seven single-family dwellings, including parking, and landscaping;
2) Roadway improvements, including widening and paving the unpaved portion of Kenilworth Road and a deed restriction to prohibit further extension of the road;
3) Wildland fire protection;
4) Geotechnical stabilization of the site and of upslope properties;
5) Post-construction stormwater management facilities;
6) Protection of a small on-site wetland and an on-site drainage course delineated by the U.S. Army Corps of Engineers (Appendix E), pursuant to Creek Permit No. 04068 and a Department of Fish and Game Section 1602 Lake and Streambed Alteration Agreement for the proposed 300 square feet of branch clearing, and establishment of a permanent creek buffer through conditions of approval and a deed restriction.

Improvement and construction of Kenilworth Road is expected to take six months. Construction of the custom single-family residences would occur over approximately two years, pending permit approvals, and could take as long as five years. Grading that is proposed on-site would be limited to the dry season between April 15 and October 15, except if specifically approved by the Director of the Community and Economic Development Agency (CEDA), approved by the Project Geologist, and subject to all applicable wet weather stormwater management best management practices to minimize erosion set forth in this EIR. Construction would occur five days a week. Hours of construction would occur in accordance with the requirements of the City's standard Conditions of Approval (Improvement Measures). Major construction activities would include the following:

- Establishment of temporary construction road.
- Site stabilization and wetland protections for construction.
- Installation of site utilities.
- Installation of foundations and building construction.
- Permanent road construction.
- Permanent wetland and drainage course protections and enhancement.
- Installation of non site-specific landscaping.
- Construction of custom residences and final site-specific landscaping.

The project sponsor has the following objectives:

- Construct a high-quality, cost-effective, and economically feasible residential development for seven single-family houses and parking to meet the demands of the expanding Oakland economy and growth in the project area.
- Develop a project that is consistent with and enhances the existing single-family, hillside residential design character of the area, while preserving views.
- Complete geotechnical stabilization of the site and upslope properties.
- Improve stormwater management for the area.
- Improve wildland fire protection, including improved emergency vehicle access, weed abatement and fire hydrants.
- Enhance and protect the small on-site wetland and drainage course.
- Complete the project on schedule and within budget.
- Develop a project with minimal environmental disruption.
- Support local job creation by short-term construction jobs.

## D. SUMMARY OF ENVIRONMENTAL EFFECTS

This EIR includes analyses of the environmental effects of the proposed project, including application of the City's standard Conditions of Approval (Improvement Measures) and recommends potentially feasible mitigation measures to avoid or reduce potentially significant impacts to less than significant. All of the potentially significant impacts identified in the Initial Study and this Draft EIR could be avoided or reduced to less than significant with the mitigations identified in this Draft EIR.

## E. ENVIRONMENTALLY SUPERIOR ALTERNATIVE

With the implementation of the City's standard Conditions of Approval (Improvement Measures) and the mitigation measures, the proposed project would not have significant environmental effects. Of the three alternatives analyzed, the No Project Alternative would avoid all of the environmental effects of the proposed project, all of which would be reduced to less than significant under the proposed project through compliance with existing laws and regulations, and through best management construction practices that are incorporated into the project proposal. In the absence of the project, the site's existing conditions (unprotected wetlands, uncontrolled stormwater drainage, risk of land slides to upslope properties, fire hazards and expansive soils issues) would persist instead of being protected or redressed as they would under the proposed project. Thus, this alternative would avoid both the adverse changes of the proposed project that would be reduced to less-than-significant levels in the proposed project, as well as the beneficial effects. This alternative would not meet the project sponsor's objectives nor the City's goals of increasing housing or correction of existing site conditions listed above.

The Reduced Density Full-Project Site Alternative analyzes four residential sites on the seven-lot project site. This Reduced Density Full-Project Site Alternative would have several of the same beneficial effects as the proposed project (channeling drainage and limiting overflow, rectification of the soils and seismicity issues), would have the same or similar impacts in areas such as visual quality, biology, geology, hydrology, and noise, but would have approximately forty percent lower impacts in areas like population and trip generation that are proportionally related to the number of units built. As with the proposed project, this alternative's potentially significant impacts would be reduced to less-than-significant through compliance with existing laws and regulations, and through the use of best management construction practices that would be incorporated into the project proposal. Construction of four houses under this alternative – in contrast to the seven houses of the proposed project – would only minimally reduce environmental impacts and would not meet the project sponsor's objectives or Oakland's objectives in terms of increasing housing. Since CEQA does not allow the No Project Alternative to be designated the environmentally superior alternative, and since CEQA requires the designation of such an alternative, the Reduced Density Full-Project Site Alternative is the environmentally superior alternative.

A Reduced Density Original Four-Lot Alternative on the originally proposed four-lot subdivision is also examined. This alternative would have greater impacts than the proposed project due to the encroachment in the creek area. This alternative would have several of the same beneficial effects as the proposed project

(channeling drainage and limiting overflow, rectification of the soils and improved slope stability up to the end of Lot 4), would have the same or similar impacts in areas such as visual quality, biology, geology, hydrology, and noise, but would have approximately forty percent lower impacts in areas like population and trip generation that are proportionally related to the number of units built. As with the proposed project, this alternative's potentially significant impacts would be reduced to less-than-significant through compliance with existing laws and regulations, and through the use of best management construction practices that would be incorporated into the project proposal. Construction of four houses on the original four lots, compared to the proposed project with seven houses on seven lots, would only minimally reduce environmental impacts and would not meet the project sponsor's objectives or Oakland's objectives in terms of increasing housing.

## F. AREAS OF CONTROVERSY

This EIR focuses on the issues of aesthetics/visual quality, biological resources, geology and soils, hydrology and water quality, noise and growth inducement. All other potential environmental effects were found to be at a less-than-significant level with the implementation of the City's standard Conditions of Approval (Improvement Measures) which are incorporated into the project.

As described in more detail below, residents of the project neighborhood and in the surrounding urbanized area have expressed concern that: (1) the proposed project could adversely affect the biological resources of the project site including tree removal, construction adjacent to a delineated wetland and drainage course, and other species habitat, including Alameda whipsnake and raptors and other migratory birds, (2) the proposed project could affect views of other private residences in the area, (3) the proposed project could adversely affect the hydrology, soils and geology in the area, (4) construction of the proposed project could have adverse noise, vibration and air quality impacts, (5) gas and electric facilities that are located within and adjacent to the project site could be affected, and (6) cumulative conditions be adequately analyzed to assess potential impacts of the proposed project including the creeks and watersheds.

This EIR addresses all of these issues, and minimizes any impact to a less-than-significant level.

# II. INTRODUCTION

In accordance with the California Environmental Quality Act (CEQA), the City of Oakland analyzed the environmental effects of the proposed Kenilworth Residential Project to construct seven residences along with a range of site and infrastructure improvements. In compliance with CEQA, the results of that analysis are presented in this Draft Focused Environmental Impact Report (DFEIR). CEQA requires environmental analysis to identify and minimize the potentially significant environmental impacts that a project would have. All technical studies and reference materials used to prepare this Draft Focused EIR are available from the City of Oakland, Community Development Agency.

## A. PROJECT HISTORY AND ENVIRONMENTAL REVIEW PROCESS

Applications for the Kenilworth Project (PUD 04-195, TPM 8228 and CP 04068) were submitted in 2003 and deemed complete by the City in July 2004. An Environmental Evaluation was prepared, and after public hearings on April 20, 2005 and May 4, 2005, the Planning Commission determined that the project qualified for a Categorical Exemption pursuant to CEQA Guidelines Section 15332 (Infill Development Projects and approved PUD 04-195, TPM 8228 and CP 04068), with no modifications to the project or the staff's proposed Conditions of Approval. The Planning Commission's CEQA determination was appealed, and on July 19, 2005, the City Council granted the appeal, and directed that an Initial Study be prepared to determine whether a (Mitigated) Negative Declaration or Focused EIR should be prepared. The City Council also directed Planning Department staff to accept and process applications from the project sponsor for all related permits for infrastructure and design, including grading permit(s), encroachment permit(s) for Kenilworth Road, tree removal permit(s), design review and building permit(s) to minimize processing delay. No decisions on permits will be made until the Planning Commission certifies this additional CEQA evaluation and reauthorizes PUD 04-195, TPM 8228 and CP 04068. The City determined that a Focused EIR would provide be prepared pursuant to CEQA Section 15183 (see Appendix C – 15183. Projects Consistent with a Community Plan or Zoning), and this document is the public Draft Focused EIR for public review and comment.

Based on the extensive environmental evaluation of the Kenilworth Project completed prior to this Draft Focused EIR, uniformly-applied development policies and standards have been incorporated into the project as standard Conditions of Approval. Through this EIR process, the public will have additional opportunities

to review this analysis and comment. The applicant has voluntarily agreed that the Conditions of Approval, although they are not "mitigation measures" required by the EIR, will be included in the Mitigation Monitoring and Reporting Plan ("MMRP") prepared for this EIR, along with additional mitigation measures identified in this EIR, and will be enforceable as mitigation measures through conditions of approval.

This Draft EIR will be circulated for a 45-day public comment period. The City will then prepare a Final EIR. Consistent with CEQA Guidelines Section 15132, the Final EIR will contain a copy of each comment letter, responses to those comments, and any necessary revision to the EIR. When the City is satisfied that the Final EIR fully addresses the received public comments, it will consider the adequacy and completeness of the Final EIR.

After certification of the Final EIR the City will consider approval or denial of the proposed project and any alternative described herein (see CEQA Guidelines Section 15090-15093). If the City approves the proposed project with findings adopting some or all of the improvement and mitigation measures proposed herein, the applicant would be required to adhere to all adopted Conditions of Approval as set forth in such findings (see CEQA Guidelines Section 15091) as well as the mitigation measures identified in this EIR. Any future changes to the proposed project may be subject to additional environmental and planning review by the City.

More specifically, after the Final EIR has been certified by the City as adequate and complete under CEQA (Guidelines Section 15090), the following actions would be taken before the proposed project or an alternative could be formally approved and implemented.

- In taking action on the Project, the City must address and respond to each significant effect identified in the Final EIR. If the City chooses to approve the proposed project or an alternative despite possible significant environmental effects that might occur, the City must first adopt findings addressing (i) the feasibility of the mitigation measures proposed in the Final EIR and , if necessary, (ii) the feasibility of any alternative that would substantially lessen or avoid any significant effect that could not be substantially lessened by the adoption of feasible mitigation measures (CEQA Guidelines Section 15091(a)).
- The City must adopt a mitigation monitoring and reporting program (MMRP) to facilitate implementation of the mitigation measures. The MMRP will identify a responsible party for implementation, a party responsible for monitoring, and required timing (e.g., prior to issuance of grading permits, prior to start of construction, prior to occupancy, etc.) (CEQA Guidelines Section 15097).
- Should any significant environmental effects remain despite the adoption of feasible mitigation measures, the City must adopt a “Statement of Overriding Considerations” supported by substantial evidence in the public record that indicates why the City believes that the approved project’s

economic, social, or other benefits outweigh such significant environmental effects (CEQA Guidelines Section 15093).

Appendix B of this Draft Focused EIR contains the letters and comments received by the City of Oakland Community and Economic Development Agency (City) in response to the Notice of Preparation of the EIR that was sent to the State Clearinghouse on August 1, 2005, along with copies of the Initial Study. The City observed the 30-day scoping period in accordance with CEQA Guidelines Section 15082 to allow members of the public and public agencies to comment on the scope of the proposed analysis. The City received five comment letters during the 30-day scoping period from the following agencies and individuals: East Bay Municipal Utility District, Ralph Kanz, John R. Shordike, Janice Holve, Richard Grassetti with Frederick and Valerie Geier . In summary, the environmental issues raised are as follows, all of which are found to not be significant and have been addressed in the Initial Study and the Draft Focused EIR:

- An EIR should be prepared for the proposed project to fully comply with the California Environmental Quality Act.
- U.S. Fish and Wildlife Service and Department of Fish and Game should be consulted.
- The setting description of the project site and neighborhood should be accurately described.
- The baseline characteristics of the project site have been altered and the environmental analysis will need to be revised.
- The biological resources should be fully examined including the wetlands, habitat for endangered species (Alameda whipsnake), nesting birds, and other wild animals.
- Geological impacts of the project should be identified, including potential seismic impacts, potential landslides, grading and cut and filling.
- Hydrology and water quality impacts should be analyzed.
- Visual Quality of the project should be analyzed.
- Air Quality control measures during constructed should be identified.
- Growth Inducement should be addressed.
- Noise impacts of the project should be analyzed, including vibration from project construction.
- Land use discussion should be accurate and should include land use designations of the *General Plan*.
- Mitigation measures should be identified, particularly for impacts from noise, view shed issues, soil and geology issues, biological resources issues and zoning.
- A mitigation monitoring plan should be prepared and implemented.
- Construction impacts should be discussed including noise, removal of debris, air quality, fire prevention, traffic and parking.
- Alternatives should include a four-lot alternative.

- Cumulative impacts should be examined including creeks and watersheds.
- There should be greater protection of the creek area.

The Initial Study assessed the proposed project's potential impacts in the following areas: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and circulation, and utilities and service systems. The Initial Study identified a set of improvement measures representing the City's standard Conditions of Approval (Attachment A of the Initial Study) that would apply to the project regardless of the results of the Initial Study. The Initial Study also identified a set of specific potential impacts that would be discussed further in this Focused EIR. Those impacts were indicated in the Initial Study with a "TBD" code in the table listing each potential impact under each environmental topic and indicating whether the impact would be significant, less than significant, or no impact. Those impacts were in the broader environmental topics of aesthetics, biological resources, geology and soils, hydrology and water quality, and noise, and they are discussed in this Draft Focused EIR.

## B. TYPE OF DOCUMENT

This is a focused EIR prepared pursuant to CEQA Guidelines Section 15183. The Initial Study for the proposed project (see Appendix A) identified a limited set of potential impacts for subsequent assessment. The Initial Study prepared for the project, along with the City's standard Conditions for Approval that have been incorporated into the proposed project constitute Appendix A of this document.

The purpose of this Draft EIR is to inform the public, responsible and trustee agencies, and other interested parties of potentially significant environmental effects of the proposed project. The EIR also identifies ways to minimize potentially significant effects and describes reasonable alternatives to this project of seven residences. Three project alternatives are analyzed, the No Project Alternative (site remains vacant), the Reduced Density Full-Project Site Alternative (four instead of seven residences on the proposed project site), and a Reduced Density Original Four-Lot Alternative (four residents on the originally-proposed four lot subdivision).

# III. PROJECT DESCRIPTION & OBJECTIVES

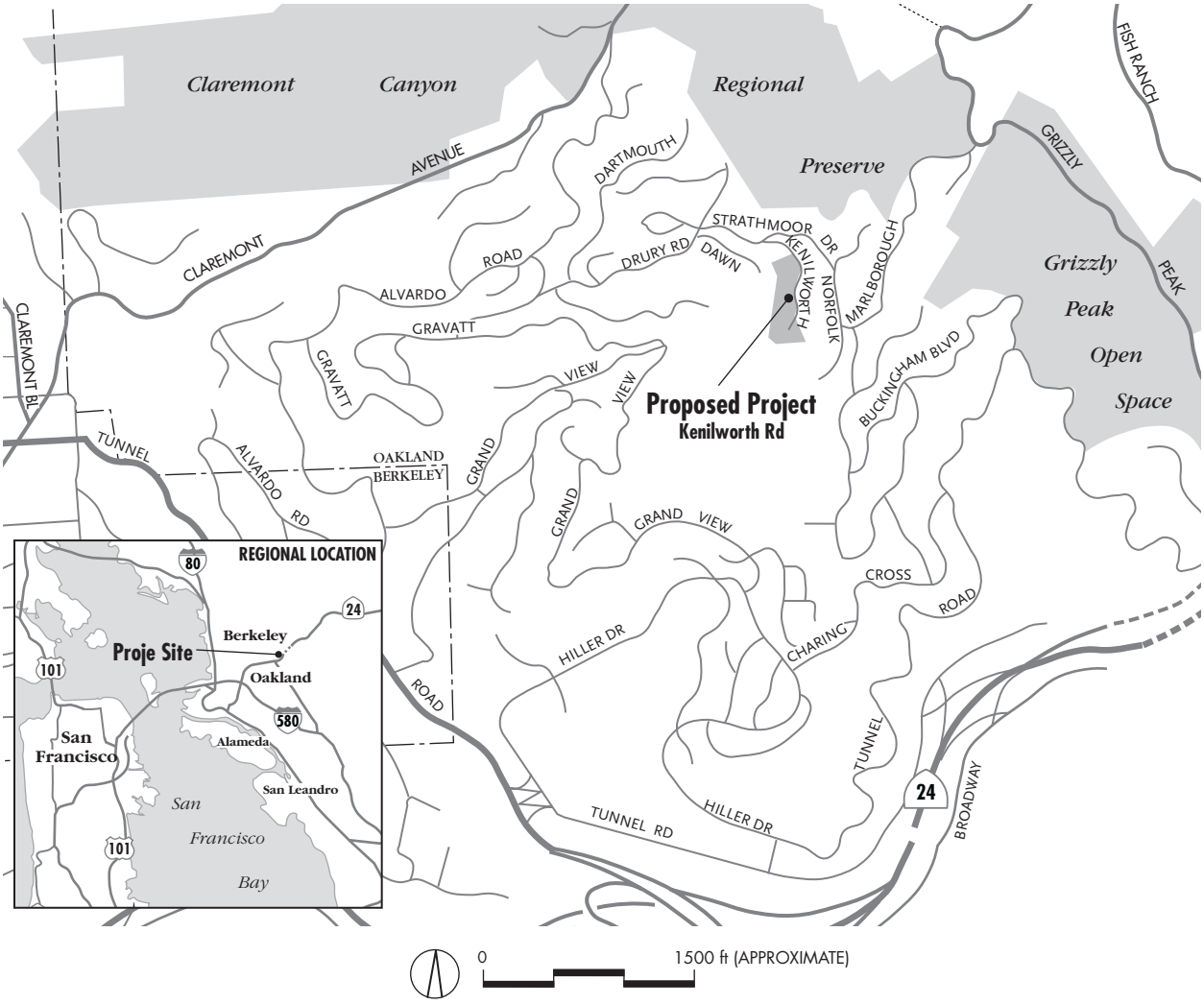
## A. LOCATION AND SITE DESCRIPTION

The proposed project is located in the hills of the City of Oakland, in the heart of the San Francisco Bay Area. The proposed project site is on Kenilworth Road, off of Strathmoor Drive, in the general area between Drury Road and Norfolk Road. The undeveloped site is situated immediately west (downslope) of the extension of Kenilworth Road, off of Strathmoor Drive. Figure 1, page 12, shows the location of the project.

The site is located in the North Hills Planning Area of the *Oakland General Plan*. The land use designation is Hillside Residential (single unit structures). The Zoning District is R-30, a one-family residential zone.

The site is approximately 2.9 acres in size, with the right-of-way for Kenilworth Road being 0.7 acre and the parcel area being the remaining 2.2 acres. The site is moderately steep to steep with slopes ranging from 3:1 (horizontal: vertical) to 1.5:1. Figures 2 and 3, pages 13 and 14, depict the proposed site plan and the existing topography. Photos of the project area (Figures 4, 5, 6, 7, 8, and 9 pages 15 through 20) illustrate conditions on the unimproved section of Kenilworth Road and on the hillside itself before and after the removal of the eucalyptus trees.

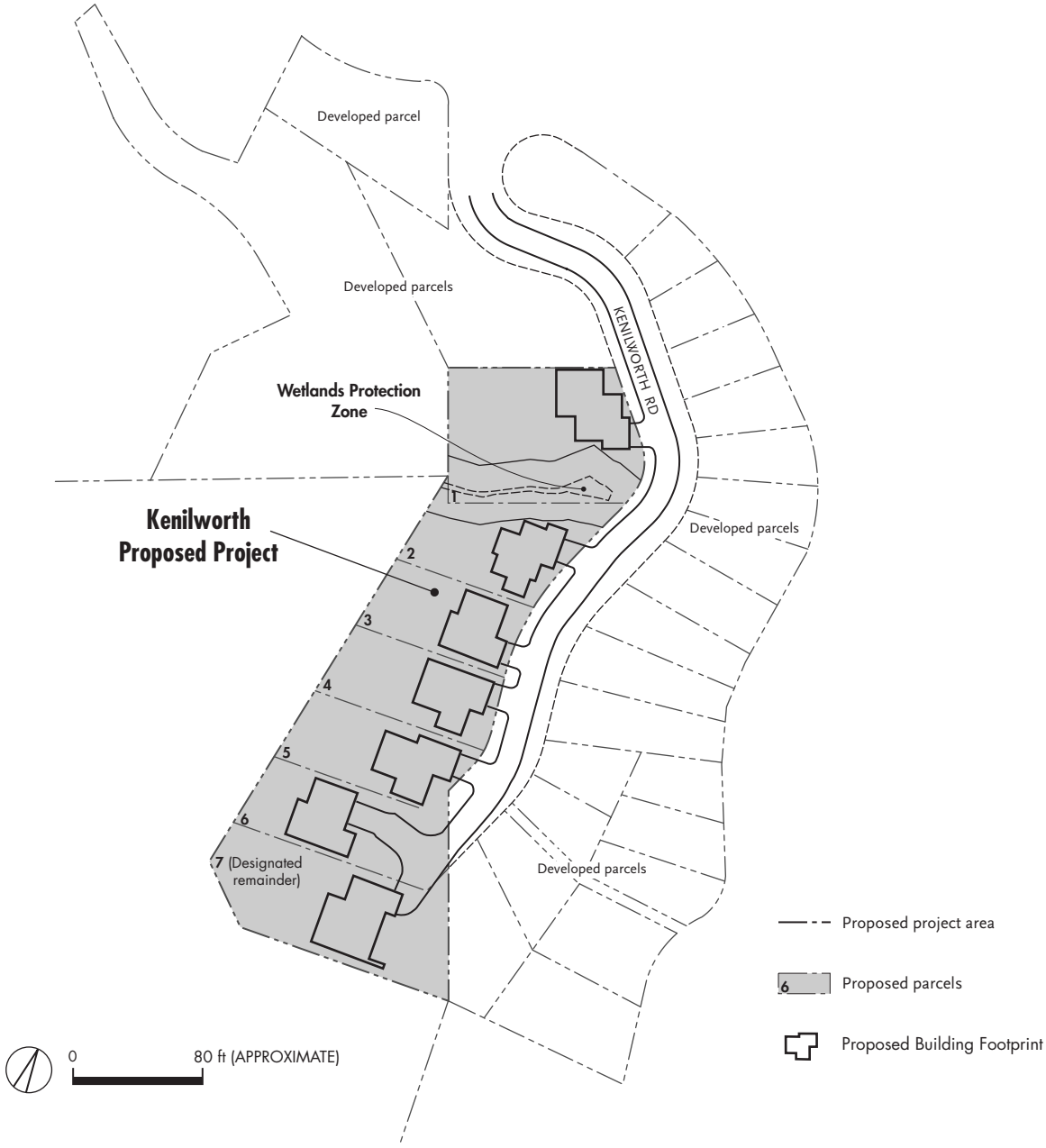
Land uses in the vicinity of the project site are low density, hillside residential, and have been for some time. A 1950 historic aerial photograph depicts housing in the vicinity of the project site, including housing as close to the project site as the intersection of Strathmoor Drive and Kenilworth Road. Current surrounding land uses are residential, including a residence on a hillside parcel located to the north at the end of the improved stretch of Kenilworth Road (approximately 200 linear feet from Strathmoor Drive). Residences lie on hillside lots to the east and uphill of the unimproved stretch of Kenilworth Road. Land located to the immediate south and west of the project site is in very low density residential. One private residence sits on 1.4 acre (within Dawn Estates) to the west, and another is situated on 39 acres to the west and the south of Kenilworth Road.




Source: During Associates

11·16·05

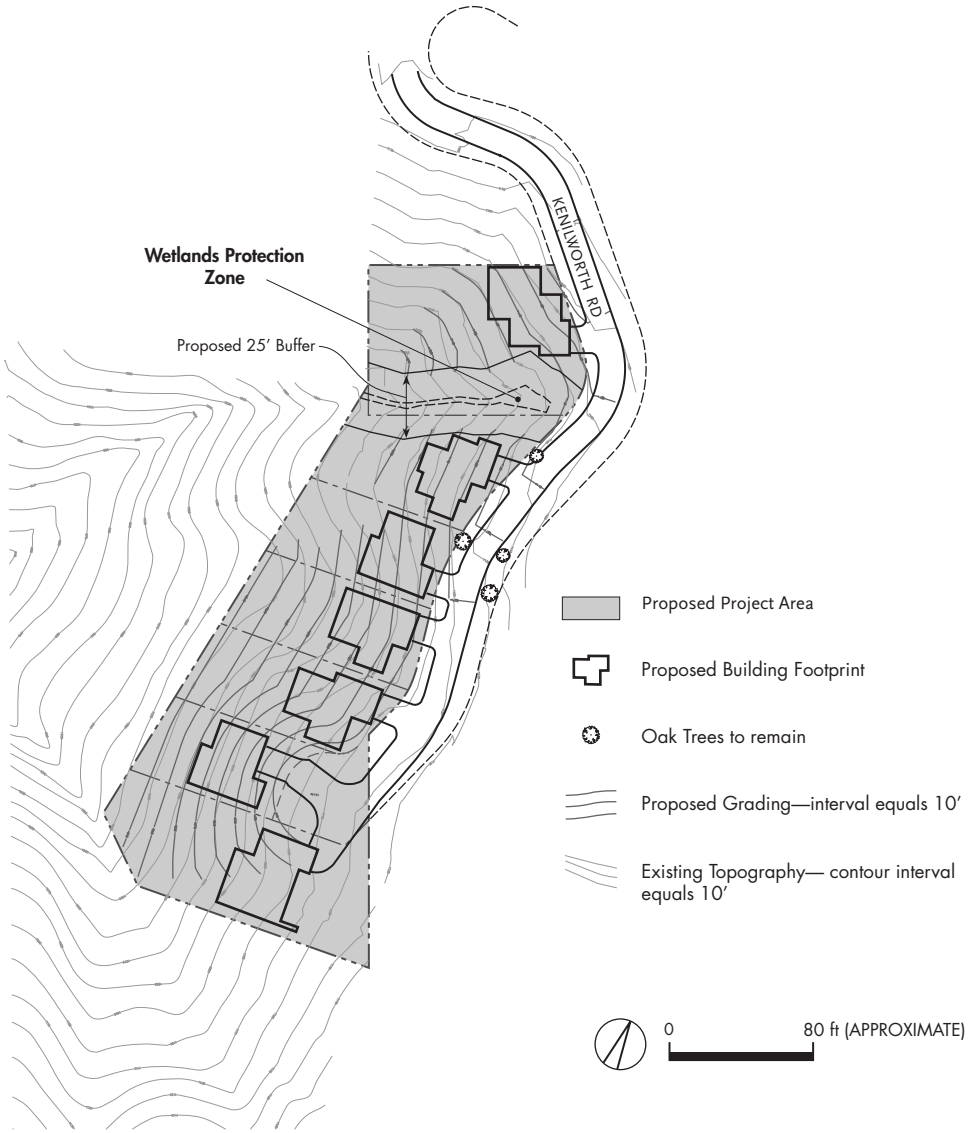
Proposed Project Location Figure 1




Source: During Associates, Moran Engineering, Inc.

10·5·05

Proposed Site Plan Figure 2




Source: During Associates, Moran Engineering, Inc.

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Site Plan Showing Existing Topography, Grading and Wetlands Protection Zone Figure 3


Stormwater concentration and diversion across Kenilworth Road to PUD North Site from nearby upslope properties.

Source: G. Borchard & Associates

11·27·05

Project Area Photo Figure 4

Typical conditions of adjacent areas located west of the PUD sites. Moderately dense stand of eucalyptus.

Source: G. Borchard & Associates

11·27·05

Project Area Photo Figure 5


Typical hillside development in the are of the PUD sites.

Source: G. Borchard & Associates

11·27·05

Project Area Photo Figure 6


Source: Eva Gero, 10-12-05

11·27·05

Project Site Photo Looking West Figure 7


Source: Eva Gero, 10-12-05

11·27·05

Project Site Photo Looking East Figure 8


Source: Eva Gero, 10-12-05

11·27·05

Project Site Photo Looking East Figure 9

## B. PROJECT PROPOSAL

The proposed project would construct seven single-family dwellings by means of a Planned Unit Development (PUD) No. 04-195 and a Tentative Parcel Map No 8228 to create seven lots. Existing lots 1 and 2 would be merged into one lot (Figure 2). Existing lot number 3 would remain, and existing lot 4 would be divided into four lots and a designated remainder for a total seven lots.

The site is located in the North Hills Planning Area of the *Oakland General Plan* with a Hillside Residential (single unit structures) land use designation. The zoning district is R-30, One-Family Residential Zone, S-14, Community Restoration Combining Zone, and S-18 Mediated Design Review Overlay Zone.

### 1. Project Components

The proposed project includes the following components and they are each described below in more detail:

- Development of project site for the footprints of seven single-family dwellings and construction of the seven single-family dwellings, including parking, and landscaping;
- Roadway improvements, including widening and paving the unpaved portion of Kenilworth Road and a deed restriction to prohibit further extension of the road;
- Wildland fire protection;
- Geotechnical stabilization of the site and of upslope properties;
- Post-construction stormwater management facilities; and
- Protection of a small on-site wetland and an on-site drainage course delineated by the U.S. Army Corps of Engineers (Appendix E), pursuant to Creek Permit No. 04068 and a Department of Fish and Game Section 1602 Lake and Streambed Alteration Agreement for the proposed 300 square feet of branch clearing, and establishment of a permanent creek buffer enforceable through deed restrictions.

#### ***a. Construction of Seven Single-family Dwellings.***

The construction of seven single-family dwellings would include the structures, site preparation, a sewage collection system, access and parking, and landscaping and screening.

- **Structures.** The project proposes construction of seven custom single-family dwellings. Except as otherwise provided in Section 17.122.110(E) of the Oakland *Planning Code*, the Planned Unit Development Regulations permits a waiver or reduction of the minimum height and yard requirements. Pursuant to the PUD regulations the normally required height and yard requirements would be waived. Proposed building heights are a 35-foot maximum at finished grade and a 20-foot

maximum at the Kenilworth Road property line (at the midpoint). These heights are similar to those of surrounding structures (including several that are up to 40 feet that were developed under previous zoning requirements). The buildings would be supported by piers and a grade beam foundation system. Setbacks would be similar to those of existing development, and meet the needs of wetland and drainage course preservation. The front of the property on Kenilworth Road would have a minimum setback of five feet and a rear setback of 15 to 65 feet. Side yard setbacks would be a minimum of five feet. Each of the seven lots may include two 19-foot maximum curb cuts to allow for separate garage access. Other than the proposed height, setbacks, and curb cuts, the development shall be subject to the regulations generally applying in the R-30 and S-18 Zones in which it is located. Design review by the Planning Department would be required in accordance with the City's Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone.

- **Sewage Collection.** The proposed project would include the installation of a gravity main within the entire Kenilworth Road public right-of-way and flow into a privately maintained lift station located in the private access easement portion of the Kenilworth cul-de-sac. At that point the wastewater would be transported under pressure up grade to the public sewer main located in Devon Way via 5-foot private sewer and utility easement. This system would avoid installation of steep hillside leach fields. In addition, two neighborhood homes could abandon their leach fields and connect to this system.
- **Access and Parking.** Kenilworth Road would be the only access to all of the proposed lots. It would be widened to 20 feet, and extended 590 feet (see subsection on Road Widening, below). Parking would be on grade and on wooden structures with concrete decks. Each dwelling would include two off-street parking spaces.
- **Landscaping and Screening.** The project sponsors will prepare a Landscape Plan that conforms to City Development Standards for landscape coverage, screening and fire prevention. The Landscape Plans will address the following: landscaping types, screening types, landscaping walls, revegetation of slopes, preservation of mature trees, and wetland and drainage course enhancement, as appropriate.

### ***b. Kenilworth Road Improvements (590 linear feet)***

Kenilworth Road is a public road, and subject to obstruction, P-Job and encroachment permits from the City. Approximately 310 linear feet of Kenilworth Road are improved from its intersection with Strathmoor Drive to the project site boundary. The project as proposed would improve another 590 linear feet of this roadway, including stormwater management and emergency access features. The right-of-way would be re-graded to achieve appropriate cross-slopes and widths to meet municipal standards. Compacted sub-base would be overlain with aggregate base, and then with asphalt. Retaining walls would be constructed at the edge of the right-of-way where required to achieve acceptable slope stability.

- **Stormwater Management.** Swales would collect stormwater on the upslope side of the roadway, and transport runoff to inlets protected by retaining walls. Existing upslope landscaping would be preserved as much as possible through design.

- **Emergency Access.** Emergency access to the area would be via the entire 900-foot length of improved Kenilworth Road (existing 310 linear feet, and 590 linear feet improved by the proposed project). The project would include a dedicated hammerhead[1] turnaround, unobstructed at all times, and designed to City standards, for emergency access vehicles. The 900-foot length of Kenilworth Road exceeds the maximum length allowed for a dead-end road in the City's fire hazard area, and at the request of the City's Fire Prevention Bureau the Applicant has agreed to additional features to enhance fire safety (see Wildland Fire Protection section, below) (City of Oakland 2002).
- **Deed Restriction.** A five-foot (5 ft) deed restriction as shown on TPM 8228 and will be recorded with the Parcel Map that will prohibit the future extension of Kenilworth Road.
- **Gas and Electricity.** Utility lines to the project site will be connected to existing lines and upgraded. Construction permits would identify the existing gas/electricity lines.

### *c. Wildland Fire Protection*

The project site is located in the fire hazard area. This area was burned in the Oakland Firestorm, and at least once prior to the Firestorm. In addition to improved emergency access, described above, the proposed project would include the following features recommended by the Fire Prevention Bureau to reduce the current and future risk from fire to the proposed houses and surrounding properties:

- Four fire hydrants on approximately 300-foot centers would be installed, with adequate fire flow to be confirmed by EBMUD.
- The parcels would be landscaped with plant species that comply with the City's vegetation management program, intended to reduce fire hazard; in the area of the wetland, vegetation would enhance the wetland regime without introducing a fire hazard.
- Most on-site eucalyptus have been removed, and additional eucalyptus trees may be removed and/or trimmed to eliminate or substantially reduce fuel loads.
- Houses will be outfitted with City-approved fire sprinkler systems.

### *d. Geotechnical Stabilization*

Geotechnical stabilization would occur in accordance with the recommendation of a Certified Engineering Geologist and Geotechnical Engineer and would include the following features and activities: retaining walls, restrained retaining walls, demolition and stripping, subgrade preparation, keyways, slope stabilization, subsurface drainage, and engineered fill.

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[1] A Hammerhead is a "T" shaped turnaround for lightly traveled residential streets, and creates less impervious cover compared to a circular cul-de-sac.

- **Retaining Walls.** To reduce the potential for triggering slide movement on the upslope properties adjacent to the project site, a retaining wall would be constructed along the north or upslope side of Kenilworth Road. Construction would occur prior to grading and excavation. The wall is designed to resist lateral loads exerted by uphill landslide debris and would be constructed to retain soil above grade and would continue below-grade to bedrock. Retaining walls would be provided with drainage facilities to prevent the build-up of hydrostatic pressures behind the walls.
- **Restrained Retaining Walls.** In conjunction with construction of homes and driveways (see above), retaining walls would be restrained and not free to deflect at the top of the wall. Walls and abutments would be provided with backdrain facilities.
- **Demolition and Stripping.** Grading would begin with removal of any buried pipes, leachfields, debris piles, trees and associated root systems, and other deleterious materials. Existing non-engineered fill, vegetation and soft or compressible soils would be removed as necessary. Areas to receive fill, slabs-on-grade, or structural foundations and those areas that serve as borrow for fill would be stripped of existing vegetation. Site strippings (soils) would be reserved for replacement on graded slopes prior to installation of proposed erosion control measures.
- **Subgrade Preparation.** Following demolition, clearing and stripping, areas to receive fill, slabs-on-grade or pavement would be scarified to a depth of at least 12 inches, then moisture conditioned, and compacted.
- **Keyways.** After stripping, grading would begin with construction of keyways and subdrains. Fills would be adequately keyed into firm natural materials unaffected by shrinkage cracks. Filling above keyways would be benched into firm competent soil or bedrock and drained as appropriate.
- **Slope Stabilization.** The identified landslides, which pose a potential hazard to the proposed project and neighboring properties, would be removed and replaced. Where removal and replacement of a landslide is recommended, the excavation would be observed by the project Engineering Geologist to verify complete removal of the landslide debris. A keyway and subsurface drainage would be provided as recommended by the various geo-technical reports (soils report, remedial grading plans, hydrology report geo-tech report) and a geologist's summary review of the reports.
- **Construction of Subsurface Drainage Facilities.** Subsurface drainage systems would be installed in keyways and landslide removal areas. A trench sub-drain would then be installed through the center of the sub-excavation. The wetland and drainage course would be protected and not disturbed during this activity. One or more subdrains could be directed to filter subsurface water to the wetland to enhance hydrology of this feature.
- **Engineered Fill.** Import materials, if any are needed, must meet requirements contained in Section 2.02B, Part I of the Guide Contract Specifications. The Geotechnical Engineer would be informed if importation of soil is contemplated. A sample of the proposed import material would be submitted to the Geotechnical Engineer for evaluation at least 72 hours prior to delivery at the site. Fill material, generally comprising retained stripped materials, would be moisture conditioned and compacted. Maximum dry densities and moisture contents would be determined in accordance with ASTMD-1557, latest edition. Fills would be placed in lifts not exceeding 8 inches or the depth of penetration of the compaction equipment used, whichever is less.
- **Graded Slopes.** Graded cut and fill slopes would be designed and constructed at average gradients of 2:1 (horizontal: vertical). All cut slopes would be examined by the Engineering Geologist during slope grading for adverse bedding, seepage, or bedrock conditions that could affect slope stability;

over-excavation of adverse geologic conditions could require over-excavation and re-construction of these slopes.

***e. Post-Construction Stormwater Management***

The project will have less than one-acre of new impervious surface (approximately 43,093 square feet), as shown in Figure 10 on page 26.[2] In order to reduce the amount and rate of site runoff, and to reduce the amount of pollutants in site runoff, design would include post-construction stormwater controls consistent with the Alameda Countywide Clean Water Program (NPDES Permit No. CAS0029831) ("NPDES Permit").[3] To slow the rate of stormwater from upslope properties and the rate of runoff, upslope v-ditches would discharge to one of four inlets located on the upslope margin of Kenilworth Road. The inlets would each be connected to a 48-inch diameter pipeline located beneath the roadway. These pipes would serve to detain runoff. They would transport runoff from the roadway west across the project site to energy dissipaters located near the western boundary of each project site. The energy dissipaters would spread water slowly across a geotextile and rock basin, where runoff would infiltrate or would slowly dissipate to downslope properties.

***f. Wetland Enhancement and Preservation***

The small (0.12-acre) wetland area located on the project site offers opportunities for combining enhancement of the wetland with management of subsurface water. The project sponsors propose to direct one subsurface drain to a location above the wetland (not within the delineated boundary of the wetland), where it would filter subsurface water downslope, underground, to the wetland area. Such drainage would increase flushing and provide a healthier wetland regime.

- **Setbacks and Protection – Deed Restriction.** Both the wetland and drainage course would be protected during construction and permanently by means of a deed restriction. During construction, a minimum four-foot wetland/riparian protection zone would be established and fenced off by an

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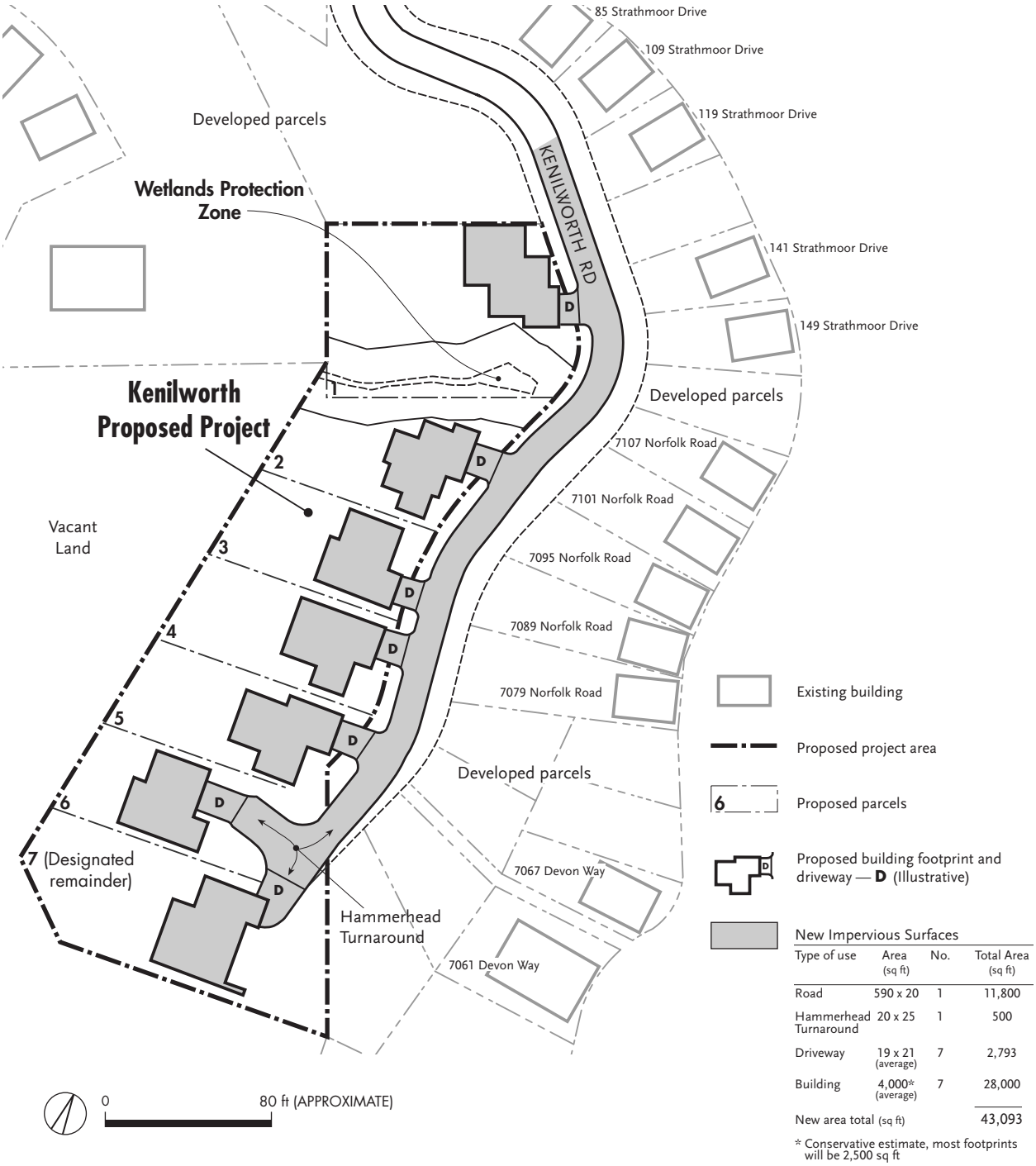
[2] The calculations shown in Figure 10 are extremely conservative, for instance the residential footprints are assumed to be 4,000 square feet when actually they would be around 2,500 square feet since the homes constructed are likely to be two-story rather than one-story ranch-style homes.

[3] As of February 15, 2005, the City is implementing new "C.3" (New Development and Redevelopment Performance Standards) stormwater compliance for Group 1 Project (projects that include one acre or more of new impervious surface). These C.3 requirements do not apply to the Project because at full build-out, including houses, driveways and Kenilworth Road, the Project would result in less than one acre of impervious surface.




New Impervious Surfaces

| Type of use | Area (sq ft) | No. | Total Area (sq ft) |
|---|---|---|---|
| Road | 590 x 20 | 1 | 11,800 |
| Hammerhead Turnaround | 20 x 25 | 1 | 500 |
| Driveway | 19 x 21 (average) | 7 | 2,793 |
| Building | 4,000* (average) | 7 | 28,000 |
| New area total (sq ft) | | | 43,093 |

* Conservative estimate, most footprints will be 2,500 sq ft

Source: During Associates, Moran Engineering, Inc.

11·23·05

Proposed Project—Impervious Surfaces Figure 10

- inner silt fence and an outer construction fence. No ground disturbing activities would occur within the outer construction fence, which would be located a minimum of four feet from the edge of the delineated wetland or bank of the drainage course. To achieve permanent wetland and drainage course protection, the proposed project would establish a minimum 20-foot and maximum 25-foot buffer from the edge of the delineated wetland or bank of the drainage course.

- **Deed Restriction.** The conditions of a deed restriction will be included in deed of each lot that contains a portion of the creek buffer. The language of the deed restriction, to be reviewed and approved by the City, will prevent activities that could adversely affect wetlands or creeks from occurring within the conservation boundary. The applicant has also prepared a Creek Protection Plan pursuant to the City's Creek Protection Ordinance. Vegetated enhancement of the wetland and drainage course would occur outside the delineated limits of the actual features, but some enhancement may occur within the setbacks to stabilize these areas, and further develop the natural wetland and riparian regimes. All enhancement of the drainage course would occur in accordance with the Landscape Plan and the site-specific Creek Protection Plan.

## C. CONSTRUCTION

Improvement and construction of Kenilworth Road is expected to take six months. Construction of the custom single-family residences would occur over approximately two years, pending permit approvals, and could take as long as five years. Grading that is proposed on-site would be limited to the dry season between April 15 and October 15, except if specifically approved by the Director of CEDA, approved by the Project Geologist, and subject to all applicable wet weather stormwater management best management practices to minimize erosion.

Major construction activities would include the following:

- Establishment of temporary construction road.
- Site stabilization and wetland protections for construction.
- Installation of site utilities.
- Installation of foundations and building construction.
- Permanent road construction.
- Permanent wetland and drainage course protections and enhancement.
- Installation of non site-specific landscaping.
- Construction of custom residences and final site-specific landscaping.

During construction, the number of personnel would vary widely, from a high of 20 personnel during building erection, to a low of four personnel. Construction methods are expected to be standard for hillside

developments, and importation of specialized construction personnel from outside the San Francisco Bay Area would not occur. Construction would occur five days a week. Hours of construction would occur in accordance with the requirements of the Oakland Noise Ordinance.

## D. REQUIRED PERMITS AND APPROVALS

Prior to undertaking site preparation or construction of improvements identified in this chapter, the project sponsors may be required to obtain permits or approvals, or to engage in consultation with jurisdictional agencies. Table 1 identifies potential discretionary regulatory requirements, and identifies agencies that may rely on the contents of this document to inform their discretionary decision-making process. This list may be modified from time to time, and the absence of an activity or an agency from the list does not preclude its use of this document for purposes of granting permits or approvals, or for engaging in consultation.

**Table 1**
**Permit, Approval, or Consultation Processes that May Rely on the Contents of this Document**

| Agency | | Permit/Approval/Consultation |
|---|---|---|
| **Federal** | U.S. Army Corps of Engineers | Wetlands Delineation (File No. 27592S) |
| **State** | State Water Quality Control Board | Compliance with General National Pollution Discharge Elimination System (NPDES) Permit for General Construction |
| | Department of Fish and Game | Issuance of replacement 1602 Lake and Streambed Alteration Agreement (300 square feet of branch clearing) (to update expired File No. 1600-2003-5134-3) |
| **Local** | City of Oakland | Planned Unit Development (PUD) No. 04-195<br>Parcel Map No. 8228<br>Creek Permit No. 040608<br>Residential Design Review<br>Tree Removal Permit(s)<br>Grading Permit(s) including possible wet weather grading<br>Encroachment, Obstruction, and P-Job Permits (Kenilworth Road) |

## E. PROJECT OBJECTIVES

The project sponsor has the following objectives:

- Construct a high-quality, cost-effective, and economically feasible residential development for seven single-family houses and parking to meet the demands of the expanding Oakland economy and growth in the project area.
- Develop a project that is consistent with and enhances the existing single-family, hillside residential design character of the area, while preserving views.
- Complete geotechnical stabilization of the site and upslope properties.
- Improve stormwater management for the area.
- Improve wildland fire protection, including improved emergency vehicle access, weed abatement and fire hydrants.
- Enhance and protect the small on-site wetland and drainage course.
- Complete the project on schedule and within budget.
- Develop a project with minimal environmental disruption.
- Support local job creation by short-term construction jobs.

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# IV. ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION

## A. AESTHETICS

### 1. Introduction

This section describes the existing visual setting and evaluates the visual effects potentially created by the Project. The analysis addresses two main issues: (1) whether the project would have a substantial adverse effect on a scenic vista, and (2) whether the project would substantially degrade the existing visual character or quality of the site and its surroundings. The Initial Study concluded that the project would not have significant impacts on scenic resources nor on light and glare (see Appendix A – Initial Study). The results of the assessment are that the two impacts noted above would not be significant and that mitigation measures would not be required.

### 2. Approach and Methodology

Information in this section is based on the City of Oakland land use controls as described in the following documents: (1) the City of Oakland *Planning Code*, (2) "Design and Bulk Review and Criteria and Guidelines for Hillside Development," (3) Section 17.122.110(E) of the Oakland *Planning Code*, the Planned Unit Development Regulations, and (4) Interim Design Review Manual for One- and Two-Unit Residences. All documents are available for public review between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Thursday and Friday, and 9:30 a.m. to 4:00 p.m. on Wednesday at the City of Oakland Community and Economic Development Agency, 250 Frank Ogawa Plaza, Suite 3315, Oakland.

### 3. Setting

The proposed project site is located in the hills in the northern portion of the City of Oakland. Terrain of the project site and surrounding area is moderately steep to steep. Homes located upslope of the project site enjoy scenic vistas of San Francisco Bay; the project site is well below the line-of-sight of these vistas, and

do not affect views of neighboring residences. The project site is not visible from a state-designated scenic highway or scenic route. The project site and parcels adjacent to the south and west are undeveloped in a relatively natural state, and provide nearby residences long-term foreground and mid-ground views of a pleasant natural setting within a broader low-density urban visual context. The project site is not lighted; but nearby houses and local streets include nighttime security and safety lighting.

## 4. Impacts and Mitigation

### *a. Standards of Significance*

The proposed project would have a significant aesthetic effect if any of the following criteria are met:

> ***Criterion 1*** *– Have a substantial adverse effect on a scenic vista.*
>
> ***Criterion 2*** *– Substantially degrade the existing visual character or quality of the site and its surroundings.*

The following section presents the project's potential impacts relative to each of these criteria.

### *b. Assessment*

**Impact Aesthetics – 1** *(Criterion 1 – Have a substantial adverse effect on a scenic vista)*: The project site is visible from upslope residences that enjoy vistas of San Francisco Bay, Golden Gate Bridge, Bay Bridge, downtown Oakland, or San Francisco Skyline. In addition, the project site would be visible from various downslope locations with views of the Oakland hills. The site is not within a formally designated public view corridor nor block a formally protected scenic vista. Thus, the proposed project would not affect formally protected public views or vistas. As a result, the impact would be less than significant and mitigation measures would not be required.

The proposed project's seven single-family residences could block views of a portion of the sky from some upslope and downslope locations visible from private residences, with the blockage decreasing with distance from the site. *The City Interim Design Review Manual* stipulates that an obstruction of ten degrees or more (of the sight line at a seated eye level) would be considered a view impact. The roofs of the proposed houses as well as street lights along Kenilworth Road would be located below the line-of-sight of the vistas from the nearby upslope residences. The seven houses would not obstruct the views of upslope residences ten degrees

or more and a change in such views would not be expected. The project could be visible from some private views looking east towards the Oakland Hills. This visual change would be an unavoidable consequence of the project and may be perceived by some nearby residents as an undesirable change the individuals whose views would be changed. This reduction or blockage of private views is not considered a significant impact, and no mitigation measures are warranted.

**Impact Aesthetics – 2** *(Criterion 2 – Substantially degrade the existing visual character or quality of the site and its surroundings)*: The proposed project would construct low-density custom single-family residences that would be designed to be visually compatible with adjacent and surrounding residential development. Design would comply with the requirements of City of Oakland development standards of the *Planning Code*, and will be subject to future detailed design review. View protection will be considered by the City for all existing residences abutting the project site or directly across the street and during Design Review, design techniques may be recommended for the project that would affect the proposed building's height, siting, massing or depth in order to maintain views from neighboring properties.

As discussed in more detail in Section 9. Land Use and Planning, Changes to the *Planning Code* or Zoning Map in the Initial Study (see Appendix A), the proposed project would be developed through the Planned Unit Development (PUD) provisions of the *Planning Code*. This provision provides flexibility to develop a proposal that is customized to site-specific circumstances to meet or exceed design standards that would otherwise apply through the *Planning Code*.

Further, a PUD requires Planning Commission approval, which itself allows for project-specific requirements above and beyond those existing in the *Planning Code*. One of the conditions of a PUD, in addition to those of a conditional use, is that the development will be well integrated into its setting, will not require unnecessary earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.

In particular, the design of the proposed project would be in accordance with and follow the requirements of the "Design and Bulk Review and Criteria and Guidelines for Hillside Development," and *The Oakland Design Review Manual.* In general, these requirements address the following types of design issues:

- Building orientation that enhances and does not disrupt the neighborhood development pattern.

- Heights that minimize or avoid view blockage.
- Massing and forms that fit and enhance the surrounding environment through close proximity of living spaces to grade, efficient use of space within the building envelope, avoidance of monolithic or otherwise overwhelming building massing, use of modest scales of walls near abutting properties.
- Building siting and massing that allow for views over, around, through and/or between structures.
- Stepping buildings down a hillside to maintain a view corridor.
- Minimizing the visual impact of garages and driveways.
- Outdoor spaces that are integrated into the overall design of the residence, that reinforce natural landforms and provide visual openness (courtyards, etc.).
- Reasonable effort to minimize privacy impacts from upper-level decks or windows on primary living spaces of residential lots abutting the sides or rear of the project site.
- Solar access to actively used outdoor and indoor areas of abutting residential properties shall be maintained.
- On hillsides, open spaces shall reinforce natural landforms, provide for visual openness between houses and include livable outdoor areas such as courts, yards or terraces at or near grade.
- Hillside projects shall use methods that blend with the hillside setting and minimize the building's prominence.
- Building and site design that integrate space, form and circulation (levels stepping down a site, roof and walls treated as planes with horizontal roof planes "floating" over walls, figuratively carved walls, enclosing stepped courtyards on a hillside site with two simple components of building mass).
- Architectural forms that use deep recesses, overhangs, varied roof eave lines, and similar techniques to reduce bulk and add visual interest. The architectural composition of forms should be well related to one another and the site in proportion, scale, geometry, and style.

Except as otherwise provided in Section 17.122.110(E) of the Oakland *Planning Code*, the Planned Unit Development Regulations permit a waiver or reduction of the minimum height and yard requirements. Pursuant to the PUD regulations the normally required height and yard requirements would be waived.

Based on preliminary design work, building heights of the proposed project would be a 35-foot maximum at finished grade and a 20-foot maximum at the Kenilworth Road property line (at the midpoint), which is lower than several houses in the area built to 40 feet under previous zoning requirements. These heights are similar to those of surrounding structures and they would not block views from existing residences. Anticipated setbacks would be similar to those of existing development, and would be developed to meet the needs of wetland and drainage course preservation. Preliminary design ideas for the front of the property on Kenilworth Road are to have a minimum setback of five feet and a rear setback of 15 to 65 feet. Side yard setbacks would be a minimum of five feet. Each of the seven lots may include two 19-foot maximum curb cuts to allow for separate garage access. Other than the proposed height and setbacks, the development shall

be subject to the regulations generally applying in the R-30 and S-18 Zones in which it is located. Design review by the Planning Department would be required in accordance with the City's Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone.

As new construction, the proposed project would be subject to the more extensive, public design review requirements of Oakland Municipal Code Chapter 17.147, intended to protect nearby properties from, among other things, adverse effects of project bulk or mass on existing views. As such, the proposed project would not be expected to substantially degrade the existing visual character or quality of the site or its surroundings. The impact would be less than significant and mitigation measures would not be required.

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# B. BIOLOGICAL RESOURCES

## 1. Introduction

This section describes the existing setting for biological resources and evaluates the associated impacts potentially created by the Project. The analysis assesses the potential for significant impacts to biological resources (see list of significant impact criterion subsection 4. Impacts, below). The main conclusions of the analysis are that potential impacts to special status nesting birds, other special status animals, and trees are potentially significant and would require mitigation measures to avoid or minimize such impacts.

## 2. Approach and Methodology

Information in this section is based on a number of biological studies and assessments begun in 2001 and supplemented by more recent 2005 field studies. References to these studies are made in the following discussion and the full citations are in Chapter VII, References. All documents are available for public review between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Thursday and Friday, and 9:30 a.m. to 4:00 p.m. on Wednesday at the City of Oakland Community and Economic Development Agency, 250 Frank Ogawa Plaza, Suite 3315, Oakland.

## 3. Setting

The project site is undeveloped hillsides and a minimally improved roadway. In order to establish the biological setting of the project site, literature research and field surveys were conducted. The following description of biological setting is based on these efforts (LSA 2001; Olberding Environmental 2003a, 2003b, 2003c, 2005; and TOVA Applied Science & Technology 2005).

Prior to field surveys, the California Natural Diversity Data Base (CNDDB) and the California Native Plant Society's (CNPS) Electronic Inventory of Rare and Endangered Plants of California were reviewed to identify special-status species or communities that could occur in the Berkeley-Oakland Hills. The CNDDB was searched for the four USGS 7.5 minute quad areas around Kenilworth Road: Briones Valley, Richmond, Oakland East, and Oakland West. The CNPS Inventory was used to search for all special-status

plant species that could potentially occur in Alameda County. The results of the CNPS Inventory search were refined to include only plants that occur in the Berkeley-Oakland Hills according to the *Annotated Checklist of the East Bay Flora* by Dr. Barbara Ertter, curator of Western North American Flora in the University and Jepson Herbarium at the University of California, Berkeley.

The entire 2.9-acre project site was surveyed for aquatic resources and special status species habitat as described in the *Results of Preliminary Biological Survey, Kenilworth Road Property, Oakland, CA,* by LSA Associates, Inc. 2001, as augmented by Olberding (2003b, c, 2005) and TOVA Applied Science & Technology (2005).

Potential jurisdictional waters of the United States, including wetlands, were identified. The extent or boundary of wetland habitats was defined using the 1987 *Corps Wetlands Delineation Manual.* The following descriptions of vegetative communities, plants, and wildlife are from *Results of Preliminary Biological Survey, Kenilworth Road Property, Oakland, CA,* by LSA Associates, Inc. 2001, as augmented by Olberding (2003b, c, 2005) and TOVA Applied Science & Technology (2005). The description of potential wetlands and waters of the U.S. is from *Location of Areas Potentially Subject to U.S. Army Corps of Engineers Jurisdiction, Wetland/U.S. Waters Delineation for the Kenilworth Property,* by Olberding Environmental, Inc. 2003.

**Vegetative Communities.** Kenilworth Road has been graded across a moderately steep to steep slope. It is a dirt road traversing the upslope boundary of the project site. Above Kenilworth Road are the steep backyards of houses located on Strathmoor and Norfolk drives and on Devon Way. The vegetation cover on the project site is a result of the 1991 fire and subsequent revegetation activities after the fire when a helicopter broadcasted over a ton of seeds over much or all of the burn area (Libby and Rodrigues 1992). The seed mixture consisted of three non-native plants and three native plants. The non-native plant seeds were Zorro annual fescue (*Festuca megalura*), Hykon rose clover (*Trifolium hirtum*), and soft chess (*Bromus hordeaceus*). The three native plant seeds were California poppy (*Eschscholzia californica*), blue lupine (*Lupinus* ssp.), and blue wildrye (*Elymus glaucus*). These species formed the initial vegetation cover on the site after the 1991 burn (Libby and Rodrigues 1992). Large areas of the original post-burn revegetation, however, remain as part of the landscape.

Vegetation cover on the project site consists of five types of plant communities: eucalyptus forest which has been removed as of August 2005, formerly landscaped area, riparian scrub, northern coastal scrub, and

perennial grassland with ruderals. With the exception of the grassland, these vegetation types are represented by small patches.

- *Eucalyptus Forest*—Large stands of blue gum (*Eucalyptus globulus*) are located to the south and west of the project site. The understory generally comprises a duff of fallen leaves and other plant debris. Eucalyptus trees on the center of the project site, which are not protected by the Tree Ordinance, were removed in August 2005 after the raptor and migratory bird nesting season.
- *Remnant Landscaped Area with Ruderal Plants*—A small strip of the project site located upslope and within the right-of-way of Kenilworth Road contains a few remnant horticultural plants such as agave and ruderal plants such as milk thistle (*Silybum marianum*), poison hemlock (*Conium maculatum*), and dove's foot geranium (*Geranium molle*).
- *Riparian Scrub*—A patch of riparian vegetation consisting of arroyo willow (*Salix lasiolepis*) with a small number of other species is present in the approximate center of the project site. Other plants occurring in the willow thicket include California blackberry (*Rubus ursinus*), poison oak (*Toxicodendron diversilobum*), and western bracken fern (*Pteridium aquilinum*). At the head of the willow thicket is a small patch of wetland vegetation that includes spreading rush (*Juncus patens*), umbrella sedge (*Cyperus eragrostis*), and common California aster (*Aster chilensis*).
- *Northern Coastal Scrub*—Below and slightly to the north of the riparian vegetation is a patch of northern coastal scrub about 1,200 square feet in size. The coyote brush (*Baccharis pilularis*) that defines northern coastal scrub is accompanied at this site with blue-blossom (*Ceanothus thrysiflorus*).
- *Creeping Wild-Rye Grassland with Ruderal Vegetation*—The majority of the project site contains ruderal grassland dominated by the moisture-loving creeping wild-rye (*Leymus triticoides*). Another common native in the grassland is western bracken fern. Ruderal plants in the grassland include thistles (milk thistle, bull thistle [*Cirsium vulgare*], Italian thistle [*Cardaus pycnocephalus*], and yellow star thistle [*Centuarea solstitialis*]), mustards (*Brassica* sp.), poison hemlock, and Canary Island broom (*Genista canariensis*). Shrubby species scattered in the grassland include coyote brush, California blackberry, and poison oak.

**Candidate, Sensitive, or Special-Status Plants.** Candidate, sensitive, or special-status plant species were not identified during field surveys of the project site, and all three of the project's biologists have concluded that conditions at the project site are not likely to support such plant species. The eucalyptus trees that were removed, creeping wild-rye meadow, and the formerly landscaped slope are all extremely unlikely to support rare plants because they all show signs of extensive past disturbance. The site does not contain serpentine soils or serpentine outcrops; therefore, such species as fragrant fritillary (*Fritillaria liliacea*), Oregon meconella (*Meconella oregano*) would not be expected to occur. There is no chamise chaparral on the site and the robust monardella (*Monardella villosa* var. *globosa)* is also not expected to occur. Additionally, other special-status plant species are not known to occur in eucalyptus forests or creeping wild-rye meadows. No rare plants associated with riparian scrub habitats are known to occur in the Berkeley-Oakland Hills.

Based on the project site's vegetation cover types, however, the western leatherwood (*Dirca occidentalis*) and the Mount Diablo cottonweed (*Micropus amphibolus*) have the greatest potential to exist on or near the project site (Table 2). Of the two potentially occurring species, the western leatherwood has the greater potential to occur. The last recorded record of observations of the Mt. Diablo cottonweed near the Kenilworth project site was fifty years ago. Existing habitat conditions on the site do not provide the optimal soil and vegetation conditions for the species. The western leatherwood, however, has a greater probability of occurrence in areas downslope of the project site.

**Table 2**
**Probability of Occurrence of Special-Status Plant Species on the Kenilworth Project Site[4]**

| Species | Preferred Habitat | Potential Occurrence |
|---|---|---|
| *Dirca occidentalis*/ Western leatherwood | Mesic, shaded slopes in woodland and forest habitats | Known near the Kenilworth Site in Claremont Canyon. Characteristic cool, shaded bay and live oak habitat occur on the project site, particularly along Vincente Creek. The species has a moderate potential for occurrence. |
| *Micropus amphibolus*/ Mt. Diablo cottonweed | Valley grassland, woodland, mixed evergreen forest on rocky soils. | Old observations recorded in the late 1930s and 1955 near Tunnel Road on rocky slopes or at the crest of hills. Habitat is not optimal on the project site. Species has a low to moderate probability of occurrence. |

***Western Leatherwood.*** The western leatherwood (*Dirca occidentalis*) is endemic to the San Francisco Bay region—Sonoma, Marin, Contra Costa, Alameda, San Mateo and Santa Clara counties. The type locality is Oakland, California, more specifically, the Oakland Hills. The plant is a winter deciduous and has very leathery bark and pliable wood. The wood is pliable because of the s-shaped arrangement of the lignified tissue in the fibrovascular bundles.

[4] Source: CNDDB, January 18, 2005 & July 26, 2005, CNPS, July 9, 2005 and USFWS, June 20, 2005.

The lemon yellow flowers appear during the winter and early spring months but the plant's fruit ripens into a drupe-like berry about 1/2 inch long. These fruits are observable from late June through July. The leatherwood prefers moist wooded hillsides and is often found associated with California buckeye (*Aesculus californica*), coast live oak, and Pacific madrone (*Arbutus menziesii*). The cool, coast oak-dominated drainages on the western slope of the project site, including Vincente Creek, could provide the type of habitat conditions that may be optimal for the leatherwood. The species is known to occur in the nearby Claremont Creek to the north of the project area.

Seasonally appropriate field surveys did not identify the presence of any special status plants (Olberding 2003c, 2005). TOVA Applied Science & Technology conducted extensive field surveys (April 29, 2005; April 30, 2005; June 10, 2005; and July 28, 2005) of the entire western and southern slope of a larger area adjacent to the project site, and conducted trees and bird nesting survey on the site (August 9, 2005 and September 8, 2005). No special-status plant species occur in the project area based on the field surveys. There are no records of special status species occurring on the site as catalogued by the California Department of Fish and Game's California Natural Diversity Data Base (CNDDB). Site conditions would not support such plant species. Several native oak trees are located on the project site. Treatment of these trees is subject to the requirements of the Oakland Tree Protection Ordinance, described below.

**Wildlife.** The project site is located in an area of residential-wildland interface where homes are built in any accessible area and remaining areas (primarily the steepest slopes) have not been built on. As a result, wildlife expected to be resident on or in the immediate site vicinity are those species able to adapt to a residential area. The history of past and relatively more recent disturbance of the area, such as the 1991 Oakland Hills fire, the steepness of the project site, the lack of permanent surface water, and the extent of surrounding development and human activity limits the wildlife habitat value of the site. As such, the wildlife species associated with the site are common to non-native grasslands and early successional phases of Northern coast scrub habitat.

The grassland vegetation supports a variety of mammals, birds, and reptiles that are commonly associated with ruderal or weedy plant cover. Field surveys conducted in 2001, 2003 and 2005 identified mostly birds, with signs (scat, smell, etc.) of deer and skunk, and perhaps coyote. Bird species observed to use the grassland and scrub habitat include scrub jay, mourning dove, brown towhee, house finch, song sparrow, chestnut backed chickadee, dark-eyed junco, and mockingbird. Several raptors (birds of prey) may occasionally forage through the area such as American kestrel, red-tailed hawk, and turkey vulture, but the

low prey base limits the likelihood that the site provides an important source of prey for these species. There was no evidence of large mammal denning activity such as den openings, signs of scat (other than deer), or sign of extensive small mammal burrows observed on the site during the field surveys.

**Special-Status Wildlife.** The project site is located within the range of two special status herptofauna: the California red-legged frog (*Rana aurora draytonii*) and the Alameda whipsnake (*Masticophis lateralis euryxanthus*).

***California Red-Legged Frog.*** California red-legged frogs occur primarily in isolated ponds or pools of stream courses where water remains standing long enough for breeding and development of young, and there is dense emergent or shoreline vegetation closely associated with deep, still, or slow-moving water.[5] The habitats observed to contain the highest densities of red-legged frogs are associated with deep-water pools (27 inches deep) with stands of overhanging willows and an intermixed fringe of cattails, tules, or sedges.

Small patches of habitat on the site are marginally suitable for both species if larger areas of suitable habitat were adjacent to the site. This is not the case. The frog could use the riparian scrub as upland estivation or dispersal habitat but in the absence of a source population this is only a potential use. No red-legged frogs are known from this portion of the Berkeley Hills and they are not expected at this location. Based on the site surveys, evidence indicates that the small patches of habitat on the site are not flanked by large areas of suitable habitat adjacent to the site, and therefore, are not part of a larger viable habitat area for the red-legged frog. As a result, red-legged frogs would not be expected on site and the on-site habitat is not considered suitable and does not require protection.

***Alameda Whipsnake.*** Existing development in the Berkeley-Oakland Hills has fragmented habitat for the whipsnake into what are considered five separate populations or units, identified by the U.S. Fish and Wildlife Service (USFWS) as the Tilden-Briones, Oakland-Las Trampas, Hayward-Pleasanton Ridge, Mount Diablo-Black Hills, and the Sunol-Cedar Mountain populations. In November 2000, the USFWS designated most of the area encompassing these populations as "Critical Habitat." The critical habitat designation was subsequently challenged in court and the Critical Habitat designation in the Oakland-Berkeley Hills was

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[5] The project site is not included in the proposed revised designation of the critical habitat for the red-legged frog (Federal Register 50-CFR Part 17).

vacated including the Caldecott Tunnel Unit Number 6 Recovery Area encompassing land areas that includes the project site.[6]

Rock outcrops are an important feature of Alameda whipsnake habitat because they provide retreat opportunities for the snake, rodent burrows, and habitat for lizards. Lizards, especially the western fence lizard (*Sceloporus occidentalis*), appear to be the most important prey item of whipsnakes (Stebbins 1985; Swaim 1994; and USFWS 2002), although other prey items are taken, including skinks, frogs, snakes, and birds (Stebbins 1985, Swaim 1994). Most radio telemetry locations for whipsnakes were within the distribution of major rock outcroppings and talus (Swaim 1994).

The biological assessment prepared by LSA indicated that the northern coastal scrub on the project site provides marginal whipsnake habitat due to the dense crown cover and the lack of rock outcrops. The additional critical habit components such as extensive rodent burrows and abundant lizard prey also do not occur in the project site. The biological report further states that the Alameda whipsnake was historically present in the project area but changes in the vegetative cover and land use essentially preclude their presence. The extent of eucalyptus forest which surrounds the undeveloped borders of the site and the amount of adjacent residential development make it highly unlikely that a whipsnake could move onto this property and they are not expected at this location. Based on the site surveys, evidence indicates that the habitat on site and in the vicinity is no longer suitable as habitat for the whipsnake.

The USFWS recognized that much of the historical habit for the whipsnake was destroyed in the catastrophic Oakland Hills firestorm of 1991 (USFWS 2002). The snake is known to have occurred or may currently occur in areas north of the project site (Claremont Canyon and Hamilton Gulch in the Berkeley-Oakland Hills). Recent records indicate that the species does currently occur in Claremont Canyon. However, the nearby Claremont Canyon area is separated from the project site by residential development, streets and roads. These factors, the lack of quality habitat and the physical separation and development barriers from the Claremont Canyon watershed north of the project site, support the conclusion that the Kenilworth project

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[6] The project site is not included in the proposed revised designation of the critical habitat for the Alameda whipsnake (Federal Register 50-CFR Part 17).

site does not provide suitable habitat for the whipsnake and that there is a low probability that the species would occur on the site.

**Migratory Bird and Raptor Nests.** Several birds (Table 3) protected by the Migratory Bird Treaty Act may be associated with the small area of riparian habitat on the project site. A patch of riparian vegetation consisting of arroyo willow (*Salix lasiolepis*) with a small number of other species is present in the approximate center of the site.

**Table 3**
**Migratory Birds Potentially Occurring in Riparian Drainages on the Project Site**

| Species | Foraging Pattern | Nesting Habitat[1] |
|---|---|---|
| Cooper's hawk | Catches small birds, especially young during nesting season, and small mammals, reptiles, and amphibians. Hunts in broken woodland and habitat edges. Uses cover to hide, attack, and approach prey; also soars and makes low, gliding search flights. | Nests in deciduous trees in crotches of conifer trees on horizontal branches. Nest is a stick platform lined with bark. Usually nest in second-growth conifer stands, or in deciduous riparian areas, usually near streams. |
| Allen's hummingbird | Hoovers to take nectar from a variety of herbaceous and woody flowering plants; also eats insects and spiders. Shrubs and trees near foraging areas provide cover. | Often attaches nest to more than one lateral support on eucalyptus, juniper, willow, other trees, vines, shrubs, or ferns. Nest sometimes placed at the end of branches of shrub or tree or on tree trunk; often placed in shade of overhanging cover. |
| Rufous hummingbird | Takes nectar from a variety of flowering plants; also eats insects, spiders, and tree sap. Uses riparian areas, open woodland and other habitats rich in nectar-producing flowers, including gardens and orchards. Hoovers while taking nectar and insects, which it gleans from foliage and flowers; also hawks insects from the air. Trees and shrubs provide cover in many habitats, including lowland riparian, open woodlands, scrub, and chaparral. | Nest is an open cup, usually on a sloping shrub or conifer tree branch near the ground. |
| Olive-sided flycatcher | Ventures out for flying insects over forest canopy or adjacent meadows, clearings, or shrub-covered slopes in wide-ranging flights from high, conspicuous perches. Favors honeybees. | Requires large, tall trees, usually conifers, for nesting and roosting sites; also lofty perches, typically the dead tips or uppermost branches of the tallest trees in the vicinity, for singing posts and hunting perches. Nest is an open cup of grasses, mosses, lichens, rootlets, and pine needles; usually placed in a conifer tree, well out on a horizontal limb. |
| Lark sparrow | Eats seeds, grains, and insects, especially grasshoppers. Takes insects and seeds from | Nest usually built on ground in herbage shaded by tussock or small |

**Table 3**

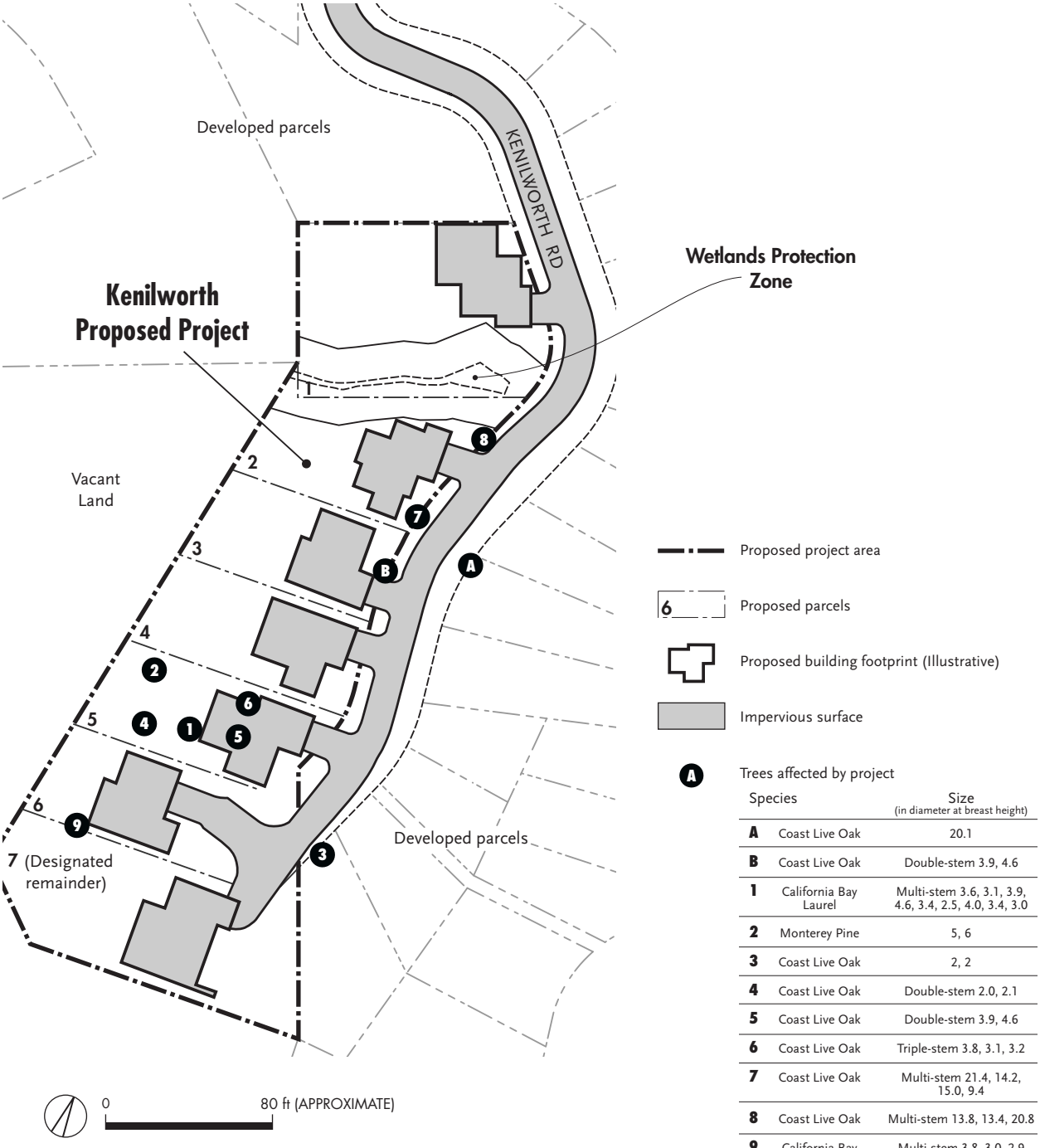
**Migratory Birds Potentially Occurring in Riparian Drainages on the Project Site**

| Species | Foraging Pattern | Nesting Habitat[1] |
|---|---|---|
| | litter on ground, from herbaceous plants, and occasionally from shrubs and trees. Scattered trees and shrubs are required for lookout and song perches and other cover. Fence posts, large rocks, other elevated sites, and ground herbage also provide cover. | shrub. Occasionally nests in shrub or tree, or found in crevices of cliffs. |
| Lawrence's goldfinch | Uses trees and shrubs for resting, escape, and other cover. Perches on fences and transmission lines. Eats mostly seed; also a few insects. Favored seeds include pigweed, fiddleneck, starthistle, and chamise. Feeds on forbs and shrubs, plucking seeds from plants. Also gleans seeds from the ground. | Builds nest in dense foliage of a tree or shrub. Prefers to nest in oak trees, or in a riparian thicket. |
| Hermit warbler | Gleans insects and spiders from foliage in middle to upper canopy of live oak woodlands, deciduous tees, and planted pines. | Mature stands of pine and fir provide cover in breeding season. Builds nest in conifer trees, well out on a horizontal branch. |
| Common yellowthroat | Mostly seeks cover in thick tangles in fresh and brackish wetlands. Eats insects, especially caterpillars and other larvae; also spiders and a few seeds. | Occasionally breeds in dense shrubs and lush fields. Nest usually on or within 3 inches of the ground. May be over water in emergent aquatic vegetation, dense shrubs, or other dense growth. |
| Yellow warbler | Usually found in riparian deciduous habitats: cottonwoods, willows, alders, and other small trees and shrubs typical of low, open-canopy riparian woodland. Feeds mostly on insects and spiders. Cleans and hovers in upper canopy of deciduous trees and shrubs. Occasionally hawks insects from the air, or eats berries. | Nest is an open cup laced above ground in a deciduous sapling or shrub. |
| Loggerhead shrike | Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low or sparse herbaceous cover. Feeds in areas of shrubs or small trees. Eats mostly large insects; also takes small birds, mammals, amphibians, reptiles, fish, carrion, and various other invertebrates. Searches for prey from a perch and usually flies directly to prey on ground or in a shrub, and sometimes hovers. Frequently skewers prey on thorn, sharp twig, or wire barb. | Builds nest on stable branch in densely foliaged shrub or tree, usually well concealed. |

[1] **Source:** *California Wildlife Habitat Relationship System*, Database Version 7.0, California Department of Fish and Game, and California Interagency Wildlife Task Group.

| Table 4<br>Existing Trees on the Project Site | | |
|---|---|---|
| **Tree Species** | **Location in Figure 11** | **Size (Inches Diameter at Breast Height)** |
| Coast live oak | A (saved) | 20.1 |
| Coast live oak | B (saved) | 12.8 |
| California bay laurel | 1 (removed) | Multi-stemmed specimen: 3.6, 3.1, 3.9, 4.6, 3.4, 2.5, 4.0, 3.4, 3.0, 3.4, and 3.3 |
| Monterey pine | 2 (removed) | 5.6 |
| Coast live oak | 3 (removed) | 2.2 |
| Coast live oak | 4 (removed) | Double stem: 2.0 and 2.1 |
| Coast live oak | 5 (removed) | Double stem: 3.9 and 4.6 |
| Coast live oak | 6 (removed) | Triple stem: 3.8, 3.1, and 3.2 |
| Coast live oak | 7 (removed) | Multi-stem: 21.4, 14.2, 15.0, and 9.4 |
| Coast live oak | 8 (removed) | Multi-stem: 13.8, 13.4, and 20.8 |
| California bay laurel | 9 (removed) | Multi-stemmed specimen: 3.8, 3.0, 2.9 |

In addition to the willow trees in the riparian thicket, the areas south and west of the site contains large stands of the invasive blue gum (*Eucalyptus globulus*). There are scattered trees on the project site itself consisting of one Monterey pine (*Pinus radiata)*, eight coast live oaks (*Quercus agrifolia*), and two California bay laurel (*Umbellularia californica*) (Table 4, above, and Figure 11 on page 47). A grove of blue gum existed in the center of the project site but these trees were removed in August 2005. Oak trees and other trees, along with the coyote brush vegetation cover, remain intact, and blue gum trees remain on the northern and southern edges of the project site. The removal of the blue gum at the center of the project site occurred at the beginning of August, after the raptor and migratory bird nesting season, which is February 15th to July 31st as specified in the conditions of the project's previous California Department of Fish and




| Species | | Size (in diameter at breast height) |
|---|---|---|
| **A** | Coast Live Oak | 20.1 |
| **B** | Coast Live Oak | Double-stem 3.9, 4.6 |
| **1** | California Bay Laurel | Multi-stem 3.6, 3.1, 3.9, 4.6, 3.4, 2.5, 4.0, 3.4, 3.0 |
| **2** | Monterey Pine | 5, 6 |
| **3** | Coast Live Oak | 2, 2 |
| **4** | Coast Live Oak | Double-stem 2.0, 2.1 |
| **5** | Coast Live Oak | Double-stem 3.9, 4.6 |
| **6** | Coast Live Oak | Triple-stem 3.8, 3.1, 3.2 |
| **7** | Coast Live Oak | Multi-stem 21.4, 14.2, 15.0, 9.4 |
| **8** | Coast Live Oak | Multi-stem 13.8, 13.4, 20.8 |
| **9** | California Bay Laurel | Multi-stem 3.8, 3.0, 2.9 |

Source: Booker Holton

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Proposed Project—Tree Locations Figure 11

Game 1603 Lake and Streambed Alteration Agreement (Notification No. 1600-2003-5134-3).[7] No nests of migratory birds or raptors were observed during the 2001, 2003, and 2005 field surveys conducted on the project site and areas along the western and southern slopes of the larger area downslope of the project area. There are no observable nests in the standing Eucalyptus trees, Monterey pine, California bay , or smaller coast live oak trees on the site. Such nests for migratory birds would have been identifiable by the structural features indicated in Table 3. Raptors nests would be recognizable by the following structural characteristics:

- A substantial platform of sticks and twigs with leaves, or debris constructed at the fork or crotch of tall trees (heron, hawks, and eagles),
- A bulky mass of small fine twigs in a deeply hollowed tree cavity (white or black-shouldered kite), or
- A tree cavity with little or no nesting material (owls or kestrel).

The four larger coast live oak trees (12 inches diameter at breast height [dbh] and larger, see Table 4 and Figure 11, sites G, H, I, and J) are located along the access road located on the eastern edge of the property. There are no nests or "nest-like" structures in three of these trees, however, there appears to be a "nest-like" structure in the coast live oak tree identified as location J in Figure 11 above. This tree is the second tree in the line of four live oak trees from the 7080 Kenilworth Road house. The nest structure is a mass of sticks in the crotch of the tree, close to the trunk, approximately 25 feet above the ground and about three feet in diameter.

**Wetlands and Other Waters of the U.S.** Potentially regulated wetlands/waters of the U.S. were identified at the project site (on Parcel 2), comprising a total of approximately 0.017 acre. An investigation/delineation of these features was performed on January 10, 2003, and approximately 0.012 acre of potential low-grade seasonal wetlands and 0.005 acre (2 feet wide by 115 feet in length) of a drainage course were identified (Olberding 2003a). These features were delineated pursuant to Corps protocols, and the delineation submitted to the Corps. The Corps verified this delineation in April 2003 (Corps 2003). (The verification is included in this document as Appendix E, U.S. Army Corps of Engineers' Determination of Waters of the U.S.) Both the wetland and drainage courses are fed during rain events by runoff diverted through one permanent and sometimes by one or more temporary pipelines (the latter are occasionally relocated to areas

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[7] Previous environmental documents for the project incorrectly listed August 31st as the end of the nesting season. The Department of Fish and Game listed February 15th to July 31st as the nesting season in the project's 1603 Lake and Streambed Alternation Permit.

other than the wetland) that traverse Kenilworth Road to the project site by upslope properties. The delineated drainage course is downslope of the delineated wetland feature, and is characterized by riparian scrub habitat, a defined channel varying from 6 inches wide (just west of the wetland) to 4 feet wide at the western project site boundary, and evidence of scour within the defined channel. An off-site drainage course is located immediately downslope and west of the western-most boundary of Parcel 7. A 300-square foot area of the adjacent riparian habitat will be subject to branch trimming/clearing, subject to a Department of Fish and Game Lake and Streambed Alteration Agreement.

On October 17, 2003, the Department of Fish and Game issued a 1603 Lake and Streambed Alteration Agreement (Notification Number: 1600-2003-5134-3) for the project site. The agreement expired on December 31, 2004 and a revised Agreement would need to be obtained by the project applicant prior to construction.

**Policies and Ordinances.** The City of Oakland has a Tree Protection Ordinance (Oakland Municipal Code Title 12, Chapter 12.36). The Tree Protection Ordinance requires property owners to obtain a permit before removing protected trees from their property or before commencing construction within 10 feet of protected trees. Protected trees include California or coast live oak (Q*uercus agrifolia*) measuring 4 inches in diameter at breast height (dbh) or larger, and any other tree measuring 9 inches dbh or larger except eucalyptus and Monterey pine (*Pinus radiata*); provided, however, that Monterey pine trees on City property and in development-related situations where more than five Monterey pine trees per acre are proposed for removal are considered to be protected trees.

The City of Oakland has a Creek Protection, Storm Water Management, and Discharge Control Ordinance (Oakland Municipal Code Title 13, Chapter 13.16). The Creek Protection Ordinance is intended to assist the City to operate consistent with the requirements of the federal Clean Water Act and NPDES Permit No. CA0029831. In addition to protecting water quality, relative to biological resources, the Creek Protection Ordinance is intended to accomplish the following:

- Safeguard and preserve creeks and riparian corridors in a natural state;
- Preserve and enhance creekside vegetation and wildlife; and
- Prevent activities that would destroy riparian areas or would inhibit their restoration (City of Oakland 2003b).

The ordinance requires property owners to obtain a permit before working within the boundaries of a creekside property, or within the public right-of-way fronting a creekside property. The Parcel 2 drainage

course (but not the wetland) appears to be subject to the Creek Protection Ordinance. The drainage course is delineated immediately west of the wetland (Olberding 2002). In addition, the nearby-offsite drainage course appears to be subject to the Creek Protection Ordinance.

**Habitat Conservation Plan.** There is no known adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan relevant to the site.

# 4. Impacts and Mitigation

## *a. Standards of Significance*

The proposed project would have a significant effect on biological resources if any of the following criteria are met:

> ***Criterion 1*** *– Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.*
>
> ***Criterion 2*** *– Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service. [NOTE: The term "sensitive natural community" should be interpreted to include aquatic and wetland habitats, as well as impermanent habitats such as seasonal wetlands and seasonal creeks.]*
>
> ***Criterion 3*** *– Have a substantial adverse effect on federally protected wetlands (as defined by Section 404 of the Clean Water Act) or state protected wetlands, through direct removal, filling, hydrological interruption, or other means.*
>
> ***Criterion 4*** *– Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.*
>
> ***Criterion 5*** *– Fundamentally conflict with the City of Oakland Tree Preservation and Removal Ordinance (Oakland Municipal Code (OMC) Chapter 12.36) by removal of protected trees under certain circumstances. Factors to be considered in determining significance include: the number, type, size, location and condition of (a) the protected trees to be removed and/or impacted by construction and (b) the protected trees to remain, with special consideration given to native trees.*[8] *Protected trees include the following: Quercus agrifolia (California or coast live oak) measuring four inches diameter at breast height (dbh) or larger, and any other*

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[8] Oakland *Planning Code* section 17.158.280E2 states that "Development related" tree removal permits are exempt from CEQA if no single tree to be removed has a dbh of 36 inches or greater and the cumulative trunk area of all trees to be removed does not exceed 0.1 percent of the total lot area.

*tree measuring nine inches dbh or larger except eucalyptus and pinus radiata (Monterey pine); provided, however, that Monterey pine trees on City property and in development-related situations where more than five Monterey pine trees per acre are proposed to be removed are considered to be Protected trees.*

***Criterion 6*** *– Fundamentally conflict with the City of Oakland Creek Protection Ordinance (OMC Chapter 13.16) intended to protect biological resources. Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of riparian and aquatic habitat through: (a) discharging a substantial amount of pollutants into a creek; (b) significantly modifying the natural flow of the water; (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability; or (d) adversely impacting the riparian corridor by significantly altering vegetation or wildlife habitat.*

The following section presents the project's potential impacts relative to each of these criteria.

***b. Assessment***

(***Criterion 1*** *– Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service*.)

Neither candidate, sensitive, nor special status species, nor sufficient associated habitat, were observed at the project site during biological surveys. The riparian scrub vegetation, however, provides the suitable moisture regime for the western leatherwood (*Dirca occidentalis*), but this species does not occur on the project site. The leatherwood prefers moist wooded hillsides and is often found associated with California buckeye, coast live oak, and Pacific madrone. The riparian habitat on the site will be avoided and no potential leatherwood habitat would be adversely affected by project construction and development.

While the project site is located within the range of the California red-legged frog and the Alameda whipsnake, suitable habitat conditions do not exist at or near the site to support either, and no impact is expected to occur to special status wildlife species. The project site does not contain the aquatic habitat features required to support the California red-legged frog and no frogs or suitable frog habitat were observed during the biological field surveys.

The project site lacks the critical habit components of the Alameda whipsnake – rock outcroppings, extensive rodent burrows, and abundant lizard prey. In addition, the nearby Claremont Canyon area on record as providing habitat for whipsnakes is separated from the project site by residential development, streets and roads. These factors, the lack of quality habitat and the physical separation and development barriers from the Claremont Canyon watershed north of the project site, and the biological field studies support the absence of the Alameda whipsnake on the project site.

**Impact Biology – 1: Inadvertent Mortality or Injury to Alameda Whipsnake Moving through the Project Site from Adjacent Whipsnake Areas (Potentially Significant)**

Although the project would take place in a partially developed area that is generally surrounded by existing buildings and roads, the site is near to the larger planning area formerly designated as Critical Habitat for the Alameda whipsnake.[9] Telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on shrub communities, whipsnakes frequently venture into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Most telemetry locations are within 50 meters (m) (170 feet (ft)) of scrub habitat, but distances of greater than 150 m (500 ft) occur (Swaim 1994; USFWS 2002). There is a remote possibility, therefore, of Alameda whipsnake movement into the project area resulting in potential but unexpected impact to the Alameda whipsnake. The following standard mitigation measures have been applied to other projects in the Oakland-Hills to avoid or minimize impacts to the whipsnake.

**Mitigation Measure Biology – 1: Pre-Construction Survey and Installation of Protective Fencing**

- Prior to the initiation of site construction, the project area shall be surveyed by a designated construction monitor/biologist to ensure that no Alameda whipsnakes are present. This survey shall not be intended to be a protocol-level survey, but rather one designed to verify that no snakes are actually on site.
- For the portions of the project construction area located adjacent to scrub areas or riparian corridors, a snake barrier fence shall be constructed to exclude Alameda whipsnakes from moving into the construction area. The fence shall be constructed of solid material, such as wood or silt fabric, at least 3.5 feet high, and have its lower six inches buried in the ground. Stakes supporting the barrier shall be located on the interior side of the fence. Installation of the fence shall occur prior to any construction, clearing or grading.
- The protective fencing shall be inspected by the construction monitor/biologist during the initial grubbing and clearing to determine if any Alameda whipsnakes are present or in danger from the construction.
- All construction workers shall attend an Alameda whipsnake information session conducted by the designated monitor/biologist. This session shall cover identification of the species and procedures to be followed if an individual is found on site.

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[9] The project site is not included in the proposed revised designation of the critical habitat for the Alameda whipsnake (Federal Register 50-CFR Part 17).

- All equipment lay-down and deposition areas shall be inspected each morning by a designated monitor to ensure that Alameda whipsnakes are not present. All construction activities that take place on the ground shall be performed in daylight hours. Construction materials, soil, construction debris, or other material shall be deposited only on areas where vegetation has been removed and any snakes present would be readily visible.
- Construction debris and trash that may attract whipsnakes shall be periodically (at least weekly) removed from the project site.

**Resulting Level of Significance**: The implementation of these mitigation measures and the resulting avoidance of inadvertent mortality or injury to an Alameda whipsnake moving into the project area from adjacent, nearby suitable habitat would result in "less-than-significant" impacts to the Alameda whipsnake.

**Impact Biology – 2: Construction Activity and Noise Disturbance of Raptor Nesting or Direct Impact on Raptor Breeding Success (Potentially Significant)**

One nest-like structure was observed in one of the coast live oak tree on the property, approximately 5 feet downslope of the proposed access road. The nest is a mass of sticks in the crotch of the tree, close to the trunk. It is approximately 25 feet above the ground and about three feet in diameter. It appears to be a possible raptor nest. Although some existing oak trees will be removed by project construction, construction-related activities near the tree could have a significant adverse effect on nesting bird reproduction if the nest-like structure is indeed an active raptor nest.

**Mitigation Measure Biology – 2: Pre-construction Nesting Raptor Survey and Avoidance**

If construction is scheduled during the nesting season (February 15$^{th}$ to July 31$^{st}$), a pre-construction field survey of the oak trees shall be conducted no earlier than 45 days and no later than 20 days prior to the proposed construction in the vicinity of the tree containing the "nest-like" structure to determine presence of nesting birds. Should the surveys find nesting birds, disruptive construction activity would be postponed through the end of the nesting season in consultation with a qualified biologist. The nest structure will be monitored for bird egg-incubation, including:

- Incubation behavior (e.g., regular periods of "disappearance" into the nest structure followed by short, secretive flights to forage).
- Extreme distress and alarm calls when in close vicinity of the nest tree.
- Observation of food carried in the beak or claws to the nest.

If incubation behavior is detected, incorporating the following measures shall protect the nest location:

- A buffer shall be established using orange construction fencing around the tree in accordance with DFG recommendations until the young have fledged.
- The nest tree shall be monitored a minimum of once per week to confirm that the young have fledged and that no new nesting pairs are present before the buffer is removed.
- Construction shall not occur within 150 feet of an active nest until the nest is vacated or juveniles have fledged.

If there is no sign of active use, or if construction is planned between August 1st and February 1st such construction could proceed as scheduled.

**Resulting Level of Significance:** Implementation of the pre-construction survey, nest monitoring, and installation of protective fencing near the "nest" tree would avoid or minimize the potential disruption of raptor breeding activity reducing the potential impact to special-status birds to a less-than-significant level.

*(**Criterion 2** – Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service. [**NOTE:** The term "sensitive natural community" should be interpreted to include aquatic and wetland habitats, as well as impermanent habitats such as seasonal wetlands and seasonal creeks].)*

**Impact Biology – 3: Potential Degradation of Riparian Habitat Resulting from Discharge of Sediments and Other Materials**

A Wetland and Creek Conservation Deed Restriction is proposed as part of the project design. As such, there would be no direct, permanent impact such as tree removal or riparian habitat conversion. However, construction activity can have short-term, temporary adverse effects on runoff water quality, such as from erosion and siltation, illicit disposal of debris and wash water from construction vehicles and equipment. This would represent a potentially significant impact.

**Mitigation Measure Biology – 3: Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan**

Construction of the Wetland and Creek Conservation Deed Restriction would follow the Creek Protection Plan approved by the City in compliance with fulfilling the requirements of the City's Creek Protection Ordinance. In particular, the following two measures are noted:

- Use a larger size cobble for energy dissipation than the 6 inches to 8 inches in diameter specified in the draft Plan. Key larger rocks into the slope to prevent dislodgement and movement downstream.

- Deed language specifying the conditions of a deed-restriction established by the City through compliance with the Creek Protection Ordinance will be written by the project sponsor and submitted to the City for review and approval.

The following 21 specific practices for protecting the wetland and drainage course areas during construction would avoid direct impacts and reduce indirect impacts to less than significance.

- Maintain a 4-foot minimum construction setback from the delineated edge of the wetland and drainage course.
- Install and maintain silt fencing with the bottom vertical six inches placed in a trench and anchored by a backfill soil a minimum of 2 feet horizontal from the delineated edge of the wetland and the drainage course.
- Install and maintain a construction exclusion fence a minimum of 4 feet from the delineated edge of the feature. This fence will be orange-colored five-foot plastic mesh that clearly establishes the setback edge.
- No equipment and no foot traffic will be allowed within the fenced setback area.
- Landslide repair or work that involves soil disturbance will not take place during the rainy season. Such activities will be limited to the period of April 15 to October 15.
- During construction, no runoff water from the project will be discharged directly into the drainage.
- During construction, storm inlets will be protected by silt barriers such as hay bales or straw wattles. Collected silt will be removed on an as-needed basis and disposed of in accordance with applicable regulations.
- During slope stabilization work, a keyway will be constructed around the drainage area that will prevent sediment and pollutants from collecting in the drainage course.
- Stockpiled soils will be placed away from the drainage course, and no dirt will be placed upslope from the drainage course. Runoff from areas of stockpiled soils will be controlled by covering or spraying with a soil binder and placing straw wattles around its perimeter.
- Disturbed areas will be protected from erosion prior to October 1 by seeding the slopes with an erosion control mix, covering the seeded area with erosion control fabric, and placing straw wattles around its perimeter.
- No construction debris, litter, or human waste material will be deposited into the buffer zone. If construction debris falls within the buffer zone it will be removed on a daily basis.
- During construction, staging and storage areas for equipment, fuels, lubricants, solvents, and other chemicals will be located so that accidental spills do not directly run off into the wetland or drainage course setbacks.
- The contractor and foremen for major subcontractors will receive materials explaining the sensitivity of the drainage course area, the prohibitions contained in the Creek Protection Plan, and the possible consequences for violating the Plan. Sufficient copies will be given to these individuals so that they can be distributed to their work crews.
- The project will incorporate the following maintenance and monitoring procedures during the construction phase:

- Inspect and repair inlet and outlet stormwater structures.
- Stabilize and/or repair eroded areas or failures of embankments and slopes.
- Monitor buffer fencing in place during construction.
- Construct additional surface ditches, sediment traps as needed, and backfill of eroded gullies.
- Observe the site conditions for litter control.
- Plant enhancement vegetation outside the delineated limits of the wetland and drainage course. Such enhancement vegetation may be planted within the construction setback area.
- Construct the subsurface drain discharge area upslope and outside the delineated limits of the wetland. Such hydrologic enhancement should be located outside the construction setback to the extent practicable.

**Resulting Level of Significance**: The establishment of a Wetland and Creek Conservation Deed Restriction and an appropriately sized creek buffer, the implementation of Best Management Practices to control the discharge of sediments and other materials, and the implementation of the creek protective conditions of the Creek Protection Plan will avoid and minimize the indirect impacts to riparian habitat. These measures would result in "less-than-significant*"* impacts to riparian habitat.

**Impact Biology – 4: Introduction of Invasive, Non-native Plants to the Native Riparian Habitat**

Landscaping within the rear portions of proposed buildings could introduce invasive, low habitat value, plant species to the riparian corridor. This impact is considered to be potentially significant.

Invasive plants pose an increasing threat to native riparian habitats. These plants, often from Asia or Europe, are capable of rapidly taking over native riparian areas. In general, native wildlife species are not adapted to use these exotic species for food or shelter. Because of this, the invasion by exotic species can severely degrade the value of riparian areas for wildlife. Often in urban areas, these plants are frequently incorporated into landscaping plans. The following mitigation measure is recommended to reduce any potential impact of non-native species:

**Mitigation Measure Biology – 4: Incorporation of Native Plants in Landscaping Plans**

Prior to the issuance of a building permit, the Applicant shall submit for review and approval to the City of Oakland a Landscape Plan that incorporates the planting of native tree and ground cover plants. The Landscape Plan should incorporate plants from the following list (Table 5) of commonly occurring native plant species.

| Table 5<br>Native Plant Species in the Oakland Hills | |
|---|---|
| **Scientific Name** | **Common Name** |
| TREES | |
| *Acer macrophyllum* | Big leaf maple |
| *Aesculus californica* | Buckeye |
| *Alnus rhombifolia* | White alder |
| *Fraxinus dipetala* | Ash |
| *Platanus racemosa* | Western sycamore |
| *Quercus agrifolia* | Coast live oak |
| *Quercus kelloggii* | Black oak |
| *Quercus lobata* | Valley oak |
| *Salix lasiolepsis* | Arroyo willow |
| *Salix laevigata* | Red willow |
| *Umbellularia californica* | California bay laurel |
| TALL AND SMALL SHRUBS, FERNS, GROUNDCOVERS | |
| *Adiantum jordanii* | Maidenhair fern |
| *Aretemesia douglasiana* | Mugwort |
| *Asarum caudatum* | Wild ginger |
| *Athyrium filex-femina* | Lady fern |
| *Baccharis pilularis* | Coyote brush |
| *Cornus sericea* | Western dogwood |
| *Corylus cornuta var. californica* | Hazelnut |
| *Dryopteris arguta* | Wood fern |
| *Frageria vesca* | Wild strawberry |
| *Heteromeles arbutifolia* | Toyon |
| *Mimulus aurantiacus* | Sticky monkey flower |
| *Oemlaria cerasiformis* | Oso berry |
| *Rhmnus californica* | Coffeeberry |
| *Ribes sanguineum var. glutinosum* | Pink flowering current |
| *Rosa californica* | California rose |
| *Rubus ursinus* | California blackberry |
| *Symphorocarpos albus var. laevigatus* | Snowberry |
| *Symphorocarpos mollis* | Trailing snowberry |

The Landscaping Plan shall also demonstrate how any proposed landscaping within or near the Creek and Wetland Conservation Deed Restriction shall:

- Minimize removal of native vegetation and
- Replant where appropriate with native plants species.

The following plants species shall be prohibited from use as landscaping material:

- Tree-of-heaven (*Ailanthus altissima*)
- English ivy (*Hedra helix*)
- Periwinkle (*Vinca major*)
- Himalayan blackberry (*Rubus discolor*)
- Giant reed (*Arundo donax*)
- Tamarisk (*Tamarix* sp.)
- Scotch broom (*Cystisus scoparius*)
- Cape ivy (*Delairea odorata*)
- Pampas grass (*Cortaderia jubata/C. selloana*)

The Project Applicant shall contact the California Exotic Pest Plant Council (CalEPPC) to identify other potential invasive plants prior to completing landscaping plans for the proposed residential units.

The selection of plants will also be compatible with the applied philosophy of "defensible space," a term first coined in the 1980 Fire Safe Guide for Residential Development in California. Defensible space is the area within the perimeter of a parcel or development where basic wildland fire prevention practices and measures are implemented, providing the key point of defense from an approaching wildfire, encroaching wildlife, or for escaping structure fire. Fuel modification or fuels management plans are effective in defense of wildfires and the selection of plants for use in the riparian buffer should respond to the requirement that such plants be natives and relatively fire-resistant.

**Resulting Level of Significance:** The final selection of plants shall be subject to review and approval by the city of Oakland prior to issuance of a building permit. Incorporation of native plant materials, and prohibition of the use of non-native, introduced, and exotic plants species would reduce the potential impact of invasive species in riparian habitat s impact to level of less-than-significant.

*(**Criterion 3** – Have a substantial adverse effect on federally protected wetlands (as defined by Section 404 of the Clean Water Act) or state protected wetlands, through direct removal, filling, hydrological interruption, or other means*.)

**Impact Biology – 5: Potential Filling and Degradation of Wetland Habitat Resulting from Construction, Discharge of Sediments and Other Materials**

The construction and operations associated with the proposed project (seven single-family residences, road improvements, etc.) could adversely affect the jurisdictional wetland present on the site through direct

removal, filling, or hydrologic interruption. Grading of the western-most portions of Parcels 1 and 2 would be located between 20 feet from the top of bank and 100 feet from the centerline of the off-site drainage course – defined as a wetland. An investigation/delineation of this feature was performed on January 10, 2003, and approximately 0.012 acre of potential low-grade seasonal wetlands and 0.005 acre (2 feet wide by 115 feet in length) were identified (Olberding 2003a), as verified in April 2003 by the U.S. Army Corps of Engineers. With inclusion of protective design measures and BMPs from the proposed project's Creek Protection Plan and Mitigation Measure Biology Impact 3 along with compliance with the City's Creek Protection Ordinance, the impact to wetlands would be avoided and mitigation measures would not be required. The Creek Protection Plan includes measures to protect the wetland during construction and protect and enhance it over the lifetime of the residences. This impact would be less-than-significant.

*(**Criterion 4** – Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.)*

**Impact Biology – 6: Loss of Less Than One Acre of Non-Sensitive Ruderal-Annual Grassland Habitat**

Loss and conversion of grassland habitat has occurred throughout the San Francisco Bay Area. Development within the City of Oakland and its surrounding adjacent lands has resulted in the cumulative loss of foraging, cover and reproduction habitat for a number of commonly occurring, casually occurring, rare or special-status species. The loss of annual grasslands that are not currently occupied by special-status species, however, is a less-than-significant environmental impact because this vegetation type is not a sensitive natural community.

In the region, cumulative loss of annual-grassland habitat will continue in the near future because of future development in the Oakland Hills Area. Past land disturbance, including fire, the introduction of the invasive blue gum (Eucalyptus) and the surrounding residential development reduces the habitat values of the grasslands on the Project site.

The loss would contribute to the loss of such habitat throughout the Oakland Hills and the City of Oakland. Although (as stated previously in the chapter) the loss of annual grassland is a less-than-significant Project impact, it does represent a cumulatively small contribution to the ongoing regional loss of habitat in the region for a wide range of species that depend on remaining open spaces. However, because no special-

status species occur on the site, the small contribution to the cumulative loss of grassland habitat is cumulatively less-than-significant.

**Impact Biology – 7: Loss of Wildlife Movement or Migration Habitat**

The project will convert less than one acre of non-sensitive ruderal-annual grassland habitat to residential development. Changes in land use and increased residential density may interfere with the movement and migration of native wildlife. Some wildlife species, such as deer, move within the portion of the Project site proposed for development from the nearby riparian habitat. Bird movement through the area would most likely be concentrated along the edge of the riparian corridor. The edges of shrub cover and trees act as ecological corridors, not only enhancing bird movements, but also guiding the direction of flights.[10] Development of the site would restrict the land area used by such species. However, for the reasons described below, this is a less-than-significant environmental impact.

The Claremont Canyon area to the next watershed north of the project site contains some of the last remaining continuous riparian oak woodland and creek habitat near the project site. Claremont Canyon is also considered one of the larger wildlife corridor areas in the area, providing habitat to several sensitive and protected wildlife species and a connecting corridor to the open space areas of EBMUD, East Bay Regional Park District, and University of California.

The riparian habitat through the center of the project site, downslope of the development area provides important wildlife habitat values for many commonly occurring species. This riparian area could, and probably does, function as wildlife movement corridors. However, the upland, previously disturbed, annual grassland area present on the portion of the Project site proposed for development has little habitat value. The site is surrounded upslope and on the north and south by residential development. This development serves as a physical barrier to the higher value open space wildlife habitat in Claremont Canyon, and the adjacent lands of EBMUD, EBRPD, and the University of California.

For this reason, the portion of the site proposed for development does not appear to constitute a major movement corridor (or linkage between concentrated use areas, breeding and rearing habitat, or feeding areas) for native wildlife. The relatively small size of the Project site, low value of the previously disturbed, onsite habitat for native species, the proximity to urban development and the low habitat values associated

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[10] Dmowski, K. and M. Kozakiewicz, 1990, pp 99-108.

with the surrounding urban areas preclude the portion of the site proposed for development as an important wildlife movement corridor.

Deer moving through the riparian corridor have access to the Project site for cover, browsing and grazing. Grasses are important food items in the spring and the Project site's thick, annual grass dominated vegetation cover provides potential food sources. Project development would convert a portion of the Project site from grass cover to houses, access roads and other infrastructure improvements. Wildlife species such as deer that use the riparian corridor of as a movement corridor would continue to do so with Project development.

Additionally, the riparian habitat areas, and some undisturbed annual grassland area, would be preserved within the Creek and Wetland Conservation Deed Restriction. The riparian edge would remain available for bird movement and other wildlife, such as deer, would continue to use the lower portion of the Project site for movement through the area down to the intersection of Grand View Drive and Gravatt Drive. Therefore, the impact of the Project on wildlife movement or migration is considered to be less-than-significant.

*(**Criterion 5** – Fundamentally conflict with the City of Oakland Tree Preservation and Removal Ordinance (Oakland Municipal Code (OMC) Chapter 12.36) by removal of protected trees under certain circumstances. Factors to be considered in determining significance include: the number, type, size, location and condition of (a) the protected trees to be removed and/or impacted by construction and (b) the protected trees to remain, with special consideration given to native trees.[11] Protected trees include the following:* Quercus agrifolia *(California or coast live oak) measuring four inches diameter at breast height (dbh) or larger, and any other tree measuring nine inches dbh or larger except eucalyptus and* pinus radiata *(Monterey pine); provided, however, that Monterey pine trees on City property and in development-related situations where more than five Monterey pine trees per acre are proposed to be removed are considered to be Protected trees.)*

**Impact Biology – 8: Injury to Coast Live Oak and California Bay Laurel Trees Protected by Oakland's Tree Protection Ordinance**

There are seven existing protected coast live oak trees on the site (see Table 4 and Figure 11) that are in excess of 4 inches diameter at breast height (dbh). Some of the oak trees have multiple stems that are less than 4 inches in diameter each but at 4.5 feet above the ground the combined diameters of component stems total over 4 inches diameter. In addition, the two multi-stemmed specimens of the California bay laurel identified in Table 4 and shown in Figure 11 contains a cluster of stems, each less than 9 inches diameter, but

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[11] Oakland *Planning Code* section 17.158.280E2 states that "Development related" tree removal permits are exempt from CEQA if no single tree to be removed has a dbh of 36 inches or greater and the cumulative trunk area of all trees to be removed does not exceed 0.1 percent of the total lot area.

with combined diameters exceeding 9 inches at 4.5 feet above the ground surface. This EIR analyzes a worst-case condition and assumes that five of the coast live oak trees, the Monterey pine and the two California bay laurel trees would be removed. The Oakland Tree Protection Ordinance requires individual tree protection during construction if construction activities would be within ten feet of a protected tree.

**Mitigation Measure Biology – 8: Implementation of Best Management Tree Protection**

Per standard policy and practice, a consulting arborist and the Tree Services division of the City's Office of Parks and Recreation will create a tree protection plan. This plan shall include measures such as surveying and mapping the trunk locations and elevations of individual tress and adjusting the grading plan where feasible to preserve individual trees. Specific practices for protecting trees during construction include:

- Grading and construction plans will delineate the tree protection zone.
- Trees remaining on-site will be protected by pre-construction tree protection fencing. The minimum tree protection zone for healthy trees is generally one foot of protection for each inch in diameter.
- The protection zone will be marked with readily visible fencing materials that remain in place for the duration of construction.
- A six-inch layer of mulch will be placed within the protection zone for the duration of construction. The soil should be moist prior to placement of the mulch.
- No materials, soils, vehicles, equipment, storage or traffic should be allowed within the protection zone.

As specific construction plans are developed, compliance with the Tree Protection Ordinance and the Tree Removal Permit, would identify any further measures that would be required and would avoid significant effects.

When tree removal is unavoidable, the trees that are removed shall be replaced at a 1:1 ratio with 24-inch box trees and incorporated in the Landscape Plan recommended in Mitigation Measure 4 above. In addition four mature 60-inch box trees would be part of the Landscape Plan.

*(**Criterion 6** – Fundamentally conflict with the City of Oakland Creek Protection Ordinance (OMC Chapter 13.16) intended to protect biological resources. Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of riparian and aquatic habitat through: (a) discharging a substantial amount of pollutants into a creek; (b) significantly modifying the natural flow of the water; (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability; or (d) adversely impacting the riparian corridor by significantly altering vegetation or wildlife habitat).*

**Impact Biology – 9**

The City's Creek Protection Ordinance also applies to the project site and its drainage course. The project sponsor intends for site design of the residences to avoid direct impacts to the drainage course. The project's protective construction BMPs (as described in Mitigation Measure Biology 3: Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan), would minimize indirect impacts to the drainage feature. Slope stabilization of the western portions of Parcels 1 and 2 would occur upslope of a nearby drainage course and would also be subject to the City's Creek Protection Ordinance. The construction procedures identified in Mitigation Measure Biology Impact 3 would not allow grading to occur in this drainage course. Because the proposed project's construction activities could be within 20 feet of the top of bank, the proposed project would require a Creek Protection Permit. These permits establish requirements for site planning, noticing, development of a Creek Protection Plan, compliance with CEQA, and preparation of a hydrology report. In addition, it is expected the City may impose additional conditions of approval for the permit, with which the proposed project would comply.

In summary, the City's Creek Protection Ordinance is intended to protect biological resources. Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of riparian and aquatic habitat through: (a) discharging a substantial amount of pollutants into a creek; (b) significantly modifying the natural flow of the water; (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability; or (d) adversely impacting the riparian corridor by significantly altering vegetation or wildlife habitat.

Since the proposed project has the potential for these adverse impacts, it has developed a creek protection proposal in preparation of its creek protection plan as required by the City's Creek Protection Ordinance. Briefly, the Plan specifies the following measures to comply with the Ordinance and protect biological resources: (a) preserving the wetland/creek area and not disturbing it; (b) stabilizing the land around the creek and keeping sedimentation out of the creek and preventing direct erosion; (c) enhancing the 20-foot creek buffer zone with additional native species planting; and (d) creating the boundary deed restriction to prevent future development and harm to the area. As a result of the proposed project's Creek Protection Plan, compliance with the City's Creek Protection Ordinance, and other permitting requirements of the City, the proposed project would not conflict with the requirements or intent of the Creek Protection Ordinance and the impact would be less than significant. Thus, mitigation measures would not be required.

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# C. GEOLOGY AND SOILS

## 1. Introduction

This section describes the existing setting for geologic and soil resources and evaluates the associated impacts potentially created by the Project. The analysis assesses the potential for significant impacts to geologic and soil resources (see list of significant impact criterion subsection 4. Impacts, below). The main conclusions of the analysis are that impacts would not be significant and mitigation measures would not be required.

## 2. Approach and Methodology

Information in this section is based on a number of geologic studies and assessments. References to these studies are made in the following discussion and the full citations are in Chapter VII, References. All documents are available for public review between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Thursday and Friday, and 9:30 a.m. to 4:00 p.m. on Wednesday at the City of Oakland Community and Economic Development Agency, 250 Frank Ogawa Plaza, Suite 3315, Oakland.

## 3. Setting

Much of the information in the following description of setting was developed as part of geotechnical investigations prepared specifically for the proposed project site. The findings of the investigations are presented in reports and updates to those reports (GeoStrata 1999; EnGeo 2002a, 2002b, 2003a, 2003c). The project site is moderately steep to steep, with ground elevations ranging from approximately 1,070 to 1,179 feet above mean sea level (msl). The project site is located within the San Francisco Bay Area, a region of seismic activity. The closest active fault is the Hayward Fault, which is located approximately 4,000 feet west of the project site.

**Subsurface Conditions.** In the project area, marine sedimentary, igneous, and metamorphic rock predominate, and are composed of strata ranging from firm, ridge-forming chert and sandstone to rhyolite and weak, erodible serpentine, claystone and shale. Bedrock at the site includes sandstone of the Sobrante

Sandstone of Cenozoic age and siltstone and shale of the Claremont Shale. The bedrock is overlain by surficial landslide debris, minor artificial fill, and minor surficial soil. Weathering, possible folding, faulting and landsliding have weakened the rock, as has overburden unloading. Adverse bedrock attitudes and fracture planes are likely in some areas of the site. Cuts made in these areas will be susceptible to rock slope failure that requires a geotechnically engineered design to stabilize. Bedrock is generally mapped dipping downslope to the west at approximately 50 degrees, indicating less than optimum stability for engineered cut slopes. Geotechnical exploration encountered artificial fill materials approximately three to five feet below ground surface along Kenilworth Road; review of historic aerial photos indicates the road was initially graded prior to 1950.

**Slope Stability.** Hill slopes of the project site and some up-slope parcels contain mapped landslides, and future landsliding is a possibility. Repair of the existing project site landslides would reduce this risk (EnGeo 2002a, 2002b, 2003a, 2003c). Landsliding at the project site could be influenced by the dip-slope bedding planes, fracture planes, and possible fault contact zones mapped at the sites. The majority of the project site is located within mapped landslide deposits, and more site specific landslide mapping, confirms that the majority of the area is affected by landslide deposits. Lumpy, irregular topography, visible during the Geologist's site visit indicates a history of relatively continual landslide movement. Geotechnical exploration indicates landslide depths of from approximately four to 12 feet. Prior landslide repair has occurred upslope of the southern portion of the project site, in the vicinity of the proposed Kenilworth Road cul-de-sac.

**Seismicity, Faults and Ground Rupture.** The project site is located within the San Francisco Bay Area, a region of seismic activity. The closest active fault is the Hayward Fault, which is located approximately 4,000 feet west of the project site. The project site does not lie within the Alquist-Priolo Special Study Zone boundaries. According to the U.S. Geological Survey (USGS), a magnitude 7.0 earthquake can cause landslides, slumps, debris flows or rockfalls up to 70 miles from the epicenter or 50 miles from the fault rupture zone. These data suggest that landslides and rockfalls could be triggered at the project site during an earthquake on a regional fault. While a suspected thrust-fault was mapped at the northwest portion of the project site by Crane (1988), subsequent investigation places that fault “at least 50 to 100 feet west of the site” (EnGeo 2002b). Bedrock shearing and thrust faulting are mapped both north and south of the project site.

**Seismicity, Ground Shaking.** The study area is prone to strong seismic ground shaking, as is the entire Bay Area. The probability of one or more large earthquakes (Richter magnitude 6.7 or greater) in the Bay Area resulting in widespread damage between 2000 and 2030 is estimated at 70 percent, within a 10 percent margin of error (USGS 1999). The Association of Bay Area Governments (ABAG) predicts the most dangerous earthquake in area site would originate along a combination of both the northern and southern segments of the Hayward-Rogers Creek fault system, and that shaking intensity would be "violent"[12] to "very violent"[13] as a result of an earthquake of Richter magnitude 7.1 (ABAG 1995). The overall probability of an earthquake of magnitude greater than or equal to 6.7 on this fault system before the year 2032 is approximately 27 percent (USGS 2002).

**Seismicity, Ground Failure.** In the Bay Area, seismic-related ground failure frequently results from liquefaction, a process whereby water-saturated materials lose strength during strong ground shaking. Liquefaction occurs when the energy from an earthquake increases the pore-water pressure in loose, water-saturated geologic material to the point that it acts as a liquid rather than a solid. When material liquefies, it can move both horizontally and vertically. The most likely materials to liquefy are shallow, loose, water-saturated, well-sorted silts and sands with little or no clay-sized particles at depths less than 40 feet. The site-specific geotechnical investigation concludes that soil conditions likely to result in liquefaction do not exist (EnGeo 2002a, 2002b, 2003a,2003c).

Other forms of ground failure include lurching and lateral spreading, whereby the rolling motion of ground surface during an earthquake can cause cracks to form in weaker materials on slopes and adjacent to open channels. The project site currently has the potential to experience this type of seismic damage.

**Seismicity, Landslides.** Landslides or slope failures occur when material on an inclined face moves downward. This phenomenon can be greatly exacerbated by an earthquake. As described above, the project

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[12] Defined by the Modified Mercalli Scale as follows: General panic. Masonry D destroyed; masonry C heavily damaged, sometimes with complete collapse; masonry B seriously damaged. (General damage to foundations.) Frame structures, if not bolted, shifted off foundations. Frames racked. Serious damage to reservoirs. Underground pipes broken. Conspicuous cracks in ground. In alluvial areas sand and mud ejected, earthquake fountains, sand craters.

[13] Defined by the Modified Mercalli Scale as follows: Most masonry and frame structures destroyed with their foundations. Some well-built wooden structures and bridges destroyed. Serious damage to dams, dikes, embankments. Large landslides. Water thrown on banks of canals, rivers, lakes, etc. Sand and mud shifted horizontally on beaches and flat land. Rails bent slightly.

site as well as nearby parcels experience landsliding which could be made worse during an earthquake (EnGeo 2002a, 2002b, 2003a, 2003c).

**Soils.** Native soils and bedrock in the project area are expansive, meaning they have high placisity and high to critically high expansion potential. Expansive soils shrink and swell with fluctuations in moisture, and can cause heaving and cracking of foundation, slabs, and other elements of development.

## 4. Impacts and Mitigation

### *a. Standards of Significance*

The proposed project would have a significant geologic effect if any of the following criteria are met:

> ***Criterion 1*** *– Expose people or structures to substantial risk of loss, injury, or death involving:*
>
> > *a. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map or Seismic Hazards Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publications 42 and 117 and PRC §2690 et. seq.);*
> >
> > *b. Strong seismic ground shaking;*
> >
> > *c. Seismic-related ground failure, including liquefaction, lateral spreading, subsidence, collapse;*
> >
> > *d. Landslides.*
>
> ***Criterion 2*** *– Result in substantial soil erosion or loss of topsoil, creating substantial risks to life, property, or creeks/waterways.*
>
> ***Criterion 3*** *– Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as it may be revised), creating substantial risks to life or property.*

The following section presents the project's potential impacts relative to each of these criteria.

### *b. Assessment*

**Impact Geology and Soils – 1** *(Criterion 1 – Expose people or structures to substantial risk of loss, injury, or death involving the following phenomenon:*

a. *Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map or Seismic Hazards Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publications 42 and 117 and PRC §2690 et. seq.).*

b. *Strong seismic ground shaking.*

c. *Seismic-related ground failure, including liquefaction, lateral spreading, subsidence, collapse.*

d. *Landslides.).*

**Impact Geology and Soils – 1.a** (*Criterion 1.a. – Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map or Seismic Hazards Map issued by the State Geologist for the area or based on other substantial evidence of a known fault (refer to Division of Mines and Geology Special Publications 42 and 117 and PRC §2690 et. seq.):*

As discussed in the setting section above, there are no known faults running through the site of the proposed project that would rupture during an earthquake. The closest active fault is the Hayward Fault, approximately 4,000 feet west of the project site. The project site does not lie within the Alquist-Priolo Special Study Zone boundaries. While a suspected thrust-fault was mapped at the northwest portion of the project site by Crane (1988), subsequent investigation places that fault "at least 50 to 100 feet west of the site" (EnGeo 2002b). Bedrock shearing and thrust faulting are mapped both north and south of the project site and therefore would be expected in the vicinity but not on the site. Thus, conditions necessary for ground rupture do not exist at the project site, but do exist nearby. The site-specific supplemental geotechnical analyses consider the potential for surface rupture at the sites to be low (EnGeo 2002a, 2002b, 2003a, 2003c), and the impact would be less than significant.

**Impact Geology and Soils – 1.b** *(Criterion 1.b. – Strong seismic ground shaking):* As developed in the Initial Study (see its Attachment A) and as contained in Appendix A, the following uniformly applicable Conditions of Approval will be applied to the Project and are, therefore, analyzed as part of the project.

> **Conditions of Approval Attachment A: Improvement Measure B 6.a(ii)-1:** Project elements shall meet Uniform Building Code Seismic Zone 4 design standards or better to withstand expected earthquake ground shaking, liquefaction, or other ground failures. Design shall be in accordance with the recommendations of the final Geotechnical Report, and shall be verified for seismic loading by California-registered Professional Civil and Geotechnical Engineers; recommendations by the same regarding site preparation and design shall be incorporated into project plans.
>
> **Conditions of Approval Attachment A: Improvement Measure 6.a (ii)-2:** Site stabilization activities shall be conducted under the supervision of a California-registered Professional Geotechnical Engineer.

Strong ground shaking could occur during an earthquake, during either construction or operation the proposed project. Shaking of the intensity possible in the area could result in substantial adverse effects to structures and could expose people to risk from injury. With the application of the uniformly applicable Conditions of Approval noted above, and as modified through compliance with the City's seismically related building code as part of the building permit process, potentially significant project impacts would be reduced to less than significant and mitigation measures would not be required.

**Impact Geology and Soils – 1.c** *(Criterion 1.c. – Seismic-related ground failure, including liquefaction, lateral spreading, subsidence,* collapse.): Conditions of Approval Attachment A: Improvement Measures B 6.a (ii)-1 & 2, discussed above under Impact Geology and Soils - 2 applies to this ground failure impact as well. As discussed in the setting, the site's native soils and bedrock are expansive, meaning they have high plasticity and high to critically high expansion potential. These soils can cause heaving and cracking of foundation, slabs, and other elements of development. However, the site's soils do not have the characteristics that would lead to liquefaction: shallow, loose, water saturated, well sorted silts and sands with little or no clay-sized particles, and therefore there is not potential for a significant liquefaction impact. Other forms of ground failure, such as lurching and lateral spreading could occur on the site. However, the project as proposed, including the Improvement Measures B 6.a (ii)-1 & 2 discussed above under Impact Geology and Soils – 2, and as modified through compliance with the City's seismically related building code as part of the building permit process, would reduce this ground failure impact to a less-than-significant level and no mitigation measures would be required.

**Impact Geology and Soils – 1.d** *(Criterion 1.d. – Landslides.).* Site conditions are currently conducive to landsliding, and without correction of site conditions site landslides would be expected to continue and to be worse under seismic conditions. The project proposes extensive correction of current conditions that contribute to landsliding. The project proposes numerous measures and facilities to address slope stability and landsliding. These include retaining walls, restrained training walls, stripping, scarification, keyways and sub-drains, landslide removal, installation of a sub-surface drainage system, engineering of fills, restrictions on grades, foundation design, and erosion control. With development of the project as proposed and Improvement Measures 6. (ii)-1 & 2 noted above under Impact 1.c, and as modified through compliance with the City's seismically related building code as part of the building permit process, current conditions of slope instability and landsliding would be corrected, the impact would be less than significant and mitigation measures would not be required.

**Impact Geology and Soils – 2** (*Criteria 2 – Result in substantial soil erosion or loss of topsoil, creating substantial risks to life, property, or creeks/waterways*.): As developed in the Initial Study (see its Attachment A) and as contained in Appendix A, the following uniformly applicable Conditions of Approval will be applied to the Project and are, therefore, analyzed as part of the project.

> **Conditions of Approval Attachment A: Improvement Measure 6.b**: The contractor shall employ all or any combination of the following to avoid and minimize erosion, and to avoid sedimentation:
>
> - No grading during the rainy season unless approved by the director of CEDA and subject to appropriate best management practices to minimize erosion (a wet weather grading permit may be issued as discussed below)
> - Tops of fill or cut slopes shall be graded to prevent water from flowing freely down the slopes
> - Hydroseed or mulch cut slopes
> - Use silt fences, hay wattles, or bales to contain sedimentation
> - Street sweep to remove soil related to construction activities
> - Plant low-water landscaping shortly after site preparation

Minor areas of erosion were noted on-site, particularly near the northerly uphill boundary along Kenilworth Road. Erosion is obvious in the vicinity of Parcel 1 and Parcel 2, where concentration of runoff from upslope properties has occurred. Due to the steep slopes, erosion will take place should heavy rain occur during grading.

**Mitigation Geology and Soils- 2**

If a wet weather grading permit were issued, it shall employ the following best management practices:

a. On sloped properties, the downhill end of the construction area must be protected with silt curtains and hay bales oriented parallel to the contour of the slope (at a constant elevation) to prevent erosion to creeks and/or storm drains.

b. All work in or near creek channels must be performed by a minimum number of people. Immediately upon completion of this work, soil must be repacked and native vegetation planted.

c. Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible. All bare slopes in the area covered by the wet weather grading permit must be covered with staked tarps when rain is occurring or is expected and all such staked tarps and the like must be available at the jobsite.

d. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: start of the rainy season (October 1); site dewatering activities; and saw cutting asphalt or concrete, in order to retain any debris or dirt flowing into the

City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.

e. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into street gutters, drains, or creeks.

f. Direct and locate tool and equipment cleaning so that wash water does not discharge into creek or storm drains.

g. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by wind or in the event of a material spill. No hazardous waste material shall be stored on site.

h. Cover stockpiles of debris, soils or other material subject to being blown by the wind, with approved materials and methods.

i. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution.

j. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.

k. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to creeks or storm drains.

With development, the project site would be either landscaped or over-covered with buildings and paving, and site soils would be stabilized. While much of the site soils will be re-compacted, these soils are relatively shallow, many are non-native, and in their current state they contribute to site geotechnical problems, as described and addressed above (Items 6.a (iii) and 6.a (iv)). The proposed project would increase impervious surfaces on the site, but the amount would be less than one acre, and the project would develop a stormwater management system to slow down run off and to increase infiltration . Thus, increased erosion or flooding would not be anticipated from the increase in impervious surfaces, and there would be no long-term impact. Application of the uniformly applied Condition of Approval, Improvement Measure 6.b, would reduce erosion and flooding impacts to less than significant and mitigation measures would not be required.

**Impact Geology and Soils – 3** *(Criterion 1.c. and 1.d., see discussion above):* Site strata and soils are currently unstable. Site stabilization proposed by the proposed project would correct this condition, a project benefit. The project as proposed, including the Improvement Measures B 6.a (ii)-1 & 2 discussed above under Impact Geology and Soils – 2, and as modified through compliance with the City's seismically related building code as part of the building permit process, would reduce this impact associated with unstable soils to a less-than-significant level and no mitigation measures would be required.

**Impact Geology and Soils – 4 (***Criterion 3 – Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as it may be revised), creating substantial risks to life or property.):* Site-specific supplemental geotechnical investigations identify study area soils as expansive. Construction of foundations of other structures in such soils can cause extreme damage. Site design includes re-compaction of these soils and treatment of foundations and surrounding fills specifically to control the shrink-swell potential around such build structures. This would improve site conditions and substantial hazards from shrinking and swelling soil would be avoided and less than significant. The project as proposed, including the Improvement Measures B 6.a (ii)-1 & 2 discussed above under Impact Geology and Soils – 2, and as modified through compliance with the City's seismically related building code as part of the building permit process, would reduce this ground failure impact to a less-than-significant level and no mitigation measures would be required.

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# D. HYDROLOGY AND WATER QUALITY

## 1. Introduction

This section describes the existing setting for hydrology and water quality and evaluates the associated impacts potentially created by the proposed project. The analysis assesses the potential for significant hydrology and water quality impacts (see list of significant impact criterion subsection 4. Impacts, below). The main conclusions of the analysis are that potential impacts would be less than significant and that mitigation measures would not be required. .

## 2. Approach and Methodology

Information in this section is based on a number of studies and assessments. References to these studies are made in the following discussion and the full citations are in Chapter IV, References. All documents are available for public review between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Thursday and Friday, and 9:30 a.m. to 4:00 p.m. on Wednesday at the City of Oakland Community and Economic Development Agency, 250 Frank Ogawa Plaza, Suite 3315, Oakland.

## 3. Setting

The information in the following description of setting for hydrology and water quality is described in several studies and reports prepared for the proposed project, and peer reviewed. The studies are as follows:

- geotechnical investigation with report (GeoStrata 1999);
- supplemental geotechnical exploration (EnGeo 2002a);
- hydrologic study and geologic update (EnGeo 2002b) and supplement of that update report (EnGeo 2003a);
- seep consultation/hydrology site visit and letter report (EnGeo 2003b);
- supplemental geotechnical exploration (EnGeo 2003c);
- site review and peer review of studies and design with letter report (Hydroikos Associate 2002);
- assessment of the City's Creek Protection Ordinance as it may apply to the project site, with report (Olberding 2002);

- wetlands/waters of the U.S. delineation, with report (Olberding Environmental 2003a); and
- peer review of site design, including riparian protection measures, with letter report (Olberding 2003b).

Based on review of regional watershed mapping, the project site appears to be located on one of several slopes up-gradient of Vincente Creek, which is tributary to Temescal Creek. The project site is located within the Temescal Creek watershed of the greater regional drainage of San Francisco Bay (Oakland Museum of California 2003).

**Water Quality Standards, Waste Discharge Requirements (WDRs).** The San Francisco Bay Regional Water Quality Control Board (RWQCB, Region 2) administers water quality standards for the area. The existing project site does not currently generate runoff or effluent that violates water quality standards or waste discharge requirements of the RWQCB. The project will have less than one-acre of new impervious surface, as shown in Figure 10 on page 26. In order to reduce the amount and rate of site runoff, and to reduce the amount of pollutants in site runoff, design would include post-construction stormwater controls consistent with the Alameda Countywide Clean Water Program (NPDES Permit No. CAS0029831) ("NPDES Permit").[14] To slow the rate of stormwater from upslope properties and the rate of runoff upslope v-ditches would discharge to one of four inlets located on the upslope margin of Kenilworth Road. The inlets would each be connected to a 48-inch diameter pipeline located beneath the roadway that would serve to detain runoff. They would transport runoff from the roadway west across the project site to energy dissipaters located near the western boundary of the site. The energy dissipaters would spread water slowly across a geotextile and rock basin, where runoff would infiltrate or would slowly dissipate to downslope properties.

**Groundwater.** During the site-specific geotechnical investigation and supplemental geotechnical investigations, groundwater was encountered during subsurface exploration depths of approximately 3 to 13 feet below ground surface (bgs), depending on the location of test borings (GeoStrata 1999; EnGeo 2002a, 2002b, 2003c). A seep is located on Parcel 2, and this seep has been delineated as a wetland feature. The project site is located within Zone B of the East Bay Plain Groundwater Basin, with depths generally less than 300 feet bgs (RWQCB 1999a). Due to low yields, Zone B of the Basin is not currently, and is not likely

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[14] As of February 15, 2005, the City is implementing new "C.3" (New Development and Redevelopment Performance Standards) stormwater compliance for Group 1 Project (projects that include one acre or more of new impervious surface). These C.3 requirements do not apply to the Project because at full build-out, including houses, driveways and Kenilworth Road, the Project would result in less than one acre of impervious surface.

to be used in the future as a source of municipal drinking water. The project site does not currently utilize groundwater, or in any way affect the supply or quality of groundwater available for other uses.

**Erosion/Siltation, Runoff.** Sheet flow from the properties upslope of Kenilworth Road artificially concentrates when it encounters the roadway, and erosion scars are evident on the downslope edge of the roadway particularly in the vicinity of Parcel 2. One permanent and several temporary drains from upslope properties discharge to the project site immediately west of the roadway. Several subdrains from a landslide repair upslope on Devon Drive have an outlet near Kenilworth Road.

Below Kenilworth Road, surface water from the project site is carried downslope by both overland flow and within swales formed from gradual erosion of the landslide debris capping the sites. One of the two swales merges approximately 400 feet downslope from the project site with another swale located westerly, near Dawn Road. Several analyses of one of the swales (located on Parcel 2) were performed by experts in hydrology and biology, and these experts disagree whether or not this feature is a creek as defined by the City of Oakland. In order to be sufficiently protective of this drainage course, the drainage course is conservatively treated as a creek subject to the City's Creek Protection Ordinance. In addition, this swale has been delineated as a water of the U.S. The delineated drainage course is downslope of the delineated wetland feature, and is characterized by riparian scrub habitat, a poorly defined channel varying from 6 inches wide to 4 feet wide at the western boundary of the project site, and some evidence of scour within the poorly defined channel. A wetland is an area of land that is typically characterized by poor drainage and the consequent presence most or all of the time of sluggishly moving or standing water saturating the soil and creating the conditions for wetland plant habitat and wildlife species (see Section 4, Biological Resources, Setting Section, Wetland subsection, for a discussion of the wetland delineation). For the purposes of the proposed project, the swale and wetland area located on Parcel 2 is considered a creek under the City's Creek Protection Ordinance.

Assuming 26 inches of mean seasonal rainfall, four drainage areas upslope of the undeveloped project site are estimated to produce approximately between 1.0 and 1.4 cubic feet per second (cfs) of runoff from the 10-year storm (Moran Engineering, 2003).

**Flooding.** According to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) as interpreted by the Environmental Systems Research Institute (ESRI), the project site is not located within the 100-year floodplain (ESRI 2003). Other potential conditions relative to flooding include

inundation by seiche, tsunami, or mudflow (a well-mixed mass of rock, earth, and water that behaves like a fluid and moves down slopes with consistency similar to that of newly mixed concrete).The project site is located more than 1,000 feet above the Bay, and are not subject to tsunami. The project site is not located near an enclosed body of water, and is not subject to seiche. Conditions do not exist at or near the project site that could result in mudflows.

## 4. Impacts and Mitigation

### *a. Standards of Significance*

The proposed project would have a significant hydrologic effect if any of the following criteria are met:

> ***Criterion 1*** *– Violate any water quality standards or waste discharge requirements (including from an increase in impervious surfaces). [NOTE: All types of water, including groundwater and marine, fresh and wetland surface waters should be considered. The term "standards" should be interpreted to include a broad range of water quality parameters where feasible and appropriate (including temperature, dissolved oxygen and turbidity, as well as more conventional stormwater pollutants such as heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances and trash) and also water quality objectives such as the non-degradation of beneficial water uses and of water bodies placed on the SFRWQCB's Section 303(d) list of impaired water bodies. If the project would drain into an impaired water body, either directly or indirectly through an upstream tributary, it should be considered whether the project would result in an increase in any pollutant for which the water body is considered impaired; if the project would contribute additional load of a listed pollutant, then a significant cumulative impact would occur (see guidance below on evaluating and mitigating cumulative stormwater quality impacts)].*
>
> ***Criterion 2*** *– Substantially deplete groundwater supplies or interfere substantially with groundwater recharge (including from an increase in impervious surfaces) such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or proposed uses for which permits have been granted).*
>
> ***Criterion 3*** *– Result in substantial erosion or siltation on- or off-site that would affect the quality of receiving waters. [NOTE: Refer to the Alameda Countywide Clean Water Program's hydromodification management plan (HMP), as applicable, to assess the significance of altering drainage patterns and to develop any mitigation measures; the evaluation of hydromodification effects should consider the potential for increased erosion in the project's watershed, including streambed or bank erosion downstream. Also, the impact of stream crossings on increased delivery of sediment to creeks and streams should be considered].*
>
> ***Criterion 4*** *– Result in substantial flooding on- or off-site.: Refer to the Alameda Countywide Clean Water Program's hydromodification management plan (HMP), as applicable, to assess the significance of altering drainage patterns and to develop any mitigation measures; the evaluation of hydromodification effects should consider the potential for increased erosion in the project's watershed, including streambed or bank erosion downstream].*

***Criterion 5*** *– Create or contribute substantial runoff which would exceed the capacity of existing or planned stormwater drainage systems.*

***Criterion 6*** *– Create or contribute substantial runoff which would be an additional source of polluted runoff.*

***Criterion 7*** *– Otherwise substantially degrade water quality (including from an increase in impervious surfaces). [NOTE: All types of water, including groundwater and marine, fresh and wetland surface waters, should be considered. The term "water quality" should be interpreted to include a broad range of water quality parameters where feasible and appropriate (including temperature, dissolved oxygen and turbidity, as well as more conventional stormwater pollutants such as heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances and trash) and also water quality objectives such as the non-degradation of beneficial water uses and of water bodies placed on the SFRWQCB's Section 303(d) list of impaired water bodies. If the project would drain into an impaired water body, either directly or indirectly through an upstream tributary, it should be considered whether the project would result in an increase in any pollutant for which the water body is considered impaired; if the project would contribute additional load of a listed pollutant, then a significant cumulative impact would occur (see guidance below on evaluating and mitigating cumulative stormwater quality impacts)].*

***Criterion 8*** *– Expose people or structures to a substantial risk of loss, injury or death involving flooding.*

***Criterion 9*** *– Fundamentally conflict with elements of the City of Oakland Creek Protection (OMC Chapter 13.16) ordinance intended to protect hydrologic resources. Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of water quality through (a) discharging a substantial amount of pollutants into a creek; (b) significantly modifying the natural flow of the water or capacity; (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability; or (d) substantially endangering public or private property or threatening public health or safety.*

The following section presents the project's potential impacts relative to each of these criteria.

### ***b. Assessment***

**Impact Hydrology and Water Quality – 1** *(Criterion 1 – Violate any water quality standards or waste discharge requirements (including from an increase in impervious surfaces.):* As developed in the Initial Study (see its Attachment A) and as contained in Appendix A, the following uniformly applicable Conditions of Approval will be applied to the proposed project and are, therefore, analyzed as part of the project.

> **Conditions of Approval Attachment A: Improvement Measure 8.a:** The contractor would use any construction-generated water meeting regulatory standards for on-site dust suppression, and to discharge excess construction water meeting regulatory standards to the sanitary sewer system. With implementation of these required BMPs, the short-term impact would be less than significant.

Excavation or pier drilling during construction could encounter shallow groundwater that exists beneath the project site at between 3 to 13 feet, and could require removal of this water via pumping (dewatering), which the project sponsor has agreed to do as indicated above with Improvement Measure 8.a.

Altered stormwater runoff after project completion could increase erosion, sedimentation, and pollutant levels in receiving waters and violate water quality standards and discharge requirements. However, this would be a less-than-significant impact due to components of the proposed project and to the Improvement Measure 8.a noted above. As described in the Project Description the proposed project includes post-construction stormwater controls to be designed in accordance with RWQCB policy.

To slow the rate of stormwater from upslope properties and the rate of runoff upslope v-ditches would discharge to one of four inlets located on the upslope margin of Kenilworth Road the inlets would each be connected to a 48-inch diameter pipeline located beneath the roadway. These pipes would serve to detain runoff. They would transport runoff from the roadway west across the project site to energy dissipaters located near the western boundary of each project site. The energy dissipaters would spread water slowly across a geotextile and rock basin, where runoff would infiltrate or would slowly dissipate to downslope properties.

Post-construction controls would be designed to pre-treat runoff in accordance with RWQCB policy. These controls of surface water would not discharge to the wetland or to the on-site drainage course area.

As of February 1, 2005, the City is implementing a new "C.3"(New Development and Redevelopment Performance Standards) stormwater compliance for Group 1 Projects (projects that include one acre or more of pervious surface). However, the new C.3 requirements do not apply to the project because, as depicted on Figure 7, the proposed project would have less than one-acre of impervious surface. Since proposed project components and Improvement Measure 8.a would reduce impacts to less than significant levels, mitigation measures would not be required.

**Impact Hydrology and Water Quality – 2** *(Criterion 2 – Substantially deplete groundwater supplies or interfere substantially with groundwater recharge (including from an increase in impervious surfaces) such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or proposed uses for which permits have been granted):* Some pumping of shallow groundwater could occur during construction dewatering. This water would be used for on-site dust suppression, with excess discharged to the sanitary sewer (see Improvement Measure 8.a). Drilled piles would be installed to provide stable foundations. While shallow groundwater is known to occur beneath both sites, and depth to bedrock is shallow, pile drilling would be to a depth of 10 feet or less into the bedrock, and not be of sufficient

magnitude to affect the underlying basin. Since the proposed project would not directly connect with the groundwater basin nor indirectly affect it in any substantial way, neither construction nor operation of the proposed project would substantially deplete groundwater supplies or interfere substantially with groundwater recharge. Thus, the proposed project would have a less-than-significant impact and mitigation measures would not be required.

**Impact Hydrology and Water Quality – 3** *(Criterion 3 - Result in substantial erosion or siltation on- or off-site that would affect the quality of receiving waters.)*: As developed in the Initial Study (see its Attachment A) and as contained in Appendix A, the following uniformly applicable Conditions of Approval will be applied to the proposed project and are, therefore, analyzed as part of the project.

> **Conditions of Approval Attachment A: Improvement Measure 8.c:** The project sponsors shall develop and implement a "small project" Storm Water Pollution Prevention Plan (SWPPP), with appropriate BMPs for each stage of the project. The SWPPP shall be submitted to the City and RWQCB for review and acceptance. During site preparation and construction, control measures could include silt fences, hay wattles, and filter fabric to prevent runoff of sediment into Temescal Creek and the Bay. The SWPPP shall include post-construction controls to address storm water runoff during the life of the project. To the extent applicable and feasible the SWPPP shall utilize techniques found in Erosion and Sediment Control Field Manual (RWQCB 1999b) for construction BMPs, and Start at the Source, Design Guidance Manual for Stormwater Quality Protection (Bay Area Stormwater Management Agencies Association [BASMAA] 1999) for post-construction BMPs.

As described in the project description, the proposed project would not alter the existing drainage pattern or the course of an existing stream or river on the site, and therefore would not increase erosion or siltation. Further, the project would comply with the City's Creek Protection Ordinance as discussed on pages 49 and 63 under Biology. Ground-disturbing construction activities would not occur during the rainy season, unless a wet weather grading permit were issued. During construction, site soils would be disturbed, and although rain events are not expected during construction, should a rain event occur, on-site erosion may result. Should eroded soils leave the project site, they could be deposited as sediment downslope. These components of the proposed project and the SWPPP would reduce impacts to less-than-significant levels and mitigation measures would not be required.

**Impact Hydrology and Water Quality – 4** *(Criterion 4 Result in substantial flooding on- or off-site. Criterion 8 – Expose people or structures to a substantial risk of loss, injury or death involving flooding.):* The proposed project would not substantially alter the existing drainage pattern or the course of an existing stream or river on the site or area in a manner that would increase flooding. The project would not alter off-site drainages features, and would not discharge untreated stormwater or effluent to off-site receiving waters

in excess of RWQCB policy (see discussion of proposed post-construction stormwater controls under Impact **Hydrology and Water Quality –** 1, above). The project site would be graded and its drainage pattern altered slightly, but permanently; however, its topography would remain substantially unchanged, moderately steep to steep. Site design incorporates wetland and drainage course protection and enhancement measures, including construction setbacks from drainage course areas, a permanent deed restriction over on-site drainage areas, and riparian enhancement, a project benefit. The project sponsors would need a Creek Protection Permit from the City and must construct in accordance with conditions of those permits. Long-term changes to drainage patterns would be minor, and would not result in flooding. As a result, impacts would be less than significant and mitigation measures would not be required.

**Impact Hydrology and Water Quality – 5** *(Criterion 5 – Create or contribute substantial runoff which would exceed the capacity of existing or planned stormwater drainage systems.):* The proposed project would not create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. The proposed project would increase impervious cover and have potential to increase the amount of runoff. Design includes post construction stormwater controls that would slow the rate of site runoff, and would both reduce the amount and improve the quality of runoff discharged off-site. These controls are described in the Project Description (and summarized above in Impact Hydrology and Water Quality – 4). Because runoff would be pre-treated via post-construction controls, it would not be a substantial source of additional pollution. As a result, impacts would be less than significant and mitigation measures would not be required.

**Impact Hydrology and Water Quality – 6** *(Criterion 6 – Create or contribute substantial runoff which would be an additional source of polluted runoff. Criterion 7 – Otherwise substantially degrade water quality (including from an increase in impervious surfaces.)*: As discussed above under Impact 1, the proposed project would not include elements nor would they include construction or operation activities that could otherwise substantially degrade water quality. The proposed project as designed would improve the quality of site runoff, and would slow the rate of runoff, reducing erosion and total suspended solids. As a result, water quality impacts would be less significant and mitigation measures would not be required.

**Impact Hydrology and Water Quality – 7** (*Criterion 9 – Fundamentally conflict with elements of the City of Oakland Creek Protection (OMC Chapter 13.16) ordinance intended to protect hydrologic resources.):* Please see pages 49 and 63 in the Biology Section above. The impact would be less than significant.

# E. NOISE

## 1. Introduction

This section describes the existing setting for noise and evaluates the associated impacts potentially created by the proposed project. The analysis assesses the potential for significant noise impacts (see list of significant impact criterion subsection 4. Impacts, below). The main conclusions of the analysis are that impacts would be less than significant and mitigation measures would not be required.

## 2. Approach and Methodology

Information in this section is based on a number of studies and assessments (particularly a technical study entitled *Environmental Noise Assessment for Seven single-Family Homes on Kenilworth Road, by* Illingworth & Rodkin, Inc., 2005). References to these studies are made in the following discussion and the full citations are in Chapter VII, References. All documents are available for public review between the hours of 8:00 a.m. and 4:00 p.m. Monday, Tuesday, Thursday and Friday, and 9:30 a.m. to 4:00 p.m. on Wednesday at the City of Oakland Community and Economic Development Agency, 250 Frank Ogawa Plaza, Suite 3315, Oakland.

## 3. Setting

The project site experiences relatively low ambient noise levels, and is subject primarily to traffic-generated noise related to nearby residences and airplane over flights. The Noise Element of the *General Plan* does not identify the project site or the immediate surrounding area as a critical noise impact area that falls within an existing noise contour of 65 A-weighted decibels (dBA)[15] (City of Oakland 2005). That is, noise in the study area is not consistently as high as 65 dBA.

Tables 6 and 7 identify exterior City of Oakland noise standards at noise-sensitive receptors relevant to the proposed project according to the City's Noise Ordinance (Oakland Municipal Code, Title 17, Chapter

[15] A-weighting is a system of describing sound that takes into account the sensitivity of humans to sound.

17.120.050). These standards apply to noise generated by project construction or operation. Noise-sensitive receptors (residences) are located immediately east and north of the project site.

**Table 6**
**City of Oakland Operational Noise Standards at Receiving Property Line, dBA[1]**

| Receiving Land Use | Cumulative No. of Minutes, 1-Hr Period[2] | Maximum Allowable Noise Level (dBA) | |
|---|---|---|---|
| | | Daytime 7 AM – 10 PM | Nighttime 10 PM – 7 AM |
| Residential and Civic (legal residences, schools and child care facilities, health care or nursing homes, public open space, or similarly sensitive land uses) | 20 ($L_{33}$) | 60 | 45 |
| | 10 ($L_{16.7}$) | 65 | 50 |
| | 5 ($L_{8.3}$) | 70 | 55 |
| | 1 ($L_{1.7}$) | 75 | 60 |
| | 0 ($L_{max}$) | 80 | 65 |

**Source:** City of Oakland, 2000.

Notes:

1 These standards are reduced 5 dBA for simple tone noise, noise consisting primarily of speech or music, or recurring impact noise. If the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise level.

2 $L_x$ represents the noise level that is exceeded X percent of a given time period. $L_{max}$ is the maximum instantaneous noise level.

**Table 7**
**City of Oakland Construction Noise Standards at Receiving Property Line, dBA[1]**

| Receiving Land Use | Maximum Allowable Noise Level (dBA) | |
|---|---|---|
| | Weekdays 7 AM – 7 PM. | Weekends 9 PM – 8 PM |
| **Less than 10 days** | | |
| Residential | 80 | 65 |
| **More than 10 Days** | | |
| Residential | 65 | 55 |

**Source:** City of Oakland, 2000.

Note:

1 If the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise level.

During the hours of 7 p.m. to 7 a.m. on weekdays and 8 p.m. to 9 a.m. on weekends and federal holidays, noise levels received by any land use from construction or demolition shall not exceed the applicable nighttime operational noise level standard as shown in Table 6:

Table 8 below presents land use compatibility standards applying to the proposed land uses of Residential. These standards define acceptable project design and construction methods based on exposure of persons to specific noise levels. If these standards are exceeded, an acoustic analysis should be conducted, and noise attenuating design employed into the project, or construction should not be undertaken.

**Table 8**
**Relevant Noise and Land Use Compatibility Standards**

| **Project Relevant Land Use** | **Noise Exposure $L_{dn}$[1](dBA)** | | | | | | |
|---|---|---|---|---|---|---|---|
| | **50** | **55** | **60** | **65** | **70** | **75** | **80** |
| Residential: Low-density single family | | | | | | | |

**Source:** State of California, Governor's Office of Planning and Research, 1998.

Note: $L_{dn}$ is the average day-night sound level at a specific location.

**Legend:**

**Normally Acceptable:** Land use is satisfactory; buildings need

**Conditionally Acceptable:** New construction should be undertaken only after acoustic analysis and installation of noise insulation. Conventional construction and fresh air supply

**Normally Unacceptable:** New construction should be discouraged. If construction does proceed, acoustic analysis will determine noise insulation required.

**Clearly Unacceptable:** New construction should not be undertaken.

The site is located in the Oakland Hills in an existing single-family residential area. There are approximately 16 existing single-family homes within 300 feet of the proposed project site. There are currently two or three other homes being constructed immediately above the site. Existing noise levels during the daytime in this area are currently dominated by construction of several new homes. In the absence of the noise generated by this construction activity, sound levels are very quiet in the area. The typical daytime noise level is 40 to 45 dBA. The dominant noise source is distant traffic. The estimated day/night average noise level in this location is 50 to 55 dBA

# 4. Impacts and Mitigation

## *a. Standards of Significance*

The proposed project would have a significant noise effect if any of the following criteria are met:

> ***Criterion 1*** *– Expose persons to or generate noise levels in excess of standards established in the Oakland general plan or applicable standards of other agencies (e.g., OSHA).*
>
> ***Criterion 2*** *– Violate the City of Oakland Noise Ordinance (Oakland Planning Code Section 17.120.050) regarding operational noise.*
>
> ***Criterion 3*** *– Violate the City of Oakland Noise Ordinance (Oakland Planning Code Section 17.120.050) regarding construction noise, except if an acoustical analysis is performed and all feasible mitigation measures imposed, including the standard City of Oakland noise measures adopted by the Oakland City Council on January 16, 2001.*
>
> ***Criterion 4*** *– Violates the City of Oakland Noise Ordinance (Oakland Municipal Code Section 8.18.020) regarding nuisance of persistent construction-related noise.*
>
> ***Criterion 5*** *– Create a vibration which is perceptible without instruments by the average person at or beyond any lot line containing vibration-causing activities not associated with motor vehicles, trains, and temporary construction or demolition work, except activities located within the (a) M-40 zone or (b) M-30 zone more than 400 feet from any legally occupied residential property (Oakland Planning Code Section 17.120.060).*
>
> ***Criterion 6*** *– Generate interior $L_{dn}$ or CNEL greater than 45 dBA for multi-family dwellings, hotels, motels, dormitories and long-term care facilities (and may be extended by local legislative action to include single family dwellings) per California Noise Insulation Standards (CCR Part 2, Title 24).*
>
> ***Criterion 7*** *– Result in a 5 dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project,*
>
> ***Criterion 8*** *– Conflicts with state land use compatibility guidelines for all specified land uses for determination of acceptability of noise.*

The following section presents the project's potential impacts relative to each of these criteria.

## *b. Assessment*

**Impact Noise – 1** (Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. In particular, the City of Oakland identifies the following significance criteria related to noise standards):

- ***Criterion 1 – (General Standards Violations).*** *Expose persons to or generate noise levels in excess of standards established in the Oakland general plan or applicable standards of other agencies (e.g., OSHA).*

- ***Criterion 3 – (Construction).*** *Violate the City of Oakland Noise Ordinance (Oakland Planning Code Section 17.120.050) regarding construction noise, except if an acoustical analysis is performed and all feasible mitigation measures imposed, including the standard City of Oakland noise measures adopted by the Oakland City Council on January 16, 2001.*
- ***Criterion 4 – (Construction – Persistent Nuisance).*** *Violates the City of Oakland Noise Ordinance (Oakland Municipal Code Section 8.18.020) regarding nuisance of persistent construction-related noise.*
- ***Criterion 2 – (Operational Noise).*** *Violate the City of Oakland Noise Ordinance (Oakland Planning Code Section 17.120.050) regarding operational noise.*
- ***Criterion 7 – (Operational Noise).*** *Result in a 5 dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project,*
- ***Criterion 6 – (Interior Noise).*** *Generate interior Ldn or CNEL greater than 45 dBA for multi-family dwellings, hotels, motels, dormitories and long-term care facilities (and may be extended by local legislative action to include single family dwellings) per California Noise Insulation Standards (CCR Part 2, Title 24).*
- ***Criterion 8 – (Interior Noise).*** *Conflicts with state land use compatibility guidelines for all specified land uses for determination of acceptability of noise.*

The estimated $L_{dn}$ in the project area is in the range of 50 to 55 dB. This level of noise would be considered acceptable for residential development without any further analysis. No interior or exterior noise mitigation would be necessary to provide acceptable indoor and outdoor noise environments.

After the project is constructed, noise generated by the proposed seven homes would be similar to that generated by existing homes in the area; that is, noise would be generated during periods of home maintenance and other typical activities. However, this noise would not be expected to be any different than current noise levels in the area.

The only other potential noise source associated with the project would be traffic generated by the project. Traffic was focused out of the EIR because the project is so small that it would not generate a significant number of trips. Similarly, noise levels would not increase significantly due to the lack of traffic activity associated with the project. Noise levels generated by traffic from this project passing down existing streets in the area would be similar to the noise generated by the existing traffic and the low volume of activity would not result in an increase in average noise levels along the streets in the area.

As developed in the Initial Study (see its Attachment A) and as contained in Appendix A, the following uniformly applicable Conditions of Approval (adopted by the City Council on January 16, 2001) will be applied to the proposed project and are, therefore, analyzed as part of the project.

**Conditions of Approval Attachment A: Improvement Measure 11(1):** The project sponsor shall require construction contractors to limit standard construction activities as required by the City Building Department. Such activities are generally limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 p.m. and 1:30 p.m. No construction activities shall be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities (pile driving or greater than 90 dBA) shall be allowed on weekends and holidays.

**Conditions of Approval Attachment A: Improvement Measure 11(2):** To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures:

- Equipment and trucks used for project construction shall utilize the best available noise control techniques (*e.g.,* improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- Impact tools (*e.g.*, jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.

**Conditions of Approval Attachment A: Improvement Measure 11(3):** To further mitigate potential pile driving and/or other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall include as many of the following control strategies as feasible:

- Erect temporary plywood noise barriers around the construction site, to shield adjacent uses, where appropriate;
- Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and
- Monitor the effectiveness of noise attenuation measures by taking noise measurements.

**Conditions of Approval Attachment A: Improvement Measure 11(4):** Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- A procedure for notifying the City Building Division staff and Oakland Police Department;
- A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem;
- A listing of telephone numbers (during regular construction hours and off-hours);
- The designation of an on-site construction complaint manager for the project;
- Notification of neighbors within 300 feet of the project construction (approximately 16 single-family residences) area at least 30 days in advance of pile-driving and/or other extreme noise-generating activities about the estimated duration of the activity; and
- A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

During construction, activity on the site would generate noise levels typical to those experienced in the existing neighborhood by the construction of the homes going on in the area now. Noise levels, depending upon the activity, would range from 50 to 70 dBA in the area. These noise levels would be noticeable and would be expected to be annoying to the existing residents, at least during some phase of the construction. The topography of the project area would not have an effect on the generation of construction noise. The construction period, however, is expected to last only several months. Nonetheless, this is a potentially significant impact. However, the project sponsor would implement Improvement Measures 11(1), 11(2), 11(3) and 11(4) presented above, and as a result, the impact would be less than significant.

Operation of the proposed project would not include activities that would increase ambient noise levels. Operation of the proposed project would be similar to other residential land uses near the study area. The primary noise source would be vehicular traffic of the same type as is typical in the area. Operation of the proposed project would generate noise from vehicles, and occasional maintenance activities. These are relatively minor sources of noise. Because the area enjoys relatively low levels of ambient noise that do not now exceed the City's or other Agency's standards or the City's Noise Ordinance, it is reasonable to assume that small developments of similar character to existing would not result in a substantial temporary, periodic, or permanent noise increase in ambient noise levels, nor ambient noise that would exceed the standards established in the Oakland general plan or applicable standards of other agencies (e.g., OSHA) or that would exceed the standards of the City of Oakland Noise Ordinance (Oakland *Planning Code* Section 17.120.050) regarding operational noise. Thus, the proposed project's ambient noise impact would be less than significant and mitigation measures for ambient noise created by the operation of the proposed project would not be required.

Based on the quiet existing noise environment and no substantial increase in ambient noise from the proposed project in combination with compliance with California State Title 24 requirements and those of the City of Oakland (*General Plan* and Noise Ordinance as shown on Figure 12 on page 91), the proposed project would not expose people residing within the new homes to excessive noise levels. Thus, the interior noise impact would be less than significant and mitigation measures would not be required.

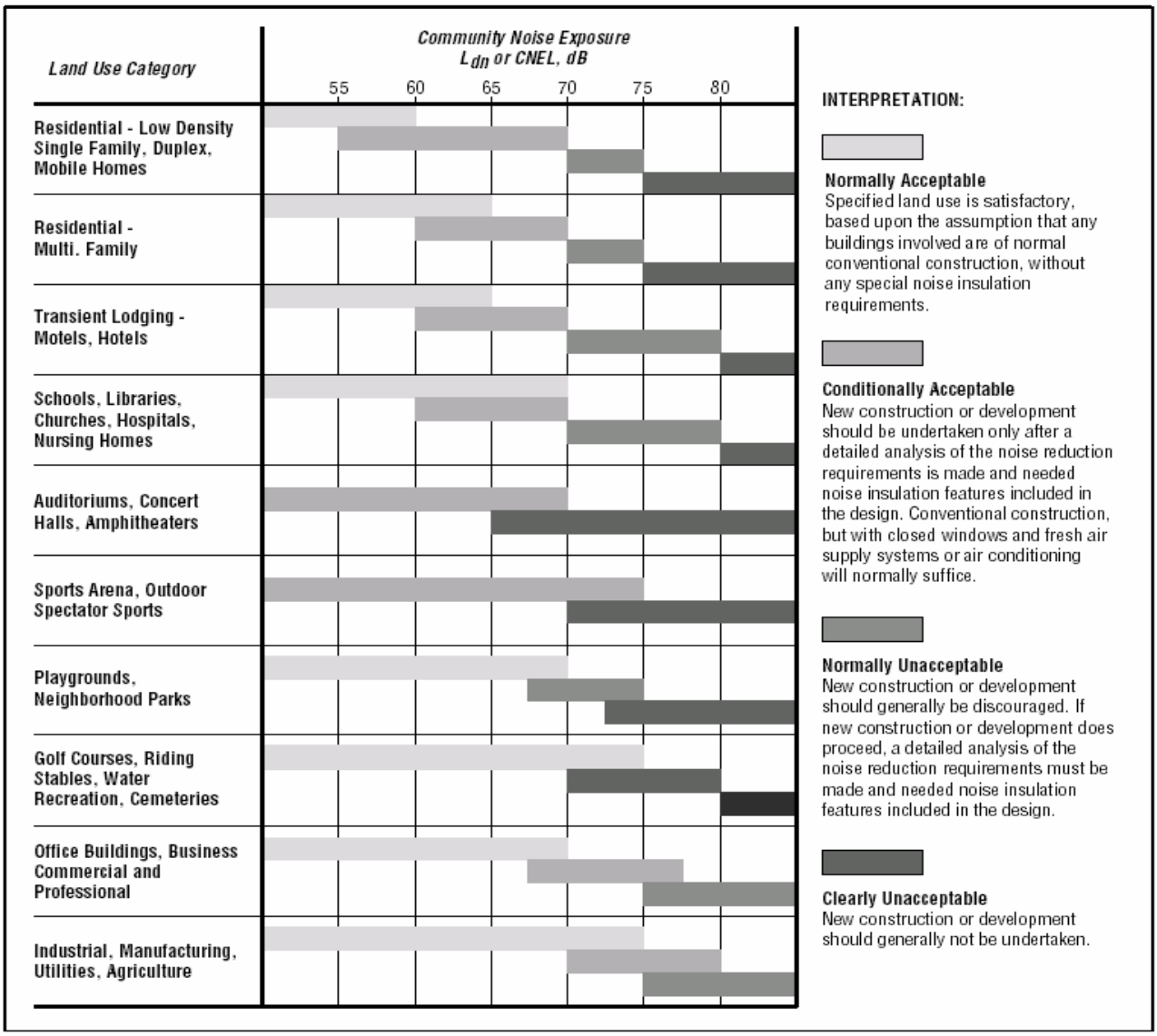
**Impact Noise - 2** *(Criterion 5 – Create a vibration which is perceptible without instruments by the average person at or beyond any lot line containing vibration-causing activities not associated with motor vehicles, trains, and temporary construction or demolition work, except activities located within the (a) M-40 zone or (b) M-30 zone more than 400 feet from any legally occupied residential property (Oakland Planning Code Section 17.120.060).):* First, vibration caused by temporary construction is not a significant impact. Even if construction related ground vibrations were considered to be a significant environmental impact, which they are not, the construction equipment proposed to be used for the project (graders, backhoes, air compressors, saws, etc.) would not generate ground vibration that would be felt off the construction site. Pile driving would not be necessary.

Foundations of nearby homes would be located within about 300 feet of the closest activities (about 200 feet or further from pile/caisson installation). The nearby existing structures are about less than 15 years old; and therefore, are considered to be normal or modern construction. Construction would involve large equipment and pile/caisson installation techniques that could produce localized vibration. Vibrations decrease with distance from the source. While vibrations can be felt in buildings close to construction activities, rarely do these vibrations reach levels that cause damage to building structures. Old fragile or historical buildings are sometimes an exception. Humans are sensitive to vibration levels.

The National Cooperative Research Program and The California Department of Transportation indicate that construction vibrations are generally assessed in terms of peak particle velocity (ppv), which are typically expressed in terms of inches per second (in/sec). The greatest vibration-generating construction activities would include use of bulldozers and caisson drilling. Based on published data, these activities produce ppv vibration levels of 0.089 in/sec. Heavy loaded trucks produce ppv levels of 0.076 in/sec. The human threshold of perception is a ppv of 0.008 to 0.012 in/sec. As a result, vibrations may be perceptible to people at 50 to 100 feet from these activities, including the passage of large loaded trucks on Kenilworth Road.

**Figure 12**

**Acceptable Community Noise Exposure by Land Use Category**




Levels at residences closest to the construction activities are likely to fall in the category of barely to distinctly perceptible. While vibrations may be perceptible, Caltrans reports that there is virtually no risk of "architectural" damage to normal buildings at levels of 0.10 in/sec. Caltrans also uses a ppv level of 0.2 in/sec as a criterion for "minor architectural damage" risk from continuous vibrations, although they report that this appears conservative for intermittent sources such as construction. In addition, high amplitude low

frequency sound from construction equipment may generate noise capable of rattling windows or structures. Although this may result in perceptible vibration, no damage to buildings or the stability of the slope would occur.

As noted above, the project sponsor would implement Improvement Measures 11(1), 11(2), 11(3) and 11(4). These improvement measures would reduce impacts to less-than-significant levels and mitigation measures would not be required.

## F. GROWTH INDUCEMENT

CEQA requires a discussion of a project's growth-inducing impacts – that is, the ways in which the proposed action could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. In other words, a project would be considered growth inducing if its construction and use would encourage population increases and/or new development that might not occur if the project were not approved and implemented. The proposed project entails the preparation of seven residential sites for construction of seven single-family residences. The additional residential space would increase the daily population on the project site by approximately 19 residents from the currently vacant site. The proposed project would use the site in the manner envisioned under current zoning and *General Plan* designation – single-family residential development. Thus, the proposed use would not change the potential for growth under present zoning and planning controls in the surrounding area, as Kenilworth Road is an existing albeit a partially improved public road. The proposed project would not directly build or influence the construction of additional housing in the surrounding environment. Construction of the Kenilworth Roadway extension would provide access to the seven residences of the proposed project, as well as four other lots nearby. The easier access to these four other lots would reduce, somewhat, the barriers to developing those lots, and in this way, the proposed project could have an indirect growth inducing impact for the eventual development of these four other non-project lots. By the same logic, the site protections and improvements of the proposed project may also be considered as reducing indirectly some of the barriers to developing these other sites, and therefore, would be considered similarly indirectly growth inducing. However, while Kenilworth Road is being extended for the project itself, a deed restriction would prohibit its extension or use by future projects. Additionally, although property owners adjacent to the road on the north and east would have access to the road, the sanitary wastewater lift station would be private and sized to only serve the project and the previously developed lots.

The new population to the area who would live in the new residences would directly foster economic growth in proportion to their increase in the area's residential population. This economic stimulation would occur through the residents' new direct purchases of economic goods and services. Economic growth would be fostered indirectly through the economic multiplier effect of additional purchases of goods and services used by the many businesses that produce the intermediate materials and services required in the final products and services (the production supply chain). This increase would be minimal in light of the proposed seven additional residences and four non-project lots with direct access to Kenilworth Road, and up to 30 or so new

residents in an area occupied by, and served by, the population and economy of Oakland and the wider Bay Area. In sum, the growth inducing impacts of the project would be less than significant.

# G. CUMULATIVE IMPACTS

Cumulative development in the area from reasonably foreseeable future projects is expected to be limited due to the low capacity of the area for further development and the City's planning controls that limit future development. Such controls include *Oakland General Plan* policies that generally specify the location, type, and intensity and density of future growth to enhance and not degrade Oakland's neighborhoods and districts and to protect its natural environment.[16]

The project site is located in the North Hills Planning Area of the *General Plan* with a Hillside Residential (single unit structures) land use designation, not an open space designation. The more definitive zoning controls applicable to the project site are the R-30 zoning district – One-Family Residential Zone, S-14, Community Restoration Combining Zone – and the S-18 Mediated Design Review Overlay Zone.

In particular, the Open Space, Conservation and Recreation Element (OSCAR) of the *General Plan* generally conserves and protects Oakland's rich endowment of open space from development, thus limiting the potential for future cumulative development. The OSCAR identifies two areas near the project site as parkland, Claremont Canyon and Grizzly Peak, and these could not be developed. In addition the OSCAR also identifies a privately-owned property to the west of the project as having conservation potential – the Lands of Varney (OSCAR Action OS-1.2.4, Additional Resource Conservation Area Designations). Although this property is now zoned for residential development, its development potential is limited by steep terrain, proximity to the Hayward Fault, propensity for land slide hazards, and high-value wildlife habitat. Action 1.2.4 would study ways to limit development on the most environmentally sensitive parts of the Lands of Varney and other privately held sites designated to have conservation potential. Options like transfer of development rights, conservation easements, planned unit development and rezoning should be considered. However, the OSCAR recommends against acquisition with City funds due to fiscal constraints and the larger need for additional open space in the flatland neighborhoods. Regardless of whether a conservation designation is ever negotiated for the Lands of Varney, its cumulative development potential would be limited due to physical site constraints.

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[16] To date, the City of Oakland has no pending land use applications on file for the Felton property to the west of the project site (Lands of Varney) or the four undeveloped lots which would join the Kenilworth Road extension.

Further, it should be noted that although cities can control, and even limit, land use through the use of general plans, zoning, and other measures, all such actions will be subject to the legal maxim that City policies – including open space and conservation policies in particular – can not deny an owner economically viable use of their land (OSCAR, Relationship to Private Property Rights, page 1-2). The City interprets this to mean that some economically viable use must remain on each parcel of privately held land after controls are imposed. Thus, no such conservation controls may be applied to private property unless it is either voluntarily agreed to by the owner or if there is a reasonable legal basis for the designation and the owner still retains an economically viable use of his or her property.

With these limitations on the City's land use controls, the *Planning Code*, through zoning regulations, translates *General Plan* policies into definitive land use prescriptions and restrictions regarding the type of use, location, density, height/bulk, design, and so forth. There are restrictions on development in wildland areas subject to fire hazards. Wetlands and other natural resources are protected through deed restriction. The proposed project must establish a wetlands deed restriction for the creek running through the property.

The project's proposed extension of Kenilworth Road would be deed-restricted to prevent further extensions. Development within the City of Oakland and its surrounding adjacent lands has resulted in the cumulative loss of foraging, cover and reproduction habitat for a number of commonly occurring, casually occurring, rare or special-status species. The loss of annual grasslands that are not currently occupied by special-status species, however, is a less-than-significant environmental impact because this vegetation type is not a sensitive natural community.

In the region, cumulative loss of annual-grassland habitat will continue in the near future because of future development in the Oakland Hills Area. Past land disturbance, including fire, the introduction of the invasive blue gum (Eucalyptus) and the surrounding residential development, reduces the habitat values of the grasslands on the Project site.

The loss would contribute to the loss of such habitat throughout the Oakland Hills and the City of Oakland. Although the loss of annual grassland is a less-than-significant project impact, it does represent a cumulatively small contribution to the ongoing regional loss of habitat in the region for a wide range of species that depend on remaining open spaces. However, because no special-status species occur on the site, the small contribution to the cumulative loss of grassland habitat is cumulatively less-than-significant.

The project site is located on one of several slopes up-gradient of Vincente Creek, a tributary to Temescal Creek. The project would install measures (such as v-ditches and inlets) to slow the rate of and detain stormwater from upslope properties. The energy dissipaters would spread water slowly and runoff would infiltrate or would slowly dissipate to downslope properties. There would be less-than-significant cumulative impacts to Vincente and Temescal creeks.

Thus, the limited cumulative development expected in the vicinity of the proposed project would not be expected to result in the basis for significant cumulative impacts. Further, the proposed project's seven new residences would avoid or reduce potentially significant impacts to less-than-significant levels.

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# H. AREAS OF CONTROVERSY

This environmental impact report focuses on the issues of aesthetics/visual quality, biological resources, geology and soils, hydrology and water quality, noise, growth inducement, and cumulative impacts. All other potential environmental effects were found to be at a less-than-significant level or to be mitigated to a level of less-than-significant with standard conditions of approval agreed to by the project sponsor. Please see the Initial Study, included in this document as Appendix A, for analysis of issues other than aesthetics/visual quality, biological resources, geology and soils, hydrology and water quality, noise and growth inducement

Residents of the project neighborhood and in the surrounding urbanized area have expressed concern that: (1) the proposed project could adversely affect the biological resources of the project site including tree removal, wetlands, and other habitat (discussed in Chapter B, Biology, pages 37 to 64 in this document); (2) the proposed project could affect views of other residences in the area (discussed in Chapter A, Aesthetics, pages 31 to 35 in this document); (3) the proposed project could adversely affect the hydrology, soils and geology in the area (discussed in Chapter C, Geology and Soils, pages 65 to 73; and in Chapter D, Hydrology and Water Quality, pages 75 to 82, in this document); (4) construction of the proposed project could have adverse noise, vibration and air quality impacts (discussed in Chapter E, Noise, pages 83 to 93 in this document; and in Chapter 3, Air Quality, pages 25 to 34 in the Initial Study); (5) gas and electric facilities that are located within and adjacent to the project site (page 23); and (6) cumulative conditions be adequately analyzed to assess potential impacts of the proposed project including the creeks and watersheds (discussed in Chapter D, Hydrology and Water Quality, pages 75 to 82, in this document).

The Planning Commission will be asked to certify the Final EIR after publication and distribution of written responses to all comments received on the Draft EIR.

After Final EIR certification, and following consideration of community concerns as expressed in the future Conditional Use public hearing and the information presented in the Initial Study and this EIR, the City of Oakland Planning Commission (or the City Council on appeal) will decide whether or not to approve the proposed project.

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# V. ALTERNATIVES

## A. INTRODUCTION

This Draft EIR evaluates three alternatives, including the No Project Alternative. Under the No Project Alternative, the project site would remain in its existing condition as a vacant area. Under the Reduced Density Full-Project Site Alternative, four single-family residences would be built instead of the proposed seven residences; and under the Reduced Density Original Four-Lot Alternative, four units would be built on the original four lots.

## B. NO PROJECT ALTERNATIVE

Under the No Project Alternative, existing conditions on the site would remain unchanged. The site's development potential under the Oakland *Planning Code* would remain the same (single-family residential). The existing wetland area on the site would continue unprotected. The drainage problem with the upslope residences from the site would remain. The existing slope instability and wildland fire hazards would remain unchanged.

No houses would be constructed and so the associated less-than-significant aesthetic changes on the visual character and quality of the site and the its surroundings under the proposed project would not occur. As with the proposed project, the site is not a formally protected public scenic vista and the No Project alternative would not affect that type of visual resource.

The No Project Alternative would avoid the proposed project's less-than-significant effects on biological resources, in summary: (1) a less-than-significant modification of non-sensitive habitat that is insufficient for support of two special status wildlife species (California red-legged frog and the Alameda whipsnake) who have suitable habitat within their range of travel of the site; (2) potentially adverse effect on the small riparian habitat and wetlands that would be reduced to less than significant with the project's proposed Creek Protection Plan and compliance with Oakland's Creek Protection Ordinance; (3) potentially significant interference during construction with stray raptors that might nest and breed in the trees on-site or in trees adjacent to the site that would be reduced to less than significant with the incorporation of the improvement measures to avoid interference during breeding; and (4) potentially significant destruction of protected trees

that would be reduced to less than significant with the project's compliance with Oakland's existing Tree Preservation and Removal Ordinance.

The No Project Alternative would avoid the proposed project's potentially significant geology and soils impacts. Since buildings would not be constructed or occupied, the existing soils issues (expansive soils, landsliding) and seismicity issues (ground shaking, lurching, and lateral spreading) that would be reduced to less than significance under the City of Oakland's seismically-related building code as part of the building permit process for the proposed project would be avoided under the No Project Alternative.

The absence, under the No Project Alternative, of construction and operation of the proposed project's seven houses would avoid the proposed project's hydrology and water quality effects, some of which would be potentially significant and reduced to less-than-significant through the proposed improvement measures and compliance with existing regulations and laws. In summary those impacts are as follows: (1) containment of construction-generated water to avoid groundwater and stormwater runoff water quality effects; (2) erosion effects, and (3) stormwater drainage impacts.

The No Project Alternative would avoid all potentially significant construction-related noise that would be reduced to less-than-significant under the proposed project through improvement measures and compliance with existing regulations and laws. This alternative would also avoid the small increase in ambient noise conditions from use of the seven new houses under the proposed project, including associated vehicle trips.

The No Project Alternative would not meet any of the project sponsor's objectives for the project, including the beneficial improvements associated with the proposed project would not be made: (1) sewage collection, (2) stormwater management (construction and post-construction), (2) emergency access, (3) on-site wildland fire management improvements, (4) geotechnical stabilization, and (5) wetland enhancement and preservation.

## C. REDUCED DENSITY FULL-PROJECT SITE ALTERNATIVE

Under the Reduced Density Full-Project Site Alternative, only four of the proposed seven houses would be built as originally proposed on the seven-lot project site. The houses would be the same general height and massing as proposed under the project – 35-foot maximum at finished grade and a 20-foot maximum at the Kenilworth Road property line (at midpoint) (see the description under the "Structures" bullet in Subsection

C. Project Components, of Chapter III, Project Description). Even without development in the immediate proximity to the wetland area under the proposed project, it is likely that project construction and operation of this alternative's four houses would have similar, or greater indirect, wetlands impact potential. Development of other aspects of the site would remain the same between this alternative and the proposed project. Thus, this alternative would have the a similar project components as the project, except that it would construct four houses instead of seven and the area of improvements would be reduced as follows:

- Development of project site for the footprints of four single-family dwellings and construction of the four single-family dwellings, including parking, and landscaping;
- Roadway improvements, including widening and paving the unpaved portion of Kenilworth Road and a deed restriction to prohibit further extension of the road;
- Wildland fire protection;
- Geotechnical stabilization of the site and of upslope properties;
- Post-construction stormwater management facilities; and
- Protection of a small on-site wetland and an on-site drainage course delineated by the U.S. Army Corps of Engineers (Appendix E), pursuant to Creek Permit No. 04068 and a Department of Fish and Game Section 1602 Lake and Streambed Alteration Agreement for the proposed 300 square feet of branch clearing, and establishment of a permanent creek buffer enforceable through deed restrictions.

With the four houses to be constructed under the Reduced Density Full-Project Site Alternative, this alternative would have similar less-than-significant aesthetic changes in the visual character and quality of the site and the its surroundings as the proposed project. As with the proposed project, the site is not within a formally protected public scenic vista and so this alternative would not affect a scenic vista.

The Reduced Density Full-Project Site Alternative would have similar less-than-significant effects on biological resources as the proposed project, in summary: (1) a less-than-significant modification of non-sensitive habitat that is insufficient for support of two special status wildlife species (California red-legged frog and the Alameda whipsnake) who have suitable habitat within their range of travel of the site; (2) potentially adverse effect on the small riparian habitat and wetlands that would be reduced to less than significant with the project's proposed Creek Protection Plan and compliance with Oakland's Creek Protection Ordinance; (3) potentially significant interference during construction with stray raptors that might nest and breed in the trees on-site or in trees adjacent to the site that would be reduced to less than significant with the incorporation of the improvement measures to avoid interference during breeding; and (4) potentially significant destruction of protected trees that would be reduced to less than significant with the project's compliance with Oakland's existing Tree Preservation and Removal Ordinance.

This alternative would have the same set of less-than-significant geology and soils impacts as the proposed project due to its construction and use of the four new residences, but would not have the same extent of existing geologic hazard abatement.

Construction and operation of the four houses under the Reduced Density Full-Project Site Alternative would have similar or the same hydrology and water quality effects as the proposed project, some of which would be potentially significant and reduced to less-than-significant through the proposed improvement measures and compliance with existing regulations and laws. In summary, those impacts are as follows: (1) containment of construction-generated water to avoid groundwater and stormwater runoff water quality effects; (2) erosion effects, and (3) stormwater drainage impacts.

This alternative would have the same or slightly less extensive potentially significant construction-related noise effects as the proposed project. As under the proposed project, these effects would be reduced to less-than-significant under this alternative through improvement measures and compliance with existing regulations and laws. This alternative would have a somewhat lower, less-than-significant increase in ambient noise conditions associated with the use of four new houses in contrast to the seven houses under the proposed project, including associated vehicle trips.

Impacts related to the number of units to be occupied, such as population, trip generation, etc., would be reduced by approximately forty percent from the less-than-significant levels found for the proposed project.

The Reduced Density Full-Project Site Alternative would not meet the project sponsor's objectives for the project , including the size of the permanent wetland buffer, extent of geologic hazard abatement, or extent of fire hazard abatement.

## D. REDUCED DENSITY ORIGINAL FOUR-LOT ALTERNATIVE

Under the Reduced Density Original Four-Lot Alternative, only Lots 1-4 of the Planned Unit Development would be built with four houses clustered in the area closest to the existing Kenilworth Road extension. (See lots 1-4 of Figure 2, Site Plan in Chapter III of this EIR.) This would reduce development intensity by forty percent**.** The four houses would be the same general height and massing as proposed under the project – 35-foot maximum at finished grade and a 20-foot maximum at the Kenilworth Road property line (at midpoint) (see the description under the "Structures" bullet in Subsection C. Project Components, of Chapter III,

Project Description). The project construction and operation of this alternative's four houses would have a more significant potential impact on the wetland area because they would be clustered closer to the wetland area and the buffer would be reduced to accommodate required setbacks. This alternative would have similar project components as the project, except that it would construct four houses instead of seven and the area of improvements would be reduced, as follows:

- Development of project site for the footprints of four single-family dwellings and construction of the four single-family dwellings, including parking, and landscaping;
- Roadway improvements, including widening and paving the unpaved portion of Kenilworth Road through Lot 4.
- Wildland fire protection;
- Geotechnical stabilization of the site and of upslope properties;
- Post-construction stormwater management facilities;
- Protection of a small on-site wetland and an on-site drainage course delineated by the U.S. Army Corps of Engineers (Appendix E), pursuant to Creek Permit No. 04068 and a Department of Fish and Game Section 1602 Lake and Streambed Alteration Agreement for the proposed 300 square feet of branch clearing, and establishment of a permanent creek buffer enforceable through deed restrictions.

With the four houses to be constructed under the Reduced Density Original Four-Lot Alternative, this alternative would have similar less-than-significant aesthetic changes in the visual character and quality of the site and the its surroundings as the proposed project. As with the proposed project, the site is not within a formally protected public scenic vista and so this alternative would not affect a scenic vista.

The Reduced Density Original Four-Lot Alternative would have similar less-than-significant effects on biological resources as the proposed project, in summary: (1) a less-than-significant modification of non-sensitive habitat that is insufficient for support of two special status wildlife species (California red-legged frog and the Alameda whipsnake) who have suitable habitat within their range of travel of the site; (2) potentially adverse effect on the small riparian habitat and wetlands that would be reduced to less than significant with the project's proposed Creek Protection Plan and compliance with Oakland's Creek Protection Ordinance; (3) potentially significant interference during construction with stray raptors that might nest and breed in the trees on-site or in trees adjacent to the site that would be reduced to less than significant with the incorporation of the improvement measures to avoid interference during breeding; (4) potentially significant destruction of protected trees that would be reduced to less than significant with the project's compliance with Oakland's existing Tree Preservation and Removal Ordinance.

This alternative would have the same set of less-than-significant geology and soils impacts as the proposed project due to its construction and use of the four new residences, but would not include the same extent of geologic hazard abatement and wildland fire protection.

Construction and operation of the four houses under the Reduced Density Original Four-Lot Alternative would have similar or the same hydrology and water quality effects as the proposed project, some of which would be potentially significant and reduced to less-than-significant through the proposed improvement measures and compliance with existing regulations and laws. In summary those impacts are as follows: (1) containment of construction-generated water to avoid groundwater and stormwater runoff water quality effects; (2) erosion effects, and (3) stormwater drainage impacts.

This alternative would have the same or slightly less extensive potentially significant construction-related noise effects as the proposed project. As under the proposed project, these effects would be reduced to less-than-significant under this alternative through improvement measures and compliance with existing regulations and laws. This alternative would have a somewhat lower, less-than-significant increase in ambient noise conditions associated with the use of four new houses in contrast to the seven houses under the proposed project, including associated vehicle trips.

Impacts related to the number of units to be occupied, such as population, trip generation, etc., would be reduced by approximately forty percent from the less-than-significant levels found for the proposed project.

The Reduced Density Original Four-Lot Alternative would not meet the project sponsor's objectives for the project, including the including the size of the permanent wetland buffer, the extent of geologic hazard abatement, and wildland fire abatement.

## E. ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The No Project Alternative would avoid all of the environmental effects of the proposed project, all of which would be are reduced to less than significant under the proposed project through compliance with existing laws and regulations, and through best management construction practices that are incorporated into the project proposal. In the absence of the project, the site's existing conditions (unprotected wetlands, and drainage, landsliding, and expansive soils issues) would continue instead of being protected or redressed as they would under the proposed project. Thus, this alternative avoids both the adverse changes of the

proposed project that would be reduced to less-than-significant levels in the proposed project, as well as the beneficial effects. This alternative would not meet the project sponsor's objectives nor the City's goals of increasing housing, including creek/wetland protection, geologic hazard abatement, fire hazard abatement or correction of existing uncontrolled stormwater runoff from upslope lots.

The Reduced Density Alternatives would have the same or similar impacts in areas such as visual quality, biology, geology, hydrology, and noise, but would have approximately forty percent lower impacts in areas like population and trip generation that are proportionally related to the number of units built. As with the proposed project, this alternatives' potentially significant impacts would be reduced to less than significance through compliance with existing laws and regulations, and through the use of best management construction practices that would be incorporated into the project proposal. Construction of four houses under either alternative – in contrast to the seven houses of the proposed project – would not meet the project sponsor's objectives, including the extent of geologic hazard and wildland fire abatement and that of the City of Oakland in terms of increasing housing and creek and wetland protection. In addition, the Reduced Density Original Four-Lot Alternative would not provide as substantial a permanent wetland buffer as the Reduced Density Full-Project Site Alternative or the proposed project.

Since CEQA will not allow the No Project Alternative to be designated the environmentally superior alternative, and since CEQA requires the designation of such an alternative, the Reduced Density Full-Project Site Alternative becomes the environmentally superior alternative.

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# VI. OTHER CEQA CONSIDERATIONS

This chapter discusses a set of issues suggested under CEQA Guidelines Section 15126, as follows: (1) significant effects that cannot be avoided, and (2) significant irreversible environmental changes.

As developed in Appendix A, Initial Study and Conditions of Approval, and in Chapter IV, Environmental Setting, Impacts, and Mitigation Measures of this Draft Focused EIR, all of the potentially significant impacts of the proposed project could be avoided or reduced to a less-than-significant level through the improvement measures incorporated into the project and mitigation measures, that, in some cases, include best practices, and through compliance with existing regulations and laws. Accordingly, one key finding of the environmental review process is that the proposed project would not have unavoidable significant environmental effects.

CEQA Guidelines Section 15126.2 requires a discussion of the irreversible environmental changes that a project could have and defines such change as either irretrievable commitments of resources and/or irreversible damage resulting from environmental accidents. The proposed project would construct new residential structures, parklands, utility infrastructure, roadways, roadway improvements. Operation of the proposed project would include maintenance of the residential structures and improvements, and vehicle trips. These activities would use non-renewable resources such as fossil fuels and the wood, metal, and other materials required in the various improvements. The change in visual setting would unlikely to revert to its current state even though it may not be considered fully irreversible. The construction and operation of the proposed project would not involve the transport, use, or disposal of hazardous materials that could result in a substantial accidental release if not properly managed. The types of hazardous materials to be used would be routine household and landscaping substances that would be similar to products used in residential neighborhoods across the City.

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# VIII. ACRONYMS

Following is a list of acronyms used in this report.

| | |
|---|---|
| AAQS | ambient air quality standard (California: CAAQS or National: NAAQS) |
| ABAG | Association of Bay Area Governments |
| AC | Alameda County (transit) |
| AHM | acutely hazardous material |
| ALUC | Airport Land Use Commission |
| ALUPP | Airport Land Use Policy Plan |
| APN | Assessor's Parcel Number |
| BAAQMD | Bay Area Air Quality Management District |
| BART | Bay Area Rapid Transit District |
| BASMAA | Bay Area Stormwater Management Agencies Association |
| dbh | depth at breast height |
| bgs | below ground surface |
| BMPs | Best Management Practices |
| CAAQS | California Ambient Air Quality Standards |
| CAP | Clean Air Plan |
| CARB | California Air Resources Board (also ARB) |
| CDFG | California Department of Fish and Game |
| CDMG | California Division of Mines and Geology |
| CEDA | Community and Economic Development Agency |
| CEQA | California Environmental Quality Act |
| CMA | Congestion Management Agency |
| CNDDB | California Natural Diversity Database |
| CNPS | California Native Plant Society |
| CO | carbon monoxide |
| Corps | (U.S.) Army Corps of Engineers (also COE or ACOE) |
| dBA | A-weighted decibels |
| EBMUD | East Bay Municipal Utility District |
| EBRPD | East Bay Regional Park District |

| | |
|---|---|
| EPA | (U.S.) Environmental Protection Agency |
| FEMA | Federal Emergency Management Agency |
| FIRM | Federal Insurance Rate Map |
| $L_{dn}$ | day/night average sound level |
| LOS | level of service |
| LUTE | Land Use and Transportation Element (of the *Oakland General Plan*) |
| MEI | maximally exposed individual |
| $mg/m^3$ | milligrams per cubic meter |
| MMRP | Mitigation Monitoring and Reporting Program |
| mph | miles per hour |
| msl | mean sea level |
| NAAQS | National Ambient Air Quality Standards |
| $NO_x$, $NO_2$ | nitrogen oxides, nitrogen dioxide |
| NPDES | National Pollutant Discharge Elimination System |
| $O_3$ | ozone |
| OSCAR | Open Space, Conservation, and Recreation Element (of the *Oakland General Plan*) |
| PG&E | Pacific Gas and Electric Company |
| $PM_{2.5}$ | particulate matter with a diameter less than 2.5 microns |
| $PM_{10}$ | particulate matter with a diameter less than 10 microns |
| ppm | parts per million |
| ppv | peak particle velocity |
| PRC | Public Resources Code |
| ROG | reactive organic gas |
| RWQCB | Regional Water Quality Control Board |
| $SO_2$ | sulfur dioxide |
| SWPPP | Storm Water Pollution Prevention Plan |
| TAC | toxic air contaminant |
| UWMP | Urban Water Management Plan |
| UBC | Uniform Building Code |
| USGS | U.S. Geologic Survey |
| WDR | waste discharge requirements |
| WSMP | Water Supply and Management Program |
| µg/m3 | microgram per cubic meter |

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# APPENDICES

**APPENDIX A – INITIAL STUDY AND CONDITIONS OF APPROVAL**

**APPENDIX B – NOP LETTERS**

**APPENDIX C – CEQA GUIDELINES SECTION 15183 – PROJECTS CONSISTENT WITH A COMMUNITY PLAN OR ZONING**

**APPENDIX D – BIOLOGICAL REPORT**

**APPENDIX E – FISH AND GAME STREAMBED ALTERATION AGREEMENT**

# CEQA GUIDELINES SECTION 15183 – PROJECTS CONSISTENT WITH A COMMUNITY PLAN OR ZONING

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:
(A) A community plan adopted as part of a general plan,
(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or
(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the

environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decision-making body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances.

(2) Public access requirements.

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21083.3, Public Resources Code.

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