FINAL
FOCUSED ENVIRONMENTAL IMPACT REPORT

for the

Kenilworth Project

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

October 2006

Lead Agency:

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

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

COMBINED NOTICE OF RELEASE AND AVAILABILITY OF THE

FINAL ENVIRONMENTAL IMPACT REPORT

FOR 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: The project site is located on Kenilworth Road (off Strathmoor Drive), on approximately 2.9 acres, in Oakland, California.

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 analyzed potentially significant environmental impacts in the following environmental categories: aesthetics, biological resources, geology and soils, hydrology and water quality, and noise. The DFEIR identified no significant unavoidable environmental impacts. The DFEIR was released for public review on December 5, 2005, a public hearing on the DFEIR was held on January 4, 2006, and the public comment period closed on January 19, 2006.

A Final EIR has now been prepared which, in part, responds to comments and makes minor corrections to the DFEIR. The preparation of the Final EIR has been overseen by the Environmental Review Officer or his/her representative, and the conclusions and recommendations in the document represent the independent conclusions and recommendations of the city. The City of Oakland is hereby releasing this Final EIR, finding it to be accurate and complete and ready for public review. Copies of the Final EIR 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, **starting at 3:00 p.m. on Friday, October 20, 2006**.

PUBLIC HEARINGS: The City of Oakland Planning Commission will conduct a public hearing to consider certification of the Final EIR and the planning and creek protection permits on November 1, 2006 at 6:00 p.m. at City Hall, 1 Frank H. Ogawa Plaza, Hearing Room 1, Oakland California.

If you have any questions, please telephone Leigh McCullen at (510) 238-4977.

CLAUDIA CAPPIO, Development Director

Date: October 18, 2006

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I. INTRODUCTION

A. PURPOSE OF THE ENVIRONMENTAL IMPACT REPORT

This document has been prepared in the form of an addendum to the Draft Focused Environmental Impact Report (DFEIR) for the proposed Kenilworth project. The DFEIR identified the likely environmental consequences associated with the project, and recommended mitigation measures to reduce potential significant impacts.

The Final EIR responds to comments on the DFEIR and makes revisions to the DFEIR as necessary in response to these comments.

This document, together with the DFEIR, will constitute the Final EIR if the City of Oakland Planning Commission certifies it as complete and adequate under the California Environmental Quality Act (CEQA).

B. ENVIRONMENTAL REVIEW PROCESS

According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project, and to provide the general public and project applicant with an opportunity to comment on the DFEIR. This Final EIR has been prepared to respond to those comments received on the DFEIR and to clarify any errors, omissions, or misinterpretation of discussions of findings in the DFEIR.

The DFEIR was distributed to local and State responsible and trustee agencies and the general public was advised of the availability of the DFEIR. The public comment period on the DFEIR began on December 5, 2005, and ended on January 19, 2006, totaling 50 days and therefore exceeding the 45-day legal requirement.

Copies of all written comments received on the DFEIR are contained in this report. A summary of comments made at the public hearings is also included.

C. METHOD OF ORGANIZATION

This Final EIR for the proposed Kenilworth project contains information in response to concerns raised during the public comment period. This report is organized as follows:

- Following this introductory Chapter 1, **Chapter 2** of this document contains text changes (initiated by the Oakland Community and Economic Development Department staff and those resulting from comments on the DFEIR) and errata to the DFEIR.
- **Chapter 3** contains a list of all persons and organizations that submitted written comments on the DFEIR and that testified at the public hearing held on January 4, 2006.
- **Chapter 4** contains comment letters received during the comment period and the responses to each comment. Each comment is labeled with a number in the margin and the response to each comment is presented immediately after the comment letter.
- **Chapter 5** contains a summary of the public comments received during the public hearing held on January 4, 2006, and the responses to the comments received during the public hearings.

Appendix A contains the findings of a study conducted August 9, 2006, regarding the number of creeks and wetlands on site.

Appendix B contains the findings of an October 6, 2006 peer review of the geotechnical studies.

II. REVISIONS TO THE DRAFT EIR

This chapter presents specific changes to the text of the Draft Focused EIR (DFEIR) that are being made in response to internal review and to comments made by the public and/or reviewing agencies. In each case, the revised page and location on the page is set forth, followed by the revision.

Revised or new language is **bold**. Deleted language is indicated by ~~strikethrough~~ text. Where a change is made as part of a response to a comment on the DFEIR, the comment number is noted in brackets at the end of the text change. Where no comment number is given, the change is initiated by City staff.

The term "improvement measure" is deleted and replaced with the term "standard condition of approval" throughout the Draft EIR.

Page 3, last paragraph, third sentence, is modified as follows:

> 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 wet weather stormwater management best management practices to minimize erosion~~." [RTC #6-20, #6-28, #9-1(9), #9-32(26), #9-33, #9-34, #9-37(29)]

Pages 5–6, Chapter I. Summary, Subsection *E. Environmentally Superior Alternative,* in the DEIR is modified as follows:

> With the implementation of the City's standard conditions of approval 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 **or lower** 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. Although this alternative would encroach on the creek area more than the proposed project, it 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). This alternative 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.

Both these alternatives would further reduce the proposed project's less-than-significant visual, grading, and stormwater impacts due to construction of four

not seven houses, creation of a smaller area of impervious surfaces for increased site runoff, and smaller affected construction area for grading; although the reductions would not be exactly the same for the two alternatives.

Protected trees at risk from removal would be reduced from nine to two under the "Original-Lot" Alternative. The reduction of protected trees at risk of removal under the "Full-Project Site" Alternative would not be known until the lots to be built were designated, but it would likely reduce the number of protected trees at risk. Further, the duration of construction noise from grading would be shortened under both alternatives. The duration of construction noise associated with the road extension would be shortened under the "Original Four-Lot" Alternative but not under the "Full-Project Site" Alternative. The duration of construction noise from the housing construction phase may be shortened under both alternatives. Since the schedule for housing construction will not be set, and will in large part depend on the market for housing, the length of the reduction can not be known with much accuracy now.

The No Project Alternative is the environmentally superior alternative. However, CEQA requires that another alternative be designated the environmentally superior alternative. Since CEQA requires the designation of such an alternative, the Reduced Density Full-Project Site Alternative becomes the environmentally superior alternative because it would have similar effects as the Reduced Density Original Four-Lot Alternative except it would be able to maintain the wider wetland protection zone buffer. The "Original Four-Lot" Alternative would need a shorter buffer distance due to the configuration of the original four lots which forces clustering closer to the wetland drainage area.

Page 21 under Project Components, Construction of Seven Single-family Dwellings, the first bullet is revised as follows:

- ***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.~~ **regulations at the time of application, as there is currently a proposal before the City Council to revise residential design review throughout Oakland.**

Page 22, third sentence of the bullet on "Sewage Collection" is deleted, as follows:

- *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. [RTC #9-3]

Page 25, after the first paragraph of e. Post-Construction Stormwater Management, the following paragraph is added:

The swale/detention/dissipater system is intended to provide pre-treatment at several points in the system and to substantially slow the rate of runoff from Kenilworth Road and the project site. This would improve the quality of site runoff, and correct current erosion issues related to concentrated site runoff. In order to increase infiltration and reduce runoff volume, runoff and downspouts would be routed to vegetated areas. To increase infiltration and reduce the amount of site runoff, pervious pavers would be used in parking areas where practicable and appropriate. 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.

Page 27, first paragraph of Section C. CONSTRUCTION, third sentence, is modified as follows:

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 wet weather stormwater management best management practices to minimize erosion~~. [RTC #6-20, #6-28, #9-1(9), #9-32(26), #9-33, #9-34, #9-37(29)]

Page 28, Table 1, third row, is revised as follows:

Local	City of Oakland	Planned Unit Development (PUD) No. 04-195 Parcel Map No. 8228 Creek Permit No**s**. 04~~0~~608**, 06148** Residential Design Review Tree Removal Permit(s) Grading Permit(s) ~~including possible wet weather grading~~ Encroachment, Obstruction, and P-Job Permits (Kenilworth Road)

Page 34, the paragraph following the bullets is deleted:

> ~~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.~~

Page 48, 1st full paragraph, the text is revised as follows:

> 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~~ **locations A, B, 7, and 8**) 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~~ **#7** in Figure 11. 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." [RTC #9-27]

Page 49, beginning with the first partial paragraph, first full sentence, is revised as follows [RTC #5-38]:

> 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.

An ~~off-site drainage course~~ **additional creek** is located immediately downslope and west of the western-most boundary of Parcel 7. **The creek would be subject to the terms of a creek protection permit as a standard condition of approval, as described in Condition of Approval – Biology 3(ii).**

Page 50, second full sentence, is revised as follows:

In addition, the ~~nearby~~ off-site ~~drainage course appears to be~~ **creek located west of Lot 7 is** subject to the Creek Protection Ordinance.

Page 54, in Biological Resources, the last title on the page, Mitigation Measure Biology – 3 is revised as follows:

Mitigation Measure Biology – 3**(i)**: Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan **for the on-site creek**

Page 56, in Biological Resources, before "Resulting Level of Significance:" the following is added [RTC #5-38]:

Mitigation Measure Biology – 3(ii): Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan for the off-site creek

The following condition of approval will be applied to the project and, therefore, analyzed as part of the project:

Condition of Approval – Biology 3(ii): **Implementation of Best Management Practices (BMPs) and Approval Conditions of the Creek Protection Plan for the Off-Site Creek.**

In particular, the following three specific measures are noted:

- **Grading and other work (including the lower keyways) shall be located 37 feet from the top of bank.**
- **Chain link fence shall be installed 35 feet from top of bank**
- **Silt fence shall be installed 33 feet from top of bank.**

In addition, the following specific practices for protecting the off-site creek during construction would avoid direct impacts and reduce indirect impacts to less than significance.

a) A creek protection site plan that includes on the site plan location and type of BMPs and location of staging areas.

b) Implementation of a City-approved vegetation plan and maintenance plan for post-grading erosion control, as noted in the October 11 letter from Cundey Geotechnical consultants.

c) The following BMPs shall be implemented:

- **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.**
- **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 by hand 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.**

Page 59, second full sentence, at the end of the discussion of Mitigation Measure Biology 3(i), is revised as follows [RTC #5-38]:

> With inclusion of protective design measures and BMPs from the proposed project's Creek Protection Plan and Mitigation Measure Biology Impact 3**(i)** 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.

The construction and operations associated with the proposed project could also adversely affect the offsite creek located west of Lot 7. Grading and other work (including the lower keyways) would take place 37 feet from the top of the bank, and no runoff water from project construction would be discharged directly into the drainage. The project would also implement a City-approved vegetation plan and maintenance plan for post-grading erosion control. With inclusion of protective measures from this vegetation and maintenance plan and other BMPs from Standard Condition of Approval – Biology 3(ii), the creek would be protected during construction and operation. This impact would be less-than-significant.

Page 63, in Biological Resources, under Impact Biology – 9, is revised as follows [RTC #5-38]:

The City's Creek Protection Ordinance also applies to the project site and its drainage course **on Parcel 2**. 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**(i)**: Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan **for the on-site creek**), 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**(i)** 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. **Because the project also has the potential to affect the off-site creek located downslope and west of the project site, the proposed project would require an additional creek protection permit, the requirements of which have been included in Condition of Approval – Biology 3(ii). Creek Protection P**ermits establish requirements for site planning, noticing, development of a Creek Protection Plan, **and** 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**s** as required by the City's Creek Protection Ordinance. Briefly, the Plan **for the on-site creek at Parcel 2** specifies the following measures to comply with the Ordinance and protect biological resources: (a) preserving the **on-site** 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.

Since the proposed project also has the potential for adverse impacts to the off-site creek west of Parcel 7, it would comply with the following measures: (a) installation of an approximately 35-foot buffer zone between construction and operation of the proposed project and the off-site creek; (b) prevention of the creek's bank from direct erosion and preventing sediment from reaching the creek; (c) no allowance of discharge into the creek during construction; and (d) implementation of a City-approved vegetation and maintenance plan for post-grading erosion control.

As a result of the proposed project's Creek Protection Plan**s and standard conditions of approval**, 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.

Page 65, in Geology and Soils – 3. Setting, beginning of the first paragraph is modified as follows:

Much of the information in the following description of setting was developed as part of geotechnical investigations prepared specifically for the proposed site. The findings of the investigations are presented in reports and updates to those reports (GeoStrata 1999; EnGeo 2002a; 2002b, 2003a, 2003c). **The recommendations of the October 2, 2006 Seidelman Associates report, which peer reviewed these documents, would be incorporated by reference as a condition of project approval.**

Page 71, first bullet, Impact Geology and Soils – 2, Attachment A: Condition of Approval 6.b, is modified as follows:

- 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~~." [RTC #6-20, #6-28, #9-1(9), #9-32(26), #9-33, #9-34, #9-37(29)]

Page 71, Mitigation Measure Geology and Soils – 2, delete entire mitigation measure. [RTC #6-20, #6-28, #9-1(9), #9-32(26), #9-33, #9-34, #9-37(29)]

~~**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.~~

Page 75, under Introduction, the punctuation of the last sentence is revised as follows:

> The main conclusions of the analysis are that potential impacts would be less than significant and that mitigation measures would not be required. ~~.~~

Page 75, under Approach and Methodology, last paragraph, the address is revised as follows:

> 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~~ **2114**, Oakland.

Page 75, under Setting, first sentence, is revised as follows:

> 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**s** 2002) **and additional site visit and supplement to the letter report (Hydroikos Associates 2006)**;
- 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).

Page 77, under Erosion/Siltation, Runoff. The following is added after the second paragraph:

> **An additional creek/drainage area is located off-site down a ravine southwest of the southwestern boundary of the project site (at Parcel 7). Its upper limit is approximately 50 feet east-northeast of the southernmost corner of Parcel 7, at a point where its apparent channel diverges from the alignment of the property boundary. This feature is also considered to be a creek for the purposes of the proposed project.** [RTC #5-38]

Page 81, Impact Hydrology and Water Quality – 3, third sentence after "Conditions of Approval" quotation, is modified as follows:

> Ground-disturbing construction activities would not occur during the rainy season~~, unless a wet weather grading permit were issued~~. [RTC #6-20, #6-28, #9-1(9), #9-32(26), #9-33, #9-34, #9-37(29)]

Page 89, first full paragraph, second sentence, is revised as follows:

> Noise levels, depending upon the activity, would range from ~~50 to 70~~ **60 to 80** dBA in the area.

Page 90, second paragraph, second sentence, is revised as follows:

> 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 **and would not be of sufficient force to cause damage to surrounding buildings.** [RTC #9-41]

Page 99, the last paragraph is revised as follows:

> After Final EIR certification, and following consideration of community concerns as expressed ~~in~~ **at** 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.

Pages 101–107, **Chapter V. Alternatives**, is modified as follows, with deletions in ~~strikeout~~, and additions indicated by **bold**.

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 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~~ **that** 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 **standard conditions of approval** ~~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 **standard conditions of approval** ~~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 **standard conditions of approval** ~~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)~~ **(3)** emergency access, ~~(3)~~ **(4)** on-site wildland fire management improvements, ~~(4)~~ **(5)** geotechnical stabilization, and ~~(5)~~ **(6)** 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 **to that of the proposed project**. 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 **the** 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 instead of the seven houses under the proposed project,** this alternative**, depending on the vantage point,** would ~~have~~ **produce** similar **or smaller** less-than-significant aesthetic changes in the visual character and quality of the site and 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.

This alternative would have similar less-than-significant effects on biological resources as the proposed project, in summary: (1) a less-than-significant modification of **less than one acre of** non-sensitive habitat that is insufficient for suppor**ting** ~~of~~ two special status wildlife species (California red-legged frog and the

Alameda whipsnake) ~~who~~ **that** 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 standard conditions of approval 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.

It should be noted that the project's less-than-significant reduction in less than one acre of non-sensitive ruderal-annual grassland habitat would be about 40 percent smaller under this alternative based on construction of four compared to seven houses. Also, this alternative would reduce the protected trees at risk under the proposed project from nine to an unknown lower number depending on which lots would be designated for development. In both cases standard conditions of approval would reduce impacts to less than significant. The standard conditions of approval first require protection during construction and, second, replacement at a ratio of 1:1 with 24-inch box trees incorporated into the Landscape Plan when removal is unavoidable.

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 **instead of seven under the proposed project**, but would not have the same extent of existing geologic hazard abatement **and Wildland fire protection. As the developable area of the project site shrinks, so would the areas requiring abatement, potentially including some of the areas of upslope flows from existing residences. In addition, the reduction in the number of houses built from the project's seven to the alternative's four would shrink the total area that would be graded. Thus, there would be a smaller area susceptible to erosion impacts from stormwater flows during construction. Thus, the less-than-significant erosion construction impact of the proposed project (page 71, Impact Geology and Soils–2) would remain less than significant under the alternative, and the minimal amount of possible erosion that might result under the less-than-significant impact would be expected to be reduced further under the alternative.**

Construction and operation of the four houses under the Reduced Density Full-Project Site Alternative **instead of the project's seven houses** would have similar or the same **less-than-significant** 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~~ **due to the stormwater management system that would be part of the project and the alternative, as well as to included standard conditions of approval** ~~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. **However, the alternative would create fewer impervious surfaces and encompass a smaller project site. As a result, the raw stormwater flows that the alternative would generate for the post-construction stormwater management system would be reduced compared to the proposed project, and the system could be smaller in size. Thus the alternative would continue to have the project's less-than-significant impacts, but their magnitude would be somewhat smaller.**

This alternative would have the same ~~or slightly less extensive potentially significant~~ **less-than-significant** construction-related noise effects as the proposed project. **The noise associated with grading, earthwork, and construction under this alternative,** ~~A~~ **a**s under the proposed project, ~~these effects~~ would be reduced to less-than-significant ~~under this alternative~~ through ~~improvement measures~~ **standard conditions of approval** and compliance with existing regulations and laws. **However, the extent of the reduction in the duration of construction noise would be hard to quantify. The total number of hours required for grading and road construction would be reduced and that would probably translate into a shorter grading and road construction phases. In this case, the duration of noise from those noise sources would be shortened. Whether the duration of noise from construction of the houses would be noticeably reduced would be hard to determine in advance. First, it would depend on the approach taken by the proposed project. Since the approach would not be determined until later stages of project planning, and largely dependent on the market, the magnitude of the reduction in the duration of housing construction noise cannot be predicted now. In addition,** ~~T~~ **t**his 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 would not meet the project sponsor's objectives for the project, including **increasing housing,** the size of the permanent

wetland buffer, the extent of geologic hazard abatement, ~~or extent of~~ **and wildland** 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 **residential** 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~~ **greater** potential impact on the wetland area because they would be clustered closer to the wetland area and the **20- to 25-foot wetlands protection** buffer would be ~~reduced to accommodate required setbacks~~ **smaller under the original four-lot plan**. This alternative would have similar project components as the **proposed** project, except that it would construct four houses instead of seven and the area of improvements would be reduced, as follows:

- Development of **the** 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 **this alternative** ~~the Reduced Density Full Project Site Alternative~~ **instead of the seven houses under the proposed project,** this alternative**, depending on the vantage point,** would ~~have~~ **produce** similar **or smaller** less-than-significant aesthetic changes in the visual character and

quality of the site and 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~~ **This alternative** would have similar less-than-significant effects on biological resources as the proposed project, in summary: (1) a less-than-significant modification **of less than one acre** of non-sensitive habitat that is insufficient for support**ing** ~~of~~ two special status wildlife species (California red-legged frog and the Alameda whipsnake) ~~who~~ **that** 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 **standard conditions of approval** ~~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.

It should be noted that the project's less-than-significant reduction in less than one acre of non-sensitive ruderal-annual grassland habitat would be about 40 percent smaller under this alternative. Also, this alternative would reduce the protected trees at risk under the proposed project from nine to two. In both cases, Mitigation Measure Biology – 8 and standard conditions of approval would reduce impacts to less than significant. The mitigation measure first requires protection during construction and, second, replacement at a ratio of 1:1 with 24-inch box trees incorporated into the Landscape Plan when removal is unavoidable.

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 **instead of seven under the proposed project**, but ~~would not have~~ **may not include** the same extent of ~~existing~~ geologic hazard abatement **and Wildland fire protection. As the project site shrinks, so would the areas requiring abatement, potentially including some of the upslope flows from existing residences. In addition, the reduction in the number of houses built from the project's seven to the alternative's four would shrink the total area that would be graded. Thus, there would be a smaller area susceptible to erosion impacts from stormwater flows during construction. Thus, the less-than-significant erosion construction impact of the proposed project (page 71, Impact Geology**

and Soils Impact–2) would remain less than significant under the alternative and the minimal amount of possible erosion that might result under the less-than-significant impact would be expected to be reduced further under the alternative.

Construction and operation of the four houses under the Reduced Density Original Four-Lot Alternative **instead of the project's seven houses** would have similar or the same **less-than-significant** 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~~ **due to the stormwater management system that would be a part of the project and the alternative, as well as to included standard conditions of approval** ~~improvement measures~~ and compliance with existing regulations and laws. In summary those **less-than-significant** 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. **However, the alternative would create fewer impervious surfaces and encompass a smaller project site. As a result, the raw stormwater flows that the alternative would generate for the post-construction stormwater management system would be reduced compared to the proposed project, and the system could be smaller in size. Thus, the alternative would continue to have the project's less-than-significant impacts, but their magnitude would be somewhat smaller.**

This alternative would have the same or slightly less extensive potentially significant construction-related noise effects as the proposed project. **The noise associated with grading, earthwork, and construction under this alternative,** ~~A~~ **a**s under the proposed project, ~~these effects~~ would be reduced to less-than-significant ~~under this alternative~~ through ~~improvement measures~~ **standard conditions of approval** and compliance with existing regulations and laws. **However, the extent of the reduction in the duration of construction noise would be hard to quantify. The total number of hours required for grading and road construction would be reduced and that would probably translate into a shorter grading and road construction phases. In this case, the duration of noise from those noise sources would be shortened. Whether the duration of noise from construction of the houses would be noticeably reduced would be hard to determine in advance. First, it would depend on the approach taken by the proposed project. Since the approach would not be determined until later stages of project planning, and largely dependent on the market, the magnitude of the reduction in the duration of housing construction noise cannot be predicted now. In addition,** ~~T~~ **t**his 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 **increasing housing,** 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 uncontrolled stormwater 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, these 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 possibly 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.~~

~~CEQA will not allow the No Project Alternative to be designated the environmentally superior alternative, and s~~ **The No Project Alternative is the environmentally superior alternative. However, CEQA requires another alternative be designated the environmentally superior alternative. S**ince CEQA requires the designation of such an alternative, the Reduced Density Full-Project Site Alternative becomes the environmentally superior alternative **because it would have similar effects as the Reduced Density Original Four-Lot Alternative except it would be able to maintain the wider wetland protection zone buffer. The "Original Four-Lot" Alternative would need a shorter buffer distance due to the configuration of the original four lots which forces clustering closer to the wetland drainage area**.

Appendix E: The copy of the expired Department of Fish and Game Streambed Alteration Agreement is replaced with the U.S. Army Corps of Engineers' verification of the wetland delineation made by Olberding Environmental.

III. LIST OF COMMENTERS

A. PERSONS AND ORGANIZATIONS COMMENTING IN WRITING

1.	Emelyn J. Carothers, Attorney at Law, on behalf of John and Sheryl Clark	January 19, 2006
2.	Robert W. Floerke, Regional Manager, Central Coast Region, California Department of Fish and Game	December 22, 2005
3.	Jim Heldman, resident	January 17, 2006
4.	Janice Holve, resident	January 4, 2006
5.	Ralph Kanz	January 19, 2006 January 9, 2006
6.	David Kessler, North Hills Phoenix Association (NHPA)	January 19, 2006
7.	William R. Kirkpatrick, Manager of Water Distribution Planning, East Bay Municipal Utility District	January 11, 2006
8.	John B. Shordike, Attorney at Law, on behalf of Claremont Residents for Environmental Enforcement at Kenilworth (C.R.E.E.K.)	January 19, 2006 August 29, 2005

B. PERSONS COMMENTING AT THE PUBLIC HEARING

The following persons provided comment at the Oakland City Planning Commission Public Hearing on the Draft Focused EIR, held at City Hall on Wednesday, January 4, 2006.

Doug Boxer, member, Planning Commission

Emelyn Carothers, Attorney at Law, on behalf of Jon and Sheryl Clark

Nicole Franklin, member, Planning Commission

Richard Grasetti

Don Holve

Sonji Honda, East Bay News Service

Colland Jang, Chair, Planning Commission

Ralph Kanz

Suzie Lee, member, Planning Commission

Michael Lighty, member, Planning Commission

Mark Madras, representative of the C.R.E.E.K. and the North Hills Phoenix Association

Mark McClure, member, Planning Commission

David McDonald, project sponsor

Anne Mudge, Vice Chair, Planning Commission

A summary of the comments made at the public hearing is included in Chapter 5 of this Final EIR. Responses are provided following the summaries of the comments.

IV. RESPONSES TO WRITTEN COMMENTS

This chapter includes a reproduction of, and responses to, each letter received during the public review period (December 5, 2005 through January 19, 2006). Each letter is reproduced in its entirety, and is immediately followed by responses to the comments in it. Letters are arranged in alphabetical order by the name of the commenter, and from most recent to oldest in the case of multiple letters. Each comment and response is labeled with a reference number in the margin.

Where the same comment has been made more than once, a response may direct the reader to another numbered comment and response. Where a response requires revisions to the Draft Focused EIR, these changes are shown in Chapter II of the Final EIR.

Letter #1

LAW OFFICES
EMELYN JEWETT CAROTHERS
2366 WARREN ROAD
WALNUT CREEK, CALIFORNIA 94595
FACSIMILE: (925) 944-1719 TELEPHONE: (925) 944-5290 E-MAIL: EJCAROTHER@AOL.COM

January 19, 2006

Planning Department
City of Oakland
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Kenilworth Road Project
Case File Number: PUD 04-195, ER 040006, CP04068, TPM 8228
Comment Relating to Project subject to draft EIR

Dear Planners and Planning Commissioners:

I write on behalf of John and Sheryl Clark (7080 Kenilworth Road) as a follow up to my comments to the Commission at the January 4, 2006 hearing on the Kenilworth Road draft EIR, to urge you to approve the project without delay, and to **plead with you to use your influence to close Kenilworth Road until it is stabilized** by Mr. McDonald.

Kenilworth Road is presently very hazardous and in immediate need of the stabilization the McDonald project would likely provide. The road is perched above a steep ravine, and is now plagued by new landslides. There are no guardrails, there is no turnaround. Any traffic down that road must back uphill in reverse gear in order to exit (or, alternatively, must back down the road).

With this letter, I enclose photos of the recent landslide activity, photos of some of the trucks using the road in the past several months, and a copy of Ted Yeghoian's January 4, 2005 letter to me in which he stated that he recommended that "little or no traffic should be allowed on the road during the winter months" until the road is paved, and he cautioned that such a road will "deteriorate substantially even with relatively little use." (Ted Yeghoian repaired the previous landslides. However, the slide repairs will not be complete until the road is paved.)

The Clarks desperately need your help. Until and unless Kenilworth is closed to traffic until the hill is stabilized and the road is paved, they have no way to protect the landslide repairs they already made, and they have no way to protect themselves against the hazard of a car careening down the embankment into their home. Thank you for your anticipated prompt attention to this matter.

1-1

Very truly yours,

Emelyn J. Carothers

Emelyn J. Carothers

EJC:oho
encl.

Individual Copies to:

Douglas Boxer
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Nicole Y. Franklin
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Colland Jang
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Suzie W. Lee
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Michael Lighty
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Mark A. McClure
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Anne E. Mudge, Esq.
Planning Commissioner
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Jane Brunner
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Patricia Kernighan
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Nancy Nadel
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Jean Quan
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Ignacio De La Fuente
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Desley Brooks
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Larry Reid
City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Henry Chang City Council, City of Oakland
One Frank Ogawa Plaza
One City Hall Plaza, 2nd Floor
Oakland, CA 94612

Chris Lewis
Building Department, 2nd Floor
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Mike Neary
Public Works Dept.
250 Frank H. Ogawa Plaza
Oakland, CA 94612

John Russo, Esq.
Oakland City Attorney
City Hall, 6th Floor
One Frank Ogawa Plaza
Oakland, CA 94612

Mark Wald, Esq.
Oakland City Attorney's Office
City Hall, 6th Floor
One Frank Ogawa Plaza
Oakland, CA 94612

Alexis Pelosi
Oakland City Attorney's Office
City Hall, 6th Floor
One Frank Ogawa Plaza
Oakland, CA 94612

Tamsen Plume, Esq.
Holland & Knight LLP
50 California St Ste 2800
San Francisco, CA 94111

Leigh McCullen
City of Oakland Planning Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Claudia Cappio
City of Oakland Planning Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Attachment to Letter #1

964 Scots Lane
Walnut Creek, CA 94596
FAX (925) 945-6480

Ted W Yeghoian Grading Inc (925) 935-4875

Grading • Landslide Repair • General Engineering • License #614740

January 4, 2005

Ms. Lynne Carouthers

Per our telephone conversation January 3, 2005:

In 2003 my grading company repaired a portion of the slope along Kenilworth Road and prepared the road subgrade for future development. When we finished our work at the end of December, 2003 the road was on grade and base rock was spread and compacted. We recommended that little or no traffic should be allowed on the road during winter months until the road was paved. I understand that the developer kept the road closed until dryer weather in 2004. The gravel road was used some but the improvements were not complete and the road was not finished or paved in 2004.

I have not seen the section of Kenilworth road for about 6 months, so I don't know the conditions on the site at this time. Generally dirt or gravel roads are very susceptible to erosion and damage if used during wet weather. Ruts form and the soil or gravel becomes looser and the road will usually deteriorate substantially even with relatively little use. The drain pipes can also be dislodged or damaged. This can lead to significant damage to the roadway, slope or environment below.

The owner or developer should continue to maintain the drainage and road surface to protect the work area. The City or project engineer can probably provide recommendations or specifications for the proper maintenance of the site during the wet season.

I recommend that the road be closed to traffic until the dry season. I have no control or authority over the use of the road, but have been asked to give my recommendation. Final decision and responsibility for the road use must be from the owner, developer, engineer, or City.

Sincerely,

Ted W. Yeghoian

Ted W. Yeghoian
President


7E73248


7P61781

LETTER #1 RESPONSE

Emelyn J. Carothers
Attorney at Law
On behalf of John and Sheryl Clark
January 19, 2006

1-1 The letter and attachment summarize information regarding the existing potentially hazardous conditions on Kenilworth Road, the surrounding slope instability, and the risks they may pose for the Clark residence. That information reflects and extends descriptive information found on page 66 of the Draft Focused EIR ("Draft EIR" or "DEIR" hereinafter), first full paragraph, and in the discussion of Impact Geology and Soils–1.d. The proposed Kenilworth Road extension and the geotechnical stabilization described on pages 22-25 of the Draft EIR would correct those hazards.

Letter #2

State of California – The Resources Agency
ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

December 22, 2005

Ms. Leigh McCullen
City of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Dear Ms. McCullen:

Kenilworth Residential Planned Unit
Development Project #ER040006
Oakland, Alameda County
SCH 2005082005

The Department of Fish and Game (DFG) has reviewed the document for the subject project. Please be advised this project may result in changes to fish and wildlife resources as described in the California Code of Regulations, Title 14, Section 753.5(d)(1)(A)-(G) . Therefore, if you are preparing an Environmental Impact Report or an Initial Study and Negative Declaration for this project, a de minimis determination is not appropriate, and an environmental filing fee as required under Fish and Game Code Section 711.4(d) should be paid to the Alameda County Clerk on or before filing of the Notice of Determination for this project.

2-1

Please note that the above comment is only in regard to the need to pay the environmental filing fee and is not a comment by DFG on the significance of project impacts or any proposed mitigation measures.

If you have any questions, please contact Mr. Carl Wilcox, Habitat Conservation Manager, at (707) 944-5525.

Sincerely,

Robert W. Floerke
Regional Manager
Central Coast Region

cc: State Clearinghouse

Conserving California's Wildlife Since 1870

LETTER #2 RESPONSE

Robert W. Floerke
Regional Manager, Central Coast Region
California Department of Fish and Game
December 22, 2005

2-1 Comment noted; no further response is required. The comment identifies the need to pay a fee and states that it is not a comment on the proposed significance of any proposed project impacts or mitigation measures in the Draft EIR.

Letter #3

From: Jim Heldman [jim@heldman.com]
Sent: Tuesday, January 17, 2006 6:26 PM
To: holve@comcast.net; 'McCullen, Leigh'
Cc: 'Donald Holve'; 'Howard Cohen'; 'Tina Heldman'; 'John Shordike'; 'Frederick Geier'; 'Richard Grassetti'; 'Mark Medress'
Subject: RE: Kenilworth/Planning Commission Meeting

I would add my observation to Don's.....the hawks started circling our house as their trees were gone and at least one skunk invaded our home. This is all hard to believe given the recent feelings of so many about the value of the environment.

Clear cutting in the Oakland Hills! And, no one seems to care in the City.

3-1

Jim

LETTER
#3
RESPONSE

Jim Heldman
January 17, 2006

3-1 Please see Response to Comment #4-A. In summary, eucalyptus trees on the project site were removed during the period between the end of July and the beginning of August. During this period the breeding of raptors or migratory birds would have been less likely, and therefore breeding activity would not have been adversely affected. The removal of the large eucalyptus trees undoubtedly eliminated the potential tall roosting and resting structures for hawks and other raptors, but the impact to nesting and reproductive success is less than significant. It is possible that commonly occurring wildlife, such as skunk, raccoon, deer, and gophers, could have been temporarily displaced by the noise and tree removal activities. It is expected that after site disturbance, these species would most likely relocate to other areas in the canyon and the impact is less than significant.

Letter #4

From: holve@comcast.net
Sent: Wednesday, January 04, 2006 1:38 PM
To: McCullen, Leigh
Cc: Donald Holve; Howard Cohen; Tina Heldman; John Shordike; Frederick Geier; Richard Grassetti; Jim Heldman; Mark Medress
Subject: Re: Kenilworth/Planning Commission Meeting

Dear Leigh,

Attached is my response letter regarding the Draft Focused Environmental Impact Report: Kenilworth Project File # ER040006.

The most important points are most clearly addressed in the letter from our neighborhood group and from Mr. Grassetti. However, I wanted to add a detail of my personal experience during the construction of the partial road. The report indicates that the impact was minor and that impact during the road completion would be similiar and minor. As a community volunteer, homemaker who is at home almost all day, the impact was significant. I offer my own personal experience regarding noise, vibration, and dust as counterpoint to the assertion that the impacts of an extended construction period are minor.

Although it is not part of my letter, but since I am here during the day to bear witness, I think it significant to note that the hawks (and periodic eagle) that lived in this canyon disappeared after several days of circling the area in great distress following the broadscale tree cutting that occurred within a week following the City Counsel's decision that a focused EIR report should be completed for the canyon. Several dens of skunks, many additional raccoons, deer and gophers invaded our property and neighboring properties creating hazard for existing domestic pets and people. 4-A

Thank you for transmitting my letter to the Planning Commission and making it a part of the record for this project review.

City of Oakland Planning Commission
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Subject: Kenilworth Road Draft Focused EIR Report

Thank you for sending me a copy of the Draft Focused Environmental Impact Report for the Kenilworth Project File # ER040006. I have read it with interest.

I explicitly agree with the detailed comments made by Richard Grassetti and the comments from area neighbors as incorporated in a letter from Attorney John R. Shordike.

In addition, I have particular experience with and concerns regarding several sections of the report: Noise, Vibration, Upslope retaining walls & Upslope access to Kenilworth. I believe my neighbors concur with my overall assessment but the specifics provided herein are my own. In addition to the major issues noted above, my remaining concern involves noting that initial EPA reports regarding the creek identified two source streams, not just one. As those who live here can attest, it is clear that water springs and runs nearly year round from two areas rather than one. This draft report continues to ignore this issue of significant primary environmental concern. 4-1

Noise:
The report suggests that the development noise would be no greater than is currently ongoing. This is deceptive since, although many of us have now been living with high levels of dust and noise for many years, this should not mean that these levels are either "normal" or acceptable. The time period for this project in the report has been extended to five years. If this is added to the 8 years we have already endured this construction noise, it starts to become an unacceptably large percentage of my expected lifetime and a long time to be deprived of "quiet enjoyment" of my home. Perhaps because the terrain in our canyon is steeper and soil preparation more difficult than in many areas, development has been strung out for an atypically long period. Most of the fire storm areas are now nearly complete. For someone who is retired as I am or who works at home, this lack of "quiet enjoyment" of property has become burdensome. Just because, due to an emergency situation, it has been going on for some time should not mean that the standard of development noise should be the norm. A local group is exploring initiative options to put a moratorium on property tax payments in areas where building destroys all semblance of quiet for extended periods - as some small compensation for the daily loss of enjoyment due to construction noise. This is not merely a local issue and I am beginning to regard this effort with interest. 4-2

Since specifics are better than generalities, during the time that this developer was doing "emergency" repairs to create the first section of the road, the noise was so loud that I could not be heard nor hear when talking on the telephone. I have many friends and co-workers willing to testify to this fact. In an effort to be a good neighbor, I purchased a new set of Bose noise canceling earphones and put them over a pair of industrial earplugs and still the noise was so loud that I could not concentrate to study.

The prior "emergency" construction was supposed to take 3 weeks but ended up taking almost 4 complete months. It was very disruptive to my daily activities. To be more specific: I have been a part of ongoing volunteer projects with the Stanford Business School Alumni Volunteer teams (local projects include: Children's Fairyland, Operation Green, Social Venture Network, Heritage Foundation, Oakland School for the Arts) which has been very successful working with city and non-profit groups to help them develop better business models and revenue streams. Neither of

my groups which were active at that time could meet during this construction period since it was impossible to have a discussion in my living room during any time Monday through Saturday until well after dark. Additional volunteer work involved providing massage therapy to cancer patients; which although I am certified and am not charging for this work, I had to stop because there was insufficient quiet to provide the relaxation needed by patients. Transporting all the equipment to them was not physically possible for me. Third, under the name of 2Care a group of volunteers, under my direction, were trying to develop web based calendaring programs to assist hospice in networking and getting help for families dealing with life threatening illness. One by one volunteers stopped because the noise was too great for them to think or to have needed conversations during this critical time when we were trying to get this effort going.

I personally have become so sensitive to back-up noise that I become physically ill after it continues for more than ten to fifteen minutes. When a single house is being built, equipment of this sort is typically used for a very short period of time and I can arrange to be away for a few hours or even a couple of days. Now – as a student- being away from my house for extended periods is not an option. Nor do I think one should have to privately fund being away from one's home to avoid being sick. Nor do I think having to leave one's home should be expected. If the road remaining to be completed is roughly twice what has already been built, based on past experience, we are looking at 6 to 10 months of continued road construction – not a minor disruption of one's "quiet enjoyment." On this schedule, based on the prior experience, entertaining/ living at our house will be virtually impossible during the entire spring, summer and fall of 2006.

4-2

Many of the houses in this area, including our own, do not have significant air conditioning, so closing doors and windows on warm days is not an option as it might be in more urban environments.

I should also mention that when the substrate in this area is cut, it spawns an outbreak of huge numbers of large black flies for a month or so after each cut. The resulting flies lay eggs throughout our gardens. The numbers are so significant, that even after installing screen on every window and door to mitigate the problem, some inevitably get indoors and infect my extensive collection of orchids. This requires extensive spraying, which I abhor, to save the remainder. My neighbors and I have developed extensive gardens to be contiguous with the open space at significant expense. The damage to our plants during each construction period is significant. I invite members of the planning commission to visit our neighborhood to fully appreciate this annoying, if ultimately minor, problem. While I can not put a precise time frame on the additional work load involved resolving the fly problem – it entails many days – time I would prefer to spend in other ways.

4-3

I do not know precisely what 50 to 55 dB implies but will make an effort to find out and to correlate that with what I experienced before. I find it hard to imagine that the noise level standard would be set at a level incompatible with normal conversation 50 to 100 feet away, as prior construction most assuredly was.

I recognize that this canyon is a nearly perfect amphitheatre and as such probably concentrates sound in an atypical manner. People talking below on Kenilworth can be heard as if they are in the next room – not 50 to 100 feet away. As I read the case law, it seems that a particular location and its sound properties are what is relevant, not a state or county norm. This open space, what is called a chimney with all the fire, sound and water implications that implies, is quite unique and its uniqueness needs to be considered when setting sound, and fire, standards.

4-4

Further, the developer states that the backup alert is required for safety. However, on several occasions I observed workers using earplugs, earphones or loud music in their immediate workspace. I suspect that the videotapes of the area can validate this point if their detail is fine enough. I know this because when I would go down to talk with a worker about a problem, he would frequently have to remove his earplugs. Given the volume of the noise in my office, I can only imagine that they really did need earplugs under OSHA guidelines… but then what good are the backup beepers. Some form of earphones remotely transmitting a modified alert would seem more appropriate to solving both problems.

4-4

Vibration, Lateral and Subjacent Support:
During the time of road construction, I would estimate that the vibration in our house was equivalent to what has been reported as 2 to 3.5 magnitude earthquakes. Having lived virtually over the Rodgers fault during its last large swarm of quakes, I became familiar with that level of movement. Items on our shelves were so frequently dislodged that I had to remove dishes, ceramics and glass art and put them away for safety. Pictures had to be re-leveled on such a daily basis that I gave up. Although it was our habit to have Saturday afternoon fall gatherings of friends, this was impossible during this period due to noise, vibration and dust.

More significantly, windows on the west side have all become loose and many have begun to leak since that time period. One we have already had to replace at a cost of over $2,000. Further, from this time, doors on the northwest corner no longer close properly. I know that our next door neighbors suffered even more extensive damage which they felt was directly related to the extensive excavation. If we known to have an engineer look at the property before this began, I believe we could establish a causal relationship between the deep cuts to the sublateral support of the hill and the damage created. This concern prompts our request for before and after engineering reviews to assess this problem quantitatively and objectively.

While I understand that by statute an owner of adjoining land has a right to make proper and usual excavation for purposes of construction or improvement in spite of the fact that common law holds that every owner of land is entitled to lateral support of that land in its natural state from every other coterminous owner. This common law right is considered an absolute right incident to the land itself. Even statutory law states that if the excavation is intended to be or is deeper than the standard depth of foundations (which depth is defined to be a depth of nine feet below the adjacent curb level) at the point where the joint property line intersects the curb, and if on the land of the coterminous owner there is any building or other structure the wall or foundation of which goes to standard depth or deeper, then the owner of the land on which the excavation is being made (i) must protect the adjoining land and any building or other structure on the land from any damage by reason of the excavation, without cost to the owner of the property, and (ii) will be liable to the property owner for any such damage, except minor settlement cracks in buildings or other structures. [CA Civ. Code § 832(4)] In our case the excavation, up to the edge of our property went significantly below the nine foot level. If anywhere near the same level of activity as occurred last time is required prospectively for any of the remainder of the road, I believe the extra level of care we requested in our joint neighborhood letter is warranted. To repeat, we would like to have an appropriate civil engineer evaluate our current homes just before work begins so that if what happened before repeats itself, it will be documented and can be properly and straight forwardly addressed.

4-5

Upslope Stabilization and road access:
For the last eight years, we have used Kenilworth road as crucial access for everything from removing debris, bringing in plants to the joyous start of our daughter's walk up the isle to her wedding on our patio. If the developers install retaining walls like the ones north of our property

4-6

we will lose our pathway from the road that allows us to bring in garden supplies. As my husband has had a hip replacement and I have had extensive knee surgery – neither of us is young - this path, this historical and long used access, is essential for us to be able to maintain our property. I suspect this is true for our other neighbors as well. We think it vital that this access be maintained.

4-6

Although Mr. McDonald talks of upslope stabilization, we know that his prior proposal included a new means of slope control. Given the history of problems in this canyon, the lack of detail is concerning. I specifically reference Mr. Grassetti's letter on this issue. Absent significant detail, we have no way of assessing this reliability of his procedure nor do we have the expertise to understand the developer's plan. It is the city's job to insure that adequate stabilization occurs and to repair damage if it occurs following the development. We are naturally reluctant to have the developer use the stability of our homes to test a new containment/ stabilization system, especially if it is the low cost solution.

4-7

I understand that these concerns require a balancing of conveniences, but it is my hope that this information provides you with a clearer understanding of the level of disruption that occurred last time.

Sincerely,

Janice Holve
7101 Norfolk Rd.
Berkeley, CA 94705 (within Oakland city limits)

LETTER #4 RESPONSE

Janice Holve
January 4, 2006

4-A As a general rule, raptor nesting in the Bay Area usually occurs as early as the end of January into February, with nest building as early as late February, but as late as April. The incubation of eggs ranges from about early April through about mid-May. Hatching begins in early May, although it can occur as late as mid-June. Young will fledge from the nest from early June through a late as mid-July. Parental feeding within the natal territory continues as late as the end of July.

The eucalyptus trees on the project site were removed during the period between the end of July and the beginning of August. Tree removal occurred close to the beginning of August and, as such, the removal of eucalyptus trees was conducted during a period when breeding of raptors or migratory birds would have been less likely and therefore; breeding activity would not have been adversely affected. The removal of the large eucalyptus trees undoubtedly eliminated the tall potential roosting and resting structures for hawks and other raptors but the impact no nesting and reproductive success is less than significant.

It is possible that commonly occurring wildlife, such as skunk, raccoon, deer, and gophers could have been temporarily displaced by the noise and tree removal activities. Such animal species are routinely observed in urban and urbanizing environments and appear to be accustomed to nearby human activity and altered land uses. It is expected that after site disturbance, these species would most likely relocate to other areas in the canyon and the impact is less than significant.

4-1 Please see Response to Comment #5-3 as well as #5-6 and #5-31.

4-2 Please see Responses to Comments #8-40 (on the neighbor's experience), #8-42 (on construction schedule), #8-44 (on the noise analysis), #8-45 (on noise impacts), #8-50 (on construction noise mitigation measures), and #8-52 (on other mitigation measures). The Draft EIR indicated that the temporary construction noise impacts would be annoying and potentially significant. It included a set of standard conditions of approval (11-1 through 11-4) to reduce impacts to a less-than-significant level. The expected construction schedule for the Kenilworth Road extension is six months as noted in Response to Comment #8-42.

4-3 It is not clear if the proposed project would exacerbate the condition identified by the commenter regarding black flies. Even if the project would exacerbate the condition, it would be a less-than-significant biological resource impact because it would not adversely affect sensitive or protected species. Black flies are a normal component of the insect fauna throughout the area. The flies are not special-status species, nor are they significant or protected biological resources. Like mosquitoes (also a natural component of the insect community) and based on human perception, black flies may be considered nuisance organisms, although perhaps having some ecological value. Flies are important in the breakdown of organic matter and are important in the greater ecological function of nutrient cycling.

4-4 Regarding dBA levels, please see Response to Comment #8-44 (on noise analysis) and Response to Comment #8-45 (on noise impacts). Regarding the noise characteristics of the project site, the noise analysis in the Draft EIR addressed noise potential specifically for the site and its locational characteristics. The safety back-up beepers are required by OSHA. Please see Response to Comment #8-50(B) regarding back-up beepers and alternatives.

4-5 The Draft EIR, as required by CEQA, provides an analysis of the impacts of the proposed project. Please see Responses to Comments #8-36 and #8-43 regarding the vibration analysis in the Draft EIR and the proposed project's less-than-significant vibration impact. The potential damage to adjacent structures from a proposed project is addressed through existing laws and regulations that are assessed for an individual project during review and approval of a building permit application.

4-6 Access to private property is not a potentially significant environmental impact under CEQA and is governed by established private property case law.

4-7 Please see Response to Comment #8-4. Detailed engineering proposals for storm water management systems, grading, and slope stabilization have not been developed. Per standard policy and practice, they will be subject to review by the appropriate City departments prior to the issuance of construction-related permits. The project may be included in the City Geologic Hazards Abatement District, which will be considered as a condition of project approval during the project review process.

Letter #5

Ralph Kanz
48087 Congress Ave.
Oakland, CA 94601
(510) 482-3979

January 19, 2006

Leigh McCullen
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Kenilworth Project, Case No. ER04-0006

Dear Ms. McCullen:

These are my comments on the Draft Focused Environmental Impact Report (DEIR) for the proposed Kenilworth Project.

Project History

The project history on Page 1 fails to mention the earlier proposal for this site that was for a smaller project. How do the sizes of the two projects differ and how does the change in the proposed project impact the analysis in the DEIR? This omission is important as will be discussed later in this analysis. 5-1

Environmentally Superior Alternative

"In the absence of the project, the sites's existing conditions (unprotected wetlands, uncontrolled stormwater drainage, risk of landslides to upslope properties, fire hazards and expansive soil issues) would persist instead of being protected or redressed as they would under the proposed project." (DEIR,1/19/06 Page 5). Most of these existing conditions are completely natural and do not need to be altered. Without the project the wetlands would be in a more natural condition. Landslides are a part of the natural processes in the Oakland hills. Assuming the upslope properties were properly designed and built, there is no landslide risk to these properties. Fire hazards are already greatly reduced by the removing of the eucalyptus trees on the site. The City of Oakland requires property owners to maintain their properties to minimize the fire threat and this project would not change this requirement. 5-2

Further on Page 5: "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." CEQA Guidelines Section 15126.6(e)(2) regarding "Consideration and Discussion of Alternatives to the Proposed Project" declares: "If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." CEQA does allow the No Project Alternative to be designated the environmentally superior alternative. 5-2

Project Proposal

Page 21 states that the "on site drainage course was delineated by the U.S. Army Corps of Engineers (Appendix E)." Appendix E is a copy of the expired Department of Fish and Game Streambed Alteration Agreement. The record indicates that the wetland delineation was performed by Olberding Environmental.

The Wetland Enhancement and Preservation section on page 25 fails to address the other potential creeks and wetlands on the proposed project site. The Deed Restriction on page 27 should be included as a part of the EIR Mitigations Measures. 5-3

Project Objectives

The sixth objective to enhance and protect the small on-site wetland and drainage course should include protection and enhancement for all wetland and drainage courses on-site and adjacent to the project. Also include the need to limit the downstream impacts of waters discharged from this site. Will the project cause impacts to the downstream channel? 5-4

BIOLOGICAL RESOURCES

Surveys

The surveys used for this section have not included the entire 2.9-acre project site, except for the TOVA trees and nesting bird surveys of 2005. I could find nothing in the record to confirm that the LSA and Olberding surveys were conducted after the expansion of the project site. 5-5

The Wetland Delineation by Olberding Environmental did not analyze the other potential wetlands identified in my January 9, 2006 correspondence that is a part of the record. Special status species plant surveys should be required for the entire site at the proper time of year to allow identification. 5-6

3

Vegetative Communities

The assessment of the impacts of post 1991 fire revegetation activity to the project site is speculative. 5-7

Eucalyptus Forest-- The eucalyptus on the proposed project site have been cut down but they have not been removed. 5-8

Riparian Scrub-- At least one additional area of riparian scrub on the site that was not identified in the surveys. 5-9

Candidate, Sensitive, or Special-Status Plants

Page 39: "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." This is a conclusion unsupported by the condition of the site. The majority of the site is in its natural state, except for the addition of non-native species, and the removal of the eucalyptus trees will improve conditions for the remaining vegetation. However, the downed eucalyptus trees have not been removed. 5-10

"The site does not contain serpentine soils…" Yet on page 65 the DEIR states "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." 5-11

The last paragraph of this section on page 41 tries to use surveys conducted by TOVA on adjacent properties to justify the conclusion that there are no special status plant species on the proposed project site. "Site conditions would not support such plant species" is a conclusion that cannot be supported by the record. 5-12

Alameda Whipsnake

The DEIR fails to address the concerns in the NOP comments that are a part of Appendix B. Specific concerns regarding the need for surveys for Alameda whipsnakes (AWS) are not addressed in the DEIR. 5-13

The felling of the eucalyptus trees on the site are a violation of proposed Mitigation Measure Biology 1-Pre-Construction Survey and Installation of Protective Fencing on pages 52-53. 5-14

Karen Swaim should make a site assessment for AWS. As detailed in my NOP comments, recent information about AWS has challenged assumptions about ideal habitat for this species. 5-14

Migratory Bird and Raptor Nests

The list of migratory birds only includes those species potentially occurring in riparian areas. The list does not include many species that could potentially occur in other habitats on the site. One example would be California thrasher in Northern Coastal Scrub. 5-15

Wetlands and Other Waters of the U.S.

As detailed in my January 9, 2006 submittal, in addition to the one identified wetland and creek, there are two other potential creeks and one other potential wetland on the site that need to be delineated. 5-16

Policies and Ordinances

The felling of eucalyptus trees into the watercourses on the site in August 2005 would appear to violate the Oakland Creek Protection Ordinance. A permit was not obtained for this work. Work in the creek would require a Category IV permit, which is a discretionary action under CEQA and therefore subject to CEQA review. 5-17

Impacts and Mitigation

The conclusions on page 51 such as "Neither candidate, sensitive, nor special status species, nor sufficient associated habitat were observed at the project site during biological surveys" are not supported by the record. Adequate surveys of the entire site need to be completed before such conclusions can be reached. 5-18

Mitigation Measure Biology–3

- Is the proposed 4-foot setback adequate to protect the creek and wetland? What was the basis for this amount of setback.
- Is the 2-foot setback for silt fencing adequate? If so, on what authority? 5-19

5

- Landslide repair or work that involves soil disturbance will not take place during the rainy season, yet on page 71 in the Geology and Soils Section, requirements for wet weather grading are listed. 5-20
- Stockpiled soils will be placed away from drainage courses. How far away should they be placed? 5-21
- Disturbed areas will be protected from erosion by seeding. How will you ensure that invasive non-native species are not introduced during the seeding? 5-22

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

Mayten should be added to the list of prohibited plant species. CalEPPC is now known as CAL-IPC. 5-23

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

This fails to address the loss of perennial grassland habitat on the site. Earlier in the Biological Section the existence of a Creeping Wild-rye grassland on the site was discussed, but in this portion of the section the native perennial grasses are ignored. Native bunchgrass grasslands should be included in the analysis. 5-24

Impact Biology-9

The CEQA analysis of the issuance of the Creek Permit for the proposed project cannot be put off until after the analysis of this DEIR. The Creek Permit analysis must be a part of this DEIR. CEQA does not allow putting off drafting of mitigation measures to a future action. The Creek Permit and its mitigation measures must be a part of the DEIR. 5-25

GEOLOGY AND SOILS

Again in this Section we cannot tell if the investigations, reports and updates are for the current 2.9-acre proposal, or the earlier smaller project. 5-26

Impact Geology and Soils-1.d

"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." This statement while arguably true, fails to acknowledge that the sliding on the site is a natural process, and does not require "correction." 5-27

6

Mitigation Geology and Soils-2

As explained previously, the Biological Resources Section states that there will be no grading between October 15 and April 15. No BMP's are required for wet weather grading since wet weather grading will not take place. 5-28

Impact Geology and Soils-3

"Site strata and soils are currently unstable." While the statement may be true, this is a naturally occurring feature of the hills where the project is located. Site stabilization is only required for the building of houses. The no project alternative does not require stabilization of the site. 5-29

HYDROLOGY AND WATER QUALITY

The studies used for this Section appear to apply to the earlier, smaller proposed project. Studies need to be performed on the entire 2.9-acre site. 5-30

Erosion/Siltation, Runoff on Page 77 states: "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." There is no citation to support this statement. This acknowledges that the other swales on the project site were not analyzed for potential creeks and wetlands. 5-31

CUMULATIVE IMPACTS

This Section fails to address the issues raised in the NOP comments. Again the document refers to annual grasslands, when instead it should be dealing with perennial grasslands, especially native bunchgrass grasslands and the cumulative impacts to them. There is a total failure to analyze the cumulative impacts to creeks and watersheds. The effects are found from the source of a project all the way to the bay. 5-32 5-33

ALTERNATIVES

The No Project Alternative analysis continues the assertion that there is only one wetland on the site and that on-site wildland fire management improvements would not be made. There may be other wetlands on the site and current City of Oakland ordinances require the maintenance of all properties to limit their fire potential. The removal of the eucalyptus trees has greatly reduced the fire potential of the site. 5-34

7

Environmentally Superior Alternative

Page 107 again makes this assertion: "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 is the environmentally superior alternative." CEQA Guidelines Section 15126.6(e)(2) regarding "Consideration and Discussion of Alternatives to the Proposed Project" states: "If the environmentally superior alternative is the 'no project' alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives." CEQA does allow the No Project Alternative to be designated the environmentally superior alternative. 5-35

MITIGATION MEASURES

Mitigation measures need to be identified in the DEIR. Many of the mitigation measures are put off to a future date in connection with future City approvals. Penalties for failure to implement mitigation measures should be included. 5-36

ACCESS TO RECORDS

The DEIR states that all documents are available for review at 250 Frank Ogawa Plaza, Suite 3315. When I attempted to inspect documents at the identified location they were not available. In my NOP comments I specified the documents that should be available for inspection. They have not been made available. All the correspondence between the applicants and the consultants has not been made a part of the record. Previous permits issued for the project site were not included in the record. This includes the nine items identified in the 08-30-04 letter from David McDonald to Calvin Wong. Proper evaluation of the DEIR cannot take place without access to all the relevant records. 5-37

CONCLUSION

Thank you for your consideration of these matters. Please contact me if you have any questions.

Sincerely yours,

Ralph Kanz

From: Ralph Kanz [rkanz@earthlink.net]
Sent: Monday, January 09, 2006 2:07 PM
To: Leigh McCullen
Cc: Jane Brunner; Justin Horner; Richard Grassetti
Subject: Kenilworth Project; Creek and Wetland Delineation
Leigh,

These are my preliminary comments on the Draft Environment Impact Report (DEIR) for the Kenilworth Project. These comments only address the adequacy of the wetland delineation that was prepared for the Project.

The Wetland Delineation prepared by Olberding Environmental only delineates one area of wetlands on the project site. During my inspection of the property on January 9, 2006, I discovered two areas of potential wetlands that apparently were not examined during the surveys for the Wetland Delineation. The second potential wetland is located downslope from the excavated roadway at approximately the site of the fourth proposed house. The vegetation in this possible wetland appears to contain willow, elderberry, and blackberry. At the lower end of the potential wetland is a dead elderberry that was apparently cut last summer along with the trees. Identification of all potential wetland plant species is difficult at the present time due to the downed eucalyptus trees that now cover much of the site. Below this potential wetland the swale becomes what is arguably a creek, possessing a defined bed and bank. Again eucalyptus trees cut last summer cover much of this feature. 5-38

At the far end of the proposed project site is a third potential creek that was not discussed in the Wetland Delineation. While this feature is not on the project site, it could be impacted during construction activities.

The surveys being relied upon for the Wetland Delineation were prepared when the proposed project site was smaller. The second swale/creek would have been at the far edge of the earlier proposal, and the third swale/creek would not have been close enough to the project to be of concern.

The cutting of trees on the project site last summer has raised some serious issues. The activity appears to violate the terms of the Streambed Alteration Agreement issued by the California Department of Fish and Game in 2003 and could also be a violation of the City of Oakland Creek Protection Ordinance. 5-39

The City needs to have these two additional creeks/wetlands delineated in order to complete the required environmental review. There should be a new consultation with the Department of Fish and Game to determine if violations have occurred and how to proceed. The City should inspect the site to determine if the Creek Protection Ordinance is being honored. 5-40

Please contact me if you have any further questions.

Ralph Kanz
4808 Congress Ave.
Oakland, CA 94601
(510) 482-3979

LETTER #5 RESPONSE

Ralph Kanz
January 19, 2006 and January 9, 2006

5-1 The earlier proposal was for a four-unit project on the original four lots (about 1.5 acres) compared to the seven unit, seven lot, 2.9-acre site of the proposed project. The earlier proposal is similar to Alternative D: Reduced Density – Original Four-Lot Alternative (see pages 104-106 of the Draft EIR for an assessment of the differences between these two project concepts, as well as Response to Comment #8-14). The change in the project proposal does not affect the Draft EIR analysis because it analyzes the environmental effects of the current project proposal, not the earlier proposal. Changes in project proposals often occur during project development, review, and permitting as more information about the site becomes available. Please see also Responses to Comments #5-26 and #5-30, below.

5-2 The proposed project's storm water management system would reduce existing, ongoing erosion impacts and their associated effects on existing slope instability as well as capture and dissipate flows from the proposed project. The proposed project's wildfire protection improvements (fire hydrant, improved road and turnaround for fire prevention vehicles, greater emergency water access) would reduce wildfire risks to existing residents as well as to those of the proposed project. The Draft EIR does designate the Reduced Density Full Project Site Alternative as the Environmentally Superior Alternative on pages 106 and 107 after indicating that CEQA requires designating another alternative as such if the No Project Alternative would be the environmentally superior alternative.

5-3 Please see the Draft EIR, the last paragraph on page 48 and the first two paragraphs of page 49, for a discussion of the wetlands delineation, the expired streambed alteration agreement, and the need for a revised agreement. The U.S. Army Corps of Engineers' verification of the Olberding delineation (Olberding 2003a) is added to Appendix E of the EIR. The absence of protection for other wetlands in the project proposal subsection entitled "Wetland Enhancement and Preservation," on pages 25-26 of the Draft EIR reflects the absence of such features being identified in the existing studies. Those studies are referenced in section B. Biological Resources and wetlands identification is discussed on pages 48 and 49 of the Draft EIR in the subsection entitled "Wetlands and Other Waters of the U.S." Please see also Responses to Comments #5-31, #5-34, #5-6, #8-9 and #8-16. In addition, on August 9, 2006, Robert Coats, Ph.D., of Hydrokois Ltd., conducted a survey to identify the potential for

additional jurisdictional creeks or wetlands.[1] Based on the survey, Dr. Coats concluded that the project site contained no wetlands or creeks, apart from the previously identified and protected feature on Parcel 2.

> The Draft EIR is revised accordingly: **Appendix E** with the copy of the expired Department of Fish and Game Streambed Alteration Agreement is replaced with the U.S. Army Corps of Engineers' verification of the wetland delineation made by Olberding Environmental.

The creek permit is not a mitigation measure. The Draft EIR's mitigation measures are proposals in the project's Creek Protection Plan to avoid significant impacts to the creek. The deed restriction mentioned on page 27 is included in the required "Mitigation Measure Biology–3(i)" (page 54 of the Draft EIR. Please see also Response to Comment #8-25.

5-4 The objectives listed on page 29 of the Draft EIR are the project sponsor's objectives. Wetlands delineation studies did not identify other areas as wetlands. Therefore, those areas are not included in the project sponsor's objectives. Identifying and protecting such areas is not required for reducing a significant impact. Part of the proposed project proposal is a storm water management system to control and limit those downstream storm water runoff impacts. Please see also Response to Comment #8-38. Please see Response to Comment #5-38 regarding potential creeks and wetlands on adjacent lots.

5-5 TOVA Applied Science & Technology reviewed the LSA and Olberding studies previously prepared for the project. They conducted a review of the *Results of Preliminary Biological Survey, Kenilworth Road Property; Oakland, CA* (prepared by LSA Associates, Inc, 2001, as augmented by Olberding in 2002 and 2003). Olberding conducted surveys in February 26 and May 12, 2003 during the blooming periods of the target special status plant species known to occur in the general vicinity of the project area. The dates of the surveys were appropriate to ensure that positive identification of special status plants could be made based on defining flower structure and morphology. The entire property was surveyed using standard plant sampling methodology involving walking along uniformly spaced transects. Such methodology is also appropriate to ensure adequate survey coverage of the entire 2.9-acre project site, as noted in a letter dated June 28, 2005, by Jeff Olberding, Principal, Olberding Environmental, Inc., to Leigh McCullen, City of Oakland.

On the following page is a matrix indicating what biological studies were conducted on which portions of the project site:

[1] Robert Coates, Ph.D., Hydroikos Ltd., *Supplemental survey of additional jurisdictional creeks or wetlands*, September 1, 2006. This letter report is included in this document as Appendix A, and includes a map of the survey area.

Biological Surveys of Kenilworth Project Site			
Study and Consultant	**Area of Site**	**Species**	**Time Frame of Visit**
Hydroikos Ltd. ▪ *"Supplemental survey of additional jurisdictional creeks or wetlands"* (2006)	Entire 2.9-acre project site and all potential creek and wetland areas, including adjacent areas.	Creek and wetland survey and delineation	August 9, 2006
LSA Associates, Inc. ▪ *"Results of Preliminary Biological Survey, Kenilworth Road Property"* (2001)	An approximately 1.4- to 1.5-acre portion of the project site.	Aquatic habitat assessment , habitat assessment of special-status plants and animals	November 2001
Olberding Environmental, Inc. ▪ *"City of Oakland Stream Setback Ordinance Analysis for the Kenilworth Property"* (2002)	An approximately 1.4- to 1.5-acre portion of the project site	Creek and wetland surveys and delineation, and special-status plant survey	November 19 and December 12, 2002
Olberding Environmental, Inc. ▪ *"Location of Areas Potentially Subject to U.S. Army Corps of Engineers Jurisdiction: Wetland/U.S. Waters Delineation for the Kenilworth Property"* (2003) ▪ *"Special Status Plant Species Survey No.2"* (2003)	Entire 2.9-acre project site and all potential creek and wetland areas.	Creek and wetland surveys and delineation, and special-status plant survey	January 10, February 26 and May 12, 2003
TOVA Applied Science & Technology ▪ *"Kenilworth Project Raptor Nest Evaluation"* (2005) ▪ *"Tree Survey"* (2005) ▪ *"Supplemental Biological Assessment"* (2005)	Entire 2.9-acre project site and areas adjacent to the site	Survey of raptors and migratory bird nesting, trees, and confirmation survey of special-status plants and animals	August 9 and September 8, 2005

5-6 The wetland delineation is valid. All possible wetland areas on the project site were evaluated and only one area could be verified under the Army Corps of Engineers wetland delineation protocols (see Response to Comment #5-3). In a letter dated June 28, 2005, Jeff Olberding, Principal of Olberding Environmental, Inc., writes to Leigh McCullen, City of Oakland, the following summary assessment.

> "The Army Corps of Engineers (Corps) and California Department of Fish and Game (DFG) were also consulted in 2003 of the 1.4 acre portion of the property that contains the creeks and wetland features. The Corps verified a small wetland and rated swale, and DFG issued lake and streambed alteration agreement (No. 1600-2003-5143-3) that authorized the proposed removal and pruning of riparian vegetation. There are no proposed impacts to the wetland or Creek features proposed or authorized. In its authorization of this vegetation removal and pruning activity, DFG did not express any concerns with any rare, threatened or endangered species, nor require any future mitigations or conditions related to species. To clarify also, the remaining 3 lots that

were subsequently added to the project do not contain any wetland or Creek features that are subject to the DFG or court jurisdiction.

"Based on the LSA study our fall and spring plant surveys and numerous site visits, it is my opinion that the site provides no existing habitat for any endangered, threatened or rare plant or animal species."

In addition, as indicated in Response to Comment #5-3, Hydrokois Ltd. concluded that the project site contained no wetlands or creeks, apart from the previously identified and protected feature on Parcel 2 (please see Response to Comment #5-38).

5-7 The post-1991 Oakland-Berkeley Hills Burn Area, an area that includes the project site, is well documented by Libby and Rodriques, 1992, in the journal *Fremontia*. The information source is cited in the Draft EIR. Some of the species used in the initial revegetation effort remain as part of the plant composition in the vegetation cover on the project site.

5-8 The EIR statement remains correct. It acknowledges that the trees were removed. That functionally the trees were cut down and only some of the downed debris remains.

5-9 Please see Response to Comment #5-6

5-10 Eucalyptus trees are introduced, invasive, non-native species. Tree canopy structure in eucalyptus grooves is typically limited to one species. There are usually very few native overstory species present within eucalyptus planted areas.[2] The allelopathic nature of eucalyptus leaves and litter deposition often prevents the establishment of any significant shrubby understudy.[3]

Research studies indicate that significantly fewer birds and aerial insects occur in eucalyptus areas than in areas lacking eucalyptus.[4] This is attributed to the alteration of soil chemical properties caused by eucalyptus (i.e., toxins leached from leaves, etc.). Although the

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[2] Fenwick, R. 1980. Proposed fire management plan for the Lake Chabot Eucalyptus Plantation, East Bay Regional Parks District, Oakland, CA.

[3] McArthur, A.G. 1962. Control burning of eucalyptus forests. 8th Commonwealth Forestry Conf. (Canberra, Australia). Forestry and Timber Bureau Leaflet No. 80. and Smith, C.F. 1976. A flora of the Santa Barbara region, California. Santa Barbara Museum of Natural History, Santa Barbara, CA.

[4] Echizen, M, S. Infalt, and T. Walker. 2004. Evaluation of the effects of Eucalyptus on the Presence/Absence of Birds and insects at Jepson Prairie, Solano County, CA. UC Davis Unpublished report, Spring 2004.

eucalyptus has become "naturalized" throughout the Bay Area, it still represents a disturbed, nonnative habitat condition that reduces species diversity.

5-11 The text on DEIR page 65 refers to subsurface rocks and not to surface soils that would influence plant species composition, particularly of serpentine-endemic plant species. The soils on the project site are classified as the Maymen-Los Gatos Complex, which are shallow soils formed in material that weathered from sedimentary rock.

5-12 The DEIR clearly states that the TOVA plant surveys were conducted on the areas adjacent to, but west and south of the project site. These surveys were not intended to replace the already completed project-site surveys conducted by LSA and Olberding during the appropriate times of the year and using the appropriate, standard field survey techniques routinely used by botanists to conduct special status plant species surveys.

5-13 The DEIR discusses the nature of the fragmented habitat for the whipsnake, the fact that the project site is not in or near designated "Critical Habitat," and that the USFWS recognized that much of the historical habit for the whipsnake was destroyed in the catastrophic Oakland Hills firestorm of 1991.[5] The biological assessment prepared by LSA indicated that the northern coastal scrub on the project site provides marginal whipsnake habitat due to the density of the crown cover and the lack of rock outcrops. 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. However, 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). As a result, the DEIR provides a mitigation measure to avoid injury to whipsnakes, if such were to inadvertently move onto the project site from these off-site areas. The mitigation measure prescribes a pre-construction survey to verify that no snakes are actually on the project site and to construct a temporary protective fence to exclude whipsnake migration on to the site.

5-14 The habitat of the Alameda whipsnake is dominated by shrubs, but could include adjacent grassland, oak-grassland and, occasionally, oak-bay woodland. The species is not associated with eucalyptus forest communities. It is unlikely that the cutting of the eucalyptus trees on the project site would have adversely impacted Alameda whipsnake habitat or individuals. Research on the Alameda whipsnake conducted by Karen Swain was reviewed and considered regarding possible habitat on the project site.

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[5] U.S. Fish and Wildlife Service (USFWS). 2002. Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay, California. Region 1, Portland, OR.

5-15 The list of migratory species is only representative of the birds that may be associated with riparian communities. Mitigation Measure Biology–2, describes a protective action that calls for a pre-constructive survey and impact avoidance to minimize, reduce, or eliminate the impact to nesting migratory birds. The California thrasher is a common, non migrating resident of California and its breeding range is only in California; from the western slopes of the Sierra Nevada and high mountains of Southern California to the Pacific, and from the head of the Sacramento Valley to Baja.

5-16 Please see Response to Comment #5-6.

5-17 The cutting of non-native eucalyptus trees, a species that is not a native riparian-associated tree, was conducted during the dry season and would not have resulted in the discharge of sediments or other impacts to water quality. The hydrologic and biological functions and values of the waterway would not have been adversely affected by the removal of the introduced, invasive, non-native eucalyptus trees. The Oakland Creek Protection Ordinance protects the water quality, hydrology, and biological functions of creeks.

5-18 Field surveys were conducted of the entire project site during the proper season and using standard field assessment methodology to identify the potential presence of special-status plant species, migratory bird nesting, and the presence of special-status wildlife habitat. The DEIR provides mitigation measures, however, to avoid adverse impacts to migratory birds and Alameda whipsnake if such species were to move onto the project site before actual grading and site construction were to occur.

5-19 The project's Creek Protection Plan responds to the specific requirements of the City's Creek Protection Ordinance and provides for the protection of defined creeks on the property. The buffer zone width needed to protect a stream or wetland is often a somewhat subjective determination, and would depend on specific ecological functions or values that need protection. In the case of the project, the primary function will be to provide a "factor of safety" to keep equipment, sediment, and construction debris out of the wetland/riparian zone. The project would construct a "stabilization buffer zone" of approximately four feet to stabilize the site to the edge of the creek. A more permanent "no build zone" would subsequently be constructed at 20 to 25 feet. The 21 practices discussed on page 55 of the DEIR are standard Best Management Practices (BMPs) that are routinely implemented to protect the functions and values of creeks, waterways, and wetlands. See also Response to Comment #5-26, last paragraph.

5-20 As the comment indicates, the conditions of approval do indeed state that the grading would not occur during the rainy season, in accordance with the conditions of the *1603 Lake and*

Streambed Alteration Agreement and the *Creek Protection Ordinance* for work within the streambed/riparian corridor. The project had been proposing dry-weather grading only, with an emergency contingency for wet-weather grading only if a permit could be obtained where conditions of approval would ensure a less-than-significant erosion impact. However, due to public concerns over wet-weather grading, the project sponsor has directed the City to strike the emergency contingency provision for wet-weather grading from the project proposal. As revised in this Final EIR, wet-weather grading would not be permitted at all under the proposed project, and the wet-weather Mitigation Measure Geology and Soils–2 is no longer needed. Thus, wet weather grading conditions have been eliminated.

The EIR is revised as follows:

> Page 3, last paragraph, third sentence, is modified as follows: "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 wet weather stormwater management best management practices to minimize erosion~~."
>
> Page 27, first paragraph of Section C. CONSTRUCTION, third sentence, is modified as follows: "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 wet weather stormwater management best management practices to minimize erosion~~."
>
> Page 71, first bullet, Impact Geology and Soils–2, Standard Condition of Approval 6.b, is modified as follows: "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~~."
>
> Page 71, Mitigation Measure Geology and Soils–2, delete entire mitigation measure.
>
> Page 81, Impact Hydrology and Water Quality–3, third sentence after "Conditions of Approval" quotation is modified as follows: "Ground-disturbing construction activities would not occur during the rainy season~~ unless a wet weather grading permit were issued~~."

5-21 The setback distance from the drainage course for stockpiled soils would depend on micro-topography and will be determined during construction, subject to review and approval by the City**.** The determining distance would be identified based on the likelihood that material could enter a creek from upslope or adjacent areas. Soil coverings, binders, silt fences, straw bales, and other standard BMPs would protect drainage way water quality.

5-22 The DEIR indicates that protective seeding would incorporate an erosion control mix. The DEIR also addresses the significant impact of introducing invasive, non-native plants into native riparian habitat. As such, a suitable erosion control seed mix that emphasizes a

composition of native plants is desirable. The Bay Area Seed Mix is typically used in creek restoration and protection projects. The composition of the seed mix maximizes the use of native plant seeds and effective non-fertile erosion control plants (see table below).

NATIVE BAY AREA HABITAT SEED MIX		
Lbs./Acre of Pure Live Seed	**Scientific Name/Common Name**	**Min. Germination**
7.5	*Bromus carinatus*/ California brome	45%
6.0	*Elymus glaucus*/ Blue wildrye	45%
6.0	*Hordeum brachyantherum* ssp. *californicum*/California barley	45%
3.75	*Festuca idahoensis*/Idaho fescue	40%
3.75	*Nassella pulchra*/Purple needlegrass	40%
3.0	*Poa secunda*/Pine bluegrass	40%
1.5	*Eschscholzia californica*/California poppy	45%
1.5	*Lasthenia glabrata ssp. glabrata*/Goldfields	40%
3.0	*Lupinus nanus*/Sky lupine	40%
1.5	*Clarkia bottae*/Showy clarkia	40%
1.0	*Castelleja exerta*/Purple owls clover	20%
10.0	ReGreen – sterile wheat nurse crop*	45%

* Cover crop to help protect the site from soil erosion as well as provide safe sites for seedling germination until the native plants that were seeded are able to establish. Cover crops usually some type of sterile annual weed-free grain that will grow rapidly, establish for the first year, and then fade out as the natives become established. ReGreen is sterile wheat that would not compete with seeded natives.

5-23 It is appropriate to include the tree Mayten (*Maytenus boaria*) on the list of prohibited plant species. The DEIR discusses the need to contact the California Exotic Pest Plant Council (CalEPPC) to identify other potential invasive plants prior to completing landscaping plans for the proposed residential units.

5-24 Sensitive natural community types on the site consist of coastal-scrub and segments of the riparian corridors dominated by willow riparian scrub vegetation willow. Areas dominated by willows are generally regulated by the California Department of Fish and Game (CDFG), but technically are not considered to have a high inventory priority by the California Natural Diversity Data Base (CNDDB). The stands of native creeping wildrye, while noteworthy, lack the species diversity and sufficient size to be characterized as a sensitive natural community type, with non-native grasses and forbs forming the dominant grassland cover on most of the site.

5-25 The DEIR does not suggest that acquiring the Creek Permit is mitigation to protect the creek from short-term, temporary adverse effects on water quality, nor does the DEIR put off till a later time an analysis of the project's creek impacts. The project has developed a Creek Protection Plan and the DEIR incorporates a specific mitigation measure to reduce the impact on creeks (Mitigation Measure Biology–3(i): Implementation of Best Management Practices and the Approval Conditions of the Creek Protection Plan) and a Deed Restriction.

5-26 The Draft EIR evaluated the potential impacts for the entire site of the proposed project and used or developed the pertinent information as needed. As stated on page 65, third paragraph, first sentence: "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 . . . ." Some of the studies for the smaller site of the earlier project proposal are used for this EIR and the larger project site when the information is pertinent. If more information and analysis was required for the larger site, then that information was obtained from new or updated studies as stated on page 65. Please see also Response to Comment #5-30, below.

5-27 The context for the discussion is the project proposal. In that context, naturally occurring landslides from existing unstable slopes represent a potential natural hazard as noted in the CEQA Initial Study Checklist for this topic (see Appendix A, Item 6.a.iv). This hazard would need to be addressed for the proposed project, which it is in the in the Draft EIR. Please see also Response to Comment #8-25.

5-28 As discussed further in Response to Comment #5-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the Draft EIR have been removed.

5-29 The topic of slope instability referenced in the comment occurs in the first sentence of page 73 in the Draft EIR. Slope instability is a naturally occurring condition as is slope stability. As identified in the Draft EIR's Appendix A, CEQA Initial Study Checklist Item 6.a.iv, landslides are a natural hazard that could expose people or new structures of a proposed project to potentially substantial adverse effects, including the risk of loss, injury or death. The No Project Alternative does not require stabilization because the alternative does not propose a new action that would, in combination with existing slope instability, create a human safety hazard. The Draft EIR states this point in the second sentence of the first paragraph on page 102.

5-30 As noted in Response to Comment #5-26, above, the Draft EIR evaluated potential impacts for the entire 2.9-acre site of the proposed project. It used and developed pertinent information as needed. Some of the studies for the smaller site of the earlier project proposal were relevant for the environmental analysis of the proposed project site. The studies used for the Hydrology and Water Quality section are listed on pages 75-76 of the Draft EIR. They are available for public review as stated in the second paragraph on page 75.

5-31 The cited statement in the Draft EIR summarizes some of the analytic studies that are listed on pages 75 and 76. All swales were evaluated to determine the extent of the wetlands on the site, and to identify which ones qualified for protection under Oakland's Creek Protection Ordinance. The statement indicates that of the multiple analyses of the swales, experts disagreed over whether some of the swales met the definition of a creek in Oakland's Creek Protection Ordinance. The Draft EIR states that "In order to be sufficiently protective of this drainage course, it is conservatively treated as a creek subject to the City's Creek Protection Ordinance." Additional discussion of the wetland delineation can be found on pages 48 and 49 of the Draft EIR in the subsection on "Wetlands and Other Waters of the U.S." Please see also Response to Comment #5-6.

5-32 Please see Response to Comment #5-24. Native perennial grasses lack the species diversity and sufficient size to be characterized as a sensitive natural community type.

5-33 Section IV.G, Cumulative Development, of the Draft EIR assesses the proposed project's cumulative impacts. Please see Response to Comment #9-19(14). Also, there is a discussion of cumulative aesthetic impacts on pages 22-23 of the Draft EIR. As stated in Response to Comment #5-39(30), Section G. of the Draft EIR (Cumulative Impacts, page 97) discusses the cumulative impact potential to Vicente Creek. Because the proposed project would reduce surface water stormwater flows from both existing development and the proposed project with its storm water management system, the proposed project would have a net positive or at least a less-than-significant impact, and therefore, would not contribute substantially to a cumulative impact.

5-34 The hydrologic and biological studies, including a wetlands delineation conducted according to U.S. Army Corps of Engineers' protocols as referenced in Response to Comment #5-31, have developed evidence sufficiently supporting the identification of only one wetland on site (see also Responses to Comment #5-3 and 5-6). The No Project Alternative (Draft EIR, pages 101-102) description states that the proposed project's fire prevention components would not be developed. That is a true statement for the "*No*" Project Alternative. As the commenter notes, current fire prevention resources are required of existing residents. Please see also the discussion above under Response to Comment #5-2 regarding the Environmentally Superior Alternative.

5-35 The Draft EIR discusses the environmental effects of the No Project Alternative in the last paragraph of page 106, which continues at the top of page 107. The Draft EIR then goes on to designate the Reduced Density Full-Project Site Alternative as the environmentally superior alternative on page 107 to comply with CEQA's requirements of identifying an alternative besides the No Project Alternative as the environmentally superior alternative. Please see also Response to Comment #5-2 regarding the Environmentally Superior Alternative.

5-36 The Draft EIR identifies a range of standard conditions of approval where compliance is required independently from CEQA as well as mitigation measures that CEQA requires. Both standard conditions of approval and mitigation measures would be enforced as legal conditions of project approval. The project sponsor has also agreed to treat the standard conditions of approval as mitigation measures. Please see also Responses to Comments #8-10, #8-9(12), and #8-48(41).

5-37 The public records were and are open for inspection during normal business hours. Absent an appointment, a customer may need to wait for the case planner to retrieve the files.

5-38 Regarding wetlands and bioswales, please see Response to Comments #5-6 and 5-31. As indicated on page 49 of the DEIR, there is a ravine and a small creek to the southwest of the project site. The project construction would include standard BMPs such as straw bales and/or a silt fence to avoid any runoff from the project site. The City of Oakland has issued a creek protection permit. The Final EIR has been revised to include the requirements of this creek protection permit as Standard Condition of Approval – Biology 3(ii), below. Please also note additional changes to the DEIR on pages 49, 59, 63, and 77, as revised in Section II of this document.

The Final EIR, page 56, is revised to include the following:

> "The following condition of approval will be applied to the project and, therefore, analyzed as part of the project:
>
> > **Condition of Approval – Biology 3(ii):** Implementation of Best Management Practices (BMPs) and Approval Conditions of the Creek Protection Plan for the Off-Site Creek.
> >
> > In particular, the following three specific measures are noted:
> >
> > - Grading and other work (including the lower keyways) shall be located 37 feet from the top of bank.
> > - Chain link fence shall be installed 35 feet from top of bank
> > - Silt fence shall be installed 33 feet from top of bank.

In addition, the following specific practices for protecting the off-site creek during construction would avoid direct impacts and reduce indirect impacts to less than significance.

a) A creek protection site plan that includes on the site plan location and type of BMPs and location of staging areas.

b) Implementation of a City-approved vegetation plan and maintenance plan for post-grading erosion control, as noted in the October 11 letter from Cundey Geotechnical consultants.

c) The following BMPs shall be implemented:

- 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.
- 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 by hand 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."

–

5-39 The 1603 Lake and Streambed Alteration Agreement authorizes the removal of vegetation, the pruning of understory riparian vegetation, and minimizing the removal of riparian trees. The Agreement provides a condition that for each native tree that is removed or disturbed, native replacement trees are to be planted on the project site at a minimum 3:1 ratio (trees replaced: trees lost). For each non-native tree (e.g., eucalyptus trees) that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 1:1 ratio. The removal of trees with proper compensatory plantings of native trees would not violate the conditions of the Streambed Alteration Agreement. The alleged violation of the Section 1603 agreement is not a CEQA issue. Likewise, the alleged past violation of the Creek Protection Ordinance is also not a CEQA issue. Please also see also Response to Comment #9-31 and for further discussion of the Section 1603 agreement.

5-40 Please see Responses to Comments #5-37 and #5-6. The studies indicate only one wetland and it is the subject of the proposed "Wetland Enhancement and Preservation" component of the project described on pages 25–27 of the Draft EIR, and is in compliance with the City's Creek Protection Ordinance.

Letter #6

From: David Kessler [dkessler@library.berkeley.edu]
Sent: Thursday, January 19, 2006 2:12 PM
To: lmccullen@oaklandnet.com
Cc: Jane Brunner
Subject: RE: File #: ER04006 Draft Focused EIR (Kenilworth PUD 04-195)

Leigh McCullen, Planner III
City of Oakland
Community and Economic Development Agency
Planning and Zoning Division
250 Frank H, Ogawa Plaza, Suite 2114
Oakland CA 94612
lmccullen@oaklandnet.com

RE: File #: ER04006
Draft Focused EIR (Kenilworth PUD 04-195)

Dear Ms. McCullen:

We are writing on behalf of the North Hills Phoenix Association (NHPA), a community organization whose membership represents a broad spectrum of the 1500-plus residents of the North Hills/Claremont Heights area. The NHPA has reviewed the January 19, 2006 comments of the C.R.E.E.K organization regarding the Kenilworth Draft Focused Environmental Impact Report. Please be advised that by this letter that the NHPA is on record supporting all the C.R.E.E.K comments and proposals for effective and enforceable mitigation measures, which NHPA hereby adopts as its own.

As you know, the NHPA has often spoken out to insist that the development of properties in the North Hills be done in a lawful and responsible way. We believe this includes making every reasonable effort to minimize adverse environmental effects. Thoughtful development includes full, informed, public participation in the planning process. For this reason the NHPA is concerned that the city of Oakland is deliberately evading the CEQA (California Environmental Quality Act) analysis, disclosure, and public participation process by rubber-stamping major development projects in our neighborhood without requiring CEQA-mandated independent review and mitigation measures.

6-1

We ask that you respond fully and in good faith to C.R.E.E.K's comments on the DFEIR. An independent consultant hired directly by the City should review and rewrite the DFEIR. This new draft should then be widely circulated for public review.

Thank you for your attention to this matter.

In peace,

Anne Seasons, President 2005
David Kessler, President, 2006
North Hills Phoenix Association

****

David Kessler,The Bancroft Library, UC Berkeley, Berkeley CA 94720-6000,
dkessler@library.berkeley.edu, 510-642-8174 (work), 510-843-5122 (home)
"...memories collect in us and form aquifers of meaning below the surface of our lives." Nuala O'Faolain, "The Story of Chicago May."

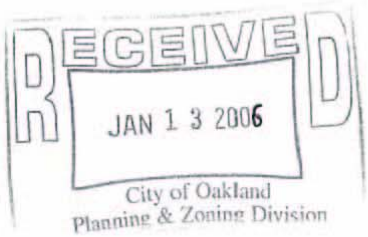
LETTER
#6
RESPONSE

David Kessler
North Hills Phoenix Association (NHPA)
January 19, 2006

6-1 Please see Responses to Comments #8-1, #8-9, #8-12, #8-19, #8-21, #8-23, #8-32, #8-37, #8-39, #8-46, #8-48, and #8-53 that address the comments made in the January 19, 2006 C.R.E.E.K. letter. The proposed project fully complies with CEQA. Please see Response to Comment #8-1(1) regarding peer review, City review and authorship as the Lead Agency, and Responses to Comments #8-9 and #8-10 regarding mitigation and standard conditions of approval permitted and used in the CEQA process and for the proposed project.

Letter #7

EAST BAY MUNICIPAL UTILITY DISTRICT



January 11, 2006

Leigh McCullen, Planner III
City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Draft Environmental Impact Report - Kenilworth Residential Planned Unit Development Project, Oakland

Dear Ms. McCullen:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Kenilworth Residential Planned Unit Development Project located in the City of Oakland (City). EBMUD has the following comments.

WATER SERVICE

EBMUD's Gwin Pressure Zone, with a service elevation range between 1,100 and 1,300 feet, will serve the proposed development. A main extension, at the project sponsor's expense, will be required to serve the proposed development. Off-site pipeline improvements, also at the project sponsor's expense, may be required depending on domestic water demands and fire flow requirements set by the local fire department. Off-site pipeline improvements include, but are not limited to, replacement of existing pipelines to the project site. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing water service to the proposed development. Engineering and installation of water mains, off-site pipeline improvements and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

7-1

WASTEWATER SERVICE

EBMUD's Main Wastewater Treatment Plant is anticipated to have adequate dry weather capacity to treat the proposed wastewater flow from this project, provided the wastewater flow meets the standards of EBMUD's Environmental Services Division. However, the City's Infiltration/Inflow (I/I) Correction Program sets a maximum allowable peak wastewater flow from each subbasin within the City, and EBMUD agreed to design and

7-2

375 ELEVENTH STREET . OAKLAND . CA 94607-4240 . TOLL FREE 1-866-40-EBMUD

construct wet weather conveyance and treatment facilities to accommodate these flows. EBMUD prohibits discharge of wastewater flows above the allocated peak flow for a subbasin because conveyance and treatment capacity for wet weather flows may be adversely impacted by flows above this agreed limit. The project sponsor needs to confirm with the City's Public Works Department that there is available capacity within the subbasin flow allocation and that it has not been allocated to other developments. The projected peak wet weather wastewater flows from this project need to be determined to assess the available capacity within the subbasin and confirmation included in the EIR. Suggested language to include in the EIR is as follows: "The City of Oakland Public Works Department has confirmed that there is available wastewater capacity within Subbasin *(insert subbasin number here)* that is reserved for this project." 7-2

In general, the project should address the replacement or rehabilitation of the existing sanitary sewer collection system to prevent an increase in I/I. Please include a provision to control or reduce the amount of I/I in the environmental documentation for this project. The main concern is the increase in total wet weather flows, which could have an adverse impact if the flows are greater than the maximum allowable flows from this subbasin. 7-3

WATER CONSERVATION

The proposed project presents an opportunity to incorporate water conservation measures. EBMUD would request that the City include in its conditions of approval a requirement that the project sponsor comply with the Landscape Water Conservation Section, Article 10 of Chapter 7 of the Oakland Municipal Code. 7-4

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning, at (510) 287-1365.

Sincerely,

Harry P. Hamm for

William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:SCB:sb
sb06_002.doc

cc: Eva Gero, Project Sponsor
David McDonald, Project Sponsor

LETTER #7 RESPONSE

William R. Kirkpatrick
Manager of Water Distribution Planning
East Bay Municipal Utility District
January 11, 2006

7-1 The comment is noted regarding the water service information and summary of the standard development procedures and responsibilities for scheduling and paying for on- and off-site infrastructure improvements. The project sponsor will contact EBMUD's New Business Office to coordinate requirements for water service provision.

7-2 The intention of the proposed project's post-construction storm water management system is to eliminate issues regarding stormwater flows. On page 82, Impact Hydrology and Water Quality–5, the Draft EIR states that "The proposed project would not create or contribute to runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff." The proposed post-construction storm water management system could be designed to meet a range of standards that the current conditions and permitting process would require. The system is proposed and would be designed to capture and reduce some of the existing uncontrolled stormwater flows from upslope properties as well as flows from the proposed project to meet the standards and requirements of the permitting process.

7-3 The project's proposed post-construction storm water management system does address the issue of preventing a substantial increase in peak wet weather flow infiltration/inflow (I/I) to the EBMUD wastewater treatment system. Please see the Draft EIR page 25, first paragraph, page 76 and the subsection entitled "Water Quality Standards," and page 82, the subsection entitled "Impact Hydrology and Water Quality–5," as well as Response to Comment #7-2, above.

7-4 The proposed project would be required to comply with the cited Landscape Water Conservation Section, Article 10 of Chapter 7, of the Oakland Municipal Code.

Letter #8

JOHN R. SHORDIKE
ATTORNEY AT LAW

24560 RIDGE ROAD
WILLITS, CA 95490
707-459-1564
SHORDIKELAW@MINDSPRING.COM

January 19, 2006

DELIVERY BY HAND

Leigh McCullen, Planner III
City of Oakland
Community and Economic Development Agency
Planning and Zoning Division
250 Frank H, Ogawa Plaza, Suite 2114
Oakland CA 94612

RE: File #: ER04006
Draft Focused EIR (Kenilworth PUD 04-195)

Dear Ms. McCullen:

I represent the Claremont Residents for Environmental Enforcement at Kenilworth ("C.R.E.E.K"), an unincorporated association of more than two hundred residents of the neighborhood immediately surrounding the proposed Kenilworth PUD.

Herewith are C.R.E.E.K's comments on the December 5, 2005, Draft Focused EIR ("DFEIR"), individually numbered to facilitate your consideration and response. These written comments are in addition to the oral comments given by C.R.E.E.K members at the January 4, 2006 Planning Commission Meeting regarding this project.

The DFEIR does not directly or specifically respond to most of C.R.E.E.K's comments enumerated in my August 29, 2005 NOP comment letter ("Shordike Comment Letter") (Appendix B of the DFEIR). Most of the flaws and questions highlighted in my August 29 letter remain evident in the DFEIR. Therefore C.R.E.E.K incorporates by this reference its August 29 comments as an integral part of its comments on the DFEIR, and asks for your specific good-faith response to each of those 42 numbered comments in addition to your response to the new comments herein. C.R.E.E.K also has reviewed the separately submitted comments of Janice Holve and Ralph Kanz, is in agreement with those comments, and asks that you fully respond to those comments as well. C.R.E.E.K also proposes specific mitigation measures to be included in the EIR.

In brief, the DFEIR requires substantial new analysis, revision, and recirculation to satisfy CEQA. Its numerous omissions, inaccuracies, and evasions make the DFEIR appear to be far more a product of project advocates than of the objective, good-faith, peer-reviewed planning and science process required by CEQA. The flaws in this document illustrate the perils of allowing project applicants to prepare their own EIRs without genuine independent review by the Lead Agency.

Project Setting, Description, Piecemealing, and Objectives:

1. Please respond to the August 29 Shordike Comment Letter, paragraphs numbered 1 through 9. 8-1

2. Erroneous Characterization of the Project Area. The project site is not completely surrounded by developed residential uses. It is adjacent to such land uses on two sides, while it is adjacent to undeveloped wildlands on the other two sides. In labeling these sites "very low density residential" (*see* p. 11) the DFEIR deceptively substitutes "designated" land uses for actual land uses in attempting to characterize the site as surrounded by urban development. The DFEIR then downplays project impacts because of assumed adjoining land uses. This sort of "plan-to-plan" approach to analysis is explicitly forbidden by CEQA. *See* CEQA Guidelines section 15125(e). 8-2

3. Inadequate Project Description. Under "Sewage Collection" the DFEIR notes that the project sewage system would "avoid installation of steep hillside leach fields". This is a deceptive comparison aimed at making the project look better than it is; it is deceptive because any new leachfields are illegal in Oakland, and could not be constructed as part of any project on this or any other site in the City. 8-3

4. Inadequate Project Description. The geotechnical stabilization discussion is purely generic and fails to describe where, and what facilities, grading, equipment, and work would be required to stabilize the slope. Lengths, heights, and construction details of retaining walls are not provided; quantities and locations of cuts, fills, and keyways are not described; and quantities of imported/exported materials are not addressed. This failure to completely describe the project has resulted in an inadequate impact analysis (failure to correctly assess noise/vibration; failure to accurately calculate impervious area) and inadequate selection of alternatives (see comments on alternatives). 8-4

5. Inadequate Project Description. The post-construction stormwater management discussion that estimates impervious surfaces at 43,093 sq. ft. (coincidentally just below the 43,560 sq. ft. threshold for triggering Clean Water Act "C.3" requirements) is in error because it fails to consider impervious surfaces of the proposed retaining walls, which would add at least 590 sq. ft. (590 ft long by 1-ft wide) to these surfaces, and thereby trigger those requirements. 8-5

6. Improperly Piecemealed Project/Analysis. The project consists of two distinct phases: The first 300-feet of the roadway extension and associated slope stabilization, completed last year, and the currently proposed project. The applicant's submittals to the City at the time of the first phase clearly indicate that this second phase was proposed at that time as part of the same initial application, and that it was only partitioned off because of the "emergency" need to do landslide repair. Further, the applicant freely admits that the project consists of the two phases. The potential environmental impacts of the first phase have never been evaluated under CEQA. Therefore the EIR should be revised to include the impacts of both phases of the project, not just the second phase. This could be accomplished either in the body of the analysis or in the cumulative impacts section. 8-6

7. **Impermissibly Narrow Project Objectives**. The proper definition of project objectives is important in the CEQA process because those objectives guide the selection and comparative evaluation of project alternatives. When a project and its objectives are defined too narrowly, an EIR's treatment of alternatives may also be inadequate.

The DFEIR's project objective to build "seven single-family houses" precludes from acceptability all alternatives that do not include seven houses. This is an impermissibly narrow project objective. Further, the objective of an "economically feasible" residential development is unsupported by any evidence of what would or would not be economically feasible. Thus, please redefine the project alternative to eliminate "seven" from the first objective, and require that the applicant provide financial evidence regarding the feasibility of two-, three-, and four-house alternatives, if those alternatives are rejected. The three-unit alternative was specifically requested in the Shordike August 29 letter, paragraph 13. 8-7

8. **Unsupported Project Objectives**. Numerous stated project objectives are unsupported by any evidence in the DFEIR, are transparent advocacy statements by the developer, and therefore must be eliminated from the DFEIR. Specifically, there is no evidence in the DFEIR that the project, as proposed, would accomplish the following:

A) "support local job creation" – The project is not conditioned to hire only local contractors and laborers, or exclude those from outside Oakland;

B) "Improve wildland fire protection" - The project fails to comply with the Fire Department's requirements for maximum driveway length

C) "Enhance and protect the onsite wetland" - The project would allow grading within four feet of the wetland, and construction of the proposed silt fence would encroach even closer to the wetland; the project could include rainy season grading, which has fouled wetlands and riparian areas throughout the hills. The DFEIR includes zero evidence or supporting studies that a four foot buffer would protect a wetland. Experts commonly believe that at least 25 feet is required to assure protection, particularly when mass grading is proposed adjacent to the wetland, as in this project. This distance also is reflected in the City's Creek Protection Ordinance, which establish much more stringent Creek Protection Permit requirements for grading within 25 feet of a creek. 8-8

D) "Complete stabilization of the site and upslope properties" – The DFEIR fails to include any description or maps of the landslides or proposed stabilization measures, so there is no way that the DFEIR reader can possibly evaluate the scope of this proposal, the adequacy of the project and alternatives' response to this objective, or the actual need for this objective. The failure to provide detailed slope stabilization description also renders the DFEIR's project description inadequate to meet basic CEQA disclosure requirements.

E) "Completion of the project on schedule and within budget" – This peculiar objective includes no metrics for determining a project's compliance; the DFEIR does not disclose any details of a schedule or budget, rendering impossible any assessment of the project's or an alternative's compliance.

F) "Meet the demands of the expanding Oakland economy and growth in the project area". – No evidence is presented in the DFEIR establishing the need for seven more multi-million dollar houses in Oakland. Please provide such evidence or eliminate this objective. Also, please describe how this objective addresses the need for low- and moderate-income housing, and how the project would comply with City General Plan policies to provide such housing?

8-8

"Implementation and Improvement Measures":

9. Please respond to the August 29 Shordike Comment Letter, paragraphs numbered 10 through 12.

8-9

10. Failure to Provide Mitigation Measures. In response to numerous potentially significant impacts, the DFEIR claims that those impacts are mitigated below a level of significance through the implementation of "the City's standard Conditions of Approval (Implementation Measures)." Yet many of those measures are not standard and have never been adopted by the City for general application to all development projects. Further, many of those measures have loopholes (i.e. wet weather grading prohibition) that make actual mitigation of impacts uncertain. Finally, the use of "Improvement Measures" instead of the CEQA-mandated "Mitigation Measures" violates CEQA requirements, as set forth in our August 29 comment letter. In effect, the City has established a parallel process to CEQA that is not permitted by CEQA.

8-10

11. Definition of City's Parallel CEQA process. With respect to each and every "standard condition of approval" and "improvement measure" relied upon in the DFEIR, please specify:

(A) A legal definition for "standard condition of approval" and "improvement measure";

(B) When, and via what legal mechanism, each "standard condition of approval" relied upon in the DFEIR was adopted by city decision-makers;

(C) To which classes of projects each specific "standard condition of approval" relied upon in the DFEIR applies;

(D) The legal difference, if any, between each "standard condition of approval" and "improvement measure" and CEQA mitigation measures;

8-11

(E) If a "standard condition of approval" or "improvement measure" is not an actual CEQA "Mitigation" measure, do CEQA's legal requirements for MMRP enforcement apply to these conditions and measures even with their inclusion in the MMRP?

(F) The legal mechanism, if any, that assures implementation, monitoring, and enforcement of each "standard condition of approval" and "improvement measure";

(G) How each "standard condition of approval" and "improvement measure" will be integrated into the required CEQA findings for mitigation;

(H) The reason, if any, that each "standard condition of approval" and "improvement measure" is not included in the EIR as a CEQA mitigation measure.

8-11

Alternatives:

12. Please respond to the August 29 Shordike Comment Letter, paragraph number 13.

8-12

13. Inconsistencies. The descriptions/analyses of the Alternatives in the Alternatives chapter of the DFEIR are not consistent with those in the Summary chapter. Many of the adverse effects of the no-project and 4-unit alternatives that are highlighted in the summary are entirely absent from the actual alternatives analysis.

8-13

14. Inconsistencies. The reduced density Original Four-Lot Alternative is internally inconsistent, first noting that it is lots 1-4 on the project site plan (figure 2) and then claiming that the houses would be closer to the wetland area (which raises the obvious question…how much closer than four feet can one get?). Similarly, claims that the 4-lot alternatives would reduce geologic hazard abatement are entirely unverifiable given that the extent of proposed or necessary abatement is never indicated in the EIR. Please note that the analyses of the alternatives' impacts are inaccurate, as discussed in the Inadequate Analysis of Alternatives section of this letter, below. Because the project objectives are impermissibly narrow and the analyses of the 4-lot alternatives are inadequate, the discussion of the Environmentally Superior Alternative also is fatally flawed.

8-14

15. Inadequate Analysis of Alternatives. The EIR states that impacts from the two four-lot alternatives on visual quality, biology, geology, hydrology, and noise would be the same or similar to those of the seven-lot project. This indicates a failure to adequately assess the alternatives. Even the most superficial alternatives analysis necessarily would conclude that these fewer-lot alternatives would:

8-15

- Substantially reduce the visual prominence of the project;
- Reduce project runoff by about 40%;
- Eliminate the vast majority of project grading (see DFEIR Figure 3) and associated potential erosion on the site;
- Reduce removal of natural vegetation on the site by over 40%;
- Reduce removal of protected trees from 11 to 4; and,
- Reduce construction noise associated with grading, earthwork, and construction of three additional houses.

8-15

16. "Straw Man" Alternatives. CEQA requires that alternatives reduce potential impacts of the proposed project. The DFEIR concludes that none of the project alternatives would accomplish this goal, and that all of the alternatives would be either environmentally worse than the project or the same. This clearly indicates an inadequate range of alternatives, and that the alternatives included in the EIR are impermissible "Straw Man" alternatives that have been manipulated solely to make the project look good.

8-16

17. Proper 4-lot Alternatives. A proper 4-lot alternative would include the first four lots on the project plan, with the same creek and wetland setbacks, slope stabilization, and fire protection. In fact, the description of the Reduced-Density Original Four Lot Alternative as described on p. 104, last paragraph, explicitly says "See Lots 1-4 on Figure 2…of this EIR". Yet, the analysis of this alternative assumes a reduced setback to the creek, which is in conflict with Lots 1-4 as shown on Figure 2. Lots 1-4 on Figure 2 would be an appropriate alternative. Alternately, smaller houses on the lots shown in the old four-lot plan, revised for adequate creek setbacks also might be appropriate. The gerrymandered large houses on smaller lots as assumed in the Reduced-Density Original Four Lot Alternative clearly do not comply with CEQA requirements for alternatives.

8-17

18. Proper 2- or 3-lot Alternatives. If the two 4-lot alternatives in the DFEIR are not substantially superior to the project, then the DFEIR should include a two-lot or three-lot alternative that avoids the wetland and creek, complies with the City Fire Department's road-length requirements, includes a fire hydrant, and includes all requisite slope stabilization. That additional alternative also should forbid rainy-season grading, establish at least a 25-foot setback form the wetland, indicate development envelopes, guarantee monitoring and enhancement of the wetland in perpetuity, compensate for the illegal logging of raptor nests during the nesting season, and fund acquisition of some or all of the adjacent parcel designated as open space in the City's OSCAR as compensation for project impact to natural resources.

8-18

Cumulative Impacts:

19. Please respond to the August 29 Shordike Comment Letter, paragraph number 14.

8-19

20. Other than biological resources, the Cumulative Impacts assessment is entirely devoid of any analysis of cumulative impacts. Please revise to address cumulative stormwater, visual, and construction noise impacts of past, planned, and reasonably foreseeable projects in the project area. 8-20

Aesthetics:

21. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 16 through 17. 8-21

22. The Aesthetics impacts discussion is more argument than analysis. Despite repeated requests for photosimulations of the project's visual effects, the EIR fails to provide any such simulations. Absent such simulations the EIR's conclusions that the project would have no significant visual impacts are conclusory and entirely unsupported by fact. The project would change the visual character of the site from open space/wildlands to urbanized with large houses that exceed the zoning ordinance's normal height and have smaller setbacks. In fact, with 5-foot setbacks, the houses would form a tall wall of development where none currently exists. Therefore the project will have a significant visual impact. Under CEQA, neighbors' opinions on the significance of visual impacts are considered sufficient evidence of such impacts. 8-22

Biological Resources:

23. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 19 through 23. 8-23

24. The biological resources section fails to describe which of the supporting studies applied to the entire site and which applied only to the original two-acre site. 8-24

25. The DFEIR position that the illegal tree removal was undertaken outside of the raptor nesting season may not be consistent with CDFG enforcement protocol. The EIR preparers should contact CDFG to confirm the correct date for the end of the raptor nesting season. Reliance on dates in an (expired) Streambed Alteration Agreement (SAE) as applicable to the grove of eucalyptus is fatally flawed because the SAE applied only to riparian vegetation and not to upland vegetation. 8-25

26. The tree and nesting bird surveys cited in the DFEIR were conducted after the illegal tree cutting, making their results suspect. As can be seen on an aerial photo of the project area, the project site is contiguous to large open space areas that are connected to Claremont Canyon whipsnake habitat. Therefore, the discussion on the bottom of p. 43 regarding separation of the site from Claremont Canyon habitat is incorrect. The biological resource section also should consider whether the removal of the eucalyptus forest from the site may have resulted in recolonization of the site by whipsnakes, contrary to the conclusions on p. 43. 8-26

27. The numbering of protected trees on Figure 11 does not match the text discussion on p. 48, which uses letters instead of numbers. Therefore it is not possible to identify the location of tree "J" on Figure 11. 8-27

28. Mitigation Measure Biology-1: Why isn't a protocol-level survey proposed? What is the reliability of the non-protocol-level survey? 8-28

29. Please provide evidence or expert agency concurrence to support the dubious claim that a 4-foot setback would actually protect the wetland from construction impacts. Can construction equipment fit in the 4-foot setback between the wetland and the bottom of the adjacent reconstructed slope? 8-29

30. The DFEIR statement at p. 60 that the project is surrounded on north and south by residential development is false – the south is undeveloped, with one house on approximately 30 acres. Also, a review of photos indicates that there could be habitat connections from the project site and adjacent open space lands to Claremont Canyon habitat. 8-30

31. Mitigation 8, p. 62: a 1:1 tree replacement ratio may comply with the City's tree ordinance but does not comply with standard CDFG, COE, and USFWS mitigation ratios, which are typically 3:1. Please contact CDFG and revise as appropriate. 8-31

Geology and Soils:

32. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 24 through 26. 8-32

33. Because the geology "analysis" shows neither landslides nor proposed stabilization activities, it is wholly inadequate. CEQA requires that the Lead Agency "show us" the evidence. The "trust us" approach used in this DFEIR fails to comply with CEQA disclosure requirements. The wet-weather grading permits issues by the City of Oakland (Mitigation 2, p. 71) fail to adequately protect slopes and drainages. A simple drive through the area hills today will indicate numerous instances of this. The large-scale mud/silt blow-out on the Allen Tunnel Road property in 2002 is an excellent example of how this wet-weather grading on steep slopes can result in significant unavoidable impacts. 8-33

34. Please describe how this wet-weather grading complies with the City Stormwater Discharge permit from the RWQCB. Please provide evidence of confirmation of compliance by the RWQCB. 8-34

35. DFEIR p. 72, last paragraph: As described previously, the statement that the project's impervious surfaces would be less than one acre is false. 8-35

36. DFEIR Geology (pages 69 to 74) and Vibration (page 90): Neither the vibration or geology impact discussions address the potential for vibration-induced differential settlement or slope instability. When the previous slope repair work was completed by the project contractor, some adjacent homes were subject to cracking and damage as a result of either: (1) 8-36

vibration associated with operation of heavy equipment and earthmoving; or (2) settlement or ground movement induced by vibration. Regardless of the cause, the EIR does not specifically address the potential for structural damage at adjacent, uphill homes as a result of ground movement that could result from vibration produced by proposed slope repair work or subsequent road and home construction. Despite such analysis being absent in the EIR, C.R.E.E.K requests that the City conduct pre-construction surveys on all homes located adjacent to and uphill of the proposed construction area in order to document structural conditions before construction begins. 8-36

Hydrology:

37. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 28 through 31. 8-37

38. Please describe how the project would "pre-treat' runoff as discussed on p. 80. See previous comments re erroneous statement that the project's impervious surfaces would be less than one acre. Impact Hydrology and Water Quality 5 concludes that the project would not exceed capacity of existing or planned drainage systems but provides no supporting evidence. Where are downstream stormwater systems? What are their capacities? How would the project and cumulative development affect these systems? Please note that elsewhere in the Oakland Hills, storm drain system capacities are regularly exceeded by the unchecked development. 8-38

Noise Impacts:

39. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 34 through 36. 8-39

40. Neighbors' Experiences. The noise significance criteria fail to reflect CEQA case law, including both *Oro Fino Mining Co. v. County of El Dorado* and the more recent *Berkeley Keep Jets Over the Bay v. (Oakland) Board of Port Commissioners*. Compliance with noise standards does not guarantee mitigation of noise and vibration impacts to less than significant levels, particularly where local residents have had direct experience with similar noise and vibration sources. In this case, the applicant conducted road-building and slope stabilization activities on the northern portion of Kenilworth Road, virtually identical to those proposed here, over the past two years. Adjacent residents reported cracks in their houses resulting from compaction activities (which, incidentally, were omitted from the project description but are essential to any slope stabilization program, and were part of the first phase of this improperly segmented CEQA review). These residents also reported extreme disturbance from these activities, as well as nearby house construction activities that have extended for year upon year[1]. Therefore, these residents qualify as experts with respect to the significance of noise and vibration impacts. The residents' past experience with noise and vibration on Kenilworth significantly affected their ability to live peaceful lives, study, and work at home, and project 8-40

[1] See DEIR Comment letter from Janice Holve, whose home was one of several that was adversely and significantly affected by the noise and vibration of the first phase of this project.

vibration actually damaged several of the houses. Therefore the impact of the proposed project must be considered significant. 8-40

41. Unsupported Conclusions. The DFEIR states that "vibration caused by temporary construction is not a significant impact." This conclusion is unsupported by facts or analysis, just by a conclusory statement that no vibration would be felt off-site. Why not? CEQA clearly states that short-term impacts may be significant. This statement is repeated on p. 92: "Although this might result in perceptible vibration, no damage to buildings … would occur". These unsupported predictions directly contradict neighbors' experiences with similar grading by the same applicant on the same street (*see* scoping letters), that they felt significant vibrations from the applicant's past construction activities on Kenilworth, and that vibration actually resulted in cracks in their homes[2]. 8-41

42. Inconsistencies. The DFEIR noise assessment states that "the construction period . . . is expected to last only several months" (p. 89), which is contradicted by the more plausible DFEIR project description, which states that grading and roadway construction would take six months while house construction would be ongoing for up to five years. Further, single-event and particularly annoying project noise sources such as truck trips and back-up beepers are entirely missing from this analysis, as is any analysis of noise and vibration associated with landslide repair. 8-42

43. Inconsistencies. Vibration (page 90): The EIR states that, "foundations of nearby homes would be located within about 300 feet of the closest activities (about 200 feet or further from pile/casson installation)." However, according to Figure 10 on page 26 of the EIR, the footprints of future homes are approximately 90 to 100 feet from the footprints of existing homes. Road construction would occur at closer distances. At 100 feet, vibration levels will be higher than estimated vibration levels. Please clarify this discrepancy and revise the projected vibration levels based on the correct distances. 8-43

44. Incorrect Noise Analysis. Page 89: Projected construction noise levels of "50 to 70 dBA in the area" are incorrect. In addition, the EIR does not estimate construction-related noise levels at the closest residential receptors WITHOUT and WITH noise-attenuating Conditions of Approval. According to Figure 10 of the EIR, road construction would occur as close as approximately 40 to 50 feet of existing homes and future home construction would occur within 90 feet of these homes. Based on construction equipment noise levels identified by the U.S. Environmental Protection Agency,[3] noise levels at 50 feet WITH use of noise controls listed as Conditions of Approval would actually be 75 dBA for most types of heavy equipment and 80 dBA for pneumatic tools. Such noise levels would clearly exceed the City of Oakland construction noise limit of 65 dBA during the day (for construction occurring for more than 10 days). In addition, if the 65 dBA noise limit is applied at the "Receiving Property Line" (as stipulated in the Oakland Noise Ordinance), construction noise levels at the property lines of 8-44

[2] Id.

[3] U.S. Environmental Protection Agency, 1971. *Noise from Construction Equipment and Operations, Building Equipment, and Home Appliances*. Washington D.C.

adjacent residences would be even closer than 40 or 90 feet, which would make the potential exceedance of the City's noise limits even greater. Therefore, project-related construction noise would be a significant and unavoidable impact because the Conditions of Approval, which include compliance with the Oakland Noise Ordinance, would clearly not be met. 8-44

45. Noise Impacts. The proposed road project would result in significant and unavoidable construction-related noise impacts for six months. In addition, it will allow for construction of at least seven new homes within the Proposed Project Area, which could occur over a period of five years. Therefore, adjacent residents will be subject to construction noise for many years. Since Oakland's Noise Ordinance applies construction noise limits and defines exposure in "days" (less than or more than 10 days), it is inappropriate to apply only Oakland's standard construction measures to this project. Given that construction noise impacts will also be significant and unavoidable, additional measures should be imposed to protect neighbors, as described in paragraph 50 below. 8-45

Growth Inducement:

46. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 39 through 40. 8-46

47. The Growth Inducement analysis needs to address the project's precedent-setting aspect as the first piecemealing off of the large Felton Property. The project development also could induce development on the adjacent OSCAR-designated open space parcel. 8-47

Mitigation Measures and Monitoring/Enforcement:

48. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 41 through 42. 8-48

49. Some of the significant and unavoidable impacts described above can be partially addressed by the following mitigation measures hereby proposed, without limitation, by C.R.E.E.K for inclusion in the EIR: 8-49

50. Construction Noise Mitigation Measures:

(A) The City will require contractors to use line power to avoid use of generators, thereby minimizing prolonged exposure of neighbors to this noise impact as well as this source of diesel particulates (diesel engine particulate matter has been identified by the California Air Resources Board as a toxic air contaminant and it has also been identified as a human carcinogen). The requirement of line power is further justified by the fact that some of the Conditions of Approval will be ineffective. For example, COA Attachment A: *Improvement Measure 11(3) - Use of temporary plywood noise barriers and noise control blankets* - will be ineffective in attenuating noise because of the difference in elevation between noise source (downslope) and residential receptors (upslope). 8-50

(B) The project contractor as well as contractors of future homes shall be prohibited from use of backup beepers and shall use flag persons in lieu of backup alarms. The contractor/City shall consult with OSHA to find acceptable alternatives. Title 8 of the California Administrative Code allows use of a backup alarm, automatic braking system, or administrative controls. Administrative controls include: (a) employing a spotter in clear view of the operator who shall direct the backing; or (b) procedures that require the operator to dismount and circle the vehicle prior to backing.

(C) The project contractor as well as contractors of future homes shall be prohibited from use of pneumatic tools on weekends or outside of normal work hours.

(D) The project contractor as well as contractors of future homes shall be prohibited from use of radios, music, or other non-construction noise.

8-50

51. Visual Impacts Mitigations: The use of CC&Rs (or other legally enforceable mechanism) on the entire PUD to enforce the following design limitations on all lots:

(A) No zoning variances or exceptions;
(B) Specified maximum square footage allowance;
(C) Earth tones to blend with environment;
(D) Non-reflective natural toned roofs;
(E) Hooded, down-facing lighting;
(F) Appropriate landscaping

8-51

52. Other Mitigation Measures. The use of CC&Rs (or other legally enforceable mechanism) on the entire PUD to enforce the following limitations on all lots:

(A) After the PUD is finished, Kenilworth is a public road with unrestricted access (including across retaining walls and historical gate and stairway access) for uphill property owners for property access, maintenance, and fire control.
(B) Prohibition on Kenilworth Road ever being extended beyond the developed lots.
(C) Assuring that the end of Kenilworth has an effective fire truck turn-around.
(D) Add Kenilworth neighbors as additional insureds on contractors' general liability policies, at no cost to the neighbors.
(E) Pre- and post-construction inspection of uphill homes, at no cost to neighbors.
(F) Prohibition on non-construction related noise (such as radios, music, etc) during construction hours, and prohibition on smoking during construction.
(G) Prohibition on encroachment of neighbors' lots during construction.

8-52

53. Please respond to the August 29 Shordike Comment Letter, numbered paragraphs 15, 18, 27, 32, 33, 37, and 38. 8-53

Conclusion

For all of the reasons described above, the DFEIR fails to meet basic CEQA requirements for objectivity, completeness, and adequacy. We are therefore requesting that it be re-written by an objective, independent consultant under direct contract to the City, and recirculated for public review and comment. 8-54

Thank you for your close attention to these matters. Please do not hesitate to contact me should you have any questions.

Very truly yours,

John R. Shordike
Attorney at Law

Cc:

Jim and Tina Heldman
Mark and Margie Medress
Don and Janice Holve
Dr. Howard Cohen
Joe and Nora Ching
Leslie Becker
Gary and Amy Jones
Richard Grassetti

JOHN R. SHORDIKE
ATTORNEY AT LAW

1826 YOSEMITE ROAD
BERKELEY, CA 94707
510-526-0582
SHORDIKELAW@MINDSPRING.COM

August 29, 2005

DELIVERY BY HAND

Leigh McCullen, Planner III
City of Oakland
Community and Economic Development Agency
Planning and Zoning Division
250 Frank H, Ogawa Plaza, Suite 2114
Oakland CA 94612

RE: Case No. ER04-006
NOP of Draft EIR (Kenilworth PUD)

Dear Ms. McCullen:

I represent the Claremont Residents for Environmental Enforcement at Kenilworth ("C.R.E.E.K"), an unincorporated association of more than two hundred residents of the neighborhood immediately surrounding the proposed Kenilworth PUD. As you know, the City of Oakland received on July 18 the written petition of these two hundred-plus residents regarding the Project. Also, various members of C.R.E.E.K provided extensive comments and testimony regarding the Project, and successfully appealed the City's approvals of the Project. This successful appeal led to the present Kenilworth Project Notice of Preparation of Draft Environmental Impact Report ("NOP") and included Initial Study ("IS").

Herewith are C.R.E.E.K's comments on the NOP and IS, individually numbered to facilitate your consideration and response. As the IS is substantially similar to its prior incarnation as the so-called "Evaluation of Environmental Impacts", all of the C.R.E.E.K. appellants' previous substantive comments on the record regarding the Evaluation are also incorporated herein by this reference and are attached hereto for your reference.

Project Setting, Peer Review, and Project Description:

1. **Peer Review:** The setting section states that all of the listed studies prepared for the applicant were peer reviewed, yet the IS provides no evidence of any such review. Who reviewed these documents? Who retained the reviewers? What are their qualifications? What documentation did they prepare of their reviews? What independent review has been provided by the City, and by whom? Absent this information, the IS "analysis" appears to be based entirely on the applicants' consultants' studies, with no peer review or independent City review. Please provide an independent peer review and independent City review in the EIR.

See 8-1

2. **Adjacent Parcels:** The Initial Study's ("IS") characterization of parcels adjacent to the eastern edge of the project site as "developed parcels" (see Figure 2) is incorrect. At least four or five of these parcels are not extensions of the developed lots on Norfolk and Devon, but rather are separate buildable parcels that are currently undeveloped. These parcels have been "land-locked" but will be developable should the project be approved. Therefore, they should be identified as undeveloped lots in the Project Description.

3. **Growth Inducement**: It follows that the project should be described as Growth Inducing in that it would provide the access to at least four or five parcels that heretofore were not developable. The EIR also should assess traffic, noise, runoff, and other impacts associated with the potential development of these previously land-locked parcels.

4. **Characterization of Project Setting:** The IS repeatedly and incorrectly characterizes the existing setting of the project site as "surrounded by residential development". While the project site is bordered by residentially-zoned lands on several sides, most of this land is, in fact, currently open space. CEQA statutes and case law requires that impacts be evaluated based on the conditions at the time that the NOP is issued. At this time, the parcels immediately to the east, south, and west of the site are open space, not residential.

5. **Inconsistency with General Plan:** Further, the IS states that the parcel immediately west of the project site is designated as open space for acquisition by the City in the City General Plan's Open Space and Recreation (OSCAR) Element. The EIR should reflect that the project would be inconsistent with this proposed use, and would represent urban extension into this large, roadless, open space area.

See 8-1

6. **Internal Inconsistencies in Project Description**: The "Proposed Site Plans" (Figures 2 and 3) show a "Wetlands Protection Zone" and then show that the zone is violated by a building footprint intruding into it. A protection zone that doesn't prohibit encroachment does not protect anything. The Project Description also describes a stormwater treatment system located upslope of Kenilworth Road. But runoff from project roadway and houses will occur downslope of Kenilworth. How will the upslope treatment area treat the project's potentially contaminated runoff if it does not flow to that treatment area?

7. **Boundary Easement:** To whom will the easement be granted? Has a preliminary agreement been reached with that agency to accept the easement? If not, how will the public be guaranteed that Kenilworth will not be extended to serve future development of portions of the adjacent Felton property?

8. **Upslope Constraints:** How will project retaining walls and storm-drainage pre-treatment be developed that permit access and development of the developable upslope lots? Can this be done? If not, how will the project achieve these goals?

9. **Grading Information:** The IS Project description lacks any information on quantities of cut and fill on the site. The EIR should include calculations of cut, fill, and materials to be re-placed on the site. The duration and timing of grading activities also should be described. No wet-weather grading should be permitted given the site's sensitive location.

See 8-1

"Improvement Measures":

10. The City's continued use of "Improvement Measures" (a term not found in CEQA) is not lawful or acceptable. These substitutes for the CEQA-required Mitigation Measures essentially eliminate the legal standing and enforceability of the measures (despite their proposed inclusion in the Mitigation Monitoring Program). This would not be acceptable under the best of circumstances. Here, it is particularly troubling in light of the applicant's flagrant disregard for these very same "commitments" that occurred immediately after the City's issuance of the Initial Study/NOP.

11. Within one week of the City Council's determination that an IS or EIR be prepared for the project because of potential impacts to biological resources on the site, the applicant willfully violated Improvement Measures 4d-1 and 4d-2 (and possibly also measure 4e-1), which were specifically intended to protect such resources. In addition to the clear cutting of the trees on the site and consequent ground disturbance, the applicant subsequently proceeded to grade the roadway without a City permit. All of this with full knowledge of the pending environmental review, and, one can only presume, the intention to permanently transform the environment (and eradicate further potential impacts) before any further review was undertaken.

12. To my knowledge no enforcement actions have been taken by the City to date, other than a stop-work order issued long after the destruction was complete and the site environment irreparably degraded. This lack of enforcement and good faith on the part of the applicant and City, respectively, shows that the use of unenforceable "Improvement Measures" is at best ill-advised, and at worst a reward for the applicant's bad faith and lawlessness. All of these measures should be re-titled Mitigation Measures in compliance with CEQA, and given enforcement and monitoring teeth, as outlined below.

See 8-9

Alternatives:

13. The No-Project Alternative should include both a No-development Alternative and a 4-Lot Alternative (which is the number of legal lots currently present on the site. The Alternatives also should include a reduced-project alternative that provides standard California Department of Fish and Game ("CDFG") setbacks from streams (100+ feet), a 25-foot setback from any grading activity for the on-site wetlands, and development consistent with existing zoning (no height-limit increases or setback reductions). This alternative should include no more than 3 units.

See 8-12

Cumulative Impacts:

14. The IS fails to address likely cumulative impacts of this PUD development, and does not list cumulative impacts as an issue for analysis in the EIR. CEQA requires the City to examine the impacts of the Project against the backdrop of cumulative conditions, and whether the impacts are cumulatively considerable. Of particular cumulative concern in this project are the issues of: Further burdens on already overtaxed public services such as fire fighting capability; traffic flows and emergency access and evacuation on narrow neighborhood streets; disappearance of remaining wildlands and encouragement/enablement of further development; effects of storm water runoff and erosion on remaining creeks and watersheds; violations and/or evasions of normal zoning and permitting requirements (e.g. lot line adjustments, setbacks, building footprints and sizes, height limits) and effects on the character and liveability of the neighborhood, including density and viewsheds. Considerable ongoing construction activities in the neighborhood must be evaluated in this regard. As just one example, the same applicant has submitted plans for 7026 Devon, proposing construction of 4500-5000 square feet on a 5000 square foot lot.

See 8-19

Required Permits:

15. The IS's list of required permits/approvals fails to include compliance with state and federal Endangered Species Acts, as well as the Migratory Bird Treaty Act and Bald Eagle Protection Act, both of which the applicant may already have violated since issuance of the NOP by failing to conduct necessary studies and get required clearances prior to cutting down the potential nesting trees on the site. Also, CDFG and US Fish and Wildlife Service should be consulted and Endangered Species Act permits obtained, as necessary, for possible take of the Alameda whipsnake from the site (no protocol-level surveys were conducted for this species, despite their potential for occurring on the site).

See 8-53

Aesthetics:

16. The statement in the Aesthetics setting section that the project site is outside the line of sight of vistas of houses upslope of the site is patently false – the project site and trees are the major elements in many of these views.

17. The statement that the design of the project would be in accordance and follow the requirements of the Bulk Criteria is unsupported; in fact, the project would allow taller buildings and reduced rear-yard setbacks compared to normal zoning. Absent stricter setback and height requirements, the project likely would result in a wall of tall houses replacing the natural vegetation and open space. This would be a significant impact.

See 8-21

Air Quality:

18. Improvement Measure 3.b is inadequate to reduce dust emissions from the project during construction, particularly given the large area to be graded and often windy conditions on this ridge. The BAAQMD's "Enhanced" control measures should be required on this site to account for the special conditions on the site.

See 8-53

Biological Resources and Peer Review:

19. Although the IS/NOP claims that the applicant's studies have been peer reviewed, there is no evidence in the IS of such peer review. Please note that a planner's review of a biologist's work does not constitute a "peer' review. Rather, the document relies exclusively on questionable reports prepared by contractors retained and coordinated by the applicant. The Olberding reports are especially troubling, as they repeatedly and erroneously assume full development of the area surrounding the site.

20. The whipsnake assessment states that "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…" Yet, in reality, as described in earlier comments, the site is not surrounded by residential development and has been expanded since the LSA biological report quoted in the IS to include areas of, and adjacent to, chapparal where whipsnakes could occur. Despite this, the City has not conducted any whipsnake surveys of the expanded site area, and continues to rely upon the applicant's skewed studies of a smaller (2-acre) project previously proposed for part of the site as adequate biological documentation. The City must retain an independent whipsnake expert to conduct an independent review and, if appropriate, protocol-level surveys, for this species. Absent such a review, this analysis does not meet CEQA's requirement for independent review by the Lead Agency and will be substantially deficient.

21. Despite my request, the applicant has provided no copy of any nesting bird survey conducted prior to the (apparently illegal) felling of the on-site potential nesting trees. We can only presume at this time that no formal study was conducted, or that it is being suppressed. This felling precludes the analysis that would have been required as a condition of project approval and mitigation required under CEQA. Therefore the City must assume that such nests were present, and that the project has, in fact, already resulted in a significant unavoidable adverse impact. Any other conclusion would be contrary to the IS' conclusion that "raptors may use on-site…eucalyptus as roosting or nesting habitat".

22. The EIR should specify that the "Improvement Measures" requiring surveys for, and protection of, raptor nests have been invalidated given that the trees were felled without any such surveys. Appropriate penalties and mitigation measures should be developed and enforced.

See 8-23

23. The EIR should evaluate objectively how the proposed four-foot setback from massive grading on a steep slope actually preserves the wetland. It seems more than likely that materials from grading will slide down the slope into the wetland, and that project workers will more than likely disturb the wetland. Please provide written evidence from responsible agencies (i.e. CDFG or Army Corps of Engineers ("COE")) that the four-foot wetland setback is adequate to protect the wetland. Is this setback consistent with COE Clean Water Act Section 404 Permit requirements? Absent that concurrence, the project's impacts to those wetlands must be considered potentially significant and unmitigated.

See 8-23

Geology and Soils and Peer Review:

24. The geology discussion in the IS refers to a potential thrust fault within 50 to 100 feet of "the site." However, the IS includes no analysis of the potential effects of shaking resulting from an earthquake on that fault on the proposed project. Thrust faults can result in far more intense ground-shaking than strike-slip faults such as the Hayward fault. Therefore, the impacts of potential movement on this fault should be fully assessed in the EIR.

25. Further, the IS provides minimal description of the landslides on and near the site. These should be fully identified and described in the EIR, as should any proposed stabilization. The IS claims that the applicant's geologic reports have been peer reviewed, yet there is no evidence and no citations to any such peer review in the document. Because of the potential sensitivity of the site to geologic hazards, the EIR should include an independent peer review of all geologic information used therein. The reviewer should be retained by the City, not the applicant, and the review should be conservative.

26. As stated previously, all "Improvement Measures" should be recast as standard CEQA mitigation measures to assure that their implementation can be enforced under State law, and not just under City regulations, as the City does not have a good track record of enforcing conditions at this or other sites in the hills. The condition prohibiting grading during the rainy season is very weak, and defers any real mitigation to future erosion control plans. Because of the steep slopes on the site and the large scale of the proposed grading, the EIR should include mitigations that prohibit any grading in the rainy season. Absent such a blanket prohibition, erosion and potential water quality impacts downstream cannot be shown to be effectively mitigated, and those impacts would be significant.

See 8-32

Hazards:

27. This is the only IS section that correctly characterizes the land uses surrounding the project site: "The project site is located adjacent to undeveloped wildland to the west, and undeveloped land with nearby properties to the south". Please correct the other misleading descriptions to correspond with this correct description.

See 8-53

Hydrology and Water Quality and Independent Review:

28. The runoff treatment swale described in item 8.a would be located upstream of the project roadway and houses. How can it treat water that flows away, and not towards it? Given the site's steep slopes, how long will water be "treated" in the grassy swale? Please provide a study assessing the effectiveness of this "treatment" in the EIR.

29. Item 8.c assumes that "ground-disturbing construction activities would not occur during the rainy season". Yet the "Improvement Measures" provide no such certainty, and instead would allow such rainy season construction. Please revise the Mitigation Measure in the EIR to assure that no rainy season construction would occur. Otherwise erosion must be considered a potentially significant impact.

30. Please describe the cumulative impacts of past, approved, and reasonably foreseeable developments on flows, erosion, and water quality in Vicente Creek in the EIR.

31. Improvement Measure 8.c refers to runoff of sediment into San Leandro Creek. How will that occur, given that the project is in the Temescal Creek drainage?

See 8-37

Land Use:

32. The City's General Plan OSCAR Element was developed to mitigate impacts of the Plan's Land Use and Transportation Element. In this project area, the OSCAR included City purchase of the Varney Conservation Area, adjacent to the western edge of the project site, to assure compliance with General Plan policies regarding open space and habitat conservation. Please include City or Applicant purchase of that parcel and preservation as open space as mitigation for cumulative land use impacts in the area. Absent such a commitment, project-plus-cumulative land use impacts are not mitigated, nor would the project comply with applicable OSCAR policies.

33. The table of project conformity with Oakland General Plan policies makes a large number of assumptions regarding project design and mitigation measures that are not required as mitigation. In addition, Policies CO-7.4 and 8.1 already have been violated by the applicant. Therefore, the project as proposed would not comply with these policies.

See 8-53

Noise Impacts:

34. Past earthwork by the applicant on Kenilworth Road resulted in severe noise impacts to neighboring residents. Many of the neighbors are primarily retired and are often home during the day. Others work at home. In addition to the customary annoyance of construction noise, back-up beepers interfered with all aspects of their lives. Such an interference is considered a significant adverse impact under CEQA. (See, for example, the Berkeley Keep Jets over the Bay v. Board of Port Commissioners case, where the Oakland Airport's EIR was voided in part because of its failure to assess

See 8-39

noise considered significant by residents, and instead relied on arbitrary standards). Therefore, the EIR must include monitored and enforceable prohibitions on back-up beepers (and use of alternative safety features) as a mitigation measure.

35. Further, the applicant's past earthwork resulted in high levels of vibration that cracked and otherwise damaged neighboring homes. This impact can reasonably be expected to occur from the proposed even larger grading activities. Therefore, the EIR must include a mitigation measure for pre-and post-construction inspections of the neighbors' houses, and repair of any damage to be paid for by the applicant. In addition, given past experience at this site with this applicant, vibration impacts on thelives of the adjacent residents must be considered a significant impact.

36. Noise impacts are a primary concern of neighbors, as noted in the cover sheet for the 200+ signature petition submitted during the appeal of the prior Project approvals. Attached hereto is that petition cover sheet as well as correspondence from neighbors attesting to the noise impacts of long-term and ongoing construction in the immediate neighborhood.

See 8-39

Utilities and Services:

37. This section again refers to pre-treatment of project runoff, yet that runoff would occur downstream of the treatment facilities. Please describe how this treatment would occur.

38. As noted above, please analyze potential impacts to already over-extended fire protection services, as well as impacts on prospective preserved wildlands and parklands as contemplated by the OSCAR and General Plan.

See 8-53

Growth Inducement:

39. As noted above, the IS' conclusions that the project would not induce growth are in error. The project would provide access to four or five developable and currently landlocked lots. The lack of access is the primary constraint on development of those lots. Removal of that primary constraint to development is growth inducing as defined by CEQA. Please describe the potential impacts of development of those parcels.

40. The project would also represent the first piecing off of the large Felton property for development. That piecing allowed this project to expend from 4 to 7 houses. This precedent of allowing development of the larger parcel also is growth inducing.

See 8-46

Mitigation Measures and Monitoring/Enforcement:

41. As previously stated, true CEQA-required mitigation measures must be implemented and a monitoring and penalty program established to ensure compliance and enforcement. Each existing "Improvement Measure" must be recast into a specific and enforceable mitigation measure, and a monitoring and enforcement program detailed for each.

42. Such measures should address impacts from noise, viewshed issues, soils and geology issues, biological resource issues, zoning and others. C.R.E.E.K. under separate cover will provide a list of additional mitigation and enforcement measures to address these issues.

See 8-48

Thank you for your close attention to these matters. Please do not hesitate to contact me should you have any questions.

Very truly yours,

John R. Shordike
Attorney at Law

Enclosures

Cc:

Jim and Tina Heldman
Mark and Margie Medress
Joe and Nicky Dovener
Don and Janice Holve
Dr. Howard Cohen
Joe and Nora Ching
Leslie Becker
Gary and Amy Jones
Fritz Geier
Richard Grassetti

Attachment to 082905 Letter

Case No: PUD 04-195, ER 0400006, CP04068, TPM 8228 July 19, 2005
Kenilworth Road, (Off Strathmoor Drive)
Appeal Case

200+ SIGNATURE PETITION

For Following CEQA Rules and Regulations for Kenilworth Proposed Development, measuring mitigating factors and producing a 'planned' development if CEQA determination allows.

Your signature on this Petition shows your support for:

1. **CEQA Compliance** 8-55
2. **Mitigation Monitoring** 8-56
3. **Protection of Creek Area** 8-57
4. **A host of construction activity requirements such as:** 8-58
   - **Noise from back up horns, radios and power generators, etc.**
   - **Timely removal of trash, felled trees, construction debris etc.**
   - **Traffic and parking enforcement**
   - **Construction Hours**
   - **Smoking and other fire prevention measures by OFD**
   - **establishing a procedure for open communication between our community and the City/ Developers to address issues**

Your signature indicates support for this Petition in requiring the City and Developer to abide by State and Local laws.

LETTER #8 RESPONSE

John B. Shordike, Attorney at Law
On behalf of Claremont Residents for Environmental Enforcement at Kenilworth (C.R.E.E.K.)
January 19, 2006 and August 29, 2005

8-1 The commenter referred to an August 29, 2005 letter which is reproduced on the pages immediately prior to this page. The following responses are responses to that letter as well as the January 19, 2006 letter. Responses to the earlier letter are indicated by a numbered and italicized subheading.

1. Peer Review

CEQA does not require peer review. The City, as the lead agency for implementing CEQA, assumes authorship and is legally responsible for the veracity of the information and CEQA compliance. Documents submitted by the consultant are reviewed by City staff in the normal course of application processing. As stated in the Notice of Release of the Draft Focused EIR (Claudia Cappio, Development Director, December 5, 2005) "The City of Oakland is hereby releasing this Draft Focused EIR, finding it to be accurate and complete and ready for public review."

The studies used in the preparation of the DEIR are professionally prepared and unbiased. Chapter X. EIR Authors, Project Sponsor Team, and Persons Consulted, identifies all of the independent consultants and their expertise. Footnotes in each section reference the independent analyses and their authors, as does Chapter VII. References.

With the exception of geotechnical reports[5] and site design (including riparian protection measures, as indicated in the Draft EIR on page 75 and 76), the professionally prepared supporting studies have not been peer reviewed. A reference to the geotechnical study peer review conducted October 2, 2006 has been added to page 65 of the EIR. The reference to peer review on page 75 of the EIR has been deleted.

2. Adjacent Parcels

Figure 2 in the Initial Study is replicated in the DEIR as Figure 2 (page 13). Figure 10 in the DEIR (page 26) includes building footprint information that shows which parcels are developed and which are not developed. Moreover, Figures 6, 7, 8, and 9 (pages 17-20 in the DEIR) provide visual depictions of the project site, which clearly portray the project area.

3. Growth Inducement

Section 15126(d) of the Guidelines lists "Growth-Inducing Impact of the Proposed Project" as one type of impact to discuss in an EIR. It defines a growth-inducing impact as the amount of growth a proposed project could stimulate directly and indirectly in the

[5] Seidelman Associates, *Geotechnical Peer Review for Kenilworth Road Project, Oakland, CA*, October 2, 2006. This letter report is included in this document as Appendix B.

surrounding area. The DEIR discusses the growth inducing impact of the proposed project, including reference to the four undeveloped parcels, in Section IV.F, on pages 93-94. The growth inducement section specifically evaluates the implications of the four undeveloped parcels to the east of the proposed project for CEQA impacts in its discussion of the ways the proposed project could induce growth in reference to the road extension component of the proposed project.

The growth inducement section (IV.F.) of the DEIR concludes that although the project could induce a small amount of growth, both in the adjacent undeveloped parcels and through the economic multiplier effect of new residents' spending in the local economy, the impact would not be substantial and would be, therefore, less than significant.

Further, the Kenilworth Road deed restriction would prohibit its extension or use by future projects, particularly those of the four parcels adjacent to the project site, and the proposed project's sanitary waste treatment would be sized to only accommodate the flow from the project's residences. CEQA does not require an analysis or mitigation of the potential environmental impacts of the speculative projects of potentially induced growth in a project EIR, but simply the identification and description of the potential for inducing growth as presented in the DEIR.

4. Characterization of the Project Setting

The cited reference in the Initial Study as "surrounded by residential development" refers not to the immediately adjacent parcels, but to the general vicinity of the proposed project. The DEIR project description accurately (page 11) characterizes surrounding uses as low density and very low-density hillside residential development. There are empty or partially developed, residentially zoned lots immediately adjacent to the project site, which are not considered "designated" open space, but undeveloped, residentially zoned parcels. Regardless of how one characterizes the project setting, impacts are evaluated against the physical baseline condition of the site. Please refer to Figure 1 of this document, page 101 for an aerial view of development in the project area.

It should be noted that the project site and vicinity are designated Hillside Residential in the *Oakland General Plan* and are located within the R-30 one-family residential zone as stated in the DEIR (page 11) and in the Initial Study (DEIR, Appendix A, page 66). The type of development the City envisions with this general plan designation as stated in the Initial Study (Appendix A, page 69) is "*residential areas characterized by detached, single unit structures on hillside lots*." The Initial Study (DEIR, Appendix A, page 69) discusses the undeveloped, privately owned land to the west of the project site known as the Lands of Varney and the Open Space, Conservation, and Recreation (OSCAR) Element's designation as a potential conservation area; including the recommendation that the City acquire the site, along with other potential conservation areas, as feasible. The DEIR expands on that discussion in Section G. Cumulative Impacts (pages 95-96), and notes three points: (1) that the OSCAR also recommends against purchasing it with scarce City funds, (2) that its steep slopes would be a substantial development constraint, and (3) that cities can not apply conservation land use controls to private property without voluntary agreement of the owner.

5. Inconsistency with the General Plan

Figure 4 of the City's Open Space, Conservation, and Recreation (OSCAR) Element (page 2-10) shows the Lands of Varney in the undeveloped area noted in the comment to the west

of the project site as a Potential Resource Conservation area, not as formally designated open space. It is a smaller area within the larger undeveloped area west of the project site. The proposed project does not involve the purchase—or development—of any of the privately held Lands of Varney. The proposed project is not inconsistent with the adjacent undeveloped area to the west and does not represent extension into it. The project site has a "Hillside Residential" land use designation in the *General Plan*, the purpose of which is "to create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots" (LUTE, page 147). The project site is within an R-30 one-family residential zone. Also refer to the above response.

6. Internal Inconsistencies in Project Description

The overlap of the residential footprint into the wetlands protection area shown in Lot 1 in Figures 2 and 3 of the Initial Study (pages 6-7) were inaccurate and are corrected in Figures 2 and 3 of the DEIR (pages 13-14). As discussed on page 27 of the DEIR, the proposed project would establish a permanent buffer zone around the delineated wetland or bank of the drainage course, at a minimum distance of 20 feet.

7. Boundary Easement.

The mechanism for protecting the wetland area during construction and in perpetuity is through compliance with the City's Creek Protection Ordinance and a deed restriction as described on pages 25-27 of the DEIR. The mechanism of the boundary easement in the Initial Study was changed to a deed restriction in the DEIR for the private cul-de-sac.

8. Not Constraining Upslope Development

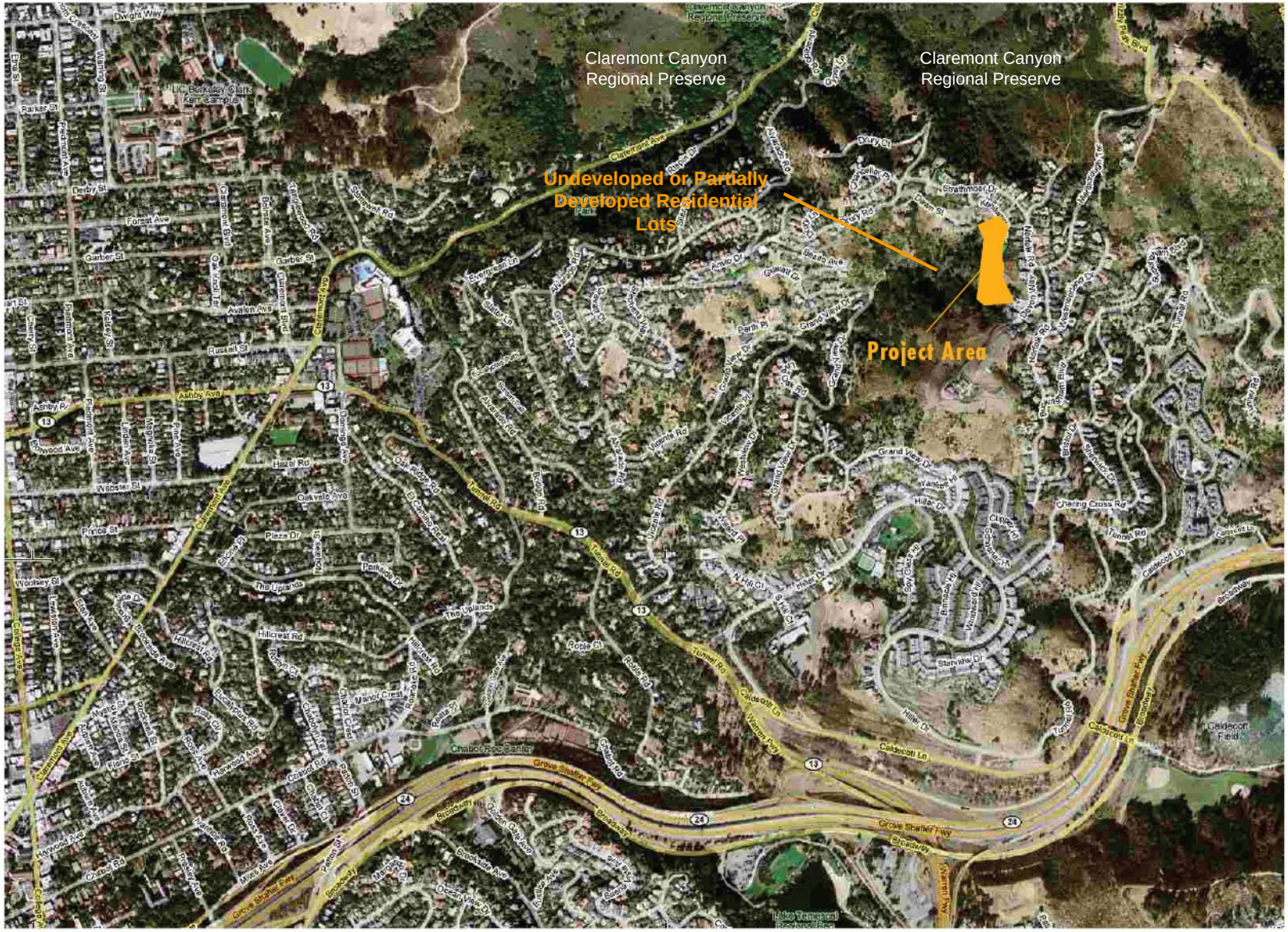
The project stormwater management system would not prevent future development of the undeveloped parcels or otherwise compromise upslope access to existing parcels.

9. Grading Information

Grading would occur with two phases of the proposed project: 1) slide repair would involve approximately 20,000 cubic yards of excavation, which would not be removed from the site; rather, the excavated material would be used as fill; and 2) housing foundation work. Although the specific building footprints have not been designed for the proposed project, approximately 1,500 to 2,500 cubic yards would be excavated in this phase. Excavation spoils from foundation work would also be reused as fill on the project site. The DEIR contains detailed analysis of the geology and soils, lists mitigation measures, and concludes that there would not be any significant geologic impacts.

As discussed further in Response to Comment #5-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the DEIR have been removed.

8-2 Please see Response to Comment 8-1(4), above. The characterization of the project site and vicinity throughout the DEIR is accurate and in compliance with *CEQA Guidelines*. The reference in the DEIR to very low-density residential development refers specifically to one private residence on a 1.4-acre parcel and one on a 39-acre parcel (see the last two sentences of page 11). See the aerial photo of the project area on the following page. Regardless of the



Source: Google Maps

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Aerial Perspective of Project Area Figure 1

characterization of the project site, impacts are evaluated against the physical baseline conditions, and not a plan-to-plan comparison.

8-3 As noted in the comment, the project proposes a sewage collection gravity main within the entire Kenilworth Road right of way to transport sewage to a privately maintained lift system to lift the sewage to the existing public sewer main on Devon Way (DEIR page 22, third sentence of bullet on "Sewage Collection.")

The EIR is revised as follows:

> Page 22, third sentence of the bullet on "Sewage Collection" is deleted, as follows:
>
> "• **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."

8-4 CEQA does not require detailed engineering information for an adequate environmental analysis. Such information is typically not developed until after environmental review and project approval and during the building permit process. Section 15124, Project Description, of the CEQA Guidelines, states that the description of the project ". . . should not supply extensive detail beyond that needed for evaluation and review of the environmental impact."

In the Draft EIR (page 70), Impact Geology and Soils 1.d generally discusses the project components anticipated to address slope stability issues, including: retaining walls, restrained training walls, stripping, scarification, keyways and sub-drains, landslide removal, installation of a subsurface drainage system, engineering of fills, restriction on grades, foundation design, and erosion control. The section notes that "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 land sliding would be corrected, the impact would be less than significant and mitigation measures would not be required."

The Project Description, pages 23-25 of the DEIR, provides information and a description of each engineering component of the geotechnical stabilization component of the proposed project. Background documents and technical plans and proposals, to the degree they have been developed, are available for public review at the City offices. Also refer to Response to Comment #8-36 regarding noise and vibration, Comment #8-5 regarding the impervious surface calculation, and Comments #8-12(13) and #8-13 through #8-15 regarding Alternatives selection.

8-5 The impervious surface estimate is conservative and overestimates the size of the proposed footprints of the houses. Although the Draft EIR assumes approximately 4,000-square-foot building footprints, the actual footprints would be approximately 2,500 square feet for multi-story houses, as noted in footnote 2, page 25, DEIR. Thus, the total amount of impervious surfaces will be less than one acre.

8-6 As noted in the comment, the full project proposal always has been evident. The Final EIR includes the construction of the Kenilworth Road, which entails the earlier emergency work done regarding landslide repair in the proposals for slope stabilization (described on pages 23-25), and as discussed on page 70. Please see Response to Comment #8-4, above, regarding the geotechnical stabilization proposal and impact analysis. Since the emergency work has been completed last year, any CEQA violations (to the extent any did occur) have long since happened, and the statute of limitations has long since ended. The EIR properly analyzes the changes to the existing physical conditions resulting from the proposed project.

8-7 The DEIR analyzes a reasonable range of feasible alternatives (pages 101-109) as suggested by the CEQA Guidelines, including one with fewer than seven residences. The statement of project sponsor objectives in an EIR does not constrain the alternatives developed and analyzed in an EIR. As stated in CEQA Guidelines Section 15126.6 (b), Consideration and Discussion of Alternatives to the Proposed Project, "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project . . . There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. . . Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly"* [emphasis added].

8-8 CEQA does not require evidentiary support for a project sponsor's objectives. As stated on page 29, "the *project sponsor* [emphasis added] has the following objectives." The DEIR contains evidence of a linkage between the proposed project and the objectives (as listed on page 29).

> *Job Creation*. The objective does not state or claim that the local job creation will be limited exclusively within the City of Oakland, but implies job creation within the wider Bay Area economy. Typically, small infill development projects hire mostly local labor and that expectation would hold for the proposed project. The EIR does not contain an analysis of this topic because social and economic effects are not considered potentially significant effects on the physical environment, and therefore, are not required in a CEQA document (Guidelines, Section 15131). The Initial Study notes (page 89, Appendix A), that "Construction of the proposed project would

require a crew ranging from a low of four personnel, to as many as 20 personnel during building erection. . . . and the need for construction personnel would be met in the study area or surrounding Bay Area." The growth inducement discussion in the DEIR, page 93, second paragraph, discusses the minor ongoing economic stimulation in the surrounding economy from the spending of the new residents that would support existing jobs and may lead to minor local job growth.

Wildland Fire Protection. The Wildland Fire Protection subsection of the Project Description on page 23 of the DEIR lists the principal ways recommended by the city's Fire Prevention Bureau in which the proposed project would improve Wildland fire protection. The Initial Study (pages 57-58, Appendix A) assesses the Wildland fire impact of the proposed project and includes a standard condition of approval (7.h.) that would reduce Wildland fire risk and increase protection, including the following action: "submit survey and site plans for fire department review, prior to issuance of building permits for the first house." The PUD application adds another opportunity for Fire Prevention Bureau participation and conditioning as necessary.

Wetland Protection. The proposed wetlands protections in the Project Description (Wetlands Enhancement and Preservation, pages 25-26), the discussion of the City's Creek Protection Ordinance (pages 49-50), and the conditions of project approval for wetlands protection and preservation (Mitigation Measure Biology–3(i), pages 54-56) make it clear that the proposal would be ". . . consistent with the requirements of the federal Clean Water Act and NPDES Permit" and—with best management practices so that the creek and riparian corridor's natural state would be safeguarded and preserved—that creek side vegetation and wildlife would be preserved and enhanced and that destructive activities and effects would be prevented.

Upslope Stabilization. CEQA requires sufficient information and assessment to establish the presence of a potential impact and the action that would reduce the impact to less-than-significant levels. The DEIR on pages 65-68 establishes a range of existing conditions through summarization of many cited technical studies. The "Slope Stability" subsection on page 66 establishes the fact that landslides exist. The cited studies are available to the public for review. Page 24 of the DEIR lists and describes nine key components of the anticipated stabilization component. Subsequent engineering proposals will be prepared, reviewed and ultimately approved by the City Engineering Bureau based on a final Geotechnical Report covering all ground failure hazards, including landslides, required to be prepared by a California-registered Professional Civil and Geotechnical Engineer as conditions of approval in Attachment A - Standard Conditions of Approval B 6.1(ii)-1 and -2 (see Impact Geology and Soils–1.b, page 69). The alternatives do not need to be developed around the landslide impact in particular.

On-Schedule/On-Budget. This is a common objective, at this point of the project development and permitting process, and metrics for determining compliance are not required by CEQA.

Meet Economic Demands. The objectives of this proposed project are not to construct low income housing development and the project sponsors are not claiming it to be a low income housing project. The objective clearly states on page 29, first

bullet, that the project sponsor's intention is to construct high quality housing as cost effectively as possible at a cost below which they can be sold (economically feasible from the project sponsor's position), and to meet these demands for housing from a growing economy in Oakland at the project site in the Oakland Hills. The Association for Bay Area Governments' Projections 2005 anticipates a growing Oakland city and economy. It projects household growth from 154,330 households in 2005 to 195,690 households in 2030, and job growth from 207,100 jobs in 2005 to 279,340 jobs in 2030. The proposed project would construct seven of the roughly 41,360 new housing units needed to accommodate Oakland's household growth from 2005–2030.

8-9 ***10. Standard Conditions of Approval***

As presented in the Initial Study and the DEIR, the standard conditions of project approval have the same force of law as the CEQA-required mitigation measures. Mitigation measures in CEQA are required to reduce significant impacts to less-than-significant levels. These standard conditions of approval are imposed on projects regardless of CEQA. The project sponsor has agreed to treat standard conditions of approval as mitigation measures imposed by CEQA.

The term "improvement measure" is often found in CEQA documents because California planning law allows a wider range of conditions to be attached to projects than simply the subset of measures that CEQA would require to reduce significant impacts to less-than-significant levels. To clarify this, the term "improvement measure" is deleted and replaced with "standard condition of approval." In the case of the proposed project, both the mitigation measures required by CEQA and the standard conditions of approval will be incorporated into the conditions of project approval and will be used to monitor compliance and enforce implementation of both the CEQA-required mitigation measures and the standard conditions of approval. The full set of measures (both mitigation measures and standard conditions of approval) will be incorporated into another CEQA requirement, the Mitigation Monitoring and Reporting Plan (MMRP) (*CEQA Guidelines*, Section 15097) for monitoring, reporting, and enforcement.

11. Advance Site Preparation and Standard Conditions of Approval

The environmental baseline in the DEIR (against which the level of potential project impact was evaluated) identified the conditions of the project site both before and after the removal of the eucalyptus trees. The applicant received an emergency permit from the City to stabilize Kenilworth Road. Only eucalyptus trees were removed.

12. Enforcement and Standard Conditions of Approval

Please see Response to Comment 9-9(10), above.

8-10 The DEIR does not propose unspecified standard conditions of approval, but states in each case the particular action that would reduce the corresponding impact to a less-than-significant level. Please see Response to Comment #9-9 (10), above. The DEIR contains both mitigation measures and standard conditions of approval, which will be incorporated

into the conditions of approval for the proposed project pursuant to standard CEQA process and requirements. These conditions of approval will, in turn, be incorporated into CEQA's required Mitigation Monitoring and Reporting Plan for monitoring, reporting, and enforcement (C*EQA Guidelines*, Section 15097). There are no "loopholes" but rather contingent actions that would not be permitted without conditions and would reduce impacts to a less-than-significant level.

The standard conditions of approval are derived from the mitigation measures of the 2004 Housing Element Mitigated Negative Declaration; Chapter 12.36 of the Oakland Municipal Code (Trees); Chapter 13.16 of the Oakland Municipal Code (Creek Protection); Oakland's Creek Guide; BMPs developed by Alameda County; the Uniform Building Code and Uniform Fire Code, as adopted by the City; and conditions of approval developed and applied by the Planning Department. These standard conditions of approval have been found by the Planning Department, City Planning Commission, and City Council to reduce impacts to less-than-significant levels.

8-11 Please see Response to Comment #8-10, above. Reference to "standard conditions of approval" in the DEIR is linked to specific regulations or measures that would reduce the corresponding impact to a less-than-significant level, such as the terms specified in the Creek Protection Ordinance which are the development standards for the City. These specific mitigation measures and standard conditions of approval will be incorporated into the conditions of approval for the proposed project and they will also be incorporated into the Mitigation Monitoring Plan required by CEQA for monitoring, reporting, and enforcement (C*EQA Guidelines*, Section 15097). All of the mitigation measures and standard conditions of approval will be implemented as stated and as required to reduce impacts to a less-than-significant level.

Specific legal description is not necessary for the "standard condition of approval." Under CEQA Section 15183, the City of Oakland is permitted to rely on uniformly applied development policies or standards.

8-12 ***13. Range of Alternatives***

The alternatives analysis in the DEIR (pages 101-107) was prepared based on CEQA Guidelines Section 15126.6, Consideration and Discussion of Alternatives to the Proposed Project. CEQA does not require that specific alternatives (aside from the no project alternative) or an exhaustive set of alternatives are analyzed, but states that the rule of reason be used to develop alternative site proposals as another way of possibly addressing significant project impacts rather than through mitigation measures. The DEIR analyzes a reasonable range of feasible alternatives, including the No Project Alternative. Both alternatives analyzed are reduced density alternatives: one alternative reduces the number of units built to four units on the full seven lots, the other reduces development to four units but limits the site to the existing four lots. Typically, in CEQA analysis, the No Project Alternative is defined as "no build" when the proposed action is a project proposal (CEQA

Guidelines 16126.6(e)(3)(B)). Accordingly, the DEIR analyzes a "no build" No Project Alternative.

8-13 The summary discussion of alternatives on pages 5–6 of the DEIR and the Alternatives Chapter V, pages 101 -107 is an accurate summarization of the Alternatives chapter, but not a replication of the details contained in the Alternatives chapter.

8-14 The description of the Reduced Density Original Four-Lot Alternative refers to Figure 2 (DEIR page 13) as a general reference to the project site area of the Alternative, not to the precise location of the alternative's building footprints or the configuration of the original four lots, which are not shown in Figure 2. The description indicates that the proposed residences would be about the same general height and massing as under the proposed project, but they would be clustered closer together and nearer the creek than the residences would be under the proposed project due to the configuration of the original lots. Under the proposed project, building footprints on lots one and two would be no closer than 20 feet to the edge of the delineated wetland or bank of the drainage course, not four feet as stated in the comment. The commenter seems to have confused the four-foot ground-disturbing construction buffer (from the edge of the wetland) with the 20-foot minimum and 25-foot maximum buffer (from the wetland edge) of the permanent wetland protection zone (see Project Description, page 27, first bullet). These larger distances are used as a constraint in siting the building footprints under the proposed project. Under this Reduced Density Original Four-Lot Alternative, the houses may be situated closer than the 20-feet minimum buffer of the permanent wetlands protection zone of the proposed project due to the original configuration of the lots.

The Alternatives chapter has been revised and is provided in Chapter II of this Final EIR document on pages 8 to 17.

There are not significant impacts with the proposed project. All impacts are reduced to a less-than-significant level, and the Alternatives further reduce that level. The DEIR does not claim that geologic abatement of significant impacts would be reduced with the Alternative. On pages 104 and 106, first sentence on each page, the EIR states the following: "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." Reduced abatement would result since the alternative would have three fewer units subject to potential hazards requiring abatement.

Please see Response to Comment #8-7, above, and Response to Comment #8-15, below, regarding the issue of the adequacy of the alternatives' analysis.

8-15 As noted, the Alternatives section has been modified and is provided in Chapter II of this document to recognize that the four-lot alternatives would further reduce the already less-than-significant impacts, including the following:

Visual Effect. There were no significant visual effects with the proposed project, thus, the visual effects of the two four-lot alternatives (Reduced Density Full-Project Site Alternative, and Reduced Density Original Four-Lot Alternative) would be a reduction of a less-than-significant project impact. Even though there would be four instead of seven houses, they would be indistinguishably part of the same scattered visual pattern of lower density hillside residential development immediately surrounding them. The smaller visual presence from three fewer houses may be noticeable from some, but not all, vantage points.

Stormwater Flows. Some reduction in the quantity of net new raw stormwater flows from the elimination of three houses and construction of the latter part of Kenilworth Road is likely due to the reduction in new impervious surfaces. However, the stormwater flow impact would not be significant under the proposed project or the alternative because both the proposed project and the alternative would include as part of the project a stormwater management system and other best management practices to avoid significant impacts from new impervious surfaces as well as from existing uncontrolled stormwater runoff from the existing upslope properties.

Grading. It is not clear from Figure 3, page 14, of the DEIR, that the "vast majority of project grading" would be avoided under the alternative. That there would be less grading is obvious, but it would not eliminate a significant impact. The potential grading impacts (erosion and topsoil loss as discussed on pages 71–72 of the DEIR) would be less-than-significant in both the proposed project and the alternative as Standard Condition of Approval 6.b. that would be part of the proposed project and the alternative.

Vegetation removal would not be a significant impact under the proposed project. As discussed on page 59, the loss of less than one acre of non-sensitive ruderal-annual grassland habitat "is a less-than-significant environmental impact because this vegetation type is not a sensitive natural community." An approximate 40% reduction in the amount of non-sensitive grassland habitat removed from the site under the alternatives would be a reduction, but would still remain a less-than-significant impact.

Tree Effects. The alternative would reduce removal of protected trees from a maximum of nine under the worst case scenario of the proposed project where none can be protected during construction and they all need to be removed to a maximum of two under the alternative as shown in Table 4 and Figure 11 on pages 46 and 47, respectively, of the DEIR. However, the impact would not be significant in either case. Further, the mitigation requirements of first, protection during construction, and then second, replacement at a ratio of 1:1 with 24-inch box trees incorporated into the Landscape Plan (page 62, DEIR) when removal is unavoidable, would reduce impacts to a less-than-significant level in both cases.

Construction Noise. Construction noise would not be significant with the proposed project with standard conditions of approval. Thus, the shortened duration of noise associated with grading, earthwork, and construction of only four houses would be less-than-significant and would not change the requirements for the standard conditions of approval. Whether the noise from construction of the houses in the alternative would be noticeably reduced, would depend on the phasing of housing construction of the alternative compared to the project.

In sum, the fewer lots alternatives would have the potential for some reductions in impacts compared to the proposed project's already les-than-significant impacts. The same

mitigations and standard conditions of approval for the proposed project would be required for the alternatives. .

8-16 The alternatives analysis in the DEIR is CEQA-compliant and addresses a reasonable range of alternatives, which is CEQA's requirement (please see also Response to Comment #8-7). A reduction in the number of housing sites would reduce the frequency of occurrence or the total magnitude of some impacts compared to the project, but it would not eliminate the impacts, which would require the same mitigation measures and standard conditions of approval. The DEIR does not conclude that the alternatives would not accomplish the goal of reducing significant impacts, nor does it conclude that all of the alternatives would be worse than the project or the same. The DEIR does indicate that the Reduced Density Full-Project Site Alternative becomes the environmentally superior alternative because it would have similar effects as the Reduced Density Original Four-Lot Alternative except it would be able to maintain the wider wetland protection zone buffer (see the DEIR, last paragraph, page 107, as well as the revisions to the Alternatives chapter made in Response to Comment #8-15. As revised, it is clear that the four-lot alternatives would further reduce the already less-than-significant impacts of the project.

8-17 CEQA does not require an analysis of all feasible alternatives nor alternatives with particular development characteristics, but a reasonable range of alternatives. The alternatives analysis does reveal that some reduction in the magnitude of already less-than-significant impacts would occur. Please see also Responses to Comments. #8-13 through #8-16, above.

8-18 Please see Response to Comment #8-17, above. The assessment of the four-lot alternatives is adequate; CEQA does not require the analysis of a two- or three-lot alternative. However, the reduction in impacts, under the commenter's proportionality theory, would be as already described. Thus, there is no need for further analysis of a two- or three-lot alternative.

8-19 ***14. Cumulative Impacts***

Section IV.G, Cumulative Development, of the DEIR assesses the proposed project's cumulative impacts. It notes a small, less-than-significant contribution to the less-than-significant cumulative loss of grassland habitat, a non-sensitive natural vegetation-type community. It also notes a less-than-significant cumulative stormwater impact to the Vincente and Temescal creeks. Typically, the mitigation burden for a proposed project's share of a cumulatively significant impact would be reduction to less than significance of the project's impact. The Cumulative impact discussion on page 97 ends with the following conclusion: ". . . 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."

8-20 Please see Response to Comment #8-19, above. Also, there is a discussion of cumulative impacts' aesthetic impacts on pages 22-23 of the DEIR.

8-21 ***16. Bulk Criteria***

The visual analysis in the DEIR notes that the homes of the proposed project would not fundamentally or substantially block the direct views from neighboring homes. The proposed project's homes would be visible from neighboring homes; however, a change in views from private property would not be a significant impact under CEQA.

17. Height Controls.

The analysis of visual impacts (aesthetics) in the DEIR (pages 32-34) establishes that: (1) the project would follow Oakland's planning and zoning code as required in a PUD; (2) that the PUD requires conditional use authorization which allows for project-specific requirements above and beyond those existing in the Planning Code; (3) that the project sponsor intends to follow the Design and Bulk Review and Criteria and Guidelines for Hillside Development, with some its general principles listed, in the context of the PUD process; and (4) states that the anticipated heights above Kenilworth Road would be 20 feet at most. It also states that PUD regulations permit a waiver or reduction in the minimum height and yard requirements. The building footprints of Figure 3 (DEIR, page 14) indicate the absence of a wall of tall houses, possibly more varied and broken up than that of the existing upslope residences.

8-22 Please see Response to Comment #8-21, above. The DEIR discusses the change from undeveloped residentially zoned property to low density residential development. This change would not constitute a substantial degradation in the existing visual character of the site and its surroundings (please see Figure 1 of this document, page 101, for an aerial view of development in the project area). It also discusses the land use controls and design review process the proposed project would undergo whereby significant aesthetic impacts would be avoided (see DEIR pages 31-35). Further, the proposed project's height would only be visible from Kenilworth Road, not the existing homes above it, which are all located hundreds of feet higher. Finally, the visual presence of the proposed project's homes would most likely be similar in effect to that of the surrounding residential development.

8-23 ***19–23***

TOVA Applied Science & Technology reviewed the LSA and Olberding studies previously prepared for the project and supplemented these studies with additional studies that focused on: (1) potential habitat for Alameda whipsnake, (2) native trees, (3) potential nesting habitat for raptors and migratory birds, and (4) loss of scrub and grassland habitat. TOVA considered the previously prepared studies to be adequate and provided the results of the supplemental studies in the DEIR.

TOVA addressed in its supplemental studies the larger project vicinity that included the western and southern portion of the project area. The DEIR recognizes the adjacency of

scrub vegetation to the project site and contains a mitigation measure to avoid the potential impact of an Alameda whipsnake migrating to the project site from these adjacent areas (Mitigation Measure Biology – 1: Pre-Construction Survey and Installation of Protective Fencing).

As a general rule, raptor nesting in the Bay Area usually occurs as early as the end of January into February, with nest building as early as late February, but as late as April. The incubation of eggs ranges from about early April through about mid-May. Hatching begins in early May, although it can occur as late as mid-June. Young will fledge from the nest from early June through a late as mid-July. Parental feeding within the natal territory continues as late as the end of July.

The eucalyptus trees on the project site were removed during the period between the end of July and the beginning of August. Tree removal occurred close to the beginning of August and, as such, the removal of Eucalyptus trees was conducted during a period when breeding of raptors or migratory birds would have been less likely and therefore; breeding activity would not have been adversely affected.

For the other trees on the project site, the DEIR Mitigation Measure Biology–2: Pre-construction Nesting Raptor Survey and Avoidance, is appropriate to protect the nesting success of raptors and other migratory birds. These avoidance measures are routinely incorporated into CEQA mitigation measures.

There is no official minimum setback guidance that is routinely incorporated into measures to protect wetlands and creeks and the California Department of Fish and Game did not raise this issue in its granting of the 1603 Streambed Alteration Agreement. If local jurisdictions in the Bay Area serve as potential examples of typical fixed width setbacks from top of bank, there is wide variability in application:

Jurisdiction	**Stream Buffer Distances (Fixed width measured from top of bank)**
Alameda County	0 – 20 feet
City of San Jose	0 – 100 feet
City of Los Altos Hills	0 – 25 feet
City of Albany	0 – 20 feet
City of San Rafael	0 – 25 feet
City of San Carlos	0 – 25 feet
City of Novato	0 – 50 feet
City of Benicia	0 – 25 feet
SOURCE: San Francisco Bay Regional Water Quality Control Board. 2004. Local Government Riparian Buffers in the San Francisco Bay Area, July 2004.	

The buffer zone width needed to protect a stream or wetland is often a somewhat subjective determination, and would depend on specific ecological functions or values that need protection. In the case of the project, the primary function will be to provide a "factor of safety" to keep equipment, sediment and construction debris out of the wetland/riparian zone. The determining distance of functional adequacy is based on the likelihood that material could enter a creek from upslope or adjacent areas. The soil coverings, binders, silt fences,

straw bales, and other standard BMPs identified in the DEIR would protect drainage way water quality. The project would construct a "stabilization buffer zone" of approximately four feet to stabilize the site to the edge of the creek. A more permanent "no build zone" would subsequently be constructed at 20 to 25 feet.

8-24 The critical updated surveys for special-status species and wetlands delineation conducted by Olberding, and the raptor and tree surveys conducted by TOVA were for the entire 2.9-acre project site.

8-25 According to the California Wildlife Habitat Relationship System database maintained by the California Department of Fish and Game, the breeding season for representative raptors such as the Cooper's hawk and red-tailed hawk is from March through August; peak activity May through July. A nesting survey for the entire East Bay conducted in 2003,[6] indicate that Cooper's hawk nesting activity starts as early as the end of January into February. Hatching begins in early May to as late as mid-June. The young fledge from the nests from early June through mid-July, with parental feeding continuing as late as the end of July. Based on these sources of information, the assumption is that by the end of July or the beginning of August, nesting would have been completed.

8-26 No nests of migratory birds or raptors were observed by LSA or Olberding in surveys conducted in 2001 and 2003. The surveys included an area that encompassed the eucalyptus trees. The tree and nest surveys conducted by TOVA Applied Science & Technology in 2005 only evaluated trees still standing after the eucalyptus trees were cut. The project site is bounded on the north by residential development along Drury, Strathmoor, and Norfolk. The site is separated from the Claremont Canyon Regional Preserve by some of the development on Strathmoor and streets to the northwest of the project site. Claremont Canyon is located in the watershed north of the project site. To the west and south, the project site is directly contiguous to undeveloped or partially developed residential lots, which are not considered "designated" open space. Regardless of whether this space is characterized as open space or undeveloped or partially developed, impacts are evaluated against the physical baseline conditions of the site. Please see Figure 1, page 101, of this document for an aerial photo of the development in the project area.

North Coastal Scrub community is the core habitat type of the Alameda whipsnake. Although whipsnakes are found in a variety of other habitats (excluding eucalyptus and closed canopy forests), the snakes are most likely to use north cast scrub because they can find consistent forage (primarily lizards) and cover. It is therefore highly unlikely that the whipsnake occurred in the eucalyptus forest. Over time, a transition from nonnative eucalyptus trees to a mosaic of native habitats of varying age classes and structure could be expected to improve potential Alameda whipsnake habitat in the long term. However, the

[6] Golden Gate Raptor Observatory. 2004. GGRO's East Bay Cooper's Hawk Intensive Nesting Survey – 2003.

relatively recent removal of the eucalyptus trees on the project site would be for a short period of time for the optimal reestablishment of a mixed age, heterogeneous native shrub habitat that would be suitable for Alameda whipsnake core habitat.

8-27 Table 4 on page 46 and Figure 11 show the correct number, estimated size, structure, and approximate location of all trees with the proposed parcels. The text on page 48 is revised to read as follows:

> "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~~ **locations A, B, 7, and 8**) 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~~ **#7** in Figure 11. 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."

8-28 Habitat conditions and vegetation cover on the project site do not provide the optimal vegetation structure to support the Alameda whipsnake, and the project site is not within proposed "Critical Habitat" for the species. As such, detailed survey of the entire project site using funnel traps, pit fall traps, and drift fences that direct animals to the traps in association with visual inspections are not warranted. The pre-construction surveys identified in the DEIR are intended to monitor only the proposed impact areas to verify that no snakes are actually within those construction zones. The DEIR mitigation measure addresses only visual inspection as the pre-construction survey method. The use of visual inspection of debris piles and other potential snake hiding places is a standard construction monitoring procedure to ensure that no snakes would be adversely impacted by project construction activities. Visual inspection by a qualified monitor/biologist is technically reliable.

8-29 See Response to Comment #8-23(19–23), as presented above.

8-30 The project site is bounded on the north by residential development along Drury Lane, Strathmoor Drive, and Norfolk Road. The site is separated from the Claremont Canyon Regional Preserve by some of the development on Strathmoor Drive and streets to the northwest of the project site. Claremont Canyon is located in the watershed north of the project site. Paved roads and streets intercept any potential, narrow corridors between the project site and Claremont Canyon. The project site is only directly contiguous to undeveloped or partially developed residential lots west and south of the project, which are not considered "designated" open space (please see Figure 1, page 101, for an aerial view of development in the project area). Regardless of the characterization of this space, impacts

are evaluated against the physical baseline conditions of the sites, and not a plan-to-plan comparison. Also refer to Responses to Comments #8-1 and #8-2.

8-31 The Department of Fish and Game 1603 Lake and Streambed Alteration Agreement identifies a 3:1 replacement ratio for willow removal. In addition, the agreement contains a condition that "*for each native tree that is removed or disturbed, trees shall be replaced with native trees on-site at a minimum 3:1 ratio (replacement: loss). For each nonnative tree removed or disturbed, trees shall be replaced with native trees on-site at a minimum 1:1 ratio (replacement: loss).*" The 3:1 replacement ratio is usually applied to riparian trees and not to upland trees, unless California native oak trees in substantial groves are proposed for removal. In this case, the policy of the CDFG is to encourage projects to be designed to prevent or minimize the loss of oak trees. If removal of native oak trees is unavoidable; CDFG requires that a mitigation plan be prepared. The mitigation plan should include: protection of trees that are retained; replacement at a ratio of 5:1 of trees greater than 2 inches diameter dbh; replacement of trees less than 2 inches dbh at a ratio of 1:1 for each inch dbh; and development of a 5-year maintenance and monitoring plan with a minimum 80% success rate. Since the proposed Kenilworth project would not involve the removal of oaks in a stand or grove, the City of Oakland's Tree Ordinance requirements would be suitable to compensate for the removal of upland trees on the project site.

8-32 ***24. Mitigation for Thrust Fault***

CEQA does not require exhaustive analysis within an EIR, but sufficient treatment to establish the presence or absence of a significant impact and the extent of feasible mitigation when the impact would be significant (*Guidelines*, Section 15151). CEQA also requires a summary of technical analysis in an EIR, not the full analysis (*Guidelines*, Section 15147). The referenced text in the comment is to the discussion of existing conditions in the Initial Study, page 49 (second to last paragraph). The full statement indicates it is a "suspect" fault and that "bedrock shearing and thrust faulting are mapped both north and south of the project site." Considering these existing conditions, the same geotechnical analyses assess the potential for ground rupture on the project site as low and less than significant, but provides discussion in the EIR for informational purposes (Item 6.a(i), on page 51): "Conditions necessary for ground rupture do not exist at the project site, but do exist nearby." The Initial Study finds that compliance with the Building Code would likely reduce to less than significant the related impacts of strong ground shaking that would be associated with nearby faults of any type (Standard Condition of Approval B 6.a(ii)-1, page 53). The DEIR discusses the topic on pages 66 and 69. The criteria for a potentially significant impact of a ground fault rupture on site is not met since there are no known faults running through the site. The impact related to strong groundshaking associated with any known fault is mitigated on page 69 of the DEIR (Standard Condition of Approval B 6.a(ii)-1) through compliance with the Uniform Building Code Seismic Zone 4 design standards addressing all specific hazards identified in a subsequent final geotechnical report required as part of the building permit process.

25. Landslide Information

As noted in Response to Comment #8-32(24), CEQA requires a summary of supporting technical analysis and documents and encourages extensive technical information to be included in separate reports or appendices. Both the landslide discussion in the setting section of the Geology and Soils topic of the Initial Study on page 49 (Slope Stability) and pages 50-51 (Seismicity, Landslides) cite the full range of reports that support the points that the project site and upslope areas contain mapped landslides, that future landslides are a possibility, that it could be influenced by a range of mapped geologic conditions, the presence of continual landslide movement and past repairs, and landslide depths of 4 to 12 feet. These reports are part of the public record for this project and available for public review. Page 51-52 of the Initial Study (Item 6.a(iv)), summarizes the project's proposed measures to stabilize the slopes on and off site, which in turn are summarized in greater detail in the Project Description on pages 13-14 of the Initial Study. The technical engineering proposals developed to date are part of the public record and available for review.

Please see Response to Comment #8-1(1) regarding Peer Review. CEQA does not require peer review. Neither the Initial Study nor the DEIR claim that all the studies have been peer reviewed, and the sole reference to peer review, on page 75, has been deleted. The preparation of the environmental documentation is conducted by independent professionals, whose analyses are typically accurate and conservative in compliance with CEQA practice and professional liability. Although not required, the geotechnical reports were peer reviewed[7] (in addition to site design as indicated in the Draft EIR on page 75 and 76). A reference to the geotechnical study peer review has been added to page 65 of the EIR.

Finally, the City of Oakland, as the lead agency for implementing CEQA, assumes authorship and is legally responsible for the veracity of the information and CEQA compliance. In the course of the proposed project review, numerous City staff have reviewed the environmental documentation, including the technical reports. As stated in the Notice of Release of the DEIR (Claudia Cappio, Development Director, December 5, 2005) "The City of Oakland is hereby releasing this Draft Focused EIR, finding it to be accurate and complete and ready for public review."

26. Enforcement of Standard Conditions of Approval and Mitigation Measures

Please see Response to Comment #8-9(10) regarding standard conditions of approval. Both mitigation measures required by CEQA and the standard conditions of approval, and possibly other measures associated with project approval beyond the CEQA process will be incorporated into the conditions of project approval. These conditions then become the legal mechanism for monitoring compliance and enforcing implementation of both the required mitigation measures and the standard conditions of approval, as well as any other conditions.

As discussed further in Response to Comment #5-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the DEIR have been removed.

[7] Seidelman Associates, *Geotechnical Peer Review for Kenilworth Road Project, Oakland, CA*, October 2, 2006, op cit. This letter report is included in this document as Appendix B.

8-33 The stabilization measures proposed as part of the project are described in the DEIR on pages 23-24. The DEIR presents information regarding existing landslide conditions on page 66, second paragraph, subsection "Slope Stability." That discussion references the technical studies upon which the summary is based. Also, pages 67-68, subsection "Seismicity, Landslides," discusses the risks posed by landslide prone areas during seismic events. Impacts Geology and Soils 1.b, 1.d, and 3 all cover various adverse effects of the landslide prone slopes and the remedies proposed as part of the project. As discussed further in Response to Comment #5-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the DEIR have been removed.

8-34 As discussed further in Response to Comment #5-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the DEIR have been removed

8-35 Please see Response to Comment #8-5. The impervious surface estimate is conservative and intentionally overestimated. It will not exceed one acre.

8-36 Construction activity may adversely affect adjacent buildings—either through excavation leading to differential settlement of adjacent areas or vibration that causes structural damage. The discussion on pages 90-92 in the Draft EIR assesses the potential for vibration impacts to damage surrounding buildings and concludes that the vibration impact would be less than significant. The analysis examines vibration-generating construction activities potentially associated with the proposed project and assesses the extent of vibration that could be noticed at nearby houses and the potential for structural damage. The Draft EIR states that the peak particle velocity (ppv) at residences closest to the construction activities is likely to fall in the category of barely to distinctly perceptible (a velocity of about 0.1/in/sec ppv). Caltrans states that there would be virtually no risk of architectural damage to normal buildings at levels of 0.1 in/sec ppv, and applies a ppv level of 0.2 in/sec as the minimum threshold risk criterion for minor architectural damage from continuous vibrations, which is a conservative criterion for intermittent or temporary sources of vibration such as construction. Typically, normal site grading and construction practices do not generate sufficient vibration to cause structural damage of adjacent buildings. Pile driving is one construction technique that could generate vibration with some potential to damage adjacent structures; however, the proposed project would not use pile driving. Please also see Response to Comment #8-43.

The issue of differential settlement and slope instability caused by the proposed project's earthmoving construction activity is addressed by one of the proposed project's components—geotechnical stabilization—as described on pages 21-22 of the Draft EIR. As noted on page 66 of the Draft EIR, the project site and vicinity is generally unstable under existing conditions: "Hill slopes of the project site and some up-slope parcels contain mapped landslides, and future landsliding is a possibility." As a result, the project's geotechnical stabilization component would occur prior to subsequent residential

construction activities that could trigger differential settlement and slope instability, thus avoiding that potential impact.

8-37 ***28. Runoff Treatment and Swale***

As described in the DEIR, Chapter 2, Project Description, c. Post-Construction Stormwater Management, page 25:

> "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.[8] 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').[9] 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 49-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."

As is clear from this description, v-ditches have replaced the grassy swale component described in the Initial Study, but in either case treatment occurs ***after*** the runoff is captured and is routed through the rest of the infrastructure that allows for detention via slowing the flow, infiltration, and dissipation in the energy dissipater located near the western boundary of each project site. The upslope v-ditches and inlets on the upslope side of Kenilworth Road are situated to slow the rate of runoff from existing upslope properties that now flow uncontrolled on to the slopes below, which is the site of the proposed project. As it stands now, the uncontrolled upslope flows are the biggest stormwater runoff flow, not net new flows from the impervious surfaces created by the proposed project. The proposed technology is standard technology and its effectiveness would be confirmed through the review to meet the standards of the Alameda Countywide Clean Water Program NPDES Permit (see page 25 of the DEIR).

29. Rainy Season Construction/Grading

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[8] 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.

[9] 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.

As discussed further in Response to Comment #6-20, the project sponsor has agreed not to grade during wet weather under any circumstances, and all references to wet weather grading in the DEIR have been removed.

30. Cumulative Impacts

Section G, Cumulative Impacts, page 97 of the DEIR, discusses the cumulative impact potential to Vincente Creek. Because the proposed project would reduce surface water stormwater flows from existing development and the proposed project, the proposed project has no potential to contribute to a cumulative impact and an extensive discussion is not provided nor required by CEQA.

31. Runoff to San Leandro Creek

The requested correction was made to the restated condition of approval, Standard Condition of Approval 8.c, on page 81 of the DEIR. The incorrect reference to San Leandro Creek was corrected to state Temescal Creek.

8-38 As stated on page 80 of the DEIR, the pretreatment would be as specified in RWQCB policy**.** Part of the pretreatment includes the capture of upslope runoff and its detention and slow dissipation into a wider area.

Regarding net impervious surface coverage, please see Response to Comment #8-5, above. The proposed project's net new impervious surface would be less than one acre as already shown in the DEIR, footnote 2, page 25, and as explained further in Response to Comment #8-5.

The statement on page 82 (lines 2 to 4 of Impact Hydrology and Water Quality–5) is not a conclusion. It is a statement based on the logic that the system needs to be fully designed, and that the design process would require compliance with professional and city engineering and design standards whose purpose is to sufficiently meet anticipated stormwater flows.

Downstream stormwater systems are not discussed because they would not be used, and are therefore extraneous to the EIR discussion, since the project proposes an on-site stormwater management system.

Please see Response to Comment #8-37(30) regarding a cumulative assessment. Since the proposed project would not substantially increase stormwater flows, if at all, there is no potential to contribute significantly to a significant "cumulatively considerable" cumulative impact.

Details regarding regular exceedances of existing storm drain system capacities elsewhere in Oakland would be needed to verify the commenter's claim, to establish the facts of the matter, and to determine whether or not—and if so, how—they would be relevant to the design of the proposed project's stormwater system. However, given that the proposed project's system would be designed to current city and professional standards, including the treatment standards of the RWQCB, such information is not pertinent.

8-39 *34. Temporary (several months) Earthwork Construction Noise*

The CEQA compliance problem with the Oakland Airport EIR involved analyzing noise effects only in terms of average noise levels and not also analyzing effects on peak noise levels for impacts occurring over the life of the project. The Kenilworth EIR analysis addresses the peak noise levels associated with construction activities. The Draft EIR, on page 89, first full paragraph, assesses as annoying and potentially significant the temporary earthwork-related construction noise impacts expected to range from 60 to 80 dBAs (before mitigation). It states that Standard Condition of Approval 11(1-4) would mitigate the potentially significant impact to less-than-significant levels. In particular, the Standard Condition of Approval 11(4) is a process for tracking and resolving complaints. Standard Condition of Approval 11(3) includes taking noise measurements to monitor the effectiveness of noise attenuation measures. Back-up beeper sounds are part of the annoying but temporary construction noise and are not considered a significant impact under CEQA. However, the project sponsor may agree to such measures, as a condition of project approval, as stipulating that drivers turn down beeper volumes to the lowest settings allowed under law and/or to substitute use of a flag man for back-up beepers (these options would have to be reviewed and permitted by the Occupation Safety and Health Act, or OSHA, as suggested by the commenter in his comment numbered 50(B), dated January 19, 2006). This will be considered by the Planning Commission during project review.

35. Vibration

Please see Response to Comment #8-39(36), below. Vibration impacts would be less than significant and the City does not feel that pre- and post-construction surveys are appropriate.

36. Noise

The analysis of the Draft EIR finds that the new sources of temporary and permanent noise would generate less-than-significant noise impacts under CEQA. Please see Responses to Comments #8-39(34) and #8-39(35), above. Operation of the proposed project would not increase already low ambient noise levels. Maintenance and living noise associated with the new seven residences would not be expected to be significantly different from that of existing residences, which is at a level that no building-related noise mitigation would be necessary. Net new traffic would not change the noise levels from the existing low volume of residential trips down the hillside roads (Draft EIR, page 87, third full paragraph). Construction noise could be intermittently annoying and potentially significant. Standard conditions of approval are proposed to address this potentially significant impact and to reduce it to less-than-significant levels (see Response to Comment #8-39(34). Noise impacts would be less than significant.

8-40 Please see Responses to Comments #8-39(34–36), particularly #8-39(36). The noise potential of the proposed project has been assessed in accordance with standard CEQA and the City of Oakland practice. The assessment finds no basis for any potentially significant operational noise impact on an ongoing basis, and finds annoying and potentially significant temporary construction noise impacts. These temporary construction noise impacts would be reduced to a less-than-significant level by the proposed Standard Condition of Approval

11(1-4). As noted in Responses to Comments #8-39(35) and #8-39(36), vibration impacts would be less than significant and the City does not feel that pre- and post-construction surveys are appropriate.

8-41 Please see Response to Comment #8-36. The DEIR text on page 90, second paragraph, second sentence, is revised as follows:

> "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 significantly felt off the construction site, as defined by Criterion 5**, and would not be of sufficient force to cause damage to surrounding buildings**."

The balance of the section on page 90, paragraphs two and three and on pages 91-92, discusses the conditions and logic that support the conclusion that vibration impacts would not damage surrounding buildings, as summarized in Response to Comment #8-39(36) above, due to the low level and intermittency of vibration forces anticipated, the decrease in vibration forces over distance, and the distance of the adjacent homes to the construction areas. (Planning Code Section 17.120.060)

8-42 The significance of the potentially significant construction noise impact is not conditioned on the length of the construction period, nor is the mitigation measure which would reduce the impact to less than significant and which would be in force regardless of how long the construction period is. As stated in Chapter III, Project Description and Objectives, pages 27-28, the precise time frames for the various stages of the project are not yet clear, but this much is known now:

1. Improvement and construction of Kenilworth Road will take six months.
2. Construction of the seven residences would take about two years, but possibly up to five years on an intermittent basis depending on permit approvals and market demand.
3. Grading would be limited to the dry season only between April 15 and October 15. It would be completed over the course of one season (six months) and would include the geotechnical stabilization of the project site and vicinity, and the construction related to the wetlands enhancement and preservation component of the project.

8-43 The last paragraph on page 90 and its continuation onto page 91 describe the expectation that vibration levels at 50 to 100 feet from the source would be at the threshold of human perception. This threshold is identified as a peak particle velocity (ppv) of between 0.008 and 0.012 in/sec. Further, Caltrans uses a substantially higher ppv level of 0.2 in/sec of continual vibration (not intermittent) as a criterion for minor architectural damage and

expects no risk of architectural damage to buildings of normal structural integrity at levels of 0.1 in/sec. of continual vibration; i.e., the level expected at between 50 to 100 feet from intermittent vibration sources at the project site during construction. The first sentence of page 91 also states that "Levels at residences closest to the construction activities are likely to fall in the category of barely to distinctly perceptible" (ppv of 0.008 to 0.012 in/sec expected at 50 to 100 feet from a noise source). Since the residences range from 50 to 120 feet from the edge of the Kenilworth Road extension as indicated in Figure 10, page 26 of the Draft EIR, it is unlikely that intermittent vibration would cause damage to nearby homes. Please see also Response to Comment #8-39(36).

8-44 The comment points out that the Draft EIR incorrectly indicates that a peak noise range of between 50 to 70 dBA would be expected off-site throughout construction of the proposed project. The 2005 Noise Study indicates that these levels may actually be higher in the range of 60 to 80 dBA, prior to mitigation. (The Draft EIR is corrected to reflect this range, see Section 2, Revisions to the Draft EIR). A majority of construction activity would occur at distances greater than 50 to 100 feet from the upslope residences.

A more recent table than the 1971 table cited in the comment lists construction noise at a 50-foot distance:

Construction Equipment 50-Foot Noise Emission Limits	
Equipment Category	L_{max} Level (dBA)[1,2]
Arc Welder	**73**
Auger Drill Rig	**85**
Backhoe	**80**
Bar Bender	**80**
Boring Jack Power Unit	**80**
Chain Saw	**85**
Compressor[3]	**70**
Compressor (other)	**80**
Concrete Mixer	**85**
Concrete Pump	**82**
Concrete Saw	**90**
Concrete Vibrator	**80**
Crane	**85**
Dozer	**85**
Excavator	**85**
Front End Loader	**80**
Generator	**82**

Construction Equipment 50-Foot Noise Emission Limits	
Equipment Category	L_{max} Level (dBA)[1,2]
Generator (25 KVA or less)	**70**
Gradall	**85**
Grader	**85**
Grinder Saw	**85**
Horizontal Boring Hydro Jack	**80**
Hydra Break Ram	**90**
Impact Pile Driver	**105**
In-situ Soil Sampling Rig	**84**
Jackhammer	**85**
Mounted Impact Hammer (hoe ram)	**90**
Paver	**85**
Pneumatic Tools	**85**
Pumps	**77**
Rock Drill	**85**
Scraper	**85**
Slurry Trenching Machine	**82**
Soil Mix Drill Rig	**80**
Street Sweeper	**80**
Tractor	**84**
Truck (dump, delivery)	**84**
Vacuum Excavator Truck (vac-truck)	**85**
Vibratory Compactor	**80**
Vibratory Pile Driver	**95**
All other equipment with engines larger than 5 HP	**85**

Source: 1999 Arizona Department of Transportation

Not all the equipment in the table will be used. The project sponsor indicates that project construction equipment could include two excavators, two dozers, two compactors, a scraper, and various trucks. High noise-generating equipment such as various types of pile drivers, concrete saws, and hydra break rams, would not be used.

The 1971 EPA Table cited in the comment letter also contains pre- and post-mitigation noise levels. The above table may be more appropriate because it is more current and may provide a more reliable basis for projecting noise attenuation levels.

Once the project plans have been further developed, and prior to the start of construction, the feasibility of specific construction noise controls will be assessed and all those controls that are feasible will be implemented.

Most of the construction activity (residences, sites, and road extension) for the proposed project would occur beyond 100 feet from residences, but within approximately 50 feet of the adjacent homes' rear property lines. Peak noise levels that exceed the dBA established in the City of Oakland Noise Ordinance (i.e., 80 and 65 dBA during weekdays and weekends, respectively, where the noise source lasts less than 10 days, or 65 and 55 dBA, respectively, where the noise source lasts more than 10 days), would be expected to occur periodically at the rear property line of adjacent homes located above the Kenilworth Road extension (see Table 7, page 84 and Figure 10, page 26, in the Draft EIR).

Even with failure to fully meet the technical requirements of the noise ordinance, the impact would be less than significant because the Construction Noise Criteria 3 and 4 would not be violated (see page 86 of the Draft EIR). An acoustical analysis has been performed and all feasible mitigation measures would be imposed, including those adopted by the Oakland City Council on January 16, 2001, and those in the 2004 Housing Element Mitigated Negative Declaration. Essentially, the actual nose levels are not relevant for CEQA if all feasible steps have been taken to reduce noise impacts, such as the case here.

8-45 Please see Response to Comment #8-44, above. The proposed project's construction noise impacts would not be significant and unavoidable because they would not violate the City's Criteria 3 and 4 (see page 86 of the Draft EIR). An acoustical analysis has been performed and all feasible mitigation measures (and standard conditions of approval) would be imposed, including those adopted by the Oakland City Council on January 16, 2001, and the mitigation measures in the 2004 Housing Element Mitigated Negative Declaration. There is nothing unusual or peculiar about the project site or the project's noise impacts that requires additional measures or conditions to reduce impacts. However, the Planning Commission could consider such measures during its consideration of the project, to further reduce the already less-than-significant impacts.

8-46 ***39. Growth Inducement***

Please see Response to Comment #8-1(3). The construction of the Kenilworth Road extension would be growth inducing. However, because the deed restriction restricts further Kenilworth Road extensions onto private property, and because the sizing of the proposed project's sanitary waste treatment will only accommodate the flow from the project's residences, the growth-inducing impact of the road extension itself would be neutralized.

40. Growth Inducement from "Piecing Off" Larger Parcel

"*Piecing off*" is not a common technical term and its reference to a prohibited action is unclear and unsubstantiated. The project sponsor proposed a project on certain lots it owns and a series of actions that meet the standard land use and development controls of the City of Oakland and other jurisdictions with responsibility for land use regulation for the purpose of building seven new residences in Oakland. The same aspects of the proposed project that

neutralize the growth-inducing potential of the proposed project discussed above in Response to Comment #8-46(39) (deed restriction on further road extensions and sizing of wastewater facility) would also neutralize the project's potential growth inducement to the Felton property.

8-47 Please see Responses to Comment #8-46 and Comments #8-1(3) and #8-46(39) regarding piecemealing and growth inducement. The project is not conceived of for design and development purposes or proposed as the first phase of one project that includes future development of the Felton property. Future development of the Felton property, were it even to occur, would be conceived and proposed as a separate project, subject to all legal requirements. It is wholly speculative to analyze now, especially since there is no application for development currently before the City. Please see Responses to Comments #8-1(4) and #8-1(5) regarding the undeveloped nearby area referred to as the Lands of Varney and identified in the OSCAR as a potential conservation site. The proposed project would not be growth inducing and would not change development conditions (either forces for or barriers to development) faced by the adjacent, privately held, undeveloped and exceptionally steep site.

8-48 ***41. Mitigation Monitoring and Reporting Program***

Please see Responses to Comments #8-9(10) and #8-9(12). The use of both mitigation measures and standard conditions of approval is a common and accepted CEQA practice. The full set of measures (both mitigation measures and standard conditions of approval) will be incorporated into another CEQA requirement, the MMRP (*CEQA Guidelines*, Section 15097) for monitoring, reporting, and enforcement.

42. Mitigation Monitoring and Reporting Program

Since this comment is a continuation of the previous comment, please see Response to Comment #8-48(41), above. The required MMRP will include all mitigation measures required by CEQA and all standard conditions of approval listed in the DEIR.

8-49 No significant unavoidable impacts have been identified in the environmental review process. Thus, there is no legal need for ***more*** mitigation measures. However, the Planning Commission can add additional measures as deemed appropriate, but they are not necessary for CEQA compliance. Please review the specific responses below to the measures proposed in Comments #8-50 to #8-52.

8-50 The comprehensive set of noise standard conditions of approval 11(1-4) reflect those adopted by the Oakland City Council on January 16, 2004, and the mitigation measures in the 2004 Housing Element Mitigated Negative Declaration. In particular, the C.R.E.E.K.-proposed measure ("CREEK Measure") 50(A), using line power is already included in Standard Condition of Approval 11(2) (see second bullet) for impact tools, and would be preferred by

contractors when possible since it is a less expensive power source. The efficacy of temporary plywood barriers in reducing noise somewhat from extreme noise-generating equipment (Standard Condition of Approval 11(3), first bullet), cannot be determined outside of a specific case and it would depend on how stationary the source would be, its location on the site, and how the wall could be constructed to actually catch and modulate equipment noise. Its effectiveness will be evaluated prior to construction. CREEK Measure 50(B) is not included in the DEIR, but may be effective and may be considered as another measure to reduce less-than-significant vehicle back-up safety beeper sounds when the Planning Commission considers the project. CREEK Measure 50(C) is already included in the DEIR more stringently than the CREEK Measure (see Standard Condition of Approval 11(1), second sentence). CREEK Measure 50(D) is not included in the DEIR, but may be considered as another measure to reduce less-than-significant noise effects.

8-51 None of the proposed CREEK Aesthetic Mitigation Measures 51(A-F) are in the DEIR, nor are they required to mitigate a significant environmental impact under CEQA. They may also be problematic for different reasons. Measure 51(A) undermines the principle of a PUD where rigid interpretations of underlying zoning are relaxed if/when there is a design benefit of sufficient perceived value. Measures 51(B-D, and F) would need criteria developed to assess compliance. Measure 51(E) is one option, but it may not be necessary in all circumstances, or other options may be aesthetically better and/or more effective. Arbitrarily constraining the options may not be in the best interest of good design. These are more design-related issues and may be considered by the Planning Commission during its decision to approve or disapprove the project.

8-52 The C.R.E.E.K.-proposed Mitigation Measures 52(A, and C-G) are not in the DEIR, are not necessary to mitigate a significant environmental impact under CEQA, and do not contribute to the design and planning of the proposed project. Some of the proposals are already required by law (prohibition on encroachment of neighbors' lots; meeting fire truck turn-around requirements), or deal with legal and financial issues (nature of roadway, use rights, future extension, insuring the neighbors, pre/post home inspections). However, some of these measures could be considered by the Planning Commission in its decision to approve or disapprove the project. Kenilworth Road extension (CREEK Measure 52(B)), is prohibited, and is already in the EIR.

8-53 Additional issues from the August 29, 2005 Shordike (C.R.E.E.K.) Letter are addressed below.

15. Permit List

As stated in the DEIR on page 28, first full paragraph, 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 form time to time, and the absence of an activity or an agency from the list does not

preclude its use of the EIR for the purposes of granting permits or approvals, or of engaging in consultation.

18. Need Enhanced Dust Control

The BAAQMD (1999) requires enhanced dust control measures on construction sites greater than or four acres in area. The project site, as stated in the DEIR, page 11, third paragraph, first sentence, is approximately 2.9 acres. Therefore, the proposed project would not require enhanced dust control measures. The DEIR contains the following five basic BAAQMD fugitive construction dust control measures in Standard Condition of Approval 3.b:

1. Water all active construction areas at least twice daily.
2. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
3. Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas and staging areas, at construction-sites.
4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction-sites.
5. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

When a construction site is larger than four acres in area, then the BAAQMD requires the following enhanced measures in addition to the basic measures listed above:

1. All "Basic" control measures listed above.
2. Hydroseed or apply (nontoxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more).
3. Enclose, cover, water twice daily or apply (nontoxic) soil binders to exposed stockpiles (dirt, sand, etc.)
4. Limit traffic speeds on unpaved roads to 15 mph.
5. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
6. Replant vegetation in disturbed areas as quickly as possible.

Finally, the BAAQMD has a set of optional control measures, the use of which they strongly encourage at construction sites that are large in area, are located near sensitive receptors, or which for any other reason may warrant additional emissions reductions

1. Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.
2. Install wind breaks, or plant trees/vegetative wind breaks at windward sides(s) of construction areas.
3. Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
4. Limit the area subject to excavation, grading, and other construction activity at any one time.

List of Enhanced Fugitive Dust Control Measures, page 6 of 8, Channel Widening Plan: http://www.spn.usace.army.mil/guadalupe/4-1.pdf. And on page 16 of: http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/Uptown-PubReview/4E-AirQuality.PDF.

27. Characterization of Surrounding Land Uses

The identified sentence in the Hazards section of the Initial Study (Appendix A of the DEIR) is located on page 55 of the Initial Study, in the fifth paragraph and subsection entitled "Wildland Fire." The statement regarding project location and the characterization of adjacent land uses is in the context to Wildland fire areas which are located beyond the adjacent residences that are close to the proposed project site. Other sections of the Initial Study as well as the DEIR are discussing the whole field of adjacent land uses, from the adjacent residences to the Wildland fire areas and open space further a field. Thus, revisions to the text of these other sections are not required. For more discussion of this topic, please see Responses to Comments #8-1(2) and #8-1(4).

32.

Please see Responses to Comments #8-1(4) and #8-1(5). The Open Space, Conservation, and Recreation Element (OSCAR) did not include City purchase of the area known as the Lands of Varney for a conservation area. The proposed project is not out of compliance with the OSCAR or the General Plan in any manner. Project purchase of the Lands of Varney would not be necessary for compliance with the City of Oakland OSCAR or General Plan. The DEIR has not identified significant land use impacts requiring mitigation.

The Initial Study (DEIR, Appendix A, page 69) discusses the undeveloped, privately-owned land to the west of the project site known as the Lands of Varney and the OSCAR's designation as a potential conservation area and the recommendation that the City acquire the site, along with other potential conservation areas, as feasible. The DEIR expands on that discussion in Section G. Cumulative Impacts (pages 95-96), and notes three points: (1) that the OSCAR also recommends against purchasing it with scarce City funds, (2) that its steep slopes would be a substantial development constraint, and (3) that cities can not apply conservation land use controls to private property without voluntary agreement of the owner.

Figure 4 of the City's Open Space, Conservation, and Recreation Element (page 2-10) shows the Lands of Varney in the undeveloped area noted in the comment to the west of the project site as a Potential Resource Conservation area, not as formally designated open space. It is a smaller area within the larger undeveloped area west of the project site. The proposed project does not involve the purchase—or development—of any of the privately held Lands of Varney. The proposed project is consistent with the General Plan and its General Plan designation as Hillside Residential, the purpose of which is "to create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots" (LUTE, page 147), and it is within a R-30 one-family residential zone.

33. Land Use Policy Conformity

Table 4, Project Conformity with the Oakland General Plan is on pages 71–77 of the Initial Study (Appendix A, DEIR). It identifies a broad range of General Plan policies that are directly or indirectly related to the project proposal. The statements in the Table 4

"Substantiation/Comment" column reference either aspects of the proposed project description or standard conditions of approval and mitigation measures stated in the Initial Study. These comments are not simply assumptions about project design or unnecessary mitigation measures.

37. Utilities Runoff Pretreatment

Please see Response to Comment #8-38. The project proposes an on-site, post-construction stormwater management system. That system would be sized to not only manage on-site flows, but those of existing upslope flows from surrounding properties that are out of compliance with existing regulations and which are exacerbating—if not creating—unstable slope conditions. Please see the revisions to the "Post-Construction Stormwater Management" subsection of the DEIR, Project Description, page 25.

38. Fire Service Impacts

The Initial Study, DEIR Appendix A, page 91, assessed the potential impacts of the proposed project on public services, including fire services. It found that the small scale of the proposed seven new houses would be expected to have a negligible effect on the facilities for population-dependent services, such as fire protection, and that the direct and cumulative effects would be less than significant. In addition, the Wildland fire hazard impact was assessed in Section 7, Hazards and Hazardous Materials, of the Initial Study, on page 57, with Standard Condition of Approval 7.h stated on page 58. With the City's uniformly applied design requirements to protect hillside development from Wildland fire (Standard Condition of Approval 7.h.), and with no city development prohibitions in the area related to Wildland fire hazard, the impact would be considered less than significant. For reader convenience, the City's uniformly applied wildfire protection hillside development design guidelines of Standard Condition of Approval 7.h. from page 58 of the Initial Study, and with which the proposed project would comply, are as follows:

1. Roads not to exceed a 12% road grade and granting an easement so a complying 70-foot diameter turnaround for fire trucks.
2. Fire water flow meets fire code.
3. Demonstrate water pressure meets fire flow requirements or use approved fire sprinkler system in new structures.
4. Install four new fire hydrants.
5. Use plant species for landscaping that comply with City's vegetation management program.
6. Fire apparatus turnaround shall be dedicated and unobstructed at all times.
7. Submit survey and site plans for fire department review, prior to issuance of building permits(s) for the first house.
8. Road turnouts shall be provided per City's draft access road standards for dead-end streets.
9. All hydrants closest to any of the proposed building(s) shall be operational before construction.
10. All new homes shall be provided with an approved residential sprinkler system.
11. Each home shall have steps on grade when on-site slopes to access the rear exterior walls exceed 15 percent.

8-54 The responses to all of the comments contained in the C.R.E.E.K. letters of January 19, 2006 and August 29, 2005 submitted by John R. Shordike, correct many misperceptions about the nature of an EIR and the requirements for a sufficient, objective, accurate, and complete EIR. As such, the Final EIR will consist of the Draft Focused EIR, revised as indicated, and the responses to all of the public comments submitted on the Draft Focused EIR. Recirculation of a rewritten document, or this document, is not required.

8-55 The environmental review process for the Kenilworth project complies with CEQA. The environmental review history of the Kenilworth project is presented in the Draft Focused EIR on page 1. On July 19, 2005, the City Council directed that an Initial Study be prepared to determine whether a Negative Declaration or Focused EIR were required. The City determined that this Draft Focused EIR should be prepared. It was published on December 5, 2005, circulated for public review, and is now in the stage of responding to all written and oral comments made on the proposed project regarding the adequacy of the environmental review.

8-56 As noted in the Draft Focused EIR as modified, page 2, first paragraph, "the applicant has agreed to voluntarily add all such standard conditions of approval to the Mitigation Monitoring and Reporting Plan ('MMRP') developed for this EIR, which will be enforceable through the conditions of approval" and CEQA statutes. For further discussion on this topic, please see Responses to Comments #8-9(10) (and #8-9(11)) regarding standard conditions of approval, and also #8-9(12) and #8-48(41).

8-57 The proposed project protects the creek. On pages 25-27 of the Draft EIR, the Wetland Enhancement and Preservation component of the proposed project is described, including the deed restriction that establishes the creek buffer and prevents harmful activities. The Oakland Creek Protection Ordinance and the proposed project's compliance with the Ordinance are assessed under Impact Biology – 9, on page 63 of the Draft EIR. Further protection is found for construction-related filling and degradation impacts in Impact Biology – 5 on page 58; Impact and Mitigation Measure Biology – 3(i) on pages 54-56; Impact Geology and Soils – 2, including Standard Condition of Approval 6.b on page 71; the discussion of existing erosion/siltation and runoff conditions on page 77; Impact Hydrology and Water Quality – 1 and Standard Condition of Approval 8.a on page 79; and Impact Hydrology and Water Quality – 3 and Standard Condition of Approval 8.c. on page 81.

Please see also the following: (1) Response to Comment #8-1(6) regarding Internal Inconsistencies in Project Description; (2) Response to Comment #8-1(7) regarding Boundary Easement; and (3) Response to Comment #8-8(c) regarding Unsupported Project Objectives.

V. RESPONSES TO VERBAL COMMENTS

The City of Oakland Planning Commission held a public hearing on January 4, 2006, to provide the public an opportunity to comment on the Draft Focused EIR.

Below is a summary of comments that were made verbally at the public hearing, followed by the transcript.

Project Introduction and Planning Process Comments

Leigh McCullen introduced the project and gave a short history of the planning process to date for the project. David McDonald iterated the evolution of the project and the planning process over the past few years. He clarified an issue regarding the number of lots on the site, and introduced some of the problems they've been having in the area with respect to stormwater, landslides, slope stability, and access issues, and use of an unpaved roadway. He suggested that the benefits of the proposed project include building stability into the slope and paving the roadway.

Commissioners Lighty and Franklin asked about the apparent level of engineering required for the proposed project, and the square footage of the concept houses, and David McDonald discussed in more detail some of the landslide repair issues he is facing while the status of both the proposed project and the unpaved road on the site remains undetermined.

Emelyn Carothers spoke on behalf of her clients who are neighbors of the project site, and reiterated the danger associated with the unpaved road with continuing traffic, delays to the project, and the continuing rain. She clarified for Commissioner Mudge that the status of the road as either an unpaved right-of-way or a private road is unclear, which has rendered attempts to close the road unsuccessful. Commissioners Boxer, Mudge, Franklin, and Lighty debated the appropriateness of linking work on the slope's stability to the proposed project.

David McDonald spoke about his frustration with trying to do the repairs without development, and brought up the question of liability if a car slides off the unpaved roadway.

Mark Madras, representing two neighborhood organizations, expressed disappointment that the planning process has been contentious, and that a solution hasn't been found that satisfies CEQA requirements, the City, the developer, and the neighbors. He stressed their goal that a cooperative solution be found.

Ralph Kanz pointed out a conflict between the approvals and permits that have been previously granted, and the purpose of the EIR: namely, that an EIR should be approved before permits are granted.

Richard Grassetti said the project is a piecemeal project, with half done under the guise of an emergency, and the half that remains being proposed in the guise of an emergency.

Sonja Honda mentioned a press report claiming inappropriate project management at Fruitvale Village. He indicated its applicability to the proposed project as the City Council frequently doesn't understand what it's voting on. He also noted a tendency of the Council to support the Planning Commission, violations of the California Public Records Act, and files lost by various city government offices. He also cited the Leona Quarry project's approval as evidence of rubber-stamping by the City Attorney's office and the City Council.

Commissioner Franklin, Leigh McCullen, Mark Wald revisited the issue of who had responsibility for the unpaved road.

Commissioner Boxer said it would be appropriate for the Commission to direct staff if the Final EIR needs to examine stability and engineering, and generally to explore comments relating to any inadequacies of the Draft EIR.

Commissioner Mudge said she'd like to see from the appellants what they would like to change about the project, rather than the statement that the alternatives analysis is not adequate. Commissioner Lighty agreed. Commissioner Lee stated that without the motivation of the project the project sponsor might not have motivation to stabilize the slope, and that if the Commission could get to the bottom of the reason for opposition, maybe they could move forward. Commissioner Boxer stated that his direction was to accept or reject expressions of public concern.

Commissioner Franklin agreed with Commissioner Mudge, but stressed his concern for the public safety when the slope is unstable. Mark Wald said he believes that the City's position was that the road was not their responsibility. The hearing closed after further discussion of responsibility for the unpaved road.

Response

The discussions indicated above relate to the proposed project's review process and to the City's project review process in general, and do not contain any specific concerns about the adequacy or accuracy of the Draft EIR. Discussion of what entity has legal responsibility for the unpaved road is not related to environmental review of the proposed project. One component of the proposed project is slope stabilization and road improvement. Please see Chapter III, B.1. Project Components, pp.22 to 25 of the Draft Focused EIR for a description.

Tree Removal

Mark Madras and Don Holve expressed concern that eucalyptus trees were removed. Richard Grassetti indicated that not doing a nesting survey before cutting down the trees was negligent. He

indicated further that the Draft EIR's statement that the nesting period ended July 31st was erroneous, as it was based on the Streambed Alteration Agreement, which only applies to riparian vegetation, not the eucalyptus grove.

Response

Please refer to Response to Comment #5-39 regarding the removal of eucalyptus trees and the Lake and Streambed Alteration Agreement. Please refer to Comment #5-18 regarding site surveys of bird nesting, and Response to Comment #4-A regarding the timing of raptor nesting.

Enforcement and Mitigation and Improvement Measures

Don Holve brought up that the project is a Planned Unit Development, and as such, it incorporates basic covenants, conditions and restrictions (CC&Rs) on project design and scope, which are applicable independent of follow-through by this developer or other developers if the lots are sold off, for example the Kenilworth extension prohibition should be in all seven deeds. Mr. Holve indicated that the project sponsor violating his permit by cutting down trees on the site demonstrates the need for enforcement of the CC&Rs. He stated that the project sponsor also committed a timing violation with the way he dealt with the overburden from the unpaved road.

Mark Madras indicated that one of the major concerns the neighborhood organizations had with the Initial Study was the unenforceability of the improvement measures under CEQA, and indicated that the neighborhood organizations would be submitting detailed written comments.

Richard Grassetti indicated with its use of various improvement measures, the Draft EIR and the Planning Department was setting up a parallel process to CEQA.

Response

Please see Response to Comment #8-9(10) for discussion of Improvement Measures. Please see Response to Comment #5-39 for discussion of alleged tree cutting violations.

Neighborhood Disruption

Don Holve stated that there should be constraints which limit day-to-day disruption during the construction process, and that he moved to the canyon almost eight years ago and construction has continued throughout that time.

Response

Please see Responses to Comments #8-40 (on the neighbor's experience), #8-42 (on construction schedule), #8-44 (on the noise analysis), #8-45 (on noise impacts), and #8-50 (on construction noise mitigation measures). The Draft EIR indicated that the temporary construction noise impacts would be annoying and potentially significant. It included a set of

standard conditions of approval (11-1 through 11-4) to reduce impacts to a less-than-significant level. The expected construction schedule for the Kenilworth Road extension is six months as noted in Response to Comment #8-42.

Geology and Slope Stability

Richard Grassetti states that the Draft EIR does not include a sufficient description of the geologic stabilization that is being proposed.

Response

Please see Responses to Comment #8-4 and #8-33 regarding the DEIR slope stability discussion, and its sufficiency.

Draft EIR Authorship

Richard Grassetti indicated that the Draft EIR appears to have been written by the project sponsor's attorney.

Response

Please see Response to Comment #8-1 regarding the authorship of the Draft EIR.

Alternatives

Richard Grassetti indicated that the selection and analysis of alternatives were inadequate.

Response

Please see Response to Comments #8-12 through #8-15 regarding alternatives selection and analysis.

General Comments About Adequacy and Accuracy of the DEIR

Mark Madras indicated generally that some concerns raised in response to the Initial Study were not addressed in the Focused EIR. Don Holve agreed and indicated that the Draft EIR needs to be rewritten. Ralph Kanz stated that the Draft EIR was poorly written and that he would be submitting a list of deficiencies in writing. Richard Grassetti stated that the Draft EIR was not certifiable.

Response

In the discussions summarized above, the commenters do not identify a specific inaccuracy or insufficiency of the Draft EIR. The commenters' concerns will be considered by the decision-makers as part of their decision whether to certify the EIR.

OAKLAND PLANNING COMMISSION

January 4, 2006

Agenda Item 5:

Kenilworth Road

Construction of seven single-family dwellings by means of a Planned Unit Development

CHAIR JANG:

We can take Item 5.

MS. McCULLEN:

Thank you, Chairman Jang, and members of the Commission. This project will provide for the establishment and the planning and development of 2.9-acre parcel located on Kenilworth Road. Ultimately, it would provide for the construction of seven single-family dwellings. The project also includes a number of infrastructure improvements, including roadway improvements, stormwater management, wildland fire protection, geotechnical stability of the site, and wetland protection.

On April 20th and May 4th, this item was before the Planning Commission. The Planning Commission did approve the project on May 4th with a categorical exemption from CEQA, as you may recall. Subsequently, that decision was denied. It was appealed to the City Council and the City Council overturned the Planning Commission's decision, and directed staff to prepare further environmental analysis for the project—specifically directing staff to prepare an Initial Study, which was done, and the Initial Study was circulated in July 2005. As a result of that Initial Study, it was found that a number of potential issues could be addressed through standard Conditions of Approval; however, a number of issues were identified that would have potential impacts—impacts, such as aesthetics, biological resources, geology/soils, hydrology, and noise—and these impacts are addressed in the Focused Draft Environmental Impact Report that was circulated in December, which you should have a copy of.

Ultimately, it was found in the draft that there were no significant environmental impacts of the project that cannot be addressed through, or mitigated through, standard Conditions of Approval, Best Management Practices, or mitigation measures.

With that, I'd be happy to answer questions you may have on behalf of staff. The applicant is here to speak.

CHAIR JANG:

OK. Do we have questions for staff?

MS. McCULLEN:

Actually, I would just like to add on the purpose for this meeting tonight is to have the Commission provide staff and project sponsor direction regarding the Final Environmental Impact

Report and also the project. Also, to close the public hearing on the Draft EIR and the Planning-related submittals, but continue to accept comments until January 19th. After that, staff will prepare the Final Environmental Impact Report and we will be bringing that back to you. You will be making a decision on the Final Environmental Impact Report and the Planning-related submittals.

CHAIR JANG:

Before the applicant starts, tell me how many speaker cards we have.

MR. MILLER:

There's the applicant and then I have six speaker cards from neighbors—two of which are going to cede their time to two others, so I believe it's a total of four speakers with the time for six.

CHAIR JANG:

OK. Would the applicant wish to begin the presentation?

DAVID McDONALD:

Hi. My name is David McDonald. I'm the project sponsor. And some of this, Leigh has already presented, but the project came through May 5th, or May of 2005, and it was considered through an exemption, but the concerns were raised. So, we proceeded to prepare a Focused Environmental Impact Report. We felt that was a better way to go and it was more dependable than an Initial Study, which was the other option—we did both. I'm not a CEQA expert here, but essentially we're here today to take some public comments and comments from staff. So, I'd like to make another short presentation of the project.

I'd also like to note that, on the handouts, the bulk analysis showed an earlier version of it, which had eight houses, and that's incorrect. I'd like to re-direct over to the Initial Study and the EIR—that's on pages 13 and 26— where it shows there are actually seven lots as proposed, and previously approved and appealed. So that was just a couple of years old analysis that got in there accidentally.

The project itself has evolved over the past few years. There have been some challenges. There is no stormwater management in the area, so there have been a lot of landslide problems, slope stability problems, access issues for the neighbors—like to access the rear of their lots—so there have been a lot of challenges in a way to mitigate that the people can get down there, but also not disturb the ground. And we're hoping to move forward on this as quickly as possible.

Originally, a lot of time was focused on the creek area (which is the blue area here [indicating]), where we were trying to get a larger buffer zone. We worked pretty heavily with the Environmental Services Department, and we came up with a plan where we're merging the first two lots together and we enlarged the lot over on the south side in order to get a 20- to 25-foot buffer around the creek zone and completely protect it, leave it alone, and create a larger buffer zone around it.

The five lots were dedicated in 1925. They're old lots. Of the five lots, there were four [application project numbers]; a couple got merged over the years. We'll have a total of seven, but they're all about fifty percent larger than the average lots in the area. The roadway is dedicated to the City, but the City never accepted because of the improvements, so currently the roadway has been improved to about 10 feet after the 78 Kenilworth house (right about here [indicating]). Then after a

large landslide happened a couple of years ago, we were able to get permits to repair it on the north side of the creek area (this area right here [indicating]). So that area, which is part of the project, was already repaired and now the water problems we're having are further down where we haven't done any work.

The benefits of this project are we're creating emergency vehicle access down into an area where they can really use it, and adding fire hydrants and fire protection services. We're creating a water management system and stabilizing the entire site.

After this infrastructure—which this project is proposing—is put in, then any houses which are built on those seven lots have to go through the standard design review process that any other neighboring house would have to do. So, this isn't looking into actual designs of houses at all and there are no approvals that we're applying for right now.

Also, the process that we went through: we worked a lot with the neighbors, City staff, Environmental Services, Public Works—each one. The project has evolved quite a bit: about the alignment of the road being between the right-of-way, preserving the landscaping that some of the neighbors had placed within the road—positioning the road in such a way that it would work with that.

At this time, I'm not sure that everyone remembers the project, but we worked pretty hard with Ms. Bruner to try to mitigate the issues with the appeal, and we came up with a lot of pretty creative ways to try to work with the neighbors. In the end, it didn't seem to work out, so here we are. Appreciate your time. Thank you.

COMMISSIONER LIGHTY:

Are you a frustrated engineer or an actual engineer?

DAVID McDONALD:

I have some frustrated engineers.

COMMISSIONER LIGHTY:

Because, I'm just wondering… It seems more like an engineering experiment, really, than a development project. I mean the level of engineering is rather extraordinary, it seems to me.

DAVID McDONALD:

In the beginning, it was a basic landslide repair, but we've done a lot of extra analysis to prove every question that could conceivably be asked. The same thing has been analyzed by several different people. That's the process we've gone through.

COMMISSIONER LIGHTY:

Yes, I'd say that.

DAVID McDONALD:

It's frustrating.

COMMISSIONER LIGHTY:

Well, I can see why. I mean the retaining walls, the elaborate retaining walls, the placement of the leach field, the drainage systems on both sides of the creek, the creek protection…

COMMISSIONER FRANKLIN:

I was reading this, and I thought I was at work. OK, this is the Hunters Point Shipyard. We're doing the same thing.

COMMISSIONER LIGHTY:

How big are the houses?

DAVID McDONALD:

They're not designed yet. There are some conceptual houses, and typically on a hillside, we're in the 4,500-square-foot range.

COMMISSIONER LIGHTY:

Yes, that's what I thought… 4,500.

DAVID McDONALD:

The nice thing about the earlier work that we did a year or two ago is you can walk down this [indicating] after some pretty serious rains like we had last week and look at the area we did and it's right, it's stable, it's been through a couple of winters, and it works. Every winter it rains, and we drive down it and just see more damage to the property. It's really frustrating.

COMMISSIONER LIGHTY:

So the landslides you're going to repair?

DAVID McDONALD:

They're all across here [indicating] and here, and there was a really large one here that was already repaired. Another challenge we're running into is the contractor we use—all he does is landslide repairs, his father did landslide repair, he's just really good at what he does—and he takes it pretty seriously.

The state of this repair [indicating] is in jeopardy because without the pavement on it that caps it, it breaks up the compaction and water starts seeping in. We went down about 25 feet. We really went all the way down into the base rock. A lot of people, like over on Dawn Street [indicating], they just repaired like right where the house was, while we started at the base of the property line and went all the way out. We did a really quality job. So, it's concerning to now see the roadway–where we put a half a million dollars into it–to see the repair, just on that portion of it, starting to show signs that the water's getting in.

That's why in the application, with these rains I don't think we'll opt for it, but Vice Mayor Bruner was willing to issue a wet weather permit, which is not typical, if we were able to get through this process, to be able to solve some of these problems sooner than later. But, it's probably getting a little too late in the game. Any other questions?

CHAIR JANG:

Mr. Miller, the other speakers for tonight?

MR. MILLER:

Yes. Emelyn Carothers.

EMELYN CAROTHERS:

Good evening. I'm Emelyn Carothers. I'm the attorney representing John and Sheryl Clark, who are the homeowners who experienced the terrible landslide that Mr. McDonald just referred to. And, in fact, they also participated financially in repairing the road because it took a joint effort.

I've spoken to you before twice last spring about this problem and I'm here today to let you know that it has become more urgent. We're starting to see earth slippage in the last rains. There have been further landslides further down the road. We're continuing to experience neighbors driving big trucks down the road. Our concern is that, until this project is completed and that road is paved, this entire hill is in jeopardy, including my clients' home. I know you've all seen the pictures. I believe you all have copies of the letter from Ted Yeghoian, who is the contractor that Mr. McDonald referred to that repaired the landslide, who stated that this road should not be driven on until it is paved and stabilized. And the problem is that we continue to have traffic on it, the project continues to be delayed, and the danger increases exponentially—and particularly after the last rains.

So, I'm here on behalf of my clients to ask that you consider this to be an urgent situation and act without delay to the extent possible. Thank you.

COMMISSIONER MUDGE:

May I ask a question?

CHAIR JANG:

Sure, go ahead.

COMMISSIONER MUDGE:

Why is the road being driven on? Does it need to be driven on?

EMELYN CAROTHERS:

Apparently, several of the uphill neighbors—my understanding is that they have been sending work crews down the unpaved road in order to be able to more easily haul weeds out, or do some of their landscaping work, and have consistently been driving on that road, which we have videotapes of and can certainly show you. But that's been an ongoing problem.

We have not been successful in having Kenilworth Road closed. I know the Planning Commission directed the Public Works Department to investigate that, but we've been getting nowhere on it. And, when I call Public Works, time and again they say they don't know anything about it. So, it's a very frustrating situation and we're not quite sure where to go, except that getting this project done and getting the road completed seems still to be the most expedient way to solve the problem.

COMMISSIONER MUDGE:

This is an unpaved public road?

EMELYN CAROTHERS:

Well, that's a really good question. It was dedicated as a public right-of-way and I believe the City Council accepted the dedication sometime years ago but, to my knowledge, it was never accepted formally as a public road. In fact, when it slid, my clients asked the City to repair the road and we have several letters where the City said: no, it's not our responsibility because we've never accepted responsibility for it as a public road. But, when my clients tried to close it off, then… through some neighborhood controversy, the police were brought in and they were informed they could not block off the road. They had to allow continued use.

COMMISSIONER BOXER:

Could I just ask you one further question through the Chair?

CHAIR JANG:

Commissioner Boxer.

COMMISSIONER BOXER:

I'm having flashbacks to the last meeting about Grizzly Peak, but due to the circumstances, you know, you never know where all the facts are. I'm just trying to understand. The position of your client is that we need to approve this development so that the hill is stabilized?

EMELYN CAROTHERS:

That really is their position.

COMMISSIONER BOXER:

OK.

EMELYN CAROTHERS:

You can have your own reasons to approve it, but I want you to understand that it really is in the best interest of the people who are in that area that this project be allowed to go through because it will have the effect of stabilizing…

COMMISSIONER BOXER:

OK. Let me just make—with permission—I'm sorry, maybe I'm a little dense here. Was there some action that the City took that has caused this condition to be there? In other words, if this road was a 'public right-of-way' dedicated but not accepted…? We didn't do anything as a Planning Commission last April and May that would allow this landowner to do certain improvements, which now are causing the hill to slide. So, it seems like a false choice to me, quite frankly, that I have to approve a seven-unit development in order to stop a hill from sliding and causing further damage. That's a rhetorical question; you don't even have to answer it.

EMELYN CAROTHERS:

Well, if the hill is not stabilized, there will be further problems in that area. I think there's no question about that, and I'm merely pointing out that it may be in the City's best interest to allow that to be stabilized before the uphill properties start to slide down into the creek.

COMMISSIONER BOXER:

I'm going to stop my line of questioning because it's not going to get us anywhere today.

COMMISSIONER MUDGE:

Maybe I don't understand your concern, but this body did approve this project back in May and April based on a categorical exemption from CEQA, and the only reason why it's back in front of us is there was controversy over the procedure that we should use.

COMMISSIONER BOXER:

I understand, but nothing was done on the property subsequent to our approval because it was appealed and the appeal was accepted by the…

COMMISSIONER MUDGE:

Simply that it's been raining hard.

COMMISSIONER FRANKLIN:

Through the Chair? This to me is like when Congress has a bill—and it's a very important bill—and they tack on something to get it to pass through. I feel like this is a hazard and this hazard should be dealt with whether they are building homes or not. I think it's disingenuous to say: well, you have to approve these seven lots to take away this hazard. The hazard should be dealt with if they never develop these properties. Because there's imminent danger of it sliding, whoever owns the property should deal with this issue. Yes, this project did come before us and we approved it, but I just think that's a tack on: we have to approve this project quickly to stop the landslide.

EMELYN CAROTHERS:

I would add that my clients did try to protect the property and they were told by the City that they did not have the right to because this road was the City's jurisdiction.

COMMISSIONER FRANKLIN:

I agree with that. I understand that they tried to block it off, but…

COMMISSIONER BOXER:

Commissioner Mudge, I understand what you're saying. You're just saying this is outside the realm of this particular item, which is for us to determine whether or not the EIR and blah, blah, blah—I got that, but I'm just conceptually trying to get my arms around that since I wasn't on this Commission in April and May when it came to us last time, so I appreciate the indulgence of the Commission.

COMMISSIONER FRANKLIN:

I agree with you, actually—and I was here.

COMMISSIONER LIGHTY:

If I could weigh in on this? I'm surprised by the turn this conversation has taken. I'm going to have to agree with Commissioner Mudge on this.

The situation is that the property owner has a proposal that will address all of the environmental conditions, right? We can evaluate the adequacy of that proposal. It has a plan to alleviate the landslide conditions to protect the creeks as part of an overall development. The question of—absent that development—does the landowner have the obligation to stabilize that hillside if, in fact, it's the use of a public right-of-way that's causing the problem, becomes a separate and distinct legal issue that we don't really have to adjudicate. So, if we assert that: hey, tough luck; build the houses or not, fix the hillside. But the landowner could come back and say: But it's not my property that's causing the problem, and you are not in a position to tell me to fix a problem that I'm not responsible for.

COMMISSIONER FRANKLIN:

I've listened to the attorney's comments and I've completely just stepped back away from the project and just listened to her tie the two together. And I understand that by approving the project, this whole issue may be resolved through this over-engineering the hillside and keyways and preventing loss and this and that. I'm just hearing that one piece: hurry up and approve this project, so we can save the hillside. I'm addressing just one specific piece of it.

COMMISSIONER LIGHTY:

Right. But what I was going to suggest is look at it this way: we <u>did</u> approve the project.

AUDIENCE:

Exactly.

COMMISSIONER LIGHTY:

These folks that she [indicating] represents, their house is in jeopardy. They're saying to us: you guys approved this; if this remediation and landslide repair had gone forward, my clients' house wouldn't be in jeopardy.

So you have to understand that basically a process issue over the type of environmental review that's required has delayed landslide remediation, therefore potentially destroying their house. I think it's a reasonable argument to make.

DAVID McDONALD:

May I make a quick comment?

CHAIR JANG:

OK. Mr. McDonald.

DAVID McDONALD:

I just wanted to comment that we had to fight pretty hard to get the approval to do this [indicating] landslide repair which had no development attached to it. They wanted us to go through the full environmental level before we did any physical repair jobs. And it wasn't done through an emergency permit; we had to go through all the reports and geotechnical, so we've been working on this for several years, to actually be able to repair it. The development, obviously, that's the whole picture of it, but we would have been happy just to have come in and done the repair, separately than some of the development portion, because it's damaging the property and costing us money also.

And I think the frustration you might be hearing from the Clark's attorney is that they tried… with a lot of this area where it's not improved, there are no guardrails and so, when there was the landslide, cars were going down an 8-foot section of dirt that the other 10 feet had slid down the hill. If a car drove by there without a guardrail and slipped down the hill, I'm sure it would be a legal issue. And when they closed the road down, they were told to open it. It's a hard mix because on one hand, we don't want to take sides on it, we just want to get the development done, and fix the problem and move forward. At the same time, I think that, if the project is delayed—it's not 'hurry up and approve it,' maybe the answer is: temporarily, let's close it down for a little bit so that we don't have to address the legal issues in a different way if a car ends up down the hill. I think that's kind of the position of everyone: we just want things to be safe.

CHAIR JANG:

Commissioner Lee?

COMMISSIONER LEE:

Yes.

MR. MILLER:

The first speaker is Mark Madras, who has two minutes ceded from Marjory Madras.

CHAIR JANG:

OK. Four minutes.

MARK MADRAS:

Good evening. My name is Mark Madras. I live at 7061 Devon Way. I appreciate all the effort that you are making on all of these projects.

I'm just going to quickly say how disappointed I am that this discussion has gone in the direction it has because we just saw the Head Royce School presented with full support of the neighbors and I support you [indicating]. We could talk about the whole slide issue for a long time, but that's not what I want to talk about.

What I do want to say is that I'm here to represent the neighbors of the Kenilworth project. There are over 200 general neighbors that make up what we call C.R.E.E.K.—The Claremont Residents for Environmental Enforcement at Kenilworth—and the North Hills Phoenix Association, all of whom supported our successful appeal to the City Council last July. I want to say, again, our goal is to cooperate with the City and the developer to ensure that the Kenilworth project satisfies all

the City and CEQA requirements, protects the environment, and addresses the desires of the developer and the neighbors.

We and our attorney have made repeated what we consider good faith efforts to sit down with the relevant parties and work out our concerns in a mutually agreeable way. There was quite a lot of activity in that direction last July when Jane Bruner got us all together. I think we all felt we made a lot of progress, but there wasn't enough time to do it before the appeal was scheduled and things weren't tight enough to make everybody feel comfortable, so we had to go ahead with our appeal and our appeal was upheld in July. And the result of that appeal was the Focused Environmental Impact Report that we're talking about tonight.

We really did want to cooperate and communicate; we told everybody that. But, unfortunately, none of that has occurred since last July. Instead, within a very few days of the City Council requesting the Focused Environmental Impact Report, the developer cut all eucalyptus trees on the property. Everything that's in here that's green [indicating] is now gone. And, not only were they cut, but they were cut with no communication to us or anyone else at all. We were outraged that the environment would be so dramatically altered before this extended environmental impact review could be conducted. And, when we complained to the City, a stop work order was issued. So, I only mention this not to create controversy, but to help you understand why we are concerned about this project.

We've also looked carefully at this draft environmental impact review—we and our attorney—and we're really disappointed that a lot of the concerns that we had before, especially the ones that we were discussing under Jane Bruner's guidance, are simply not dealt with in this document. There are a lot of examples; I don't want to list them all. You'll be getting written comments to substantiate this. But I do want to point out that, at least as far as we read this, one of the major concerns we had with the Initial Study is that things were cast in terms of improvement measures and CEQA requires mitigation steps in order to be enforceable. And there aren't mitigation steps in this report except, perhaps, if you're generous by some indirect method. So, that's really a concern of ours.

We're going to be preparing detailed comments with our attorney for filing by January 19th. Janice Holve, who's here and whose husband will speak after me, has already submitted comments based on the direct personal experience they had when this [indicating] repair was done next to the Clark's house.

We'd like to really stress the fact that we want to cooperate and we'd like to invite each of you to visit our neighborhood. We would be happy to show you what we're concerned about. We'd also be happy to come and visit you, and go over these things in a way that I think would be easy to understand.

So, I just want to conclude by saying that it's our goal to cooperate, try to work things out together. I think the Head Royce project we just all saw was really inspirational. I'd just feel great if we were all here saying the kinds of things that they did, but unfortunately, we're not. I hope we can get there. If we can't, then we'll have to pursue all of our other options. I'd like to thank you for your attention, and introduce Don Holve.

MR. MILLER:

Don Holve and he has two minutes ceded by his wife—Jane, Janice—Holve.

DON HOLVE:

As Mark said, my name is Don Holve, and my wife and I live uphill of the project. We own a house [indicating] here and the lot adjacent to it. As Mark has stated, the EIR needs to be rewritten to address the City concerns, and Richard Grassetti will talk about that in more detail.

In conjunction with the EIR, the neighborhood association has previously provided a list of key neighbor concerns. These can be broken down into two basic categories, which are: (1) project design constraints and (2) construction disruption minimization for the neighborhood.

I want to highlight just one point on the project design and scope. The project is a planned unit development and, as such, it incorporates basic [covenants, conditions & restrictions], which are applicable independent of follow-through by this developer or if specific lots are sold off to independent owners/developers. There really must be enforcement provisions to ensure follow-through by the developer or developers. Kenilworth extension prohibition via a conservation easement on lot #7 should be in all seven deeds. This is just one example. Mark has illustrated the need for enforcement by his example of cutting down all the eucalyptus [indicating] and other trees, also not removed during the fire season. So this developer has already violated his permit during the Kenilworth Road improvements. In addition to that, he violated the length of time and the way that he dealt with the overburden [indicating], the extra overburden from the road below our lot last year. We can discuss that more later on if you'd like details.

On the second category, the major point is that given the five-year estimated completion time, there should be constraints which limit day-to-day neighborhood disruption during the construction process. We moved to this rural canyon in 1998, almost eight years ago, and there's been non-stop construction around us, including Saturdays on a regular basis.

So, again, I'd like to highlight in summary that we need specific mitigation measures with real enforcement teeth. Thanks very much.

CHAIR JANG:

OK. Thank you. Next speaker, Mr. Miller?

MR. MILLER:

I believe Ralph Kanz was next on the list.

CHAIR JANG:

We don't have 'rollover minutes' here…

AUDIENCE:

You could…

RALPH KANZ:

Good evening. My name is Ralph Kanz. First of all, I would just like to say that, after reading through this EIR, I was really surprised at how poorly written it is and how many deficiencies there are, so there is by no means enough time to go through all the deficiencies now—that'll have to be done in writing.

What I would like to bring to your attention, first of all, is the August 30, 2004 letter from Mr. McDonald to Calvin Wong at the City. This is a real clear explanation of why we get into the

problems like we're having with this particular development proposal. It's about building a 2-inch, pressurized sanitary sewer line on the site. Down in the letter, it says:

> *I've been progressing with development plans for Kenilworth Road with the various departments of the City of Oakland for several years, and many approvals have been granted and permits issued and work completed for different aspects of the project, including roadside retaining walls, private storm drain and detention system in a private road, creek protection permit, grading permits for slide repair, PMWM…*

This is like a total of nine permits have been issued…

> *We proceeded with this portion of the work after assurances from the City at meetings with Ms. Cappio, Mr. Yeghoian, and Mr. Manassi that the project would be backed by the City pending approval of our environmental document. The above portion of the project was necessary to complete before last year's rains. The remaining permits will be granted upon approval of our Initial Study.*

In other words, this developer went forward and did that work because he was promised by people in the City government that he was going to be able to have his project; it was a done deal. You can't give somebody a done deal before you've done this [indicating the report]. You've got to do the EIR first and you've got to do the EIR before you start handing out permits. And that's why you're having the dispute that you're having over this proposal, because you haven't done it right. It hasn't been done right. And this Commission needs to send a message to the Planning Department to start doing it right, because they aren't doing it right. I'd like to say more but I've run out of time. Thank you.

CHAIR JANG:

Mr. Miller, do we have any more speaker cards?

MR. MILLER:

Richard Grassetti.

RICHARD GRASSETTI:

I'll speak quickly. I just came from teaching a class at Cal State Hayward on how to do EIRs right…

Regarding the comment on the improvement measures issue: the City is not allowed to set up a parallel process with CEQA and that was what that was all about. The reason that we have an EIR now—one of the reasons—is that the State Attorney General's Office started tracking Oakland's practice of not doing Negative Declarations and called up Mr. Wald and said, What the hell's Oakland doing? The AG's office is also tracking this project.

Piecemealing: This clearly was a piecemeal project. Half of it was done under the guise of an emergency and now they want to do the other half in the guise of an emergency—without the environmental review being completed.

The issue of geologic stabilization: if you read the EIR, you will find nothing in it describing the geologic stabilization that's proposed. Zero. No description. No analysis. Period.

If you look at the document, you'll see that it was written by the applicant's attorney. I know that because I've written EIRs for twenty years, and I can tell one written by the applicant's attorney versus one written straightforwardly.

The objectives in the EIR are limited so that the only feasible alternative is the project. It says seven lots. You can't have an alternative that meets the objective if it says seven lots. It's illegal to do that.

The alternatives are inadequate]. The analyses are inadequate. I could go into detail; I don't have time.

The biology—I think you'll be interested in this: I talked to the Fish & Game warden who was responsible for the Oakland Hills. She said to me: not doing a nesting survey before cutting down those trees is 'negligent.' And there's one other issue under biology: the EIR says that the nesting period ended July 31st, not August 31st. Well, they based that on the Streambed Alteration Agreement. The Streambed Alteration Agreement only deals with riparian vegetation along side the stream—not the eucalyptus grove. So, it's a fallacy in the EIR which would have been caught had the EIR been written by somebody impartial instead of the applicant's attorney.

I've got a whole lot more that will be in a letter, but this document's got a big problem and it's not certifiable.

CHAIR JANG:

Sonji Honda's our last speaker.

SONJI HONDA:

For the record, I'm Sonji Honda, East Bay News Service. Let me just point out for starters, if you've not seen it, the new East Bay Express that just came out today with a front page story about 'Ghost Town'—the [inaudible] alleged Oakland City Council and City officials are heralding as a model of success in Oakland—and it's an extensive look at how poorly the finances are running, and at the Unity Council that manages it, which has not even managed to find a second tenant, other than itself, in a 21,000-square-foot building. There's a lot more in there.

And it's relevant in three ways to this project. The first is that you have in place (as I've said many times before and I'll keep saying it) a mayor on the City Council that yesterday couldn't spell CEQA and today they're having to approve CEQA documents. And, as can be seen at the City Council meetings, they often do not understand what they're voting on—based on the questions that they ask, as well as some of the comments that they make. They sometimes are not even in the same part of Oakland on a geographical basis for the project with some of the questions that they've raised in the past.

And on the appeal, it was doubly interesting because this Council has generally said: we're going to sustain the Planning Commission. That goes back the last ten or twelve years. There have been very few decisions that were actually overturned. But it's my understanding that there were so many legal potential consequences that the City Council, in closed session, was told that it was probably going to be a wise idea to sustain the original appeal.

The second thing is what Mr. Kansak brought up at Open Forum, at this point, the Community Economic [inaudible] records are a shambles. As an agency, it is not in compliance with state law regarding records retention. There are violations of the California Public Records Act. East Bay News Service filed a lawsuit in 1998, that was before Jerry Brown came into office. The

lawsuit was settled in 2000, and the City stipulated to provide documents related to a number of specifics including this [indicating] area in general—not this specific project—and here we are in 2006 and those files still have not been located. A lot of the files simply were left sitting in hallways and, ultimately, were just dumped. Within the same agency, the Rent Board (which is in another division—the Housing Division) had extensive hearings on the 1200 Lakeshore project. Dozens and dozens of tenants gave testimony in this very room. All the audiotapes and all the transcribed notes disappeared. They had to re-do the case. And, of course, a lot of information could never be re-created or reconstructed. Because the new owner on the property said: oh, we don't have that stuff anymore; it was with a previous owner. And, as a result, you got a very different situation.

And the third and final point that relates to this is that if you're records are not available for public inspection, if they're not available in the manner that they are supposed to be, if your CEQA documents are not complying with state law, and the last speaker's points about the Attorney General's office, I can also echo, because I have raised issues and concerns both with the City of Oakland and at the state government level. And, as you know, this city has been doing a rubber-stamping. When the Leona Quarry project was approved, by accident, the City Attorney's office released several modifications to the Conditions of Approval and it turned out that those were included with a cover sheet from the applicant's attorney and the only thing that Ms. Heather Lee had changed was the first sentence so that it said the 'City Attorney recommends' rather than the 'applicant wants.' And I showed that to each of the Council members after the meeting and a couple of weeks later I asked and it came back: well, it's standard practice in Oakland to have the applicant's attorney draft these kind of things. And, unfortunately, again, the citizens of Oakland don't get served.

So I just wanted to weigh in for those points. Thank you. And I do hope you'll all get a copy of this article.

CHAIR JANG:

OK. Thank you, Mr. Honda. Before I close the public hearing portion on the draft Focused EIR, are there any questions that any of the Commissioners wish to direct to the speakers? Commissioner Franklin.

COMMISSIONER FRANKLIN:

I have two questions for staff.

CHAIR JANG:

OK. Go ahead.

COMMISSIONER FRANKLIN:

Now, my comments are not about the merit of the project. My questions are not about the approval process or procedure. I have a question about safety. Who owns the road? And if they fight this out for the next ten years, who is going to make sure that the hillside doesn't fall on someone's home and someone's killed? That's what my question is—outside of the project. That's what I'm concerned about.

MS. McCULLEN:

That's a good question. The road was actually dedicated to the City and accepted by the City; however, the improvements were never made. So, it is a public right-of-way, but actually there's no roadway. So, what happens from here and who's liable for any… I'm not sure; I think that's a legal question.

MARK WALD:

Mr. Chair, I don't think we're going to get into the issue of City's liability in an open discussion, but Public Works could look at the road—the unimproved road—and if they believe it's a safety issue for people to continue driving on it, then they could close it down to any vehicular traffic pending repairs made by the project sponsor or otherwise.

CHAIR JANG:

Did you have a question?

COMMISSIONER BOXER:

I mean certainly it would be right for us to direct staff if the Final EIR needs to look at the stability and the engineering, and determine whether or not certain mitigations need to be done—as well as biology and everything else. That would be my comment. My comment would be there were questions raised here with regard to the adequacy of the EIR on certain issues and we are going to be, it sounds like, receiving a comprehensive letter from someone who seems to know about these things. My direction would simply be to explore those.

CHAIR JANG:

OK. So, what I'll do is close the public hearing and take directions from Commissioners for the EIR.

COMMISSIONER MUDGE:

May I?

CHAIR JANG:

Yes, please.

COMMISSIONER MUDGE:

I may have a slightly different perspective on this than some of my fellow Commissioners because I've seen this situation played out on many, many other cases. It's clear that the neighbors don't like this project. That's very clear. But what I'm not hearing is very much in the way of substantive reasons why they don't like the project. What I'm hearing is a lot of process, process, process. And they want an EIR—they've got an EIR now. It doesn't surprise me at all that they don't like the EIR now. The EIR's now defective. So, the City is actually giving them what they said they wanted the first time around. Now that they've got it, they don't like it. There are lots of traps in CEQA. There are a ton of traps in CEQA. It's a litigation minefield. And that's what I think these neighbors are doing.

What I'd like to hear from them is what substantively about the project is it that they would like to see change? Is it the number of lots? Is it the potential size of the houses? I'd like to hear the merits of this rather than that the alternatives analysis isn't adequate. I'd like to hear what you—do you really think the engineering's not right? I don't want to hear that the improvement measures don't qualify as mitigation measures under CEQA because I just think that that's a very legalistic argument. These applicants are going to get the EIR and the City's going to get the EIR right one of these days whether you guys send it back again and again; eventually, an EIR is going to be certified and found to be adequate.

So let's cut to the chase here. This kind of process, process, process I find very frustrating. You know, the project, it's not changing. The project's not changing. All that we're doing is generating a lot of paper, frankly. And I practice, this is how I make my living: attorney's fees, right? We're all just sort of generating a ton of paper. I'd like to get away from all the niggling stuff and figure out is there a project that the neighbors can live with and that our applicant can live with. And stop all this fighting about CEQA because I think it's a waste of resources, I really do.

CHAIR JANG:

Thank you for that. Of course, I'm looking at you Commissioner Lighty.

COMMISSIONER LIGHTY:

I agree with Commissioner Mudge on this. That's all I have to say.

CHAIR JANG:

Good. Commissioner Lee.

COMMISSIONER LEE:

Well, when I look at this, it's almost like a question of reality. You know, if the property owners do not get the approval of the lots, it's not going to have the potential for land and he's not going to spend the money—the maximum money—to fix the road, so it's a chicken and egg situation. But one way or the other, it's going to be resolved, so I think Commissioner Mudge is right—if we get to the real bottom of the reason for the opposition, maybe we can move forward; otherwise, it's going to go around in circles.

CHAIR JANG:

Thank you. Any comments, Commissioner Boxer?

COMMISSIONER BOXER:

I appreciate Commissioner Mudge's comments, and my only direction was simply to respond to public comment—not to go out and do another EIR—so that the expressions of concern are either accepted or rejected.

COMMISSIONER FRANKLIN:

Just one final comment. I agree with Commissioner Mudge, she's the attorney, and the whole paperwork and the intellectual aspects—I agree with that, but I'm concerned about there being a safety hazard tonight and it hasn't been dealt with by whomever the appropriate parties are to deal

with it. Yes, that safety hazard will probably be resolved if this project is approved at some point in the future, but what happens tonight about the safety hazard? I know that's not in our purview; we're talking about approval or public comment for this EIR, and I get that. I'm just having social commentary to the City or the property owners or whomever else. We can battle it out and have attorney's fees and have a 45-day public comment period that started December 5th, and then what happens if it rains hard again? That's my only point.

CHAIR JANG:

OK. I'm assuming that's the level of feedback we're giving staff at this point, so I think we've basically closed the public hearing. I think we've heard from the Commissioners, so this is kind of a summary. Let's see: we're accepting comments until January 19, 2006 on this EIR. We don't have to take any action on this, OK? As far as addressing other issues, is there a way we can get a report back from staff on that? Outside of the EIR; some of the concerns that were expressed?

MR. MILLER:

Regarding the roadway and who is responsible?

CHAIR JANG:

Right. I'd like to get a clarification on that.

MR. MILLER:

I checked with the planner, Leigh McCullen, and there's been a significant amount of discussion and attempts to try to decipher some of the issues that Commissioner Franklin brought up and others have discussed. There's been some difficulty in getting answers from the appropriate people in staff, so we will make other attempts to do that and bring it up the chain of command. My understanding in hearing the reports from Leigh is that there's been difficulty in doing that; in taking ownership, so to speak (pardon the pun), of who's dealing with the issue. But we will make another attempt at doing that and will provide you with a report—certainly in conjunction with this item coming back to this Commission as part of the certification for the EIR.

CHAIR JANG:

OK.

MARK WALD:

Mr. Chair, I think the City's position, as I understand it, is that since the road is unimproved, it is not responsible for items relating to the road, but I think it may not be the road that's causing the problems. It could be the steep hillside and things like that. That's my understanding of the previous Public Works position. So, even if the road may be unsafe to drive on and they close it to vehicular traffic, that still may not prevent landslides or slipping to occur. It may help alleviate that.

COMMISSIONER McCLURE:

We probably don't have the capacity to direct staff to close the road. I would just say that, for the record, maybe the recommendation of myself and perhaps other members of this body that that be a consideration and that that be investigated because I think the last thing that anyone wants is for

someone to drive down that road while we're debating the issues over the CEQA document and have a car go down the ravine. So, if mid-term mitigation would be to close the road, I would recommend that.

CHAIR JANG:

Alright. So that does it for the site.

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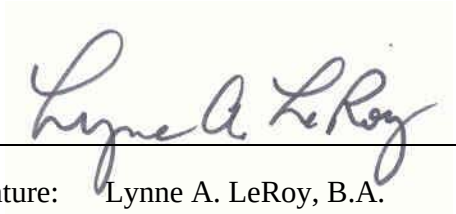


Signature: Lynne A. LeRoy, B.A. Date May 28, 2006

APPENDIX A

Hydroikos Ltd.

2560 Ninth Street, Ste. 216
Berkeley, CA 94710
Phone: (510) 845-0435
Fax: (510) 845-0436
coats@hydroikos.com
www.hydroikos.com

September 1, 2006

Mr. Stu During
Stu During Associates
Environmental Analysis & Urban Planning
120 Montgomery Street, Ste. 2290
San Francisco, CA 94104

Dear Stu,

At the request of David McDonald, I revisited the site of your proposed development on Kenilworth Road in Oakland, to look for additional jurisdictional creeks or wetlands that may have been missed in earlier inspections of the site. I walked down the road, and onto parcels 2, 3, 4, 5, 6 and 7. I also reviewed Ralph Kanz's letters of January 9 and 19th, 2006, and the Oakland Creek Ordinance and Guide. Based on my site visit and review, I have the following observations:

1. The road intercepts shallow subsurface drainage from landscape irrigation and (near the upper end) from a septic tank leach-field. The water is currently flowing a short distance along the road before infiltrating (See Figure 1). The unusually wet spring this year may have contributed to the continuing sub-surface flow. Two wetland plants (*Cyperus sp.* and *Juncus sp.*) are growing in the inboard road ditch (Figure 2).

2. There are several 4" corrugated plastic drain pipes that discharge on or above the road. Some of them carry a trickle of water, probably from subsurface drains that pick up landscape irrigation water from the lots above the road. They may also be connected to roof drains, and carry storm water during the winter (Figure 3).

3. A concrete V-ditch just above the wooden retaining wall along the road is blocked by soil and debris. The ditch should be cleared, and connected into a storm-drain system at its lower end.

4. Because the road is sloped toward the hillside, the in-board ditch conveys storm runoff down to Parcel 4 (Proposed), where it drains off the road and onto the hillside. The concentrated flow has eroded the unprotected fill, and created some small gullies on the hillside below the fill on Parcel 4 (Figure 4). These have been partially filled with organic debris and the boles of downed eucalyptus trees. They are not jurisdictional creeks or wetlands.

5. The vegetation on Parcels 3-7 is a mix of invasive species that typically colonize disturbed sites in the Oakland hills. In addition to the vigorously-resprouting blue gum (*Eucalyptus globulus*), the site

supports poison oak (*Rhus toxicodendron*), poison hemlock (*Conium maculatum*), French broom (*Cytisus monspessulanus*), wild blackberry (*Rubus vitifolius*), cow-parsnip (*Heracleum lanatum*), bracken fern (*Pteridium aquilinum*), elderberry (*Sambucus sp*.), Bull thistle (*Circium vulgare*), and various annual grasses.
(See Figure 5). None of these are obligate wetland plants.

6. The Kanz letter mentions "as second potential wetland…downslope from the excavated roadway at approximately the site of the fourth proposed house". There is a willow tree on Parcel 4, probably related to the seepage of runoff and landscape irrigation that is intercepted by the road and diverted onto Parcel 4. The approximate location of the area that I think Kanz refers to is indicated on Figure 6. As mentioned above, gullies have formed on this lot as a result of the diversion of runoff, and one of these may be what Kanz refers to as "arguably a creek". I did not see any feature on the lot that meets the definition of a Creek.

7. There is a well-defined ravine to the southwest of the southwestern boundary of Parcel 7. This is apparently the "third potential creek" that Kanz referred to. On the basis of the contours on the Moran Engineering map, I assume that the feature is a creek (See Figure 7). Its upper limit is about 50 ft ENE of the southernmost corner of Parcel 7, at a point where apparent channel diverges from the alignment of the property boundary.

I conclude that the proposed parcels in the "Planned Unit Development" contain no wetlands or creeks, apart from the previously identified and protected feature on Parcel 2 (the "Wetland Protection Zone" shown on Figure 6). The minor gully erosion problem on Parcel 4 should be corrected before the next rainy season by completion of the drainage system for the Development.

Please do not hesitate to call me if you have any additional questions or concerns.

Very Sincerely Yours,

Robert Coats, Ph.D.
Principal

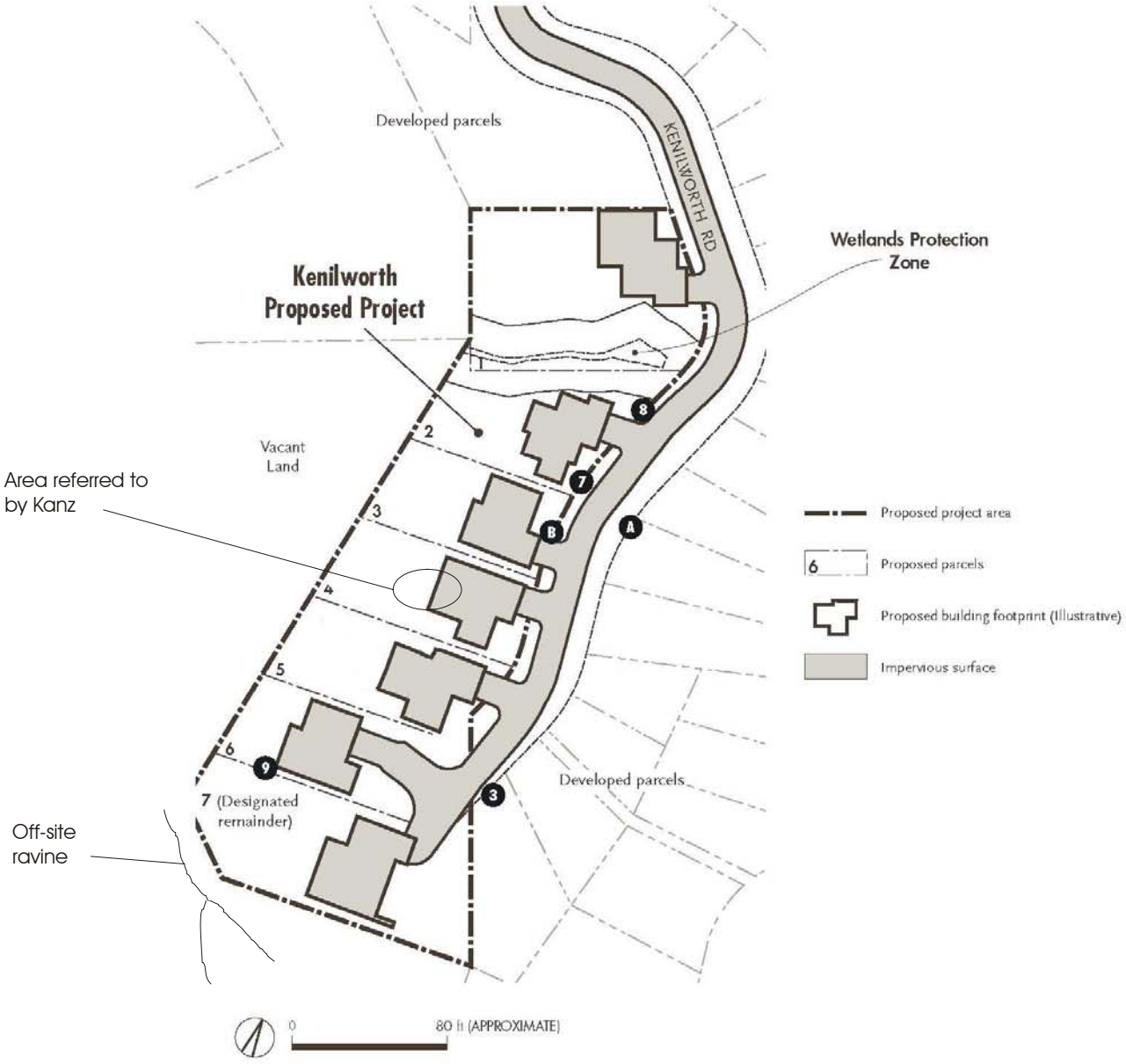
Figure 1. Water from subsurface seepage captured by the road.

Figure 2. Juncus sp. in the in-board ditch, in front of the retaining wall

Figure 3. Corregated drain pipe carrying subsurface flow from lots above the road

Figure 4. Gully on Parcel 4.

Figure 5. On Parcel 4, looking down-slope. Note invasive ruderal vegetation and eucalyptus sprouts.



Source: Booker Holton Revised by RNC

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Proposed Project Figure 6

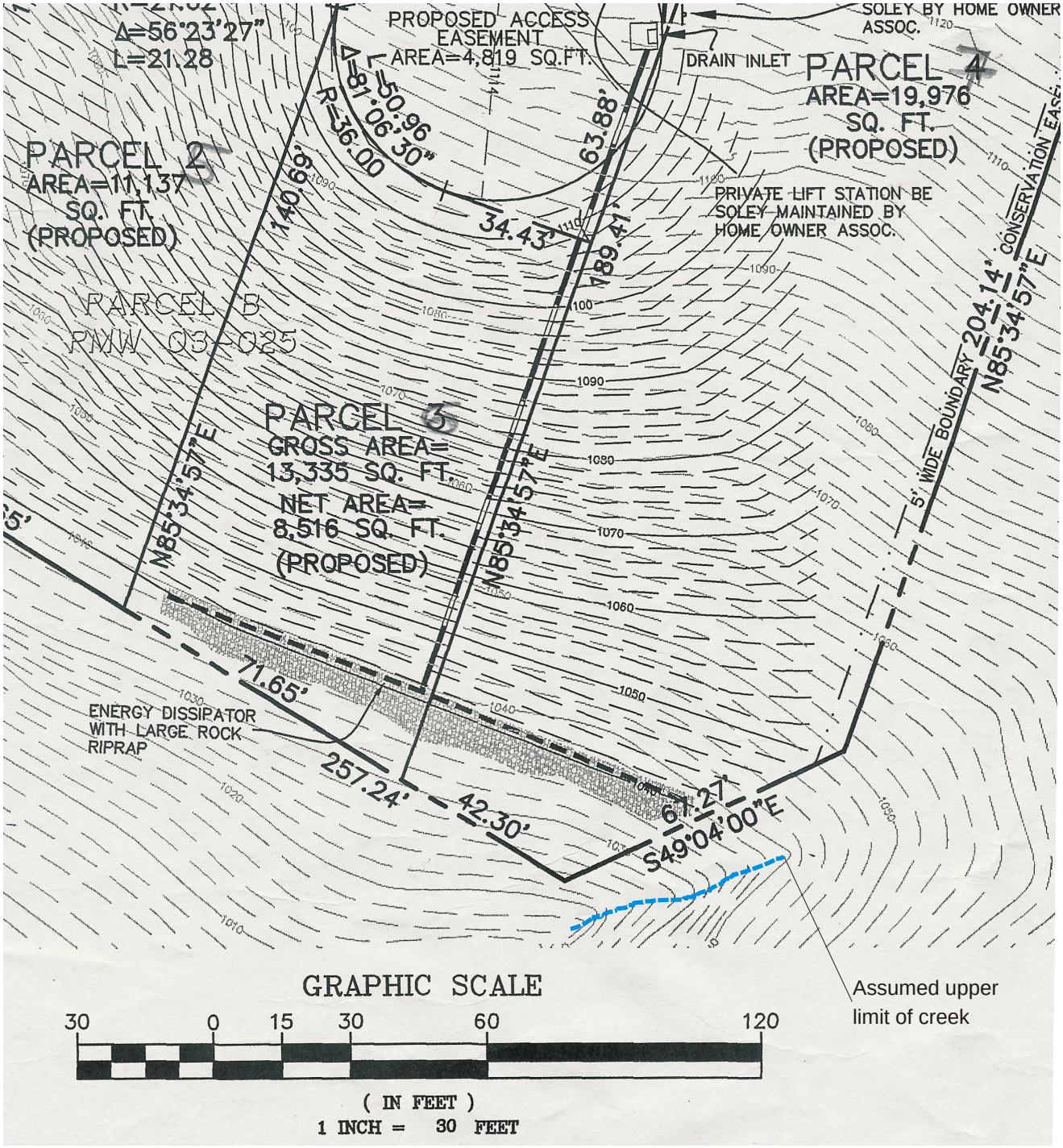

Figure 7. Topographic Detail with Possible Creek Indicated

APPENDIX B

SEIDELMAN ASSOCIATES
2427 CHERRY HILLS DRIVE
LAFAYETTE, CALIFORNIA 94549
(925) 930-0646
(925) 930-0828 (FAX)

October 2, 2006

Leigh A. McCullen
City of Oakland
Community & Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612
VIA FACSIMILE: 510-238-4730

Re: Geotechnical Peer Review for Kenilworth Road Project, Oakland, CA

Dear Ms. McCullen:

At your request, we have completed a geotechnical review of the geotechnical documents associated with the subject project on Kenilworth Road in Oakland. The geotechnical documents reviewed include ENGEO, Inc. reports dated June 3, 2002, June 28, 2002, including its appendices, containing exploration information prepared by Geo-Strata Geotechnical Consultants, and a supplemental exploration prepared by ENGEO, Inc., dated May 14, 2003.

In general, the reports are well prepared and documented. After reviewing the documents, we conclude that the field program was sufficient to support the conclusions and recommendations set forth in the documents. There exists adequate drill hole and trench data, combined with laboratory tests, to validate the opinions expressed.

In reviewing the documents, it is clear that the project involves the development of a parcel of land that is in large part underlain by landslide deposits principally composed of translational, rotational slumps. The morphology of the slides indicates both recent and older slide activity. All of the slides in the development area must be considered as potentially active.

The reports recommend removal of the landslides by excavation through the landslide material into the underlying bedrock and replacement of the slide material with an engineered fill containing properly moisture conditioned and densified soil materials with varying amounts of sub-surface drainage.

The road construction relies on retaining walls to support cuts and, in some cases, fills. The maximum slope is set at two horizontal to one vertical. The foregoing mitigation techniques are all well documented widely accepted remedies for the conditions present at the site and fall within the standard of care that prevails in the San Francisco Bay Area.

During our review, there were a few items we noticed that the City, the Developer and his Engineers may want to consider in detailing the project.

1. How will long term monitoring of the landslide drainage system be carried out – i.e., who will be responsible and what should the monitoring include?
2. We recommend tight survey control over the location of the sub-drains. It is apparent that after the hillside is reconstructed, homes will be built directly over the drainage system and home construction will require drilled piers that enter bedrock. It becomes essential to know where all sub-surface drainage pipes are located, including those that are placed as a result of geotechnical observation during hillslope reconstruction.
3. We recommend using a minimum pier diameter of 16 inches, considering the nature of the building sites, i.e., 10–12 feet of fill underlain by bedrock with piers penetrating to a minimum depth of 15 feet. Considering the potential for slope creep, which is indicated as a concern up to a depth of five feet, the bending moments on the piers can become significant. Drilled concrete piers require a three inch clear cover, meaning that a 12 inch pier has only a 6 inch usable core for steel reinforcements, while a 16 inch pier has a 10 inch usable core. Thus, the core increases by 66% by increasing the diameter 33% and a much stronger pier is achieved.
4. The sub-drainage system is designed as a trellis with a singular outlet. We recommend using a redundant system with each level of drainage having at least one outlet. This makes it easier to monitor and repair drainage installations and minimizes the problem created by a failure in one portion of the slide's drainage system.
5. We recommend using the same exclusionary depth for lateral and vertical loads. The present report calls for exclusion of five feet of soil for lateral support and three feet of soil for vertical support. Given the nature of the soils, it seems reasonable to exclude five feet of soil from both vertical and lateral load support.
6. Given the extensive nature of the slope repairs and the sloping nature of the lots, we recommend using an all bond beam foundation with no isolated interior piers.
7. Our review of the drainage discharge measures indicates a good effort is being made to reduce peak flows from the discharge system and to disperse water in a manner that will minimize erosion. Nonetheless, we recommend a period of monitoring after construction, as first and second order drainages can be quite sensitive to changes in storm flow. Therefore, channel monitoring below the discharge aprons for some finite period of time seems prudent.
8. In reviewing the slope's stability calculations, we noticed a cohesion of 200 was being used for the failure plane material. This may represent a higher value than would be present during long term stress applications. It would be helpful if some additional stability analyses were completed with different values of "c" and with some variation in the phreatic surface.

We would like to support ENGEO, Inc.'s recommendation that the slope reconstruction work be monitored professionally. It is quite common to have a technician monitoring soil densities during reconstruction of a landslide. While this is appropriate, it is not sufficient to use a technician for other aspects of the repair monitoring. Given the nature of the slides, an Engineering Geologist, certified by the State of California, is best qualified to determine when the excavation has completely removed the landslide failure plane in keyway and benched areas.

Projects of this geotechnical complexity are only successful when the details of the geotechnical recommendations are implemented carefully during the construction process, and the entire installation is well documented to assist in future evaluation and monitoring.

In summary, the geotechnical information presented in the reviewed documents is of high quality and only a few additional items for consideration were disclosed by our review.

We hope this has provided you with the information you need to proceed. If further questions should arise, please feel free to give us a call.

Sincerely,

SEIDELMAN ASSOCIATES

Paul Seidelman

GE 761
CEG 1086