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OFFICE OF THE CITY CLERK
OAKLAND

2017 NOV -2 AM 10: 22

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: William Gilchrist,
Director, PBD 

SUBJECT: Supplemental Report on the Oak
Knoll Mixed Use Community
Plan Project

DATE: November 2, 2017

City Administrator Approval 

Date: 

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Consider Adopting, As Recommended By The Oakland City Planning Commission:

1) A Resolution: (A) Certifying The Supplemental Environmental Impact Report And Adopting Related CEQA Findings, Including Adoption Of A Statement Of Overriding Considerations; (B) Amending The General Plan Land Use Diagram For The Oak Knoll Site To Match The Project's Parcel-By-Parcel Specificity And Existing Site Conditions; And (C) Adopting Planned Unit Development Permit, Preliminary Development Plan and Design Guidelines, Final Development Plan for Master Developer Site Improvements, Final Development Plan For Club Knoll Relocation and Rehabilitation, Vesting Tentative Tract Map, Conditional Use Permit for Shared Access Facilities, Creek Permit, Tree Permit And Other Development Related Land Use Permits For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard;

2) An Ordinance: (A) Adopting CEQA Findings, Including Certification Of The Supplemental Environmental Impact Report; And (B) Rezoning, Including New Zoning Districts, New Zoning Text And Zoning Map Changes For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard, Oakland;

3) A Resolution: (A) Certifying The Supplemental Environmental Impact Report, And Adopting Related CEQA Findings; And (B) Amending The General Plan From Hillside Residential And Resource Conservation To Detached Unit Residential For The City-Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland; And

4) An Ordinance: (A) Adopting CEQA Findings, Including Certification Of The Supplemental Environmental Impact Report; And (B) Rezoning From RH-3 Hillside Residential Zone - 3 To The Proposed D-OK-1 Oak Knoll District Residential Zone - 1 And The D-OK-7 Passive Open Space Zoning For The City-Owned Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland.

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REASON FOR SUPPLEMENTAL

On October 31, 2017, a public hearing was held before the Community & Economic Development Committee (CED) to consider an application to redevelop the former Oak Knoll Naval Medical Center, Oakland located at 8750 Mountain Boulevard as a new master-planned community known as the Oak Knoll Mixed Use Community Plan (Project). The CED Committee took public testimony, closed the public hearing, and made a motion to forward the Project onto the full City Council with the several amendments. These amendments included:

1. Clarifications to the Standard Conditions of Approval related to fire safety and vegetation management within a wildfire prevention area. These additions clarify that the Fire Safety Phasing Plan would need to meet the requirements of the City's Fire Code (Oakland Municipal Code Chapter 15.12) and provide further details regarding the content of the Safety Phasing Plan. The additions also clarify that the Vegetation Management Plan must be deemed satisfactory by the City's Fire Safety Division and meet the requirements of Chapter 49 of the California Fire Code as amended in the Oakland Municipal Code Chapter 15.12 (**Attachment A**). These clarifications were submitted by the Project Applicant. Staff has added new Conditions of Approval #45 and 46 to include these recommendations (**Attachment B**), which then renumbered the Conditions of Approval.
2. A request by Councilmember Brooks, that the Conditions of Approval be amended to require the Project Applicant install a traffic signal at the intersection of Keller Avenue and Creekside Parkway (**Attachment C**). The installation of the signal would include with the following summarized components: appropriate signage and pavement markings such as "stop" ahead or "signal ahead", possible flashing beacons, ADA accessible crosswalks and curb ramps, countdown pedestrian signal heads, pushbutton activation, and bicycle loop detectors. Furthermore, all design, installation and appropriate signs and other typical signalization features are included in this requirement. The Project applicant has agreed to install the traffic signal and the City's Department of Transportation supports the signal with the additional signal components. Planning Staff has added a new Condition of Approval #23 to include this recommendation (**Attachment B**).

The recommendations from the Planning Commission hearing on October 18, 2017 inadvertently were not included in the CED Committee materials, Attachment 2-R. This information is now attached to this supplemental report (**Attachment B**) with no changes to the Exhibits to the Conditions of Approval. In addition, the Project applicant will be providing a powerpoint presentation to City Council (**Attachment D**). Finally, Planning staff received additional public comments regarding the Project since publication of the CED Committee staff report (**Attachment E**) to be included in the record.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council take public testimony, close the public hearing, and adopt, as recommended by the Oakland City Planning Commission:

1) A Resolution (A) Certifying the Supplemental Environmental Impact Report and adopting related CEQA Findings, including adoption of a Statement of Overriding Considerations; (B) Amending the General Plan Land Use Diagram for the Oak Knoll Site to match the Project's parcel-by-parcel specificity and existing site conditions; (C) Adopting Planned Unit Development Permit, Preliminary Development Plan and Design Guidelines, Final Development Plan for Master Developer Site Improvements, Final Development Plan for Club Knoll relocation and rehabilitation, Vesting Tentative Tract Map, Conditional Use Permit for Shared Access Facilities, Creek Permit, Tree Permit and other development related land use permits for the Oak Knoll Mixed Use Community Plan Project, located on the former Oak Knoll Naval Medical Center Property at 8750 Mountain Boulevard;

2) An Ordinance (A) Adopting CEQA Findings, including Certification of the Supplemental Environmental Impact Report; and (B) Rezoning, including new Zoning Districts, new Zoning text and Zoning Map changes for the Oak Knoll Mixed Use Community Plan Project, located on the former Oak Knoll Naval Medical Center Property at 8750 Mountain Boulevard, Oakland;


3) A Resolution (A) Certifying the Supplemental Environmental Impact Report and adopting related CEQA Findings and (B) Amending the General Plan from Hillside Residential And Resource Conservation to Detached Unit Residential for the City-owned Barcelona parcel located at Barcelona Street and St. Andrews Road, Oakland; and

4) An Ordinance (A) Adopting CEQA Findings, including certification of the Supplemental Environmental Impact Report and (B) Rezoning from RH-3 Hillside Residential Zone - 3 to the proposed D-OK-1 Oak Knoll District Residential Zone - 1 and the D-OK-7 Passive Open Space Zoning for the City-owned Barcelona Parcel located at Barcelona Street and St. Andrews Road, Oakland.

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For questions regarding this report, please contact Scott Gregory, the contact planner at (510)535-6671 or Heather Klein, Planner IV, at (510)238-3659.

Respectfully submitted,



William Gilchrist
Director, Department of Planning and Building

Reviewed by:
Darin Ranelletti, Deputy Director
Bureau of Planning

Prepared by:
Heather Klein, Planner IV

SUPPLEMENTAL ATTACHMENTS (5):

- A. *Applicant requested additions to the Conditions of Approval related to Fire Safety and Vegetation Management.*
- B. *Revised Conditions of Approval (Redlined and Clean Version including recommendations from the Planning Commission and the CED Committee)*
- C. *Letter from Councilmember Brooks regarding a traffic signal at the intersection of Creekside Parkway and Keller Avenue.*
- D. *Project Applicant's Powerpoint Presentation*
- E. *Additional Public Comments received by Planning Staff since publication of the CED Committee staff report.*

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- To further implement SCA HAZ-4, Fire Safety, each Developer's Fire Safety Phasing Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the construction proposed by the Developer during each phase meets the requirements of the City's Fire Code (Municipal Code Chapter 15.12, including, but not limited to, Chapter 3, 5, 10, 33). The Plan's details must include, but are not limited to, information addressing the following requirements:
 - Notification of the California Emergency Management Agency prior to and at the completion of construction,
 - Fire apparatus access by phase,
 - Fire protection water supply by phase,
 - Means of egress by phase, and
 - Storage of combustible materials during construction.
- To further implement SCA HAZ-5, Wildfire Prevention Area – Vegetation Management, the Vegetation Management Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements pertaining to maintaining defensible space, clearance of brush and vegetative growth from electrical transmission and distribution lines, and ignition source control.

Includes recommendations made by the Planning Commission on October 18, 2017 and the CED Committee on November 1, 2017 in their motion to recommend moving the Project to the full City Council for Consideration.

**PART 1: STANDARD CONDITIONS OF APPROVAL –
GENERAL ADMINISTRATIVE CONDITIONS**

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials dated June 21, 2017 and as amended through October 18, 2017 and included in the Planning Commission staff report, and as may be amended in the final City Council decision, as also amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

This action by the City Council (“this Approval”) includes the approvals set forth below. This Approval includes:

- a. General Plan Land Use Diagram amendment for the area covered by the Oak Knoll PUD permit (October 18, 2017)
- b. Amended zoning text (June 2017) and zoning diagram (October 18, 2017) for the area covered by the Oak Knoll PUD permit
- c. Oak Knoll PUD permit, including Oak Knoll Preliminary Development Plan (September 2017) and Oak Knoll Design Guidelines (January 2017), Final Development Plans for the Master Developer Improvements (May 30, 2017), and Final Development Plans for Club Knoll (April 3, 2017).
- d. Transportation Demand Management (TDM) Plan, as included in the April 27, 2017 Final Supplemental EIR
- e. Greenhouse Gas Reduction Plan (GGRP), as included in the April 27, 2017 Final Supplemental EIR
- f. Creek Protection Permit and Creek Restoration Plan (February 2016)
- g. Vesting Tentative Tract Map No 8320 (September 2017)

h. Conditional Use Permit for Shared Access Facilities (October 18, 2017)

2. **Effective Date, Expiration, Extensions and Extinguishment**

Pursuant to the City's Subdivision Code, an approved tentative tract map expires two years after its approval, but may be extended for an additional year, for a maximum for a three-year period. The California Subdivision Map Act, however, specifies that an approved tentative map expires two years after its approval and that upon application of the subdivider prior to the expiration of the approved tentative map, the life of the tentative map may be extended for an additional six years. Case law indicates that these provisions in the California Subdivision Map Act preempt the City's Subdivision Code. The applicant has requested that a Vesting Tentative Tract Map (VTTM) for the project be extended the additional six-years pursuant to the California Subdivision Map Act, and has requested permission to file phased final maps. Accordingly, the VTTM shall expire at least eight years after the date of this approval. Nothing herein shall be in derogation of any additional extensions to the VTTM arising by the operation of law under the California Subdivision Map Act or other provision of state law. All Approvals, including but not limited to the Preliminary Development Plan (PDP) and Final Development Plans (FDPs) for the Planned Unit Development Permit, the Creek Protection Permit and Creek Restoration Plan and the Conditional Use Permit for Shared Access Facilities, shall expire at the same time as the VTTM.

Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of expiration dates, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or a development moratorium affecting the Project is imposed, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation or development moratorium affecting the Project.

3. **Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. **Minor and Major Changes**

Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.

Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval. Major Changes include but are not limited to changes to any of the following: density or intensity of uses in the project, changes to relocation and rehabilitation of Club Knoll, increases to building heights along roadways 26' wide or less, reduction in the amount of stormwater treatment capacity, diminution of the acreage proposed for public access, or changes that will result in any of the circumstances requiring further environmental review pursuant to CEQA Guidelines section 15162 or Public Resources Code section 21166. Refinements to engineering plans resulting in minor adjustments in lot sizes, and lot shapes are not considered to be major changes.

5. **Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors and subsequent merchant builders or homebuilders, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, mitigation measure or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the

ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third party to investigate alleged violations of the Approval or Conditions.

6. Compliance with the Terms of this Approval

Ongoing

For the duration of the project, the Director of Planning and Building or his/her designee shall have the authority to determine whether the Project Applicant and the project comply with the terms and conditions of this approval, including, without limitation, these Conditions of Approval, and shall have the authority to suspend further Project approvals, including without limitation, final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. =

The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the Director Planning and Building make a determination of noncompliance, and shall provide the Project Applicant a copy of all public documents related to such requests and a reasonable amount of time to respond and to cure any such alleged noncompliance. The City further shall take reasonable steps to promptly notify, in writing, the Project Applicant of any noncompliance determination by the Director of Building and Planning and, as applicable, shall provide the Project Applicant a copy of all documents used or relied upon in making such determination. On or before June 30 of each year, the Project Applicant shall submit to the Director of Planning and Building for review and approval the Compliance Matrix described in Condition 14 demonstrating that the legal entities implementation of its portion(s) or phase(s) of the Project comply with the terms and conditions of the Project Approvals. Such matrix may be used by the Director of Planning and Building to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of the Project Approvals. The Project Applicant's obligation to submit such matrix shall terminate only upon the City's written determination that the Project, or the part or phase being undertaken by that legal entity, is completed.

Any failure by the City or Project Applicant to perform any action specified herein, or failure of any party timely to execute any agreement specified herein shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval. Any failure by City to insist upon the strict or timely performance of any obligation of Project Applicant, including, without limitation compliance with these Conditions of Approval, regardless of the length of time for which failure continues, shall not constitute a waiver of City's right to demand strict compliance with such requirements in the future. No waiver by City of any failure of performance with these Conditions of Approval or other requirements associated with the Project Approval or any law or regulation shall be effective or binding upon City unless made in writing by City, and no such waiver shall be implied from any delay or omission by City to take any action with respect to such failure.

7. **Enforcement**

It is recognized that separate legal entities may own and develop different phases or parts of the Project, and that these separate legal entities will be responsible for compliance with all Conditions of Approval applicable to each such phase, part or facility as stated in Condition 5 above and Condition 8 below. The City shall enforce these Conditions against each legal entity/owner separately and independently from each other as long as the entities are not in common ownership and as long as the violation does not prevent compliance with Conditions on other phases or parts of the Project.

8. **Signed Copy of the Approval/Conditions**

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times. The Project Applicant and its agents, heirs, successors (including, without limitation, any successive owner of any portion of the Project Site) and assigns (collectively, "Project Applicant") shall be bound by these Conditions of Approval, any other terms and conditions and any other applicable legal requirements for implementation of the Project. The Project Applicant shall be responsible for assuring that any agent, heirs, successors and assigns are fully informed of, and bound by, the terms and conditions of this Approval.

9. **Blight/Nuisances**

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

10. **Indemnification**

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of

Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations.

- c. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

11. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

12. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

13. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement (“p-job”) permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

14. Compliance Matrix

The Project Applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of

compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

15. Construction Management Plan

Prior to the issuance of each construction-related permit and project phase, the project applicant or his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.

16. Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)

All mitigation measures identified in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* are included in the Standard Condition of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP) which is included in these Conditions of Approval and are incorporated herein by reference, as Attachment N, as Conditions of Approval of the project. The Standard Conditions of Approval identified in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* are also included in the SCAMMRP, and are, therefore, incorporated into these Conditions by reference but are not repeated in these Conditions. To the extent that there is any inconsistency between the SCAMMRP and these Conditions, the more restrictive Conditions shall govern. In the event a Standard Condition of Approval or mitigation measure recommended in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* has been inadvertently omitted from the SCAMMRP, that Standard Condition of Approval or mitigation measure is adopted and incorporated from the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* into the SCAMMRP by reference. The project applicant and property owner and subsequent merchant builders or developers, shall be responsible for compliance with the requirements of any submitted and approved technical reports, all applicable mitigation measures adopted, and with all Conditions of Approval set forth herein at his/her sole cost and expense, unless otherwise expressly provided in a specific mitigation measure

or Condition of Approval, and subject to the review and approval by the City of Oakland. The SCAMMRP identifies the timeframe and responsible party for implementation and monitoring for each Standard Condition of Approval and mitigation measure. Monitoring of compliance with the Standard Conditions of Approval and mitigation measures will be the responsibility of the Bureau of Planning and the Bureau of Building, with overall authority concerning compliance residing with the Environmental Review Officer. Adoption of the SCAMMRP will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in section 21081.6 of CEQA.

Prior to the issuance of the first construction-related permit, the project applicant shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

17. Payment of Fees

- a. Prior to issuance of a building permit, the project Applicant shall submit payment for all applicable and required fees including but not limited to the School fees, transportation fees, etc.
- b. Within one year following the Effective Date, the Project Applicant shall enter into an agreement to specify how fees and deposits will be managed to implement the Project. The City and the Project Applicant acknowledge the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP) requires the Project Applicant to directly contract with a number of independent experts monitoring construction or operation activities, including but not limited to biological, historic architectural and tribal monitors. In addition, the Project Applicant shall fund the full costs of all independent technical and other consultants the City reasonably deems necessary to comply with the Conditions of Approval, the Project Approvals and the SCAMMRP, as the final design and building permit plans for each Development Phase are submitted. All work performed pursuant to this Condition of Approval shall be under the direct supervision and direction of the City. Accordingly, the Applicant shall deposit funds in amounts acceptable to the City to cover the full costs of such consultants and other types or review, monitoring and inspection, including, without limitation, third-party plan check fees.

PART 2: PROJECT SPECIFIC STANDARD CONDITIONS OF APPROVAL

Recommended Measures from Supplemental EIR

18. Star Tulip: Recommendation BIO-1

Prior to construction, the following measures shall be implemented:

- a. A qualified botanist shall flag the location of Oakland star tulip plants during the flowering period prior to site grading. Under the direction of the qualified botanist, bulbs and associated soil plugs shall be harvested from 100 percent of the Oakland star tulip plants within those portions of the Project site to be graded or developed, following flowering and withering of leaves.
- b. Harvested bulbs shall be replanted on site in an area designated for passive open space preservation.
- c. The Project sponsor shall prepare a Monitoring Plan for relocated/transplanted Oakland star tulip plants within the Project site. The plan shall detail methods and location for relocating or reintroducing Oakland star tulip population, annual monitoring for successful establishment, and reporting protocols. The success criteria for relocated plants is 0.5:1 ratio [number of plants established: number of plants impacted] after three (3) years.
- d. Contingency measures such as obtaining bulbs from other locations should be included in the plan if it appears the success criterion will not be met after two years.
- e. The plan shall be developed in consultation with the appropriate agencies prior to the start of local construction activities.
- f. Monitoring reports shall include photo-documentation, planting specifications, a site layout map, descriptions of materials used, and justification for any deviations from the monitoring plan.

19. Sudden Oak Death (during relocation of existing trees within the Project site or introduction of new trees): Recommendation BIO-2)

The following measures shall be implemented during relocation of existing trees within the Project site or introduction of new trees to the Project site through mitigation plantings to prevent the spread of *Phytophthora ramorum*, the pathogen that causes SOD.

- a. Before working:
 - i. Provide crews with sanitations kits. (Sanitation kits should contain the following: Chlorine bleach [10/90 mixture bleach to water], or Clorox Clean-up®, scrub-brush, metal scraper, boot brush and plastic gloves).
 - ii. Ensure that work crews have properly cleaned and sanitized pruning gear, trucks and chippers prior to entering the Project Area.
 - iii. Clean and sanitize shoes, pruning gear and other equipment before working in an area with susceptible species (i.e. coast live oak, canyon live oak and California bay).

- b. While working:
 - i. When possible, conduct all tree work on *P. ramorum*-infected and susceptible species during the dry season (June - October). The pathogen is most likely to spread during periods of high rainfall especially in spring (April and May). Working during wet conditions should be avoided.
 - ii. If working in wet conditions cannot be avoided, keep equipment on paved or dry surfaces and avoid mud.
 - iii. Work in disease-free areas before proceeding to suspected-infestation areas.
 - iv. All debris from California bay trees, the primary vector of the pathogen, shall be mulched and spread in place, moved to a sunny dry area free of coast live oak, or disposed of offsite in a permitted disposal facility in accordance with state and federal regulations.
 - v. When removing California bay trees, all mulch and debris shall be segregated from other species when chipping, and all pruning gear and equipment, including chippers and trucks shall be cleaned and sanitized before working on coast live oaks.

- c. After working:
 - i. Use all reasonable methods to clean and sanitize personal gear and crew equipment before leaving a *P. ramorum*-infested site. Scrape, brush and/or hose off accumulated soil and mud from clothing, gloves, boots and shoes. Remove mud and plant debris, especially California bay, by blowing it out or power washing chipper trucks, chippers, buckets trucks, fertilization and soil aeration equipment, cranes, and other vehicles.
 - ii. Restrict the movement of soil and leaf litter under California bay trees as spores are most abundant on California bay leaves. Contaminated soil, particularly mud, and plant debris on vehicle tires, workers boots, shovels, chippers, stump grinders, trenchers, etc., may result in pathogen spread if moved to a new, un-infested site. Thoroughly clean all equipment and remove or wash soil, mud and plant debris from these items before use at another site. If complete on-site sanitation is not possible, complete the work at a local power wash facility.
 - iii. Tools used in tree removal/pruning may become contaminated and should be cleaned thoroughly with a scrub brush and disinfected with Lysol® spray, a 70% or greater solution of alcohol, or a Clorox® solution (1 part Chlorox® to 9 parts water or Clorox Clean-up®).

- d. When planting:

- i. Replanting should occur in the early fall when the pathogen is less active, and in order to take advantage of seasonal rains. Replanting activities should avoid late winter and spring.
- ii. Planting sites for susceptible species including coast live oak and canyon live oak should be selected in areas that are at least 20 yards away from California bay trees, brush and/or plant material.
- iii. California bay shall not be used as mulch for new plantings.
- iv. Small, non-protected (less than 9 inches diameter) California bay trees and brush should be cleared within a 20-yard or greater buffer where feasible to protect susceptible oak trees that are selected for preservation.

20. CPTED: Recommendation PSR-1

As part of the City's standard development review process, the Project Applicant should submit the Project plans for Crime Prevention through Environmental Design (CPTED) review by the Oakland Police Department and Bureau of Planning staff. The Project should consider design features included on the City's CPTED Checklists for residential, commercial, and civic uses. The Project Applicant shall incorporate the Police Department's recommendations into the final Project design and shall implement the design measures to an extent generally consistent with this Project Approval. CPTED review and recommendations may address points of access to the Project site or adjacent parcels, adequate public lighting, landscaping and buffering that provides visual access, particularly in parks, open spaces, and pedestrian and bicycle facilities, etc.

21. Pedestrian Safety (Crosswalks)

- a. Recommendation TRANS-1: Provide high-visibility crosswalks (meaning denoted with reflective striping or other high-visibility pavement markings) across Mountain Boulevard at Creekside Parkway, across Mountain Boulevard at Sequoyah Road, across Keller Avenue at Creekside Parkway, and at the unsignalized or uncontrolled movements at intersections within the site, consistent with City of Oakland's guidelines in place at the time of final design.
- b. Recommendation TRANS-3: Provide sidewalk along southbound Mountain Boulevard to close the existing gap between the Oak Knoll Heights exit driveway and the intersection of Sequoyah Road and Mountain Boulevard.

22. Off-site Transportation Improvements and Capital Improvements

- a. Applicant shall design and install the off-site intersection improvements described as intersections #2, 3, 12, 13, 16, 38, and 40 in the Final EIR, provided that Caltrans and City issue all necessary permits for such improvements.

- b. Applicant shall complete installation of all such off-site improvements in accordance with the timing provisions as set forth in the EIR. The EIR's timing requirements are expressed below, in terms of Equivalent Housing Units ("EHU's"), defined in Exhibit A to these Conditions.
 - i. #2: I-580 Eastbound On-Ramp/Seminary Avenue/Kuhnle Avenue (390th EHU)
 - ii. #3: I-580 Westbound Off-Ramp/Seminary Avenue/Kuhnle Avenue (940th EHU)
 - iii. #12: I-580 Eastbound Off-Ramp/Fontaine Street/Keller Avenue (280th EHU)
 - iv. #13: Mountain Boulevard/Keller Avenue (60th EHU)
 - v. #16: I-580 Westbound Off-Ramp/Mountain Boulevard/Shone Avenue (500th EHU)
 - vi. #38: Improvements to Golf Links Road/I-580 Eastbound off ramp/98th Avenue (230th EHU)
 - vii. #40: Mountain Boulevard/Golf Links Road/I-580 WB Ramp (230th EHU)

- c. Applicant shall design and install public parks and trails in accordance with this Approval and shall dedicate such parks and trails, as well as certain open space areas ("Parks and Open Space Facilities") to the City or the Geologic Hazard Abatement District ("GHAD") in accordance with Exhibit B.

- d. These off-site transportation improvements and onsite parks and open space facilities are considered "developer constructed facilities" (i.e., transportation or capital facilities that would otherwise be funded in whole or in part by the City's Transportation and Capital Improvements Impact Fee program (Oakland Municipal Code section 15.74) and/or the City's Southeast Oakland Traffic Impact Fee program). The Applicant is eligible to seek a Credit and Reimbursement Agreement (Agreement) with the City (pursuant to Municipal Code section 15.74.120), whereby the Applicant may receive credit against the amount of the impact fees due, and possibly reimbursement from impact fees paid by other development projects. The applicant is also eligible to apply to the City Administrator for reductions or waivers of the impact fees (pursuant to Municipal Code section 15.74.080), whereby the City Administrator may find the Project will not generate a need for transportation or capital improvements infrastructure or the need will be limited so as to justify a reduced impact fee, because the Project will instead provide for these transportation or capital infrastructure improvements.

23. Traffic Signal at Keller and Creekside Parkway

Pursuant to construction of Creekside Parkway improvements at the intersection of Keller Avenue (see Condition 24, below), Applicant shall install a new traffic signal with appropriate signs and pavement markings, including but not limited to “stop ahead” or “signal ahead”, that indicate drivers should slow down as they approach the intersection to reduce travel speed in the downhill direction on Keller. Flashing beacons ahead of the intersection could be used to further alert drivers of the traffic signal ahead. The primary purpose of this traffic signal is to improve safety for pedestrians and bicyclists crossing Keller Avenue.

- a. To implement this traffic signal, Plans, Specifications, and Estimates (PS&E) for this intersection shall be submitted to the City of Oakland’s Transportation Services Division for review and approval.

- b. All elements shall be designed to City standards in effect at the time of construction. All other facilities supporting vehicle travel and alternative modes through the intersection should be brought up to both City standards and Americans with Disabilities Act (ADA) standards (according to Federal and State Access Board guidelines) at the time of construction. Current City Standards call for the elements listed below:
 - i. 2070L Type Controller with cabinet assembly
 - ii. GPS communications (clock)
 - iii. Accessible pedestrian crosswalks according to Federal and State Access Board guidelines with signals (audible and tactile)
 - iv. Countdown pedestrian head module switch out
 - v. City standard ADA wheelchair ramps
 - vi. Video detection on existing (or new, if required)
 - vii. Mast arm poles, full actuation (where applicable)
 - viii. Polara push buttons (full actuation)
 - ix. Bicycle detection (full actuation)
 - x. Pull boxes
 - xi. Signal interconnect and communication with trenching (where applicable), or through (E) conduit (where applicable)- 600 feet maximum
 - xii. Conduit replacement contingency
 - xiii. Fiber Switch
 - xiv. PTZ Camera (where applicable)

- xv. Transit Signal Priority (TSP) equipment consistent with other signals along corridor
- c. Signal timing plans shall be submitted for all signals in the coordination group.
- d. These improvements are not currently included in any City traffic impact fee program, and the Applicant shall be solely responsible for implementation of these improvements.

Planned Unit Development Permit, Preliminary Development Plan and Final Development Plan

24. Phase 1 Public Improvements

Multiple final maps may be filed for the Project, subject to the Phasing Schedule set forth in Oak Knoll Preliminary Development Plan, and a more fully set forth below. Modifications to this Phasing Schedule are subject to the review and approval of the Development Director, and at his/her sole discretion; any modifications may be subject to review of the Planning Commission. The Oak Knoll Preliminary Development Plan anticipates that the property will be developed in three phases, as shown in **Exhibit C**. The Developer shall have the right to develop the Project at such time as Developer deems appropriate, consistent with these conditions and without exceeding the phasing assumptions of the SEIR; however Developer may not proceed with development of Phase 2 or 3 until all public improvements for Phase 1 (see **Exhibit D**) are complete, as further described below for specific Phase 1 public improvements.

- a. Prior to issuance of the first building permit for Phase 1, Developer shall obtain all necessary permits and shall commence construction of all **Rifle Range Creek improvements**, consistent with the Hydrology Report (Restoration Plan and Preliminary Creek Protection Plan, ESA, as revised February 24, 2016) and Master Developer Site Improvements for Creek Restoration Planting Plan and Restoration Sections (FDP Sheets L043 through L045), and including City-issued conditions of approval pursuant to the Creek Permit for Rifle Range Creek, and all applicable EIR mitigation measures. All Rifle Range Creek improvements must be deemed complete and satisfactory by City and any other applicable regulatory agencies prior to issuance of a certificate of occupancy for the final unit in Phase 1, and prior to issuance of any building permits for Phases 2 or 3. The term "all Rifle Range Creek improvements" include the following:
- i. The **Creekside Loop Vehicle Bridge**, consistent with Master Developer Site Improvements FDP, Sheets L012 through L014
 - ii. The **Pedestrian Bridge** across Rifle Range Creek, consistent with Master Developer Site Improvements FDP, Sheets L012 through L014
 - iii. Trail improvements and trail signage through Open Space Parcel A (i.e., the **Rifle Range Creek Creekside Trail**), connecting from Creekside Parkway

to the relocated Club Knoll parcel, consistent with Master Developer Site Improvements FDP Sheet L005.

- b. To facilitate orderly development, the construction of primary access roadways (see Creekside Parkway and Creekside Loop, below) may be individually phased to meet initial Phase 1 development requirements. Prior to issuance of the first certificate of occupancy for the first residential unit within any individual portion of Phase 1, any sub-phased roadway improvements shall meet the requirements of the City of Oakland Subdivision Ordinance and the provisions of the Subdivision Map Act, and shall be approved by the Oakland Fire Department as providing two acceptable means of access, inclusive of construction of the Creekside Loop Vehicle Bridge.
- c. Prior to issuance of any building permits for Phases 2 or 3, Developer shall grade and construct all remaining *Creekside Parkway* improvements from Mountain Boulevard to Keller Avenue, consistent with Master Developer Site Improvements FDP Sheets L002 and L003, inclusive of intersection improvements at Mountain Boulevard, streetlights, entry monuments and streetscape landscape improvements. The Creekside Parkway shall be designed and installed design fully consistent with the Creekside Parkway Design Details as presented in Master Developer Site Improvements FDP Sheet L007. These improvements shall include the following:
 - i. A 68-foot right-of-way inclusive of *Class I bikeway and multi-use trail along Rifle Range Creek*.
 - ii. Installation of a new traffic signal at the *Mountain Boulevard/Creekside Parkway intersection*
 - iii. Installation of an all-way-stop control at the *Keller Avenue/Creekside Parkway intersection*
 - iv. Design and relocation of the *bus stop and bus shelter* near the Mountain Boulevard/Creekside Parkway intersection
- d. Prior to issuance of any building permits for Phases 2 or 3, Developer shall grade and construct all remaining *Creekside Loop* improvements, from Mountain Boulevard to Creekside Parkway (or to the Seneca parcel, if the Seneca parcel is operating), consistent with Master Developer Site Improvements FDP Sheets L003, inclusive of streetlights and streetscape landscape improvements. The Creekside Loop design shall be fully consistent with the Creekside Loop Design Details as presented in Master Developer Site Improvements FDP Sheet L008.
 - i. The Developer shall install improvements as necessary at the *Mountain Boulevard/Creekside Loop intersection* to ensure right-in/right-out only access.

- e. Prior to issuance of any development-related permit for VTM Parcel 7, Developer shall commence relocation of the Club Knoll building, including obtaining a necessary demolition permit, grading of the new building receiver site (VTM Parcel H), disassembly of the existing Club Knoll building, and moving all disassembled building components to safe storage at VTM Parcel 7, consistent with *Club Knoll Relocation and Rehabilitation* FDP (Architectural Dimensions, April 03, 2017), and all applicable EIR mitigation measures. Prior to issuance of any building permits for Phases 2 or 3, or within 2 years from issuance of the Club Knoll demolition permit for relocation, whichever comes first, Developer shall complete (via City issuance of a certificate of occupancy) restoration of Club Knoll.
- f. Prior to issuance of a certificate of occupancy for any residential units on VTM Parcel 7, Developer shall install street and sidewalk improvements, including approved *Emergency Vehicle Access* (EVA) improvements through the "Barcelona" property, with EVA-only connection to Sequoyah Road.
- g. Prior to issuance of the 100th residential building permit in Phase 1, Developer shall construct the *Creekside Entry Park* improvements (including trail and trail signage), consistent with Master Developer Site Improvements FDP, Sheets L027 through L028.
- h. Prior to issuance of a certificate of occupancy for any development within the Retail Village that is adjacent to the public plaza, Developer shall install the *Public Plaza* as indicated in the Preliminary Development Plan. The proposed grocery store site can be constructed first, without the plaza.

25. Phase 2 and 3 Public Improvements

The Developer shall have the right to develop Phases 2 and 3 of the Project at such time as Developer deems appropriate; however Developer may not proceed with development of Phases 2 or 3 until all public improvements for Phase 1 (see Condition #23 above) are completed, and as further described below for specific Phase 2 and 3 public improvements.

- a. Developer shall construct the *North Neighborhood Park*, consistent with Master Developer Site Improvements FDP, Sheets L029 through L031, prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 21 and/or 25.
- b. Developer shall construct the *Village Pocket Park*, consistent with Master Developer Site Improvements FDP, Sheets L032 through L034, prior to issuance of the final certificate of occupancy for residential units on VTM Parcels 19 or 20.
- c. Developer shall construct the *Oak Knoll Memorial Park* including the trail and trail signage through Open Space Parcel J, consistent with Master Developer Site

Improvements FDP, Sheets L035 and L038, prior to issuance the first certificate of occupancy for residential units on VTM Parcel 15, or prior to the dedication of Open Space Parcel J.

- d. Developer shall construct the *Emergency Vehicle Assess* improvements to VTM Parcels 16 and 17 as shown on the VTM, prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 16 or 17.
- e. Developer shall implement trail improvements and trail signage through *Open Space Parcel I* (i.e., the Hardenstein property), prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 13 or 14.
- f. Developer shall implement trail improvements and trail signage through *Open Space Parcels B and R* (i.e., adjacent to lower Keller Avenue and Mountain Boulevard), prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 1 or 2.

26. Club Knoll Work Plan, Approval and Monitoring

Prior to approval of a construction-related permit for Club Knoll

A Final Work Plan for Club Knoll Relocation and Rehabilitation shall be prepared and submitted for City review and approval. The contents of the Final Work Plan shall include:

- a. Final Relocation Travel Route Plan
- b. Complete Baseline Building Conditions Study, Structural
- c. Complete Building Features Inventory and Plan
- d. All identified Specific Relocation/ Rehabilitation Measures as included in the SEIR

At City's discretion, City may retain third-party independent professional consultants to review and make recommendation on the Final Work Plan prior to approval. The Final Work Plan shall be submitted to LPAB for their review and approval prior to implementation. A third-party independent professional preservation architect and structural engineer (as defined in the Carey & Co. report dated May 3, 2016) shall be on site to monitor dismantlement and reassembly of Club Knoll.

27. Owner's Completion Bond

Prior to issuance of a construction-related permit

Consistent with Municipal Code Section 15.44.030, the project applicant or their designated representative shall file with the Building Inspector a surety company bond executed by owner or lessee as principal, and conditioned as follows:

- a. That all of the work required to be done to complete the relocation and rehabilitation shall be as set forth in the Final Work Plan for Club Knoll pursuant to the conditions of approval set forth herein.
- b. Such bond shall be in principal amount equal to the estimated cost of the work proposed to be done, plus ten percent, and shall name the City of Oakland as obligee.
- c. If the Building Inspector determines that the conditions and obligations of the Club Knoll relocation and rehabilitation permit as set forth in the Final Work Plan have not been met by the property owner or lessee, the Building Inspector may notify the property owner of the obligations with a 60-day opportunity to cure. If such cure is not effected, the City may proceed at the property owner's expense to complete all remaining obligations under the Final Work Plan. Remaining relocation and rehabilitation work may be done by private contractors, and the Building Inspector shall keep an itemized account of all such reasonable costs.
- d. Upon completion of the work, the City Manager or his or her designee shall provide written notice to the owner or lessee, showing the itemized reasonable cost of such work and giving notice of the day, hour and place when the City Council will hear and pass upon a report by the Building Inspector or his or her representative of said costs.

28. Surety Bond

Prior to issuance of a construction-related permit

Consistent with Municipal Code Section 15.44.070 and 080, the project applicant shall file a surety bond with the City Clerk, executed by the project applicant and by a surety company authorized to do business in California as surety.

- a. The surety bond shall name the city of Oakland as obligee, and shall be a principal amount as may be fixed by the City Manager based upon the facts and conditions of the proposed relocation and rehabilitation of Club Knoll.
- b. The surety bond shall be conditioned as to the following:
 - i. That the project applicant (or their designated representative) shall well, truly, honestly and faithfully perform and execute the duties of a building mover as regulated by the Oakland Municipal Code.

- ii. That the project applicant (or their designated representative) shall strictly comply with all the applicable conditions and requirements of the Oakland Municipal Code regulating the moving of buildings.
- iii. That the project applicant (or their designated representative) shall pay any and all losses or damages that may result from moving the Club Knoll building, to any property owned or controlled by the city or for which it may be responsible, and to any property belonging to any public utility company or public carrier.
- iv. That the project applicant (or their designated representative) shall save, indemnify and keep harmless the city against all liabilities, judgments, costs and expenses which may in any way accrue against the city as a consequence of the granting of the permit to move the building.
- v. That the project applicant (or their designated representative) shall file an insurance policy of public liability and property damage with the City Clerk that satisfies all City requirements.

29. Club Knoll Relocation

The relocation of Club Knoll shall follow all building permit procedures including but not limited to noticing requirements, as applicable. Moving of the building shall be conducted by a building relocation contractor with experience successfully moving and relocating large structures, and preferably with experience successfully moving and relocating large historic structures.

30. Historic Maintenance

Ongoing

The project applicant and/or successors shall keep in good repair all exterior and interior portions of Club Knoll, the maintenance of which is necessary to prevent deterioration and decay of the building. The Covenants, Conditions and Restrictions (CC&Rs) approved for the operation of the HOA shall include:

- a. a requirement to contract with a professional property management firm to operate and maintain the Club Knoll building on their behalf, potentially off-setting these management expenses through revenue derived from commercial lease of certain space within the building.
- b. a provision requiring the HOA to maintain the exterior façades of the building and the landscaping around the building at commercially reasonable standards of repair and appearance (which standards shall be defined in the CC&Rs)

- c. a provision stating that, after adequate notice to the HOA and an opportunity for the HOA to cure any alleged failure to maintain, the City shall have the right to perform the required maintenance and repairs in the event the HOA fails to do so,
- d. a written procedure for the reimbursement of costs incurred by the City in so maintaining to the standard set forth in the CC&Rs;
- e. a provision stating that the city shall have the right to enforce the Club Knoll maintenance provisions contained in the CC&Rs as a third-party beneficiary.

31. Public Art for Private Development Condition of Approval (Commercial)

The commercial portions of the Project are subject to the City’s Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. (“Ordinance”). As a non-residential project, the public art contribution requirement is equivalent to one percent (1%) of building development costs for the project. The contribution requirement can be met through the commission or acquisition and installation of publicly accessible art on the development site, payment of an in-lieu contribution to the City’s established public art fund, or satisfaction of alternative compliance methods described in the Ordinance. The applicant shall provide proof of full payment of the in lieu contribution, or provide proof of installation of artwork on the development site prior to the City’s issuance of a final certificate of occupancy for the applicable Phase in which the public art is located unless a separate, legal binding instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing. If the applicant or owner desires to install art created by an artist not verified by the City, the applicant or owner shall pay a verification fee to the City in accordance with the Master Fee Schedule.

When Required: Prior to issuance of Final Certificate of Occupancy and Ongoing

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

32. Public Art for Private Development Condition of Approval (Residential)

The residential portions of the Project are subject to the City’s Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. (“Ordinance”). As a residential project, the public art contribution requirement is equivalent to one-half percent (0.5%) of building development costs for the project. The contribution requirement can be met through the commission or acquisition and installation of publicly accessible art on the development site, payment of an in-lieu contribution to the City’s established public art fund, or satisfaction of alternative compliance methods described in the Ordinance. The

applicant shall provide proof of full payment of the in lieu contribution, or provide proof of installation of artwork on the development site prior to the City's issuance of a final certificate of occupancy for each Phase unless a separate, legal binding instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing. If the applicant or owner desires to install art created by an artist not verified by the City, the applicant or owner shall pay a verification fee to the City in accordance with the Master Fee Schedule.

The project sponsor is encouraged to allocate the public art funds to hire Oakland-based artists to provide public art on or near the site.

When Required: Prior to issuance of Final Certificate of Occupancy for the first unit and Ongoing

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

33. Club Knoll Hours of Operation and Operations

Hours of Operation for community events, commercial operations and Home Owner's Association (HOA) use shall be included and specifically outlined in the CC&R's for HOA. In addition, the Club uses shall operate within the Performance Standards outlined in Planning Code Section 17.120. Furthermore, any potential Alcohol and Beverage Sales shall meet Planning Code Section 17.103.030.

34. Club Knoll Restaurant/Kitchen Uses

Prior to issuance of a building permit, the project Applicant shall "plumb" Club Knoll for restaurant/kitchen uses including grease interceptors and exhaust, subject to the requirements of the Historic Building Code.

35. Plug-In Electric Vehicle (PEV) Charging Infrastructure

- a. PEV-Ready Parking Spaces: For on-site parking, the project applicant shall comply with of the requirements of Chapter 15.04 of the Oakland Municipal Code for the installation of parking spaces equipped with full electrical circuits designated for future PEV charging (i.e. "PEV-Ready) per requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-Ready parking spaces.

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

- b. PEV-Capable Parking Spaces: For residential and non-residential projects with more than 11 onsite parking spaces, the project applicant shall comply with requirements of Chapter 15.04 of the Oakland Municipal Code for the installation of ADA-inaccessible conduit to supply PEV-capable parking spaces. The Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-capable parking spaces.

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

- c. ADA-Accessible Spaces: For public buildings, public accommodations, commercial buildings, and publicly funded housing, the project applicant shall indicate the location of future accessible EV parking spaces as required under Title 24 Chapter 11B Table 11B-228.3.2.1, and specify plans to construct all future accessible EV parking spaces with appropriate grade, vertical clearance, and accessible path of travel to allow installation of accessible EV charging station(s).

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

36. Bike Lane Requirements

Commensurate with required traffic intersection improvements, the following adjacent or proximate bike lanes shall be installed, confined within existing roadbeds through the restriping of traffic lanes. Modifications to the City's standard lane widths may be required to install these bike lanes. The installation of these bike lanes shall not require any modifications to any roadbeds, curb, gutter, bridge or other structures, other than restriping. The plans will be reviewed by the Department of Transportation's Bicycle & Pedestrian Facilities Program. If these bike lanes are not feasible under the foregoing limitations or result in new traffic impacts that were not studied in the City's Bicycle Master Plan or the Oak Knoll Project Supplemental EIR, they shall not be required to be installed as a Condition of Approval.

- a. Mountain Blvd (Maynard Ave/I-580 WB on-ramp to Golf Links Rd): If engineering studies indicate bike lanes are feasible, install bike lanes through

restriping in each direction on Mountain Blvd from Maynard Ave to Golf Links Rd. Minimize the elimination of on-street parking from Shone Ave to Keller Ave by having one northbound lane. If a second northbound lane is deemed necessary to meet City traffic standards on the approach to Keller Ave., and is feasible to construct, minimize its length to what is necessary for the traffic signal operations. From Sequoyah Rd to Golf Links Rd, maintain the northbound on street parking that is immediately in front of private residences. This will leave some gaps in the bike lanes. Eliminate the parking that is not in front of private residences in order to install the bike lanes. As part of the intersection design for Mountain Blvd/Golf Links Rd, include bike lanes in both directions on Mountain Blvd between Golf Links Rd and the point approximately 400 feet north of the intersection where the curb-to-curb width of Mountain Blvd narrows.

- b. Golf Links Rd (Mountain Blvd to 98th Ave) and 98th Ave (Golf Links Rd to Stanley Ave): Install bike lanes in each direction on Golf Links Rd (Mountain Blvd to 98th Ave) and on 98th Ave (Golf Links Rd to Stanley Ave). On 98th Ave, maintain the existing on-street parking at the frontage of the Bishop O'Dowd High School parking lot, resulting in a short bike lane gap.
- c. Edwards Ave (Mountain Blvd/I-580 WB on-ramp to I-580 EB off-ramp): Install bike lanes in each direction on this one block of Edwards Ave (Mountain Blvd/I-580 WB on-ramp to I-580 EB off-ramp) to improve bicyclist safety on the existing bike route in the Mountain Blvd corridor. Specifically, the freeway overpass creates low light conditions and visibility issues that may be ameliorated by separating bicyclists from motor vehicles with dedicated bicycle lanes.
- d. Kunhle Ave (Mountain Blvd to Seminary Ave/Sunnymere Ave): In conjunction with the installation of two traffic signals, redesign through restriping the one block of Kuhnle Ave from Mountain Blvd to Seminary Ave as follows: one travel lane per direction, left turn pockets, and one bike lane per direction. This redesign will eliminate one travel lane per direction.

37. North Neighborhood Park along Keller

No sports field lighting or permanent field striping shall be installed in the play lawn (informal ball field).

Design Guidelines

38. Facade Materials

No foam materials are appropriate as a façade, trim, parapet or detail material.

39. **Wall Design along Mountain**

Prior to issuance of a Building Permit, the project Applicant shall submit the design of the privacy wall, consistent with the entitlement documents, along Mountain Boulevard to the Bureau of Planning for review and approval with the Final Development Plan submitted for that area of the Project.

40. **Master Signage Program**

The applicant for the Retail Village FDP shall submit a master signage program for the Village Retail Center for review and approval per the Planning Code. No signage shall be visible from the freeway without subsequent CEQA review for affects to a scenic highway.

41. **Retail Signage**

No retail or commercial signage shall be visible from I-580, a scenic highway.

42. **Trail, Creek, and Bike Lane Signage / Markers**

The applicant shall submit construction drawings of trail, creek and bike lane signage and markers prior to the issuance of grading and building permits for each phased FDP. The construction drawings shall be consistent with the signage program submitted as part of the Master Developer FDP.

Vesting Tentative Tract Map

43. **City Surveyor Conditions**

Prior to recording of each map

Multiple phased final maps may be filed subject to the Phasing Schedule set forth in Oak Knoll Preliminary Development Plan. Modifications to the Phasing Schedule are subject to the review and approval of the Development Director, and at his/her sole discretion; any modifications may be subject to review of the Planning Commission.

- a. All street shall have monuments installed for each Final Map as follows:
 - i. Monuments shall be shown on the tentative map at all BC's, PC's PRC's, Intersections (with other monument lines) and Center of Cul-de Sacs or within 25 feet of the end of a road.
 - ii. This requirement is for ALL roads and driveways, public or private.
 - iii. Monuments shall be coordinated to be parallel with the right of way and equally offset from the centerlines. No utility lines shall be allowed to be placed within 3 feet on either side of the monument lines.

- iv. Monuments shall be no greater than 600 feet apart on tangent sections. Within tangent sections greater than 600' the monuments shall be evenly spaced.
 - v. All monuments shall comply with the Standard City Monument drawings in use at that time which will be available from the City Surveyor.
 - vi. All monuments not in place at the time of the submission of the first final map shall be bonded to insure installation.
 - vii. Any existing monuments by the federal government or others shall be mapped, identified and the appropriate Record of Survey or Corner Record filed with the County. Castings and disks shall be salvaged and delivered to the City of Oakland.
- b. Benchmarks (BMs) shall be installed with the installation of improvements at the time of the filing of each final map at intersections or mid-block as follows:
- i. BMs shall be spaced at approximately a 1/4 mile (a 1250 to 1500 foot) radii throughout the entire site.
 - ii. All BMs shall be established on City of Oakland datum
 - iii. For Each BM, when set, the surveyor shall prepare an official 'card' (electronic) which will be provided by the City Surveyor's office which will include level notes, descriptions, elevation, etc.
 - iv. Benchmarks not in place at the time of the submission of each final map shall be bonded to insure installation.
 - v. The approximate locations of all BM's shall be shown upon the tentative map.
- c. All perimeter property corners shall be field established by each submitted final map. Corners shall be established with 1/1/2"x4' iron pipes (and tags) in a concert collar and will be clearly identified by fiberglass posts (Carsonite or equal) corner markers acceptable to the City Engineer.

Fire Department Conditions

44. Fire Prevention Bureau Requirements

Ongoing.

The project shall comply with all the requirements from the Fire Marshall memo dated September 29, 2017 (Attachment T).

45. Fire Safety Phasing Plan

Each Developer's Fire Safety Phasing Plan as required pursuant to the SCAMMRP Standard Condition of Approval HAZ-4 shall demonstrate, to the satisfaction of the City's Fire Safety Division, that the construction proposed by the Developer during each phase meets the requirements of the City's Fire Code (Municipal Code Chapter 15.12, including but not limited to Chapter 3, 5 10, and 33). The Plan's details must include, but are not limited to information addressing the following requirements:

- a. Notification of the California Emergency Management Agency prior to and at the completion of construction,
- b. Fire apparatus access by phase,
- c. Fire protection water supply by phase,
- d. Means of egress by phase, and
- e. Storage of combustible materials during construction.

46. Wildfire Prevention Area Vegetation Management

The Vegetation Management Plan as required pursuant to the SCAMMRP Standard Condition of Approval HAZ-5 shall demonstrate, to the satisfaction of the City's Fire Safety Division, that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements pertaining to maintaining defensible space, clearance of brush and vegetation growth from electrical transmission and distribution lines, and ignition source control.

Public Works Agency Conditions

47. Pedestrian Bridge

The pedestrian bridge shall be a minimum of 8' in width. The cross section shall be submitted for review and approval by the Department of Transportation. The pedestrian bridge shall be dedicated to and owned by the City of Oakland and shall be used solely for public pedestrian access. The pedestrian bridge shall include adequate lighting in accordance with the City of Oakland Outdoor Street Lighting Standards.

48. FEMA Regulations

All final design of buildings and structures, public or private, shall meet any applicable FEMA regulations to the satisfaction of the City Engineer in consultation with City Building Official, and the City's Floodplain Administrator.

49. **Vehicle Bridge**

The new Vehicle Bridge should include new sidewalks that are a minimum of 6' in width on both. The Vehicle Bridge shall include adequate lighting in accordance with the City of Oakland Outdoor Street Lighting Standards.

50. **Bulb-outs Design**

Bulb-outs within the City right-of-way be curved and designed to accommodate street sweeping trucks.

51. **Sanitary Sewers Design**

The sanitary sewer design for the project shall be gravity flow.

52. **Geotechnical Peer Review**

Prior to issuance of a grading permit

At the discretion of the City Engineer or the City Building Official, the applicant shall provide a Geotechnical Peer Review by a licensed Geotechnical Engineer. The recommendations provided in the peer review report shall be responded to in writing by the Geotechnical Engineer. The recommendations provided in the peer review shall be incorporated into improvement plans to the satisfaction of the City Engineer and City Building Official prior to issuance of related grading and/or building permits. The developer shall be responsible for the costs of any Geotechnical peer review as required by the City.

53. **Construction, Ownership and Maintenance of Certain Improvements**

Ownership and maintenance of certain improvements will be as set forth in the "Oak Knoll Development Ownership, Funding Sources and Maintenance Responsibilities" ("Oak Knoll Matrix") attached hereto as **Exhibit B**. The Applicant shall dedicate, and the City shall accept, all facilities designated for City of Oakland ownership on Exhibit B, including but not limited to public parks and trails, public roads, bio-retention swales and stormdrain. For parks to be dedicated to the City, park improvement plans shall be subject to review by the Bureau of Planning. Except for public parks, Applicant shall retain the right to maintain ornamental landscaping on any City-owned property, including but not limited to street trees, street planters, and decorative signage.

Prior to and at the time of approval of each final map for the Project:

- a. **Formation of Community Facilities District**: City shall establish a community facilities district ("CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "CFD Act"). The CFD will include within its boundaries all of the Oak Knoll Development Project. All costs of forming and

implementing such CFD, including, without limitation, costs for consultants, elections and any legal challenge, shall be at Applicant's sole costs, and the Project Applicant shall make an initial advance payment to the City for formation costs of the CFD, and shall advance additional amounts within five (5) business days after the written request by the City, subject to subject to reimbursement out of the proceeds of bonds or facilities special taxes collected in the CFD. All contractors and consultants paid or reimbursed by the CFD or the City shall be subject to the direction of the City. The CFD shall have full responsibility for improvements and maintenance, which obligations shall be responsibilities of Applicant until such time as the CFD is fully formed and financed to City satisfaction and City approves Applicant's release from such obligations. The CFD shall be advanced by the Project Applicant, The CFD will contain two separate special taxes, described as follows:

- i. Facilities Special Tax. The facilities special tax shall be levied to finance the construction and acquisition of the Facilities (defined below) and to secure bonds issued to finance the construction and acquisition of the Facilities. The facilities special tax will be pre-payable and will escalate annually by 2%.
 - ii. Services Special Tax. The services special tax shall be levied to finance the maintenance of the Maintained Facilities (defined below). The services special tax will be levied in perpetuity and will not be pre-payable. The services special tax will escalate annually by 2%.
- b. Authorized Facilities. The CFD, through the facilities special taxes, shall be authorized to finance all of the following facilities (herein, the "Facilities"), irrespective of the geographic location of the improvements financed:
- i. Project capital improvements such as streets, utility lines, grading and drainage.
 - ii. Affordable Housing Fees of the City of Oakland, as may be used for designated capital improvements.
 - iii. Capital fees of East Bay Municipal Utilities District.
 - iv. Capital fees of the Oakland Unified School District.
- c. Authorized Services. The CFD, through the services special taxes, which shall be based on an amount determined by the City Council as necessary to maintain public facilities within the CFD, to meet City-defined standards and cost parameters, shall be authorized to maintain the following improvements (herein, the "Maintained Facilities"), which are in or adjacent to the CFD:
- i. Publicly-owned parks
 - ii. Publicly-owned bridges

- d. Joint Community Facilities Agreements. Under the CFD Act, City may be required to enter into one or more joint community facilities agreements with other governmental entities that will own or operate any of the Facilities to be financed by the CFD. The City and Project Applicant agree that they will take all steps necessary to procure the authorization and execution of any required joint community facilities agreements with other governmental entities before the issuance of any CFD Bonds that will finance the construction or acquisition of Facilities that will be owned or operated by such other governmental entities.
- e. The RMA. In setting the tax rates in the Rate and Method of apportionment (the "RMA") for the CFD, the Total Tax Obligation (as defined below) on any residential unit within the CFD will not exceed two percent (2.00%) of the market value of that residential unit at the time the bonds are sold, secured by Special taxes of the CFD (the "2.00% Limitation"). The appraised value of a residential unit shall be determined by appraisal within no more than 90 days prior to the sale of bonds secured by such residential unit. The term "Total Tax Obligation" means, with respect to a residential unit at the time of calculation, the sum of: (a) the ad valorem taxes actually levied or projected to be levied at the time of calculation; (b) the assigned facilities special tax rates and the services special tax rates levied or projected to be levied at the time of calculation; and (c) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the residential unit levied or projected to be levied at the time of calculation. The RMA for the CFD will provide that the facilities special taxes will be levied on parcels of Developed Property (property for which a building permit has been pulled) at the maximum assigned rates both before and after bonds have been issued, and any facilities special taxes collected that are not needed for debt service on the bonds, administrative expenses, or replenishment of reserve funds will be available to finance the Facilities.
- f. Issuance of CFD Bonds. City, on behalf of the CFD, intends to issue one or more series of CFD Bonds for purposes of financing the Facilities. Project Applicant may submit written requests that City issue CFD Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Project Applicant's request, Project Applicant and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with these conditions of development and the CFD Goals. The CFD Bonds shall be issued pursuant to an indenture, trust agreement, or fiscal agent agreement (however denominated, an "Indenture") between the CFD and a fiscal agent or trustee (however denominated, the "Fiscal Agent"). CFD Bonds will have a term of not less than thirty (30) years and not more than thirty-five (35) years unless Project Applicant and City agree otherwise.
- g. Maintenance of Facilities. The RMA will provide that the services special taxes will be used to finance the Maintained Facilities. The annual amount of the

services special taxes to be levied will depend on the budgetary process described below:

- i. Services special taxes shall be levied to create a reserve fund to provide for restoration, maintenance, replacement repair or other work associated with the Maintained Facilities.
 - ii. The Project Applicant shall provide start-up funds for the CFD in an amount to be determined by the City Engineer in accordance with the approved capital development and maintenance plan, which shall be provided no later than recordation of the first final map for the Project. The Project Applicant shall also assume financial responsibility for all related work for a warranty period determined by the Public Works Director.
 - iii. The services special taxes shall be authorized to finance both on-going maintenance activities as well as a plan for unexpected maintenance and events, including events or damages that could occur as the result of site improvements associated with geotechnical, drainage or related matters. This work shall be based on the final grading, site soils conditions and specifications for improvements unless otherwise covered by the GHAD.
 - iv. The services budget shall separately identify the projected costs associated with standard annual operation, administration and maintenance work on the Maintained Facilities; long-term operation and maintenance including life cycle replacement costs of major features including but not limited to the Roadway and Pedestrian Bridge;—and the reserve fund debt service requirements described in item 1 above.
- h. Other Obligations and Requirements:
- i. The CFD shall submit an annual report to the City Council detailing compliance with Minimum Maintenance Standards, and budgetary and other financial information relevant to the CFD operations.
 - ii. The CFD shall obtain general liability insurance and directors' insurance for the Board of Directors to the extent that the CFD Board determines in its sole discretion that such insurance is available at commercially reasonable rates.
 - iii. The assessments or taxes necessary to fund the above requirements must be determined following a thorough financial analysis and must include adequate funding for indemnity and insurance obligations. The City's attorney and Risk Manager shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.
 - iv. The taxes or assessments shall be fully authorized and imposed on the project site prior to approval of the first final map. Any body formed to perform construction and/or maintenance pursuant to this Condition of

Approval will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the such body, and no City employees shall perform such services for CFD facilities and improvements. Further, the City shall not fund or otherwise administer any of the operations of the CFD.

54. Annexation of Project Area into Oakland Area Geological Hazard Abatement District (GHAD)

At Developer's request and sole cost, the City shall annex all of the properties within the boundary of the Project into the Oakland Area Geological Hazard Abatement District ("GHAD") and shall cooperate in the preparation of all documents and plans necessary for the GHAD's ownership and maintenance of the open space facilities within the Project, as set forth in Exhibit B, including but not limited to any Resolution(s) of Annexation, Engineer's Report(s) and Plan(s) of Control. To the extent the City is the fee owner of the parcels to be included within the GHAD, City shall fully cooperate with the Developer in the annexation of these parcels into the GHAD and with the implementation of all of the GHAD's operations and activities. The Applicant shall dedicate to the GHAD all facilities and land areas indicated to be owned in fee by the GHAD on Exhibit B, subject to a reservation of rights by Applicant for the purpose of maintenance of ornamental landscaping.

55. Confirmation of Substantial Compliance with Vesting Tentative Maps

Prior to the recordation of each Final Map

Prior to recordation of each Final Map, site improvement plans and a title report shall be submitted for the review and approval of the City Planning Director or his/her designee demonstrating substantial compliance with the approved VTTM and the "Project Plans" as set forth in Condition of Approval 1, as well as any subsequent permit received from a responsible or other agency with authority over the project site.

56. Financing and Conveyance Maps

As used in these conditions of approval, "final map" means only those final maps filed for construction purposes.

- a. An Ordinance for accepting and processing Finance and Conveyance Maps, (F&C Maps) has not been adopted by the City at the time of the approval of this project. Any F&C Maps submitted for this project shall be processed in the same manner as a Tentative Parcel Map application and Parcel Map application and fees owed per City's adopted Master Fee Schedule for Tentative and Parcel Map applications shall apply unless an Ordinance for F&C Maps has been adopted and the Master Fee Schedule updated to include specific fees for F&C Maps.

- b. After approval of a Tentative F&C Map a Final F&C Map shall be submitted to the Department of Transportation, Engineering Services, and the appropriate fees shall be paid in full by the applicant prior to Staff beginning any review.
- c. The following statements shall be clearly printed in an acceptable font size on the face of each proposed Tentative and Final F&C Map:
 - i. "FOR FINANCE AND CONVEYANCE PURPOSES ONLY."
 - ii. "THIS MAP DOES NOT CREATE A LEGAL BUILDING SITE. FURTHER APPLICATIONS ARE NECESSARY TO DEVELOP THIS PROPERTY."
 - iii. "THIS MAP DOES NOT REMOVE ANY DEVELOPMENT REQUIREMENTS SET FORTH WITH APPROVAL OF THE VESTING TENTATIVE MAP 8320 AND CITY'S PLANNING PROJECT NUMBER PLN15378 WHICH MUST BE SATISFIED WITH CONTINUED DEVELOPMENT OF THE PROPERTY."
- d. F&C Maps shall provide sufficient information on future uses and feasibility of future uses to ensure consistency with the approved vesting tentative map number 8320 and the project conditions of approval, including the project's environmental mitigation measures, to the satisfaction of the Planning Director and the City Engineer.
- e. All parcel lines shown on F&C Maps shall not conflict with any existing easements or proposed easements as identified on the approved vesting tentative map number 8320.
- f. No building permits shall be issued for development of any parcel or parcels presented in any recorded F&C Map until a Final Tract Map or Parcel Map is recorded with the County.
- g. Prior to recording any F&C Map it shall conform to and meet the requirements of the Subdivision Map Act and the City's municipal code as determined by the City Engineer.
- h. Parcels identified on the approved vesting tentative map 8320 for which, 1) a Final Parcel or Tract Map is already recorded with an executed Subdivision Improvement or Public Infrastructure Agreement, OR 2) included in a mylar map signed by the Owner(s) and delivered to the City but not yet recorded by the County, shall be excluded, removed from, any F&C Map application as determined by the City Engineer.

57. Offers of Dedications at time of Final Map

Prior to recordation of each Final Map

Attachment B (Updated Attachment 2-R)

Prior to recordation of each Final Map, all reservations and offers for dedications of easements, parcels and improvements and all other easements deemed necessary for all existing and proposed utilities shall be identified, to the satisfaction of the Transportation and Right of Way Management Division, for the portion of the project included in the Final Map. Closure calculations for all easements, except the public utility easements (PUE) located adjacent to streets, shall be submitted for review and approval by the Transportation and Right of Way Management Division.

58. Selection of Street Names

Prior to the recordation of each Final Map

Prior to recordation of each Final Map, street names shall be selected and submitted for approval by the Bureau of Building, PWA Engineering Services, Fire Department and Police Department.

59. Subdivision Conditions, Covenants & Restrictions (CC&Rs)

Prior to the recordation of the first Final Map for the first Project Phase

Conditions, Covenants, and Restrictions (CC&Rs) for the total master planned community shall be prepared and submitted with an application for the first Final Map and shall be reviewed and approved by the Planning and Zoning Division and the City Attorney's Office.

- a. The master community CC&Rs may include procedures whereby property within the development may be added to the CC&Rs by means of annexation as subsequent Final Maps are processed.
- b. In addition, neighborhood CC&Rs for any sub-project common interest developments shown on a Final Map (whether condominium projects or planned developments or shared access facilities) shall be prepared and submitted prior to the issuance of building permits for those individual merchant builders, and shall be reviewed and approved by the Planning and Zoning Division and the City Attorney's Office with respect to that Final Map. It is acknowledged by the City that common interest development CC&Rs are be subject to review and approval of the California Bureau of Real Estate (CalBRE) and may, subsequent to City review, be subject to revision as directed by CalBRE or as otherwise necessary to comply with California Subdivided Lands Act, related regulations, and California common interest development laws.
- c. Neighborhood CC&Rs which include common interest of shared access facilities shall provide for shared maintenance responsibilities for any such shared access facilities.

60. Subdivision Improvement Plans for Each Final Map

Engineered subdivision improvement plans in accordance with this Approval shall be prepared to meet all of the requirements of the City of Oakland Subdivision Ordinance and the provisions of the Subdivision Map Act and shall include the following: water, storm water drainage, sanitary sewer, street improvement, traffic and utility service plans.

61. Subdivision Improvement Agreement

Prior to recordation of each Final Map, a subdivision agreement, in a form acceptable to the Design and Construction Services Division and the City Attorney's Office, shall be prepared and executed for the construction of all public improvements.

62. Cost Estimates for Improvements

Prior to acceptance of each Final Map, an Engineer's Estimate shall be submitted for the cost of all public improvements. The estimate shall be subject to approval by the Design and Construction Services Division. Based on the engineer's estimate, bonds or other approved securities must be furnished to the City in accordance with the Subdivision Improvement Agreement to ensure completion of public and private improvements.

63. Final Grading Plan for Mass Grading or for Individual Project Phases

Prior to the issuance of a grading permit related to a building permit(s) or execution of a subdivision improvement agreement, Applicant shall file a final grading plan that is to accompany the subdivision improvements plans that shall be prepared and submitted with the grading permit application, and shall include the following:

- a. The grading plan shall show all proposed and existing contours as well as proposed drainage improvements.
- b. As applicable to the grading phase, final grading, drainage and foundation plan shall be prepared in accordance with the recommendations of the geotechnical report (including recommendations of the soil engineer) and supplemental letters. These reports shall identify the specific amount of fill material, if any, that is to be imported on the site. Retaining walls shall be a split-face or scored concrete block, or consistent with the approved PDP, FDP, and Design Guidelines, and shall not exceed the heights as specified on the approved Vesting Tentative Map, and shall require separate building permits.
- c. The final grading plan of all pads shall substantially comply with the preliminary grading presented on the approved Vesting Tentative Map, and shall include any inconsistencies between the contours and numeric grade shown on the Vesting Tentative Map and the final grading plan shall be subject to the approval of the City Engineer and Building Official.

- d. No mass grading shall occur between October 15th and April 15th unless approved by the City Engineer and Building Official.

64. Construction Plans for Fire Apparatus Access Roads, Off-street Parking and Access to Lots.

Prior to recordation of a final map for each project phase the improvement plans for each Final Map shall be submitted to the Fire Department for review and approval. These construction plans shall show for fire apparatus access roads, off-street parking and fire access to all lots/parcels within the Oak Knoll community. These plans shall include the following:

- a. Construction documents. Construction plans for fire access roads and plans for the water supply and distribution. CFC 501.3 and 501.4.
- b. Construction of buildings. Access roads and on-site hydrants shall be installed, operating and available prior to and during construction unless approved otherwise by the Fire Department.
- c. Fire apparatus access road widths shall adopt the Fire Department's access guidelines as adopted in the CFC Appendix D.
- d. Fire watch and fire apparatus access shall be provided per CFC Chapter 5 and Appendix C during all phases of construction, especially upon delivery of combustible construction materials at the site.
- e. All fire apparatus access roads shall not exceed 18%. The apparatus turnaround shall not exceed a 5% slope.

65. Additional Required Information on Final Map(s)

Prior to recordation, the Final Map prepared and submitted for each project phase shall include the following information, as applicable:

- a. All easements to be maintained shall be clearly indicated and easements to be abandoned shall be memorialized on the map by written notation of each easement to be abandoned, shown by reference to the recording data that created the easement.
- b. All existing utilities not intended for future use in the subdivision, and not serving other off-site areas shall be abandoned, and new utilities shall be established and dedicated as needed to serve on-site and off-site areas.
- c. The Fontaine Overpass approach ramp is within the property lines with a notation on the ALTA survey that abutters rights have been relinquished to the State of California. Prior to the recordation of the first Final Map, the parcel of land

underlying and separated from the main portion of the site by Fontaine shall be offered for dedication to the State of California.

- d. Provide documentation to show that permission, conditioned or not, has been granted by EBMUD, or that there is no restriction or limitation, under the EBMUD easement, to the construction of the roadway and the proposed housing on the EBMUD tunnel easement (766 OR 472).
- e. The extension of Barcelona Street shall be designed and shown across APN 048-6870-002, from the Project boundary to the existing terminus of Barcelona Street, including an emergency vehicle access for public street and utilities purposes, and for the work necessary to accomplish these purposes.

66. Changes to the Vesting Tentative Tract Map

Ongoing

Any final map must substantially comply with the approved Vesting Tentative Tract Map (VTTM) per required findings. Significant changes to an approved VTTM shall require re-approval of the VTTM. Significant changes would be nonconformance with the Conditions of Approval for the VTTM as well as the following: increases in the lot count, reconfiguration of the site that alters the grading concept, road widths, road slopes that exceed Fire Department requirements, and major changes to creek parcel widths, or any change deemed significant by the City Surveyor and/or the Engineering Services Division. Minor changes to the approved VTTM shall be administratively approved by the City Surveyor and/or the Engineering Services Division prior to final map approval and recordation.

67. Street Lighting Plan and Photometric Analysis

Prior to issuance of a building permit or recordation of a Final Map for each Neighborhood or Project Phase, whichever occurs first:

- a. The applicant shall submit a detailed street lighting plan and photometric analysis for review and approval, with the improvement plans for construction of all new roadways. Planning Division review shall ensure that the lighting plan and photometric analysis comply with the requirements set forth in Mitigation Monitoring Program and in the Oak Knoll Design Guidelines.
- b. Construction documents shall meet the City of Oakland Public Works Agency Outdoor Street Lighting Standards.

68. Transportation - Installation of AC Transit Bus Stop and Shelter/Landscaping

- a. Improvement plans for the Mountain Boulevard/Creekside Parkway intersection shall incorporate design and development of a relocated bus stop and bus shelter.

The location, design and specifications for the bus stop and shelter shall be to the satisfaction of the City of Oakland Transportation Services Division and AC Transit.

- b. The project Applicant and its successors shall landscape and maintain the parkway area of northbound Mountain Boulevard along the adjacent Project frontage. The parkway area is defined as the area between the back of curb shown on the VTTM and the Project property line and shall be considered part of the public street so long as the City of Oakland continues to own such right of way. The landscape improvements and maintenance obligations shall continue until such time that the City of Oakland no longer owns the right of way in whole or part in which the parkway is located. The landscape improvements shall be consistent with the existing landscaping along Mountain Boulevard.

69. Gated Entries

All roads and streets shall be dedicated to the City and accepted as public streets. As such, no such roads/streets shall be gated. Exceptions will only be granted for emergency vehicle access.

70. Barcelona Street Extension/Improvement as a Public Street

As shown on Exhibit E, the Applicant shall improve the "Barcelona Road Reservation" as a public street across APN 048-6870-002. This street shall run from the project boundary to a designated emergency vehicle access point to be located at the existing terminus of Barcelona Street. The improvements shall include tree removal, foundation removal, etc., to prepare the area for grading to create the roadbed, installation of utilities that are appurtenant to a public street, and installation of an appropriate emergency vehicle access gate or bollards. The City shall grant Applicant all access rights necessary for the installation of the improvements, including but not limited to an encroachment permit and shall maintain the street as a public street.

71. EBMUD and Right of Way Easements

Ongoing

EBMUD owns and operates water supply tunnels and pipelines along the northern edge of the development site in the EBMUD right-of way (R/W 206 and R/W 1634) and property (506 and 217-A). The integrity of these tunnels and pipelines needs to be maintained at all times. Any proposed construction activity in EBMUD rights-of-way and property would be subject to the terms and conditions determined by EBMUD including relocation of water mains and/or rights-of-way at the project sponsor's expense. The Community Park (North Neighborhood Park) to be developed by Oak Knoll on EBMUD property is subject to the execution of the land exchange between Oak Knoll and the District. If the land exchange

does not occur, the applicant shall submit revised plans to exclude the EBMUD parcel from the North Neighborhood Park.

72. EBMUD Water Service

When development plans are finalized the applicant shall 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. The project applicant shall comply with the Landscape Water Conservation Section, Article 10 of chapter 7 of the Oakland Municipal Code. The applicant should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all applicable water-efficiency measures described in the regulation are installed at the project applicant's expense.

73. Open Space Dedication and Trail Construction

Prior to the recordation of the Final Map that contains the trails

All areas designated as Open Space (VTM Parcels A (the creek), B, D, E J and O) shall be dedicated to the City or the GHAD as set forth in Exhibit B. Prior to acceptance of open space parcels, all trails through these open space areas shall be constructed.

- a. Trail designs shall be based on the standards and practices of the East Bay Regional Park District for width and surfacing of multi-use trails, and shall include applicable ADA criteria
- b. Trails shall have a public access easements, restrictive covenant or other method to ensure ongoing and continued access for benefit of the public.

Creek Permit and Stormwater

74. Regulatory Agencies

Prior to issuance of a Grading Permit

Consistent with SCAMMPR Condition of Approval, SCA GEN-1: Regulatory Permits and Authorizations from Other Agencies (#15), the project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies related to the creeks. If these permits necessitate changes to the design of the creek parcel, the Conditions regarding major and minor changes apply and might necessitate re-review.

75. Final Stormwater Control Plan

Prior to issuance of a Grading Permit

The Final Stormwater Control Plan, including narrative, shall be submitted for approval prior to the issuance of the Grading Permit. The treatment devices shall be located in accordance with the VTTM.

76. Creek Maintenance

After Creek Restoration and Ongoing

Upon sign off of the creek restoration by the Regulatory Agencies, the project applicant and successors shall submit a creek maintenance plan to ensure the successful and ongoing long-term maintenance of the creek parcels including the creek channel, and banks, stability, erosion, and infrastructure (bridges, culverts, stormwater facilities, etc.) Long term creek maintenance shall be guaranteed through the formation of a Geologic Hazard Abatement District or other means approved by the Bureau of Planning, Engineering Services and Watershed Division.

77. Trash Capture Devices

Requirement: Plans shall be submitted for review and approval by the Director of Public Works or his/her designee that show a full trash capture device installed at all private storm drain inlets or catch basins located on the property and on the public storm drain inlets in adjacent right of way area(s) – as applicable. The plans shall show the design of the device and must meet requirements of the Regional Water Quality Control Board for full trash capture. The applicant shall install these devices according to the approved plans.

When Required: Plans shall be approved prior to approval of any construction-related permit. Installation shall be completed prior to issuance of certificate of occupancy or final permit approval.

Initial Approval: City Engineer or Designee

Monitoring/Inspection: Owner of private storm drain must maintain the full trash capture device in accordance with the requirements in the Municipal Regional NPDES Permits. Records of Inspections and maintenance must be made available to the City upon request. Upon pre-approval of the City, project applicant may pay an annual fee to maintain devices installed in the public right-of-way.

78. Stormwater Treatment Devices

Prior to issuance of a building permit

In the event stormwater pollution prevention control devices shown on the approved vesting tentative map do not qualify as FTC devices, prior to approval of the first Final Map submittal or issuance of related construction permits, the design for stormwater pollution prevention control devices must meet C.3 requirements and include separate trash capture devices. All storm drainage improvements shall be designed and constructed to

meet C.3 requirements to the satisfaction of the City Engineer. To “qualify” as FTC devices, the device design must receive approval from the Water Board.

Tree Permit

79. Tree Permit (T1500124) and Removal by Phase

Prior to issuance of building permits

A Tree Removal/Preservation permit application shall be approved by the Tree Services Division for removal or preservation of all protected trees on the site and adjacent properties. The applicant shall abide by all Conditions of Approval of that permit.

80. Tree Relocation

Prior to issuance of a grading permit

The applicant shall retain a qualified arborist to survey the project site and identify 20 mature oak trees that shall be transplanted. The arborist shall submit a report for review and approval that includes the following information: trees to be relocated, removal procedures, storage area for the trees, watering and care during the timeframe that the trees are out of the ground, transplant procedures, and care and timeframe of care to ensure the tree survival. The arborist report shall be submitted to the Bureau of Planning for review and approval. The trees shall be located in the Village Center, around Club Knoll and at the main entrances.

Other

81. Pre-Construction Meeting with the City

Prior to issuance of a grading, demolition, or building permit

A pre-construction meeting shall be held with job inspectors and the general contractor/on-site project manager with the City’s project building coordinator to conform that conditions of approval that must be completed prior to issuance of a grading, demolition, or building permit have been completed (including pre-construction meeting with neighborhood, construction hours, neighborhood notification, posted signs, etc.) The project applicant will coordinate and schedule this meeting.

82. Transportation and Parking Demand Management

The Project applicant has submitted a final master Transportation and Parking Demand Management (TDM) Plan. The subsequent merchant builders and successor’s will submit a final plan noting the specific TDM measures, implement the plan, and achieve the required twenty percent (20%) vehicle traffic reduction (VTR) and reduced parking

demand generated by the project. The TDM Plan indicates the estimated VTR for each identified strategy based on published research or guidelines where feasible.

83. Native American Tribal Monitor

During creek grading

At least seven days before ground-disturbing activities in the creek corridor are scheduled to begin, one tribal monitor of the choosing of the tribes that have expressed interest in the Project shall be invited to monitor such ground-disturbing activities, and shall be afforded the opportunity to monitor such activities if the tribal monitor chooses to be present. If there is a change in the construction schedule or an unscheduled need to undertake a ground-disturbing activity in the creek corridor, the tribal monitor shall be notified as soon as feasible.

Exhibits to Conditions of Approval

Exhibit A: Equivalent Housing Unit Summary

Exhibit B: Oak Knoll Ownership and Maintenance Matrix

Exhibit C: Project Phasing Diagram

Exhibit D: Phase 1 Diagram

Exhibit E: Extension of Barcelona Street

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

Includes recommendations made by the Planning Commission on October 18, 2017 and the CED Committee on November 1, 2017 in their motion to recommend moving the Project to the full City Council for Consideration.

**PART 1: STANDARD CONDITIONS OF APPROVAL –
GENERAL ADMINISTRATIVE CONDITIONS**

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials dated June 21, 2017 and as amended through October 18, 2017 and included in the Planning Commission staff report, and as may be amended in the final City Council decision, as also amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

This action by the City Council (“this Approval”) includes the approvals set forth below. This Approval includes:

- a. General Plan Land Use Diagram amendment for the area covered by the Oak Knoll PUD permit (October 18, 2017)
- b. Amended zoning text (June 2017) and zoning diagram (October 18, 2017) for the area covered by the Oak Knoll PUD permit
- c. Oak Knoll PUD permit, including Oak Knoll Preliminary Development Plan (September 2017) and Oak Knoll Design Guidelines (January 2017), Final Development Plans for the Master Developer Improvements (May 30, 2017), and Final Development Plans for Club Knoll (April 3, 2017).
- d. Transportation Demand Management (TDM) Plan, as included in the April 27, 2017 Final Supplemental EIR
- e. Greenhouse Gas Reduction Plan (GGRP), as included in the April 27, 2017 Final Supplemental EIR
- f. Creek Protection Permit and Creek Restoration Plan (February 2016)
- g. Vesting Tentative Tract Map No 8320 (September 2017)

h. Conditional Use Permit for Shared Access Facilities (October 18, 2017)

2. **Effective Date, Expiration, Extensions and Extinguishment**

Pursuant to the City's Subdivision Code, an approved tentative tract map expires two years after its approval, but may be extended for an additional year, for a maximum for a three-year period. The California Subdivision Map Act, however, specifies that an approved tentative map expires two years after its approval and that upon application of the subdivider prior to the expiration of the approved tentative map, the life of the tentative map may be extended for an additional six years. Case law indicates that these provisions in the California Subdivision Map Act preempt the City's Subdivision Code. The applicant has requested that a Vesting Tentative Tract Map (VTTM) for the project be extended the additional six-years pursuant to the California Subdivision Map Act, and has requested permission to file phased final maps. Accordingly, the VTTM shall expire at least eight years after the date of this approval. Nothing herein shall be in derogation of any additional extensions to the VTTM arising by the operation of law under the California Subdivision Map Act or other provision of state law. All Approvals, including but not limited to the Preliminary Development Plan (PDP) and Final Development Plans (FDPs) for the Planned Unit Development Permit, the Creek Protection Permit and Creek Restoration Plan and the Conditional Use Permit for Shared Access Facilities, shall expire at the same time as the VTTM.

Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of expiration dates, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or a development moratorium affecting the Project is imposed, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation or development moratorium affecting the Project.

3. **Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. **Minor and Major Changes**

Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.

Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval. Major Changes include but are not limited to changes to any of the following: density or intensity of uses in the project, changes to relocation and rehabilitation of Club Knoll, increases to building heights along roadways 26' wide or less, reduction in the amount of stormwater treatment capacity, diminution of the acreage proposed for public access, or changes that will result in any of the circumstances requiring further environmental review pursuant to CEQA Guidelines section 15162 or Public Resources Code section 21166. Refinements to engineering plans resulting in minor adjustments in lot sizes, and lot shapes are not considered to be major changes.

5. **Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors and subsequent merchant builders or homebuilders, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, mitigation measure or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the

ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third party to investigate alleged violations of the Approval or Conditions.

6. **Compliance with the Terms of this Approval**

Ongoing

For the duration of the project, the Director of Planning and Building or his/her designee shall have the authority to determine whether the Project Applicant and the project comply with the terms and conditions of this approval, including, without limitation, these Conditions of Approval, and shall have the authority to suspend further Project approvals, including without limitation, final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. _

The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the Director Planning and Building make a determination of noncompliance, and shall provide the Project Applicant a copy of all public documents related to such requests and a reasonable amount of time to respond and to cure any such alleged noncompliance. The City further shall take reasonable steps to promptly notify, in writing, the Project Applicant of any noncompliance determination by the Director of Building and Planning and, as applicable, shall provide the Project Applicant a copy of all documents used or relied upon in making such determination. On or before June 30 of each year, the Project Applicant shall submit to the Director of Planning and Building for review and approval the Compliance Matrix described in Condition 14 demonstrating that the legal entities implementation of its portion(s) or phase(s) of the Project comply with the terms and conditions of the Project Approvals. Such matrix may be used by the Director of Planning and Building to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of the Project Approvals. The Project Applicant's obligation to submit such matrix shall terminate only upon the City's written determination that the Project, or the part or phase being undertaken by that legal entity, is completed.

Any failure by the City or Project Applicant to perform any action specified herein, or failure of any party timely to execute any agreement specified herein shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval. Any failure by City to insist upon the strict or timely performance of any obligation of Project Applicant, including, without limitation compliance with these Conditions of Approval, regardless of the length of time for which failure continues, shall not constitute a waiver of City's right to demand strict compliance with such requirements in the future. No waiver by City of any failure of performance with these Conditions of Approval or other requirements associated with the Project Approval or any law or regulation shall be effective or binding upon City unless made in writing by City, and no such waiver shall be implied from any delay or omission by City to take any action with respect to such failure.

7. Enforcement

It is recognized that separate legal entities may own and develop different phases or parts of the Project, and that these separate legal entities will be responsible for compliance with all Conditions of Approval applicable to each such phase, part or facility as stated in Condition 5 above and Condition 8 below. The City shall enforce these Conditions against each legal entity/owner separately and independently from each other as long as the entities are not in common ownership and as long as the violation does not prevent compliance with Conditions on other phases or parts of the Project.

8. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times. The Project Applicant and its agents, heirs, successors (including, without limitation, any successive owner of any portion of the Project Site) and assigns (collectively, "Project Applicant") shall be bound by these Conditions of Approval, any other terms and conditions and any other applicable legal requirements for implementation of the Project. The Project Applicant shall be responsible for assuring that any agent, heirs, successors and assigns are fully informed of, and bound by, the terms and conditions of this Approval.

9. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

10. Indemnification

a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of

Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations.

- c. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

11. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

12. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

13. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement (“p-job”) permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

14. Compliance Matrix

The Project Applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of

compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

15. Construction Management Plan

Prior to the issuance of each construction-related permit and project phase, the project applicant or his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.

16. Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)

All mitigation measures identified in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* are included in the Standard Condition of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP) which is included in these Conditions of Approval and are incorporated herein by reference, as Attachment N, as Conditions of Approval of the project. The Standard Conditions of Approval identified in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* are also included in the SCAMMRP, and are, therefore, incorporated into these Conditions by reference but are not repeated in these Conditions. To the extent that there is any inconsistency between the SCAMMRP and these Conditions, the more restrictive Conditions shall govern. In the event a Standard Condition of Approval or mitigation measure recommended in the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* has been inadvertently omitted from the SCAMMRP, that Standard Condition of Approval or mitigation measure is adopted and incorporated from the *Oak Knoll Mixed Use Community Plan Project Supplemental EIR* into the SCAMMRP by reference. The project applicant and property owner and subsequent merchant builders or developers, shall be responsible for compliance with the requirements of any submitted and approved technical reports, all applicable mitigation measures adopted, and with all Conditions of Approval set forth herein at his/her sole cost and expense, unless otherwise expressly provided in a specific mitigation measure

or Condition of Approval, and subject to the review and approval by the City of Oakland. The SCAMMRP identifies the timeframe and responsible party for implementation and monitoring for each Standard Condition of Approval and mitigation measure. Monitoring of compliance with the Standard Conditions of Approval and mitigation measures will be the responsibility of the Bureau of Planning and the Bureau of Building, with overall authority concerning compliance residing with the Environmental Review Officer. Adoption of the SCAMMRP will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in section 21081.6 of CEQA.

Prior to the issuance of the first construction-related permit, the project applicant shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

17. Payment of Fees

- a. Prior to issuance of a building permit, the project Applicant shall submit payment for all applicable and required fees including but not limited to the School fees, transportation fees, etc.
- b. Within one year following the Effective Date, the Project Applicant shall enter into an agreement to specify how fees and deposits will be managed to implement the Project. The City and the Project Applicant acknowledge the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP) requires the Project Applicant to directly contract with a number of independent experts monitoring construction or operation activities, including but not limited to biological, historic architectural and tribal monitors. In addition, the Project Applicant shall fund the full costs of all independent technical and other consultants the City reasonably deems necessary to comply with the Conditions of Approval, the Project Approvals and the SCAMMRP, as the final design and building permit plans for each Development Phase are submitted. All work performed pursuant to this Condition of Approval shall be under the direct supervision and direction of the City. Accordingly, the Applicant shall deposit funds in amounts acceptable to the City to cover the full costs of such consultants and other types or review, monitoring and inspection, including, without limitation, third-party plan check fees.

PART 2: PROJECT SPECIFIC STANDARD CONDITIONS OF APPROVAL

Recommended Measures from Supplemental EIR

18. Star Tulip: Recommendation BIO-1

Prior to construction, the following measures shall be implemented:

- a. A qualified botanist shall flag the location of Oakland star tulip plants during the flowering period prior to site grading. Under the direction of the qualified botanist, bulbs and associated soil plugs shall be harvested from 100 percent of the Oakland star tulip plants within those portions of the Project site to be graded or developed, following flowering and withering of leaves.
- b. Harvested bulbs shall be replanted on site in an area designated for passive open space preservation.
- c. The Project sponsor shall prepare a Monitoring Plan for relocated/transplanted Oakland star tulip plants within the Project site. The plan shall detail methods and location for relocating or reintroducing Oakland star tulip population, annual monitoring for successful establishment, and reporting protocols. The success criteria for relocated plants is 0.5:1 ratio [number of plants established: number of plants impacted] after three (3) years.
- d. Contingency measures such as obtaining bulbs from other locations should be included in the plan if it appears the success criterion will not be met after two years.
- e. The plan shall be developed in consultation with the appropriate agencies prior to the start of local construction activities.
- f. Monitoring reports shall include photo-documentation, planting specifications, a site layout map, descriptions of materials used, and justification for any deviations from the monitoring plan.

19. **Sudden Oak Death (during relocation of existing trees within the Project site or introduction of new trees): Recommendation BIO-2)**

The following measures shall be implemented during relocation of existing trees within the Project site or introduction of new trees to the Project site through mitigation plantings to prevent the spread of *Phytophthora ramorum*, the pathogen that causes SOD.

- a. Before working:
 - i. Provide crews with sanitations kits. (Sanitation kits should contain the following: Chlorine bleach [10/90 mixture bleach to water], or Clorox Clean-up®, scrub-brush, metal scraper, boot brush and plastic gloves).
 - ii. Ensure that work crews have properly cleaned and sanitized pruning gear, trucks and chippers prior to entering the Project Area.
 - iii. Clean and sanitize shoes, pruning gear and other equipment before working in an area with susceptible species (i.e. coast live oak, canyon live oak and California bay).

- b. While working:
 - i. When possible, conduct all tree work on *P. ramorum*-infected and susceptible species during the dry season (June - October). The pathogen is most likely to spread during periods of high rainfall especially in spring (April and May). Working during wet conditions should be avoided.
 - ii. If working in wet conditions cannot be avoided, keep equipment on paved or dry surfaces and avoid mud.
 - iii. Work in disease-free areas before proceeding to suspected-infestation areas.
 - iv. All debris from California bay trees, the primary vector of the pathogen, shall be mulched and spread in place, moved to a sunny dry area free of coast live oak, or disposed of offsite in a permitted disposal facility in accordance with state and federal regulations.
 - v. When removing California bay trees, all mulch and debris shall be segregated from other species when chipping, and all pruning gear and equipment, including chippers and trucks shall be cleaned and sanitized before working on coast live oaks.

- c. After working:
 - i. Use all reasonable methods to clean and sanitize personal gear and crew equipment before leaving a *P. ramorum*-infested site. Scrape, brush and/or hose off accumulated soil and mud from clothing, gloves, boots and shoes. Remove mud and plant debris, especially California bay, by blowing it out or power washing chipper trucks, chippers, buckets trucks, fertilization and soil aeration equipment, cranes, and other vehicles.
 - ii. Restrict the movement of soil and leaf litter under California bay trees as spores are most abundant on California bay leaves. Contaminated soil, particularly mud, and plant debris on vehicle tires, workers boots, shovels, chippers, stump grinders, trenchers, etc., may result in pathogen spread if moved to a new, un-infested site. Thoroughly clean all equipment and remove or wash soil, mud and plant debris from these items before use at another site. If complete on-site sanitation is not possible, complete the work at a local power wash facility.
 - iii. Tools used in tree removal/pruning may become contaminated and should be cleaned thoroughly with a scrub brush and disinfected with Lysol® spray, a 70% or greater solution of alcohol, or a Clorox® solution (1 part Chlorox® to 9 parts water or Clorox Clean-up®).

- d. When planting:

- i. Replanting should occur in the early fall when the pathogen is less active, and in order to take advantage of seasonal rains. Replanting activities should avoid late winter and spring.
- ii. Planting sites for susceptible species including coast live oak and canyon live oak should be selected in areas that are at least 20 yards away from California bay trees, brush and/or plant material.
- iii. California bay shall not be used as mulch for new plantings.
- iv. Small, non-protected (less than 9 inches diameter) California bay trees and brush should be cleared within a 20-yard or greater buffer where feasible to protect susceptible oak trees that are selected for preservation.

20. CPTED: Recommendation PSR-1

As part of the City's standard development review process, the Project Applicant should submit the Project plans for Crime Prevention through Environmental Design (CPTED) review by the Oakland Police Department and Bureau of Planning staff. The Project should consider design features included on the City's CPTED Checklists for residential, commercial, and civic uses. The Project Applicant shall incorporate the Police Department's recommendations into the final Project design and shall implement the design measures to an extent generally consistent with this Project Approval. CPTED review and recommendations may address points of access to the Project site or adjacent parcels, adequate public lighting, landscaping and buffering that provides visual access, particularly in parks, open spaces, and pedestrian and bicycle facilities, etc.

21. Pedestrian Safety (Crosswalks)

- a. Recommendation TRANS-1: Provide high-visibility crosswalks (meaning denoted with reflective striping or other high-visibility pavement markings) across Mountain Boulevard at Creekside Parkway, across Mountain Boulevard at Sequoyah Road, across Keller Avenue at Creekside Parkway, and at the unsignalized or uncontrolled movements at intersections within the site, consistent with City of Oakland's guidelines in place at the time of final design.
- b. Recommendation TRANS-3: Provide sidewalk along southbound Mountain Boulevard to close the existing gap between the Oak Knoll Heights exit driveway and the intersection of Sequoyah Road and Mountain Boulevard.

22. Off-site Transportation Improvements and Capital Improvements

- a. Applicant shall design and install the off-site intersection improvements described as intersections #2, 3, 12, 13, 16, 38, and 40 in the Final EIR, provided that Caltrans and City issue all necessary permits for such improvements.

- b. Applicant shall complete installation of all such off-site improvements in accordance with the timing provisions as set forth in the EIR. The EIR's timing requirements are expressed below, in terms of Equivalent Housing Units ("EHU's"), defined in Exhibit A to these Conditions.
- i. #2: I-580 Eastbound On-Ramp/Seminary Avenue/Kuhnle Avenue (390th EHU)
 - ii. #3: I-580 Westbound Off-Ramp/Seminary Avenue/Kuhnle Avenue (940th EHU)
 - iii. #12: I-580 Eastbound Off-Ramp/Fontaine Street/Keller Avenue (280th EHU)
 - iv. #13: Mountain Boulevard/Keller Avenue (60th EHU)
 - v. #16: I-580 Westbound Off-Ramp/Mountain Boulevard/Shone Avenue (500th EHU)
 - vi. #38: Improvements to Golf Links Road/I-580 Eastbound off ramp/98th Avenue (230th EHU)
 - vii. #40: Mountain Boulevard/Golf Links Road/I-580 WB Ramp (230th EHU)
- c. Applicant shall design and install public parks and trails in accordance with this Approval and shall dedicate such parks and trails, as well as certain open space areas ("Parks and Open Space Facilities") to the City or the Geologic Hazard Abatement District ("GHAD") in accordance with Exhibit B.
- d. These off-site transportation improvements and onsite parks and open space facilities are considered "developer constructed facilities" (i.e., transportation or capital facilities that would otherwise be funded in whole or in part by the City's Transportation and Capital Improvements Impact Fee program (Oakland Municipal Code section 15.74) and/or the City's Southeast Oakland Traffic Impact Fee program. The Applicant is eligible to seek a Credit and Reimbursement Agreement (Agreement) with the City (pursuant to Municipal Code section 15.74.120), whereby the Applicant may receive credit against the amount of the impact fees due, and possibly reimbursement from impact fees paid by other development projects. The applicant is also eligible to apply to the City Administrator for reductions or waivers of the impact fees (pursuant to Municipal Code section 15.74.080), whereby the City Administrator may find the Project will not generate a need for transportation or capital improvements infrastructure or the need will be limited so as to justify a reduced impact fee, because the Project will instead provide for these transportation or capital infrastructure improvements.

23. Traffic Signal at Keller and Creekside Parkway

Pursuant to construction of Creekside Parkway improvements at the intersection of Keller Avenue (see Condition 24, below), Applicant shall install a new traffic signal with appropriate signs and pavement markings, including but not limited to “stop ahead” or “signal ahead”, that indicate drivers should slow down as they approach the intersection to reduce travel speed in the downhill direction on Keller. Flashing beacons ahead of the intersection could be used to further alert drivers of the traffic signal ahead. The primary purpose of this traffic signal is to improve safety for pedestrians and bicyclists crossing Keller Avenue.

- a. To implement this traffic signal, Plans, Specifications, and Estimates (PS&E) for this intersection shall be submitted to the City of Oakland’s Transportation Services Division for review and approval.
- b. All elements shall be designed to City standards in effect at the time of construction. All other facilities supporting vehicle travel and alternative modes through the intersection should be brought up to both City standards and Americans with Disabilities Act (ADA) standards (according to Federal and State Access Board guidelines) at the time of construction. Current City Standards call for the elements listed below:
 - i. 2070L Type Controller with cabinet assembly
 - ii. GPS communications (clock)
 - iii. Accessible pedestrian crosswalks according to Federal and State Access Board guidelines with signals (audible and tactile)
 - iv. Countdown pedestrian head module switch out
 - v. City standard ADA wheelchair ramps
 - vi. Video detection on existing (or new, if required)
 - vii. Mast arm poles, full actuation (where applicable)
 - viii. Polara push buttons (full actuation)
 - ix. Bicycle detection (full actuation)
 - x. Pull boxes
 - xi. Signal interconnect and communication with trenching (where applicable), or through (E) conduit (where applicable)- 600 feet maximum
 - xii. Conduit replacement contingency
 - xiii. Fiber Switch
 - xiv. PTZ Camera (where applicable)

- xv. Transit Signal Priority (TSP) equipment consistent with other signals along corridor
- c. Signal timing plans shall be submitted for all signals in the coordination group.
- d. These improvements are not currently included in any City traffic impact fee program, and the Applicant shall be solely responsible for implementation of these improvements.

Planned Unit Development Permit, Preliminary Development Plan and Final Development Plan

24. Phase 1 Public Improvements

Multiple final maps may be filed for the Project, subject to the Phasing Schedule set forth in Oak Knoll Preliminary Development Plan, and a more fully set forth below. Modifications to this Phasing Schedule are subject to the review and approval of the Development Director, and at his/her sole discretion; any modifications may be subject to review of the Planning Commission. The Oak Knoll Preliminary Development Plan anticipates that the property will be developed in three phases, as shown in **Exhibit C**. The Developer shall have the right to develop the Project at such time as Developer deems appropriate, consistent with these conditions and without exceeding the phasing assumptions of the SEIR; however Developer may not proceed with development of Phase 2 or 3 until all public improvements for Phase 1 (see **Exhibit D**) are complete, as further described below for specific Phase 1 public improvements.

- a. Prior to issuance of the first building permit for Phase 1, Developer shall obtain all necessary permits and shall commence construction of all **Rifle Range Creek improvements**, consistent with the Hydrology Report (Restoration Plan and Preliminary Creek Protection Plan, ESA, as revised February 24, 2016) and Master Developer Site Improvements for Creek Restoration Planting Plan and Restoration Sections (FDP Sheets L043 through L045), and including City-issued conditions of approval pursuant to the Creek Permit for Rifle Range Creek, and all applicable EIR mitigation measures. All Rifle Range Creek improvements must be deemed complete and satisfactory by City and any other applicable regulatory agencies prior to issuance of a certificate of occupancy for the final unit in Phase 1, and prior to issuance of any building permits for Phases 2 or 3. The term "all Rifle Range Creek improvements" include the following:
 - i. The **Creekside Loop Vehicle Bridge**, consistent with Master Developer Site Improvements FDP, Sheets L012 through L014
 - ii. The **Pedestrian Bridge** across Rifle Range Creek, consistent with Master Developer Site Improvements FDP, Sheets L012 through L014
 - iii. Trail improvements and trail signage through Open Space Parcel A (i.e., the **Rifle Range Creek Creekside Trail**), connecting from Creekside Parkway

to the relocated Club Knoll parcel, consistent with Master Developer Site Improvements FDP Sheet L005.

- b. To facilitate orderly development, the construction of primary access roadways (see Creekside Parkway and Creekside Loop, below) may be individually phased to meet initial Phase 1 development requirements. Prior to issuance of the first certificate of occupancy for the first residential unit within any individual portion of Phase 1, any sub-phased roadway improvements shall meet the requirements of the City of Oakland Subdivision Ordinance and the provisions of the Subdivision Map Act, and shall be approved by the Oakland Fire Department as providing two acceptable means of access, inclusive of construction of the Creekside Loop Vehicle Bridge.

- c. Prior to issuance of any building permits for Phases 2 or 3, Developer shall grade and construct all remaining ***Creekside Parkway*** improvements from Mountain Boulevard to Keller Avenue, consistent with Master Developer Site Improvements FDP Sheets L002 and L003, inclusive of intersection improvements at Mountain Boulevard, streetlights, entry monuments and streetscape landscape improvements. The Creekside Parkway shall be designed and installed design fully consistent with the Creekside Parkway Design Details as presented in Master Developer Site Improvements FDP Sheet L007. These improvements shall include the following:
 - i. A 68-foot right-of-way inclusive of ***Class I bikeway and multi-use trail along Rifle Range Creek.***
 - ii. Installation of a new traffic signal at the ***Mountain Boulevard/Creekside Parkway intersection***
 - iii. Installation of an all-way-stop control at the ***Keller Avenue/Creekside Parkway intersection***
 - iv. Design and relocation of the ***bus stop and bus shelter*** near the Mountain Boulevard/Creekside Parkway intersection

- d. Prior to issuance of any building permits for Phases 2 or 3, Developer shall grade and construct all remaining ***Creekside Loop*** improvements, from Mountain Boulevard to Creekside Parkway (or to the Seneca parcel, if the Seneca parcel is operating), consistent with Master Developer Site Improvements FDP Sheets L003, inclusive of streetlights and streetscape landscape improvements. The Creekside Loop design shall be fully consistent with the Creekside Loop Design Details as presented in Master Developer Site Improvements FDP Sheet L008.
 - i. The Developer shall install improvements as necessary at the ***Mountain Boulevard/Creekside Loop intersection*** to ensure right-in/right-out only access.

- e. Prior to issuance of any development-related permit for VTM Parcel 7, Developer shall commence relocation of the Club Knoll building, including obtaining a necessary demolition permit, grading of the new building receiver site (VTM Parcel H), disassembly of the existing Club Knoll building, and moving all disassembled building components to safe storage at VTM Parcel 7, consistent with *Club Knoll Relocation and Rehabilitation* FDP (Architectural Dimensions, April 03, 2017), and all applicable EIR mitigation measures. Prior to issuance of any building permits for Phases 2 or 3, or within 2 years from issuance of the Club Knoll demolition permit for relocation, whichever comes first, Developer shall complete (via City issuance of a certificate of occupancy) restoration of Club Knoll.
- f. Prior to issuance of a certificate of occupancy for any residential units on VTM Parcel 7, Developer shall install street and sidewalk improvements, including approved *Emergency Vehicle Access* (EVA) improvements through the "Barcelona" property, with EVA-only connection to Sequoyah Road.
- g. Prior to issuance of the 100th residential building permit in Phase 1, Developer shall construct the *Creekside Entry Park* improvements (including trail and trail signage), consistent with Master Developer Site Improvements FDP, Sheets L027 through L028.
- h. Prior to issuance of a certificate of occupancy for any development within the Retail Village that is adjacent to the public plaza, Developer shall install the *Public Plaza* as indicated in the Preliminary Development Plan. The proposed grocery store site can be constructed first, without the plaza.

25. Phase 2 and 3 Public Improvements

The Developer shall have the right to develop Phases 2 and 3 of the Project at such time as Developer deems appropriate; however Developer may not proceed with development of Phases 2 or 3 until all public improvements for Phase 1 (see Condition #23 above) are completed, and as further described below for specific Phase 2 and 3 public improvements.

- a. Developer shall construct the *North Neighborhood Park*, consistent with Master Developer Site Improvements FDP, Sheets L029 through L031, prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 21 and/or 25.
- b. Developer shall construct the *Village Pocket Park*, consistent with Master Developer Site Improvements FDP, Sheets L032 through L034, prior to issuance of the final certificate of occupancy for residential units on VTM Parcels 19 or 20.
- c. Developer shall construct the *Oak Knoll Memorial Park* including the trail and trail signage through Open Space Parcel J, consistent with Master Developer Site

Improvements FDP, Sheets L035 and L038, prior to issuance the first certificate of occupancy for residential units on VTM Parcel 15, or prior to the dedication of Open Space Parcel J.

- d. Developer shall construct the *Emergency Vehicle Assess* improvements to VTM Parcels 16 and 17 as shown on the VTM, prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 16 or 17.
- e. Developer shall implement trail improvements and trail signage through *Open Space Parcel I* (i.e., the Hardenstein property), prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 13 or 14.
- f. Developer shall implement trail improvements and trail signage through *Open Space Parcels B and R* (i.e., adjacent to lower Keller Avenue and Mountain Boulevard), prior to issuance of a certificate of occupancy for any residential units on VTM Parcels 1 or 2.

26. **Club Knoll Work Plan, Approval and Monitoring**

Prior to approval of a construction-related permit for Club Knoll

A Final Work Plan for Club Knoll Relocation and Rehabilitation shall be prepared and submitted for City review and approval. The contents of the Final Work Plan shall include:

- a. Final Relocation Travel Route Plan
- b. Complete Baseline Building Conditions Study, Structural
- c. Complete Building Features Inventory and Plan
- d. All identified Specific Relocation/ Rehabilitation Measures as included in the SEIR

At City's discretion, City may retain third-party independent professional consultants to review and make recommendation on the Final Work Plan prior to approval. The Final Work Plan shall be submitted to LPAB for their review and approval prior to implementation. A third-party independent professional preservation architect and structural engineer (as defined in the Carey & Co. report dated May 3, 2016) shall be on site to monitor dismantlement and reassembly of Club Knoll.

27. **Owner's Completion Bond**

Prior to issuance of a construction-related permit

Consistent with Municipal Code Section 15.44.030, the project applicant or their designated representative shall file with the Building Inspector a surety company bond executed by owner or lessee as principal, and conditioned as follows:

- a. That all of the work required to be done to complete the relocation and rehabilitation shall be as set forth in the Final Work Plan for Club Knoll pursuant to the conditions of approval set forth herein.
- b. Such bond shall be in principal amount equal to the estimated cost of the work proposed to be done, plus ten percent, and shall name the City of Oakland as obligee.
- c. If the Building Inspector determines that the conditions and obligations of the Club Knoll relocation and rehabilitation permit as set forth in the Final Work Plan have not been met by the property owner or lessee, the Building Inspector may notify the property owner of the obligations with a 60-day opportunity to cure. If such cure is not effected, the City may proceed at the property owner's expense to complete all remaining obligations under the Final Work Plan. Remaining relocation and rehabilitation work may be done by private contractors, and the Building Inspector shall keep an itemized account of all such reasonable costs.
- d. Upon completion of the work, the City Manager or his or her designee shall provide written notice to the owner or lessee, showing the itemized reasonable cost of such work and giving notice of the day, hour and place when the City Council will hear and pass upon a report by the Building Inspector or his or her representative of said costs.

28. Surety Bond

Prior to issuance of a construction-related permit

Consistent with Municipal Code Section 15.44.070 and 080, the project applicant shall file a surety bond with the City Clerk, executed by the project applicant and by a surety company authorized to do business in California as surety.

- a. The surety bond shall name the city of Oakland as obligee, and shall be a principal amount as may be fixed by the City Manager based upon the facts and conditions of the proposed relocation and rehabilitation of Club Knoll.
- b. The surety bond shall be conditioned as to the following:
 - i. That the project applicant (or their designated representative) shall well, truly, honestly and faithfully perform and execute the duties of a building mover as regulated by the Oakland Municipal Code.

- ii. That the project applicant (or their designated representative) shall strictly comply with all the applicable conditions and requirements of the Oakland Municipal Code regulating the moving of buildings.
- iii. That the project applicant (or their designated representative) shall pay any and all losses or damages that may result from moving the Club Knoll building, to any property owned or controlled by the city or for which it may be responsible, and to any property belonging to any public utility company or public carrier.
- iv. That the project applicant (or their designated representative) shall save, indemnify and keep harmless the city against all liabilities, judgments, costs and expenses which may in any way accrue against the city as a consequence of the granting of the permit to move the building.
- v. That the project applicant (or their designated representative) shall file an insurance policy of public liability and property damage with the City Clerk that satisfies all City requirements.

29. Club Knoll Relocation

The relocation of Club Knoll shall follow all building permit procedures including but not limited to noticing requirements, as applicable. Moving of the building shall be conducted by a building relocation contractor with experience successfully moving and relocating large structures, and preferably with experience successfully moving and relocating large historic structures.

30. Historic Maintenance

Ongoing

The project applicant and/or successors shall keep in good repair all exterior and interior portions of Club Knoll, the maintenance of which is necessary to prevent deterioration and decay of the building. The Covenants, Conditions and Restrictions (CC&Rs) approved for the operation of the HOA shall include:

- a. a requirement to contract with a professional property management firm to operate and maintain the Club Knoll building on their behalf, potentially off-setting these management expenses through revenue derived from commercial lease of certain space within the building.
- b. a provision requiring the HOA to maintain the exterior façades of the building and the landscaping around the building at commercially reasonable standards of repair and appearance (which standards shall be defined in the CC&Rs)

- c. a provision stating that, after adequate notice to the HOA and an opportunity for the HOA to cure any alleged failure to maintain, the City shall have the right to perform the required maintenance and repairs in the event the HOA fails to do so,
- d. a written procedure for the reimbursement of costs incurred by the City in so maintaining to the standard set forth in the CC&Rs;
- e. a provision stating that the city shall have the right to enforce the Club Knoll maintenance provisions contained in the CC&Rs as a third-party beneficiary.

31. Public Art for Private Development Condition of Approval (Commercial)

The commercial portions of the Project are subject to the City's Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. ("Ordinance"). As a non-residential project, the public art contribution requirement is equivalent to one percent (1%) of building development costs for the project. The contribution requirement can be met through the commission or acquisition and installation of publicly accessible art on the development site, payment of an in-lieu contribution to the City's established public art fund, or satisfaction of alternative compliance methods described in the Ordinance. The applicant shall provide proof of full payment of the in lieu contribution, or provide proof of installation of artwork on the development site prior to the City's issuance of a final certificate of occupancy for the applicable Phase in which the public art is located unless a separate, legal binding instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing. If the applicant or owner desires to install art created by an artist not verified by the City, the applicant or owner shall pay a verification fee to the City in accordance with the Master Fee Schedule.

When Required: Prior to issuance of Final Certificate of Occupancy and Ongoing

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

32. Public Art for Private Development Condition of Approval (Residential)

The residential portions of the Project are subject to the City's Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. ("Ordinance"). As a residential project, the public art contribution requirement is equivalent to one-half percent (0.5%) of building development costs for the project. The contribution requirement can be met through the commission or acquisition and installation of publicly accessible art on the development site, payment of an in-lieu contribution to the City's established public art fund, or satisfaction of alternative compliance methods described in the Ordinance. The

applicant shall provide proof of full payment of the in lieu contribution, or provide proof of installation of artwork on the development site prior to the City's issuance of a final certificate of occupancy for each Phase unless a separate, legal binding instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing. If the applicant or owner desires to install art created by an artist not verified by the City, the applicant or owner shall pay a verification fee to the City in accordance with the Master Fee Schedule.

The project sponsor is encouraged to allocate the public art funds to hire Oakland-based artists to provide public art on or near the site.

When Required: Prior to issuance of Final Certificate of Occupancy for the first unit and Ongoing

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

33. **Club Knoll Hours of Operation and Operations**

Hours of Operation for community events, commercial operations and Home Owner's Association (HOA) use shall be included and specifically outlined in the CC&R's for HOA. In addition, the Club uses shall operate within the Performance Standards outlined in Planning Code Section 17.120. Furthermore, any potential Alcohol and Beverage Sales shall meet Planning Code Section 17.103.030.

34. **Club Knoll Restaurant/Kitchen Uses**

Prior to issuance of a building permit, the project Applicant shall "plumb" Club Knoll for restaurant/kitchen uses including grease interceptors and exhaust, subject to the requirements of the Historic Building Code.

35. **Plug-In Electric Vehicle (PEV) Charging Infrastructure**

- a. PEV-Ready Parking Spaces: For on-site parking, the project applicant shall comply with of the requirements of Chapter 15.04 of the Oakland Municipal Code for the installation of parking spaces equipped with full electrical circuits designated for future PEV charging (i.e. "PEV-Ready) per requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-Ready parking spaces.

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

- b. PEV-Capable Parking Spaces: For residential and non-residential projects with more than 11 onsite parking spaces, the project applicant shall comply with requirements of Chapter 15.04 of the Oakland Municipal Code for the installation of ADA-inaccessible conduit to supply PEV-capable parking spaces. The Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-capable parking spaces.

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

- c. ADA-Accessible Spaces: For public buildings, public accommodations, commercial buildings, and publicly funded housing, the project applicant shall indicate the location of future accessible EV parking spaces as required under Title 24 Chapter 11B Table 11B-228.3.2.1, and specify plans to construct all future accessible EV parking spaces with appropriate grade, vertical clearance, and accessible path of travel to allow installation of accessible EV charging station(s).

When Required: Prior to building permit final

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

36. Bike Lane Requirements

Commensurate with required traffic intersection improvements, the following adjacent or proximate bike lanes shall be installed, confined within existing roadbeds through the restriping of traffic lanes. Modifications to the City’s standard lane widths may be required to install these bike lanes. The installation of these bike lanes shall not require any modifications to any roadbeds, curb, gutter, bridge or other structures, other than restriping. The plans will be reviewed by the Department of Transportation’s Bicycle & Pedestrian Facilities Program. If these bike lanes are not feasible under the foregoing limitations or result in new traffic impacts that were not studied in the City’s Bicycle Master Plan or the Oak Knoll Project Supplemental EIR, they shall not be required to be installed as a Condition of Approval.

- a. Mountain Blvd (Maynard Ave/I-580 WB on-ramp to Golf Links Rd): If engineering studies indicate bike lanes are feasible, install bike lanes through

restriping in each direction on Mountain Blvd from Maynard Ave to Golf Links Rd. Minimize the elimination of on-street parking from Shone Ave to Keller Ave by having one northbound lane. If a second northbound lane is deemed necessary to meet City traffic standards on the approach to Keller Ave., and is feasible to construct, minimize its length to what is necessary for the traffic signal operations. From Sequoyah Rd to Golf Links Rd, maintain the northbound on street parking that is immediately in front of private residences. This will leave some gaps in the bike lanes. Eliminate the parking that is not in front of private residences in order to install the bike lanes. As part of the intersection design for Mountain Blvd/Golf Links Rd, include bike lanes in both directions on Mountain Blvd between Golf Links Rd and the point approximately 400 feet north of the intersection where the curb-to-curb width of Mountain Blvd narrows.

- b. Golf Links Rd (Mountain Blvd to 98th Ave) and 98th Ave (Golf Links Rd to Stanley Ave): Install bike lanes in each direction on Golf Links Rd (Mountain Blvd to 98th Ave) and on 98th Ave (Golf Links Rd to Stanley Ave). On 98th Ave, maintain the existing on-street parking at the frontage of the Bishop O'Dowd High School parking lot, resulting in a short bike lane gap.
- c. Edwards Ave (Mountain Blvd/I-580 WB on-ramp to I-580 EB off-ramp): Install bike lanes in each direction on this one block of Edwards Ave (Mountain Blvd/I-580 WB on-ramp to I-580 EB off-ramp) to improve bicyclist safety on the existing bike route in the Mountain Blvd corridor. Specifically, the freeway overpass creates low light conditions and visibility issues that may be ameliorated by separating bicyclists from motor vehicles with dedicated bicycle lanes.
- d. Kunhle Ave (Mountain Blvd to Seminary Ave/Sunnymere Ave): In conjunction with the installation of two traffic signals, redesign through restriping the one block of Kunhle Ave from Mountain Blvd to Seminary Ave as follows: one travel lane per direction, left turn pockets, and one bike lane per direction. This redesign will eliminate one travel lane per direction.

37. North Neighborhood Park along Keller

No sports field lighting or permanent field striping shall be installed in the play lawn (informal ball field).

Design Guidelines

38. Facade Materials

No foam materials are appropriate as a façade, trim, parapet or detail material.

39. Wall Design along Mountain

Prior to issuance of a Building Permit, the project Applicant shall submit the design of the privacy wall, consistent with the entitlement documents, along Mountain Boulevard to the Bureau of Planning for review and approval with the Final Development Plan submitted for that area of the Project.

40. Master Signage Program

The applicant for the Retail Village FDP shall submit a master signage program for the Village Retail Center for review and approval per the Planning Code. No signage shall be visible from the freeway without subsequent CEQA review for affects to a scenic highway.

41. Retail Signage

No retail or commercial signage shall be visible from I-580, a scenic highway.

42. Trail, Creek, and Bike Lane Signage / Markers

The applicant shall submit construction drawings of trail, creek and bike lane signage and markers prior to the issuance of grading and building permits for each phased FDP. The construction drawings shall be consistent with the signage program submitted as part of the Master Developer FDP.

Vesting Tentative Tract Map

43. City Surveyor Conditions

Prior to recording of each map

Multiple phased final maps may be filed subject to the Phasing Schedule set forth in Oak Knoll Preliminary Development Plan. Modifications to the Phasing Schedule are subject to the review and approval of the Development Director, and at his/her sole discretion; any modifications may be subject to review of the Planning Commission.

- a. All street shall have monuments installed for each Final Map as follows:
 - i. Monuments shall be shown on the tentative map at all BC's, PC's PRC's, Intersections (with other monument lines) and Center of Cul-de Sacs or within 25 feet of the end of a road.
 - ii. This requirement is for ALL roads and driveways, public or private.
 - iii. Monuments shall be coordinated to be parallel with the right of way and equally offset from the centerlines. No utility lines shall be allowed to be placed within 3 feet on either side of the monument lines.

- iv. Monuments shall be no greater than 600 feet apart on tangent sections. Within tangent sections greater than 600' the monuments shall be evenly spaced.
 - v. All monuments shall comply with the Standard City Monument drawings in use at that time which will be available from the City Surveyor.
 - vi. All monuments not in place at the time of the submission of the first final map shall be bonded to insure installation.
 - vii. Any existing monuments by the federal government or others shall be mapped, identified and the appropriate Record of Survey or Corner Record filed with the County. Castings and disks shall be salvaged and delivered to the City of Oakland.
- b. Benchmarks (BMs) shall be installed with the installation of improvements at the time of the filing of each final map at intersections or mid-block as follows:
- i. BMs shall be spaced at approximately a 1/4 mile (a 1250 to 1500 foot) radii throughout the entire site.
 - ii. All BMs shall be established on City of Oakland datum
 - iii. For Each BM, when set, the surveyor shall prepare an official 'card' (electronic) which will be provided by the City Surveyor's office which will include level notes, descriptions, elevation, etc.
 - iv. Benchmarks not in place at the time of the submission of each final map shall be bonded to insure installation.
 - v. The approximate locations of all BM's shall be shown upon the tentative map.
- c. All perimeter property corners shall be field established by each submitted final map. Corners shall be established with 1/1/2"x4' iron pipes (and tags) in a concert collar and will be clearly identified by fiberglass posts (Carsonite or equal) corner markers acceptable to the City Engineer.

Fire Department Conditions

44. Fire Prevention Bureau Requirements

Ongoing.

The project shall comply with all the requirements from the Fire Marshall memo dated September 29, 2017 (Attachment T).

Attachment B (Updated Attachment 2-R)

45. Fire Safety Phasing Plan

Each Developer's Fire Safety Phasing Plan as required pursuant to the SCAMMRP Standard Condition of Approval HAZ-4 shall demonstrate, to the satisfaction of the City's Fire Safety Division, that the construction proposed by the Developer during each phase meets the requirements of the City's Fire Code (Municipal Code Chapter 15.12, including but not limited to Chapter 3, 5 10, and 33). The Plan's details must include, but are not limited to information addressing the following requirements:

- a. Notification of the California Emergency Management Agency prior to and at the completion of construction,
- b. Fire apparatus access by phase,
- c. Fire protection water supply by phase,
- d. Means of egress by phase, and
- e. Storage of combustible materials during construction.

46. Wildfire Prevention Area Vegetation Management

The Vegetation Management Plan as required pursuant to the SCAMMRP Standard Condition of Approval HAZ-5 shall demonstrate, to the satisfaction of the City's Fire Safety Division, that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements pertaining to maintaining defensible space, clearance of brush and vegetation growth form electrical transmission and distribution lines, and ignition source control.

Public Works Agency Conditions

47. Pedestrian Bridge

The pedestrian bridge shall be a minimum of 8' in width. The cross section shall be submitted for review and approval by the Department of Transportation. The pedestrian bridge shall be dedicated to and owned by the City of Oakland and shall be used solely for public pedestrian access. The pedestrian bridge shall include adequate lighting in accordance with the City of Oakland Outdoor Street Lighting Standards.

48. FEMA Regulations

All final design of buildings and structures, public or private, shall meet any applicable FEMA regulations to the satisfaction of the City Engineer in consultation with City Building Official, and the City's Floodplain Administrator.

49. **Vehicle Bridge**

The new Vehicle Bridge should include new sidewalks that are a minimum of 6' in width on both. The Vehicle Bridge shall include adequate lighting in accordance with the City of Oakland Outdoor Street Lighting Standards.

50. **Bulb-outs Design**

Bulb-outs within the City right-of-way be curved and designed to accommodate street sweeping trucks.

51. **Sanitary Sewers Design**

The sanitary sewer design for the project shall be gravity flow.

52. **Geotechnical Peer Review**

Prior to issuance of a grading permit

At the discretion of the City Engineer or the City Building Official, the applicant shall provide a Geotechnical Peer Review by a licensed Geotechnical Engineer. The recommendations provided in the peer review report shall be responded to in writing by the Geotechnical Engineer. The recommendations provided in the peer review shall be incorporated into improvement plans to the satisfaction of the City Engineer and City Building Official prior to issuance of related grading and/or building permits. The developer shall be responsible for the costs of any Geotechnical peer review as required by the City.

53. **Construction, Ownership and Maintenance of Certain Improvements**

Ownership and maintenance of certain improvements will be as set forth in the "Oak Knoll Development Ownership, Funding Sources and Maintenance Responsibilities" ("Oak Knoll Matrix") attached hereto as **Exhibit B**. The Applicant shall dedicate, and the City shall accept, all facilities designated for City of Oakland ownership on Exhibit B, including but not limited to public parks and trails, public roads, bio-retention swales and stormdrain. For parks to be dedicated to the City, park improvement plans shall be subject to review by the Bureau of Planning. Except for public parks, Applicant shall retain the right to maintain ornamental landscaping on any City-owned property, including but not limited to street trees, street planters, and decorative signage.

Prior to and at the time of approval of each final map for the Project:

- a. **Formation of Community Facilities District**: City shall establish a community facilities district ("CFD") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "CFD Act"). The CFD will include within its boundaries all of the Oak Knoll Development Project. All costs of forming and

implementing such CFD, including, without limitation, costs for consultants, elections and any legal challenge, shall be at Applicant's sole costs, and the Project Applicant shall make an initial advance payment to the City for formation costs of the CFD, and shall advance additional amounts within five (5) business days after the written request by the City, subject to reimbursement out of the proceeds of bonds or facilities special taxes collected in the CFD. All contractors and consultants paid or reimbursed by the CFD or the City shall be subject to the direction of the City. The CFD shall have full responsibility for improvements and maintenance, which obligations shall be responsibilities of Applicant until such time as the CFD is fully formed and financed to City satisfaction and City approves Applicant's release from such obligations. The CFD shall be advanced by the Project Applicant, The CFD will contain two separate special taxes, described as follows:

- i. Facilities Special Tax. The facilities special tax shall be levied to finance the construction and acquisition of the Facilities (defined below) and to secure bonds issued to finance the construction and acquisition of the Facilities. The facilities special tax will be pre-payable and will escalate annually by 2%.
 - ii. Services Special Tax. The services special tax shall be levied to finance the maintenance of the Maintained Facilities (defined below). The services special tax will be levied in perpetuity and will not be pre-payable. The services special tax will escalate annually by 2%.
- b. Authorized Facilities. The CFD, through the facilities special taxes, shall be authorized to finance all of the following facilities (herein, the "Facilities"), irrespective of the geographic location of the improvements financed:
- i. Project capital improvements such as streets, utility lines, grading and drainage.
 - ii. Affordable Housing Fees of the City of Oakland, as may be used for designated capital improvements.
 - iii. Capital fees of East Bay Municipal Utilities District.
 - iv. Capital fees of the Oakland Unified School District.
- c. Authorized Services. The CFD, through the services special taxes, which shall be based on an amount determined by the City Council as necessary to maintain public facilities within the CFD, to meet City-defined standards and cost parameters, shall be authorized to maintain the following improvements (herein, the "Maintained Facilities"), which are in or adjacent to the CFD:
- i. Publicly-owned parks
 - ii. Publicly-owned bridges

- d. Joint Community Facilities Agreements. Under the CFD Act, City may be required to enter into one or more joint community facilities agreements with other governmental entities that will own or operate any of the Facilities to be financed by the CFD. The City and Project Applicant agree that they will take all steps necessary to procure the authorization and execution of any required joint community facilities agreements with other governmental entities before the issuance of any CFD Bonds that will finance the construction or acquisition of Facilities that will be owned or operated by such other governmental entities.

- e. The RMA. In setting the tax rates in the Rate and Method of apportionment (the "RMA") for the CFD, the Total Tax Obligation (as defined below) on any residential unit within the CFD will not exceed two percent (2.00%) of the market value of that residential unit at the time the bonds are sold, secured by Special taxes of the CFD (the "2.00% Limitation"). The appraised value of a residential unit shall be determined by appraisal within no more than 90 days prior to the sale of bonds secured by such residential unit. The term "Total Tax Obligation" means, with respect to a residential unit at the time of calculation, the sum of: (a) the ad valorem taxes actually levied or projected to be levied at the time of calculation; (b) the assigned facilities special tax rates and the services special tax rates levied or projected to be levied at the time of calculation; and (c) all other special taxes (based on assigned special tax rates) or assessments secured by a lien on the residential unit levied or projected to be levied at the time of calculation. The RMA for the CFD will provide that the facilities special taxes will be levied on parcels of Developed Property (property for which a building permit has been pulled) at the maximum assigned rates both before and after bonds have been issued, and any facilities special taxes collected that are not needed for debt service on the bonds, administrative expenses, or replenishment of reserve funds will be available to finance the Facilities.

- f. Issuance of CFD Bonds. City, on behalf of the CFD, intends to issue one or more series of CFD Bonds for purposes of financing the Facilities. Project Applicant may submit written requests that City issue CFD Bonds, specifying requested issuance dates, amounts, and main financing terms. Following Project Applicant's request, Project Applicant and City will meet with City's public financing consultants to determine reasonable and appropriate issuance dates, amounts, and main financing terms that are consistent with these conditions of development and the CFD Goals. The CFD Bonds shall be issued pursuant to an indenture, trust agreement, or fiscal agent agreement (however denominated, an "Indenture") between the CFD and a fiscal agent or trustee (however denominated, the "Fiscal Agent"). CFD Bonds will have a term of not less than thirty (30) years and not more than thirty-five (35) years unless Project Applicant and City agree otherwise.

- g. Maintenance of Facilities. The RMA will provide that the services special taxes will be used to finance the Maintained Facilities. The annual amount of the

services special taxes to be levied will depend on the budgetary process described below:

- i. Services special taxes shall be levied to create a reserve fund to provide for restoration, maintenance, replacement repair or other work associated with the Maintained Facilities.
 - ii. The Project Applicant shall provide start-up funds for the CFD in an amount to be determined by the City Engineer in accordance with the approved capital development and maintenance plan, which shall be provided no later than recordation of the first final map for the Project. The Project Applicant shall also assume financial responsibility for all related work for a warranty period determined by the Public Works Director.
 - iii. The services special taxes shall be authorized to finance both on-going maintenance activities as well as a plan for unexpected maintenance and events, including events or damages that could occur as the result of site improvements associated with geotechnical, drainage or related matters. This work shall be based on the final grading, site soils conditions and specifications for improvements unless otherwise covered by the GHAD.
 - iv. The services budget shall separately identify the projected costs associated with standard annual operation, administration and maintenance work on the Maintained Facilities; long-term operation and maintenance including life cycle replacement costs of major features including but not limited to the Roadway and Pedestrian Bridge;—and the reserve fund debt service requirements described in item 1 above.
- h. Other Obligations and Requirements:
- i. The CFD shall submit an annual report to the City Council detailing compliance with Minimum Maintenance Standards, and budgetary and other financial information relevant to the CFD operations.
 - ii. The CFD shall obtain general liability insurance and directors' insurance for the Board of Directors to the extent that the CFD Board determines in its sole discretion that such insurance is available at commercially reasonable rates.
 - iii. The assessments or taxes necessary to fund the above requirements must be determined following a thorough financial analysis and must include adequate funding for indemnity and insurance obligations. The City's attorney and Risk Manager shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.
 - iv. The taxes or assessments shall be fully authorized and imposed on the project site prior to approval of the first final map. Any body formed to perform construction and/or maintenance pursuant to this Condition of

Approval will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the such body, and no City employees shall perform such services for CFD facilities and improvements. Further, the City shall not fund or otherwise administer any of the operations of the CFD.

54. **Annexation of Project Area into Oakland Area Geological Hazard Abatement District (GHAD)**

At Developer's request and sole cost, the City shall annex all of the properties within the boundary of the Project into the Oakland Area Geological Hazard Abatement District ("GHAD") and shall cooperate in the preparation of all documents and plans necessary for the GHAD's ownership and maintenance of the open space facilities within the Project, as set forth in Exhibit B, including but not limited to any Resolution(s) of Annexation, Engineer's Report(s) and Plan(s) of Control. To the extent the City is the fee owner of the parcels to be included within the GHAD, City shall fully cooperate with the Developer in the annexation of these parcels into the GHAD and with the implementation of all of the GHAD's operations and activities. The Applicant shall dedicate to the GHAD all facilities and land areas indicated to be owned in fee by the GHAD on Exhibit B, subject to a reservation of rights by Applicant for the purpose of maintenance of ornamental landscaping.

55. **Confirmation of Substantial Compliance with Vesting Tentative Maps**

Prior to the recordation of each Final Map

Prior to recordation of each Final Map, site improvement plans and a title report shall be submitted for the review and approval of the City Planning Director or his/her designee demonstrating substantial compliance with the approved VTTM and the "Project Plans" as set forth in Condition of Approval 1, as well as any subsequent permit received from a responsible or other agency with authority over the project site.

56. **Financing and Conveyance Maps**

As used in these conditions of approval, "final map" means only those final maps filed for construction purposes.

- a. An Ordinance for accepting and processing Finance and Conveyance Maps, (F&C Maps) has not been adopted by the City at the time of the approval of this project. Any F&C Maps submitted for this project shall be processed in the same manner as a Tentative Parcel Map application and Parcel Map application and fees owed per City's adopted Master Fee Schedule for Tentative and Parcel Map applications shall apply unless an Ordinance for F&C Maps has been adopted and the Master Fee Schedule updated to include specific fees for F&C Maps.

- b. After approval of a Tentative F&C Map a Final F&C Map shall be submitted to the Department of Transportation, Engineering Services, and the appropriate fees shall be paid in full by the applicant prior to Staff beginning any review.
- c. The following statements shall be clearly printed in an acceptable font size on the face of each proposed Tentative and Final F&C Map:
 - i. "FOR FINANCE AND CONVEYANCE PURPOSES ONLY."
 - ii. "THIS MAP DOES NOT CREATE A LEGAL BUILDING SITE. FURTHER APPLICATIONS ARE NECESSARY TO DEVELOP THIS PROPERTY."
 - iii. "THIS MAP DOES NOT REMOVE ANY DEVELOPMENT REQUIREMENTS SET FORTH WITH APPROVAL OF THE VESTING TENTATIVE MAP 8320 AND CITY'S PLANNING PROJECT NUMBER PLN15378 WHICH MUST BE SATISFIED WITH CONTINUED DEVELOPMENT OF THE PROPERTY."
- d. F&C Maps shall provide sufficient information on future uses and feasibility of future uses to ensure consistency with the approved vesting tentative map number 8320 and the project conditions of approval, including the project's environmental mitigation measures, to the satisfaction of the Planning Director and the City Engineer.
- e. All parcel lines shown on F&C Maps shall not conflict with any existing easements or proposed easements as identified on the approved vesting tentative map number 8320.
- f. No building permits shall be issued for development of any parcel or parcels presented in any recorded F&C Map until a Final Tract Map or Parcel Map is recorded with the County.
- g. Prior to recording any F&C Map it shall conform to and meet the requirements of the Subdivision Map Act and the City's municipal code as determined by the City Engineer.
- h. Parcels identified on the approved vesting tentative map 8320 for which, 1) a Final Parcel or Tract Map is already recorded with an executed Subdivision Improvement or Public Infrastructure Agreement, OR 2) included in a mylar map signed by the Owner(s) and delivered to the City but not yet recorded by the County, shall be excluded, removed from, any F&C Map application as determined by the City Engineer.

57. Offers of Dedications at time of Final Map

Prior to recordation of each Final Map

Attachment B (Updated Attachment 2-R)

Prior to recordation of each Final Map, all reservations and offers for dedications of easements, parcels and improvements and all other easements deemed necessary for all existing and proposed utilities shall be identified, to the satisfaction of the Transportation and Right of Way Management Division, for the portion of the project included in the Final Map. Closure calculations for all easements, except the public utility easements (PUE) located adjacent to streets, shall be submitted for review and approval by the Transportation and Right of Way Management Division.

58. Selection of Street Names

Prior to the recordation of each Final Map

Prior to recordation of each Final Map, street names shall be selected and submitted for approval by the Bureau of Building, PWA Engineering Services, Fire Department and Police Department.

59. Subdivision Conditions, Covenants & Restrictions (CC&Rs)

Prior to the recordation of the first Final Map for the first Project Phase

Conditions, Covenants, and Restrictions (CC&Rs) for the total master planned community shall be prepared and submitted with an application for the first Final Map and shall be reviewed and approved by the Planning and Zoning Division and the City Attorney's Office.

- a. The master community CC&Rs may include procedures whereby property within the development may be added to the CC&Rs by means of annexation as subsequent Final Maps are processed.
- b. In addition, neighborhood CC&Rs for any sub-project common interest developments shown on a Final Map (whether condominium projects or planned developments or shared access facilities) shall be prepared and submitted prior to the issuance of building permits for those individual merchant builders, and shall be reviewed and approved by the Planning and Zoning Division and the City Attorney's Office with respect to that Final Map. It is acknowledged by the City that common interest development CC&Rs are be subject to review and approval of the California Bureau of Real Estate (CalBRE) and may, subsequent to City review, be subject to revision as directed by CalBRE or as otherwise necessary to comply with California Subdivided Lands Act, related regulations, and California common interest development laws.
- c. Neighborhood CC&Rs which include common interest of shared access facilities shall provide for shared maintenance responsibilities for any such shared access facilities.

60. Subdivision Improvement Plans for Each Final Map

Engineered subdivision improvement plans in accordance with this Approval shall be prepared to meet all of the requirements of the City of Oakland Subdivision Ordinance and the provisions of the Subdivision Map Act and shall include the following: water, storm water drainage, sanitary sewer, street improvement, traffic and utility service plans.

61. Subdivision Improvement Agreement

Prior to recordation of each Final Map, a subdivision agreement, in a form acceptable to the Design and Construction Services Division and the City Attorney's Office, shall be prepared and executed for the construction of all public improvements.

62. Cost Estimates for Improvements

Prior to acceptance of each Final Map, an Engineer's Estimate shall be submitted for the cost of all public improvements. The estimate shall be subject to approval by the Design and Construction Services Division. Based on the engineer's estimate, bonds or other approved securities must be furnished to the City in accordance with the Subdivision Improvement Agreement to ensure completion of public and private improvements.

63. Final Grading Plan for Mass Grading or for Individual Project Phases

Prior to the issuance of a grading permit related to a building permit(s) or execution of a subdivision improvement agreement, Applicant shall file a final grading plan that is to accompany the subdivision improvements plans that shall be prepared and submitted with the grading permit application, and shall include the following:

- a. The grading plan shall show all proposed and existing contours as well as proposed drainage improvements.
- b. As applicable to the grading phase, final grading, drainage and foundation plan shall be prepared in accordance with the recommendations of the geotechnical report (including recommendations of the soil engineer) and supplemental letters. These reports shall identify the specific amount of fill material, if any, that is to be imported on the site. Retaining walls shall be a split-face or scored concrete block, or consistent with the approved PDP, FDP, and Design Guidelines, and shall not exceed the heights as specified on the approved Vesting Tentative Map, and shall require separate building permits.
- c. The final grading plan of all pads shall substantially comply with the preliminary grading presented on the approved Vesting Tentative Map, and shall include any inconsistencies between the contours and numeric grade shown on the Vesting Tentative Map and the final grading plan shall be subject to the approval of the City Engineer and Building Official.

- d. No mass grading shall occur between October 15th and April 15th unless approved by the City Engineer and Building Official.

64. **Construction Plans for Fire Apparatus Access Roads, Off-street Parking and Access to Lots.**

Prior to recordation of a final map for each project phase the improvement plans for each Final Map shall be submitted to the Fire Department for review and approval. These construction plans shall show for fire apparatus access roads, off-street parking and fire access to all lots/parcels within the Oak Knoll community. These plans shall include the following:

- a. Construction documents. Construction plans for fire access roads and plans for the water supply and distribution. CFC 501.3 and 501.4.
- b. Construction of buildings. Access roads and on-site hydrants shall be installed, operating and available prior to and during construction unless approved otherwise by the Fire Department.
- c. Fire apparatus access road widths shall adopt the Fire Department's access guidelines as adopted in the CFC Appendix D.
- d. Fire watch and fire apparatus access shall be provided per CFC Chapter 5 and Appendix C during all phases of construction, especially upon delivery of combustible construction materials at the site.
- e. All fire apparatus access roads shall not exceed 18%. The apparatus turnaround shall not exceed a 5% slope.

65. **Additional Required Information on Final Map(s)**

Prior to recordation, the Final Map prepared and submitted for each project phase shall include the following information, as applicable:

- a. All easements to be maintained shall be clearly indicated and easements to be abandoned shall be memorialized on the map by written notation of each easement to be abandoned, shown by reference to the recording data that created the easement.
- b. All existing utilities not intended for future use in the subdivision, and not serving other off-site areas shall be abandoned, and new utilities shall be established and dedicated as needed to serve on-site and off-site areas.
- c. The Fontaine Overpass approach ramp is within the property lines with a notation on the ALTA survey that abutters rights have been relinquished to the State of California. Prior to the recordation of the first Final Map, the parcel of land

underlying and separated from the main portion of the site by Fontaine shall be offered for dedication to the State of California.

- d. Provide documentation to show that permission, conditioned or not, has been granted by EBMUD, or that there is no restriction or limitation, under the EBMUD easement, to the construction of the roadway and the proposed housing on the EBMUD tunnel easement (766 OR 472).
- e. The extension of Barcelona Street shall be designed and shown across APN 048-6870-002, from the Project boundary to the existing terminus of Barcelona Street, including an emergency vehicle access for public street and utilities purposes, and for the work necessary to accomplish these purposes.

66. Changes to the Vesting Tentative Tract Map

Ongoing

Any final map must substantially comply with the approved Vesting Tentative Tract Map (VTTM) per required findings. Significant changes to an approved VTTM shall require re-approval of the VTTM. Significant changes would be nonconformance with the Conditions of Approval for the VTTM as well as the following: increases in the lot count, reconfiguration of the site that alters the grading concept, road widths, road slopes that exceed Fire Department requirements, and major changes to creek parcel widths, or any change deemed significant by the City Surveyor and/or the Engineering Services Division. Minor changes to the approved VTTM shall be administratively approved by the City Surveyor and/or the Engineering Services Division prior to final map approval and recordation.

67. Street Lighting Plan and Photometric Analysis

Prior to issuance of a building permit or recordation of a Final Map for each Neighborhood or Project Phase, whichever occurs first:

- a. The applicant shall submit a detailed street lighting plan and photometric analysis for review and approval, with the improvement plans for construction of all new roadways. Planning Division review shall ensure that the lighting plan and photometric analysis comply with the requirements set forth in Mitigation Monitoring Program and in the Oak Knoll Design Guidelines.
- b. Construction documents shall meet the City of Oakland Public Works Agency Outdoor Street Lighting Standards.

68. Transportation - Installation of AC Transit Bus Stop and Shelter/Landscaping

- a. Improvement plans for the Mountain Boulevard/Creekside Parkway intersection shall incorporate design and development of a relocated bus stop and bus shelter.

The location, design and specifications for the bus stop and shelter shall be to the satisfaction of the City of Oakland Transportation Services Division and AC Transit.

- b. The project Applicant and its successors shall landscape and maintain the parkway area of northbound Mountain Boulevard along the adjacent Project frontage. The parkway area is defined as the area between the back of curb shown on the VTTM and the Project property line and shall be considered part of the public street so long as the City of Oakland continues to own such right of way. The landscape improvements and maintenance obligations shall continue until such time that the City of Oakland no longer owns the right of way in whole or part in which the parkway is located. The landscape improvements shall be consistent with the existing landscaping along Mountain Boulevard.

69. Gated Entries

All roads and streets shall be dedicated to the City and accepted as public streets. As such, no such roads/streets shall be gated. Exceptions will only be granted for emergency vehicle access.

70. Barcelona Street Extension/Improvement as a Public Street

As shown on **Exhibit E**, the Applicant shall improve the “Barcelona Road Reservation” as a public street across APN 048-6870-002. This street shall run from the project boundary to a designated emergency vehicle access point to be located at the existing terminus of Barcelona Street. The improvements shall include tree removal, foundation removal, etc., to prepare the area for grading to create the roadbed, installation of utilities that are appurtenant to a public street, and installation of an appropriate emergency vehicle access gate or bollards. The City shall grant Applicant all access rights necessary for the installation of the improvements, including but not limited to an encroachment permit and shall maintain the street as a public street.

71. EBMUD and Right of Way Easements

Ongoing

EBMUD owns and operates water supply tunnels and pipelines along the northern edge of the development site in the EBMUD right-of way (R/W 206 and R/W 1634) and property (506 and 217-A). The integrity of these tunnels and pipelines needs to be maintained at all times. Any proposed construction activity in EBMUD rights-of-way and property would be subject to the terms and conditions determined by EBMUD including relocation of water mains and/or rights-of-way at the project sponsor’s expense. The Community Park (North Neighborhood Park) to be developed by Oak Knoll on EBMUD property is subject to the execution of the land exchange between Oak Knoll and the District. If the land exchange

does not occur, the applicant shall submit revised plans to exclude the EBMUD parcel from the North Neighborhood Park.

72. EBMUD Water Service

When development plans are finalized the applicant shall 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. The project applicant shall comply with the Landscape Water Conservation Section, Article 10 of chapter 7 of the Oakland Municipal Code. The applicant should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all applicable water-efficiency measures described in the regulation are installed at the project applicant's expense.

73. Open Space Dedication and Trail Construction

Prior to the recordation of the Final Map that contains the trails

All areas designated as Open Space (VTM Parcels A (the creek), B, D, E J and O) shall be dedicated to the City or the GHAD as set forth in Exhibit B. Prior to acceptance of open space parcels, all trails through these open space areas shall be constructed.

- a. Trail designs shall be based on the standards and practices of the East Bay Regional Park District for width and surfacing of multi-use trails, and shall include applicable ADA criteria
- b. Trails shall have a public access easements, restrictive covenant or other method to ensure ongoing and continued access for benefit of the public.

Creek Permit and Stormwater

74. Regulatory Agencies

Prior to issuance of a Grading Permit

Consistent with SCAMMPR Condition of Approval, SCA GEN-1: Regulatory Permits and Authorizations from Other Agencies (#15), the project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies related to the creeks. If these permits necessitate changes to the design of the creek parcel, the Conditions regarding major and minor changes apply and might necessitate re-review.

75. Final Stormwater Control Plan

Prior to issuance of a Grading Permit

The Final Stormwater Control Plan, including narrative, shall be submitted for approval prior to the issuance of the Grading Permit. The treatment devices shall be located in accordance with the VTTM.

76. Creek Maintenance

After Creek Restoration and Ongoing

Upon sign off of the creek restoration by the Regulatory Agencies, the project applicant and successors shall submit a creek maintenance plan to ensure the successful and ongoing long-term maintenance of the creek parcels including the creek channel, and banks, stability, erosion, and infrastructure (bridges, culverts, stormwater facilities, etc.) Long term creek maintenance shall be guaranteed through the formation of a Geologic Hazard Abatement District or other means approved by the Bureau of Planning, Engineering Services and Watershed Division.

77. Trash Capture Devices

Requirement: Plans shall be submitted for review and approval by the Director of Public Works or his/her designee that show a full trash capture device installed at all private storm drain inlets or catch basins located on the property and on the public storm drain inlets in adjacent right of way area(s) – as applicable. The plans shall show the design of the device and must meet requirements of the Regional Water Quality Control Board for full trash capture. The applicant shall install these devices according to the approved plans.

When Required: Plans shall be approved prior to approval of any construction-related permit. Installation shall be completed prior to issuance of certificate of occupancy or final permit approval.

Initial Approval: City Engineer or Designee

Monitoring/Inspection: Owner of private storm drain must maintain the full trash capture device in accordance with the requirements in the Municipal Regional NPDES Permits. Records of Inspections and maintenance must be made available to the City upon request. Upon pre-approval of the City, project applicant may pay an annual fee to maintain devices installed in the public right-of-way.

78. Stormwater Treatment Devices

Prior to issuance of a building permit

In the event stormwater pollution prevention control devices shown on the approved vesting tentative map do not qualify as FTC devices, prior to approval of the first Final Map submittal or issuance of related construction permits, the design for stormwater pollution prevention control devices must meet C.3 requirements and include separate trash capture devices. All storm drainage improvements shall be designed and constructed to

meet C.3 requirements to the satisfaction of the City Engineer. To “qualify” as FTC devices, the device design must receive approval from the Water Board.

Tree Permit

79. Tree Permit (T1500124) and Removal by Phase

Prior to issuance of building permits

A Tree Removal/Preservation permit application shall be approved by the Tree Services Division for removal or preservation of all protected trees on the site and adjacent properties. The applicant shall abide by all Conditions of Approval of that permit.

80. Tree Relocation

Prior to issuance of a grading permit

The applicant shall retain a qualified arborist to survey the project site and identify 20 mature oak trees that shall be transplanted. The arborist shall submit a report for review and approval that includes the following information: trees to be relocated, removal procedures, storage area for the trees, watering and care during the timeframe that the trees are out of the ground, transplant procedures, and care and timeframe of care to ensure the tree survival. The arborist report shall be submitted to the Bureau of Planning for review and approval. The trees shall be located in the Village Center, around Club Knoll and at the main entrances.

Other

81. Pre-Construction Meeting with the City

Prior to issuance of a grading, demolition, or building permit

A pre-construction meeting shall be held with job inspectors and the general contractor/on-site project manager with the City’s project building coordinator to conform that conditions of approval that must be completed prior to issuance of a grading, demolition, or building permit have been completed (including pre-construction meeting with neighborhood, construction hours, neighborhood notification, posted signs, etc.) The project applicant will coordinate and schedule this meeting.

82. Transportation and Parking Demand Management

The Project applicant has submitted a final master Transportation and Parking Demand Management (TDM) Plan. The subsequent merchant builders and successor’s will submit a final plan noting the specific TDM measures, implement the plan, and achieve the required twenty percent (20%) vehicle traffic reduction (VTR) and reduced parking

demand generated by the project. The TDM Plan indicates the estimated VTR for each identified strategy based on published research or guidelines where feasible.

83. Native American Tribal Monitor

During creek grading

At least seven days before ground-disturbing activities in the creek corridor are scheduled to begin, one tribal monitor of the choosing of the tribes that have expressed interest in the Project shall be invited to monitor such ground-disturbing activities, and shall be afforded the opportunity to monitor such activities if the tribal monitor chooses to be present. If there is a change in the construction schedule or an unscheduled need to undertake a ground-disturbing activity in the creek corridor, the tribal monitor shall be notified as soon as feasible.

Exhibits to Conditions of Approval

Exhibit A: Equivalent Housing Unit Summary

Exhibit B: Oak Knoll Ownership and Maintenance Matrix

Exhibit C: Project Phasing Diagram

Exhibit D: Phase 1 Diagram

Exhibit E: Extension of Barcelona Street

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of Desley A. Brooks
Councilmember – District 6
e-mail: dbrooks@oaklandnet.com

(510) 238-7006
FAX (510) 238-6910
TDD (510) 839-6451

October 31, 2017

To: Chairperson Campbell Washington and Members of the CEDA Committee

From: Councilperson Desley Brooks

Re: Oak Knoll/SunCal project – Request for installation of Signalization at Keller and Creekside.

Dear Members of the CEDA Committee:

I have spoken with representatives of SunCal regarding a preferred signalization solution for the intersection at Keller and the new Creekside Parkway. They are willing to pay for the signal but the traffic engineers indicated that this intersection did not meet signal warrants (number of trips and turning movements during peak hours) and therefore it was their recommendation to keep it with the proposed stop sign control. Meeting signal warrants is just one way of justifying a signal. The City can still request the developer to install a signal at this intersection based on other findings.

Public comments describe concerns about how a stop sign would not prevent cars coming to a complete stop. Further, excessive speeds in the downhill direction of Keller may cause abrupt stops. These two factors can be used to justify signalization as a way to reduce hazards to pedestrians and bicyclists.

To that end,

A) I request that this committee include in your motion the following findings for a signal at Keller and Creekside:

1. Installing the traffic signal with appropriate signs and pavement markings such as “stop ahead” or “signal ahead” that indicate drivers should slow down as they approach the intersection would reduce travel speed in the downhill direction toward Keller. If deemed appropriate as part of the design, flashing beacons ahead of the intersection could be used to further alert drivers of the traffic signal ahead.
2. The necessary and standard components of a traffic signal such as ADA accessible crosswalks and curb ramps, countdown pedestrian signal heads, pushbutton activation and bicycle loop detectors are a superior solution for pedestrians and bicycles in the area as they offer protected crossing.
3. These components assure that pedestrian have specific protected time to cross the intersection. If there is a line of vehicles approaching a stop sign controlled intersection at this location, it is more difficult to see pedestrians crossing at crosswalks. Having a protected pedestrian phase is safer in this regard.
4. Similarly, implementing bicycle detectors would assure safer access across Keller. This feature is a standard part of the City’s signal design.

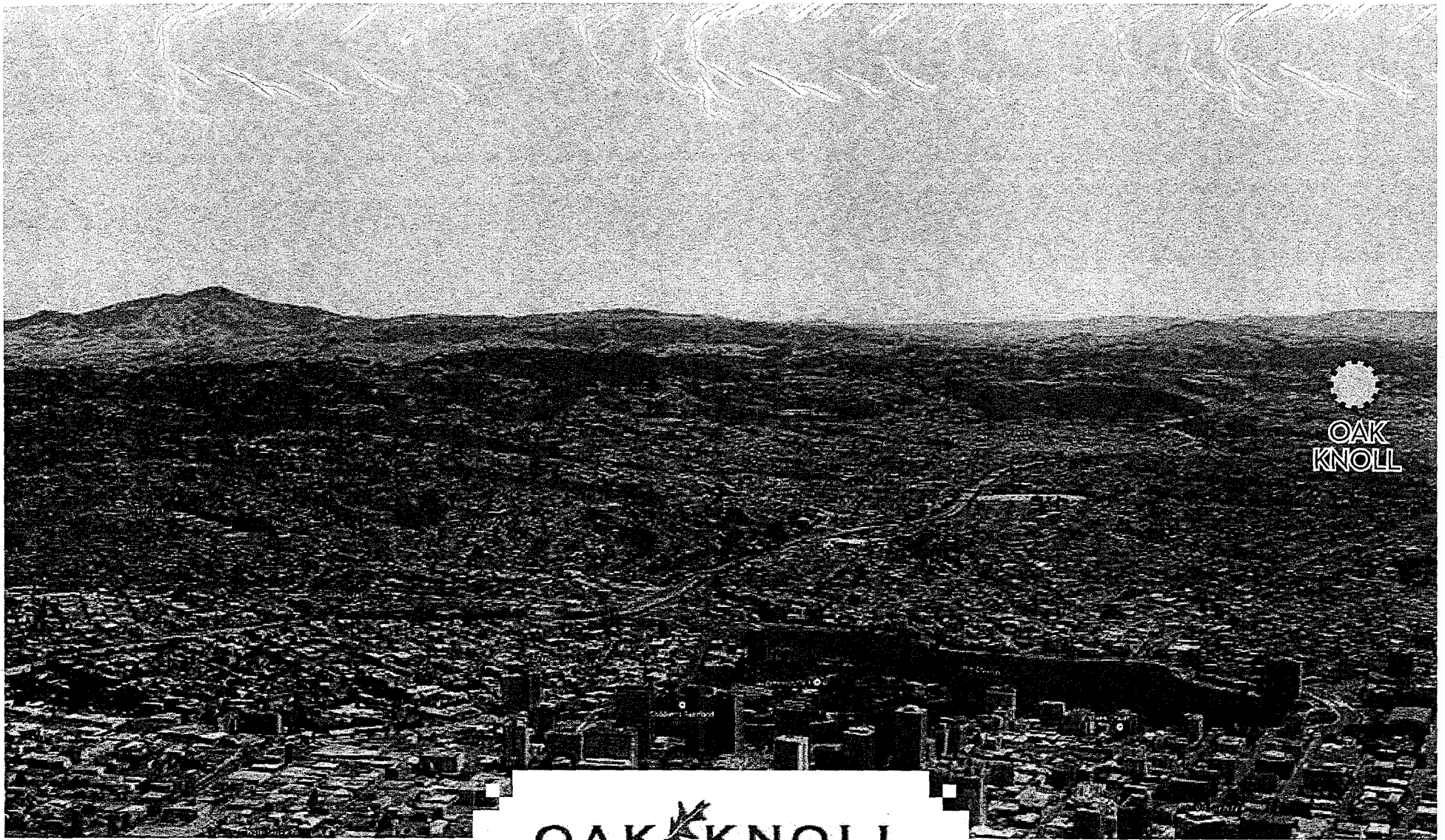
Attachment C

B) Furthermore, it is requested that an additional traffic signal at Keller and Creekside Parkway be added to the list of new signals in Condition of Approval No. 22. The protocol of having all design, installation and appropriate signs and other features should be a part of this requirement, as with the other signalization projects to be installed as part of the project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Desley Brooks". The signature is written in a cursive, flowing style with some loops and flourishes.

Desley Brooks
Council Member, District 6

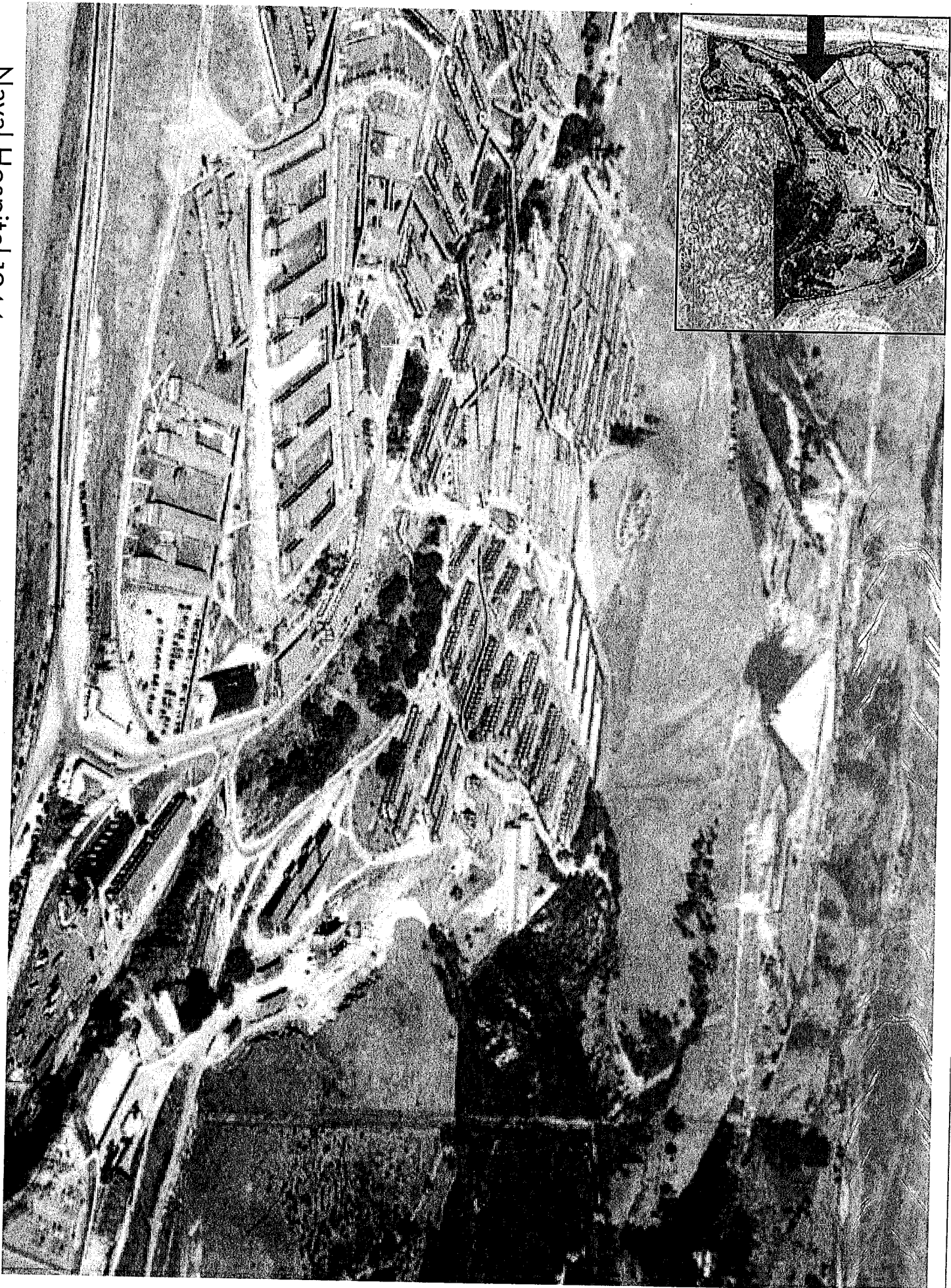


Community & Economic Development
Committee of the City Council

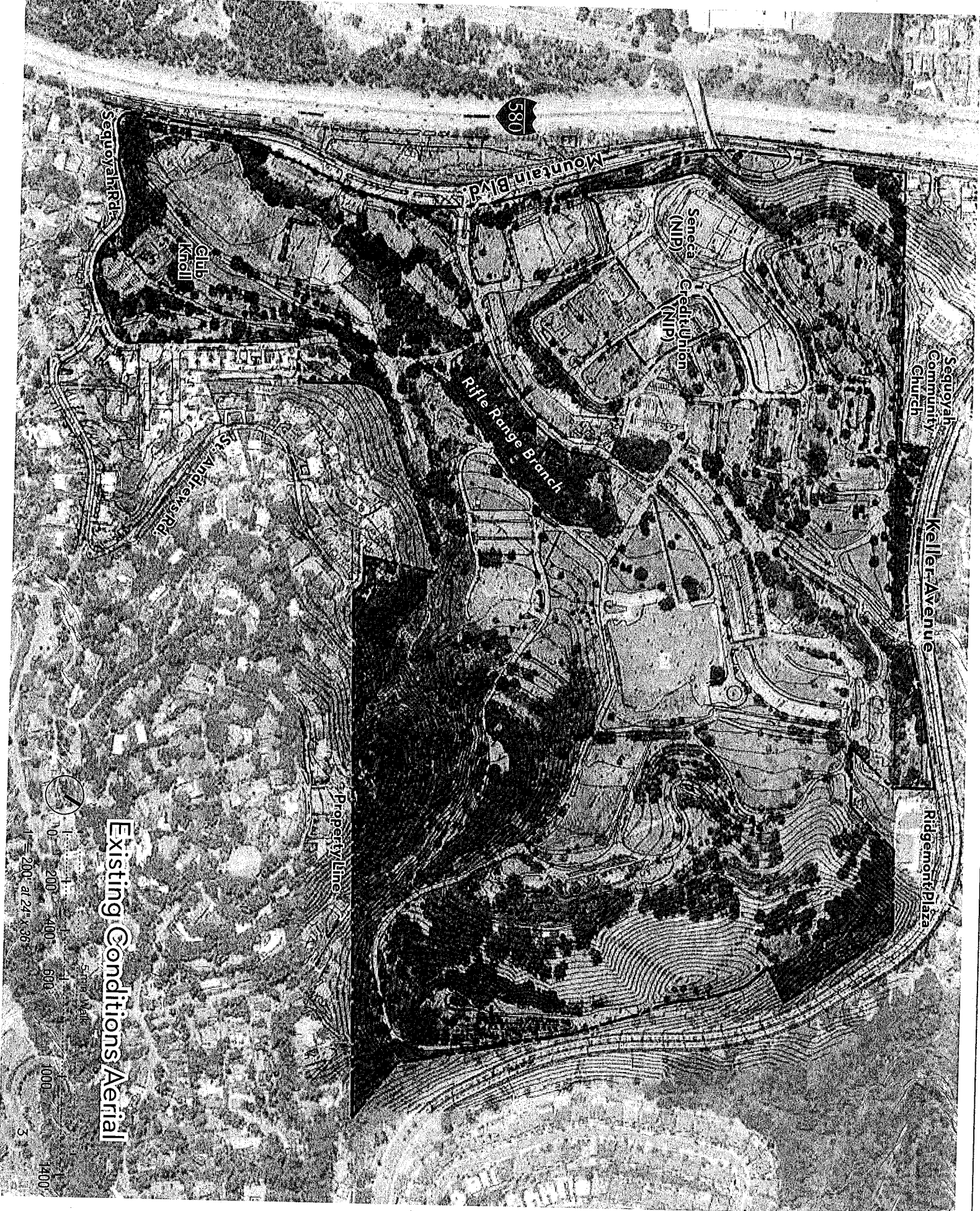
October 31, 2017

 HART HOWERTON
NEW YORK • SAN FRANCISCO

Attachment D



Naval Hospital 1944



Existing Conditions Aerial



Property Line

Sequoyah Community Church

Keller Avenue

Ridgmont Plaza

Seneca (NIP)

Credit Union (NIP)

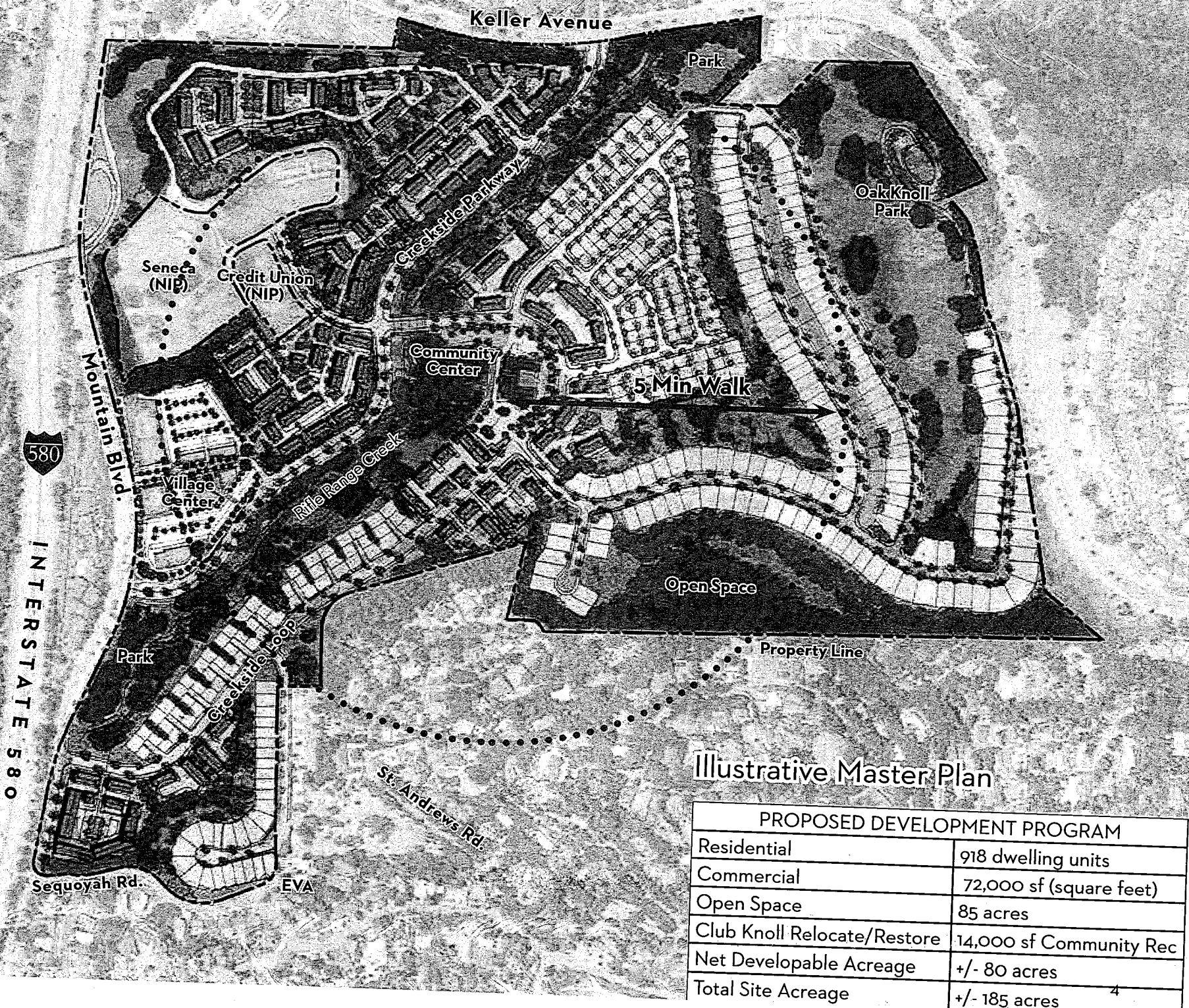
Club Kiosk

St. Andrews Rd.

Mountain Blvd.

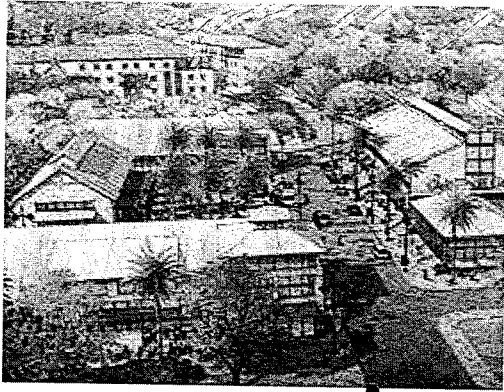
Rifle Range Branch

Sequoyah Rd.

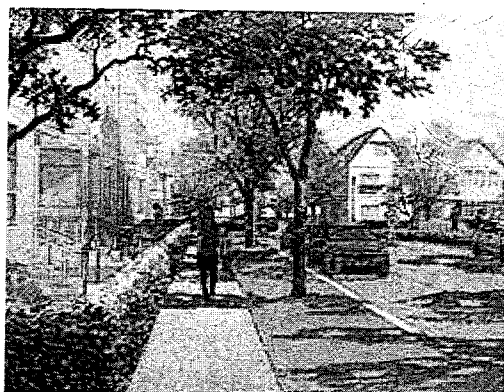


Illustrative Master Plan

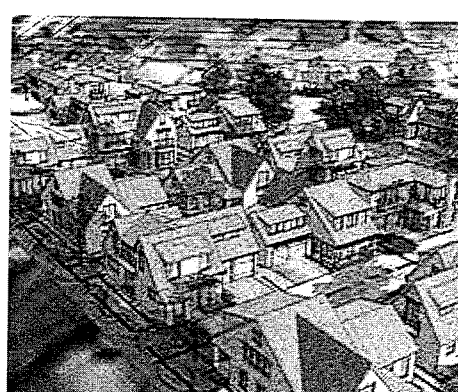
PROPOSED DEVELOPMENT PROGRAM	
Residential	918 dwelling units
Commercial	72,000 sf (square feet)
Open Space	85 acres
Club Knoll Relocate/Restore	14,000 sf Community Rec
Net Developable Acreage	+/- 80 acres
Total Site Acreage	+/- 185 acres



Shopping



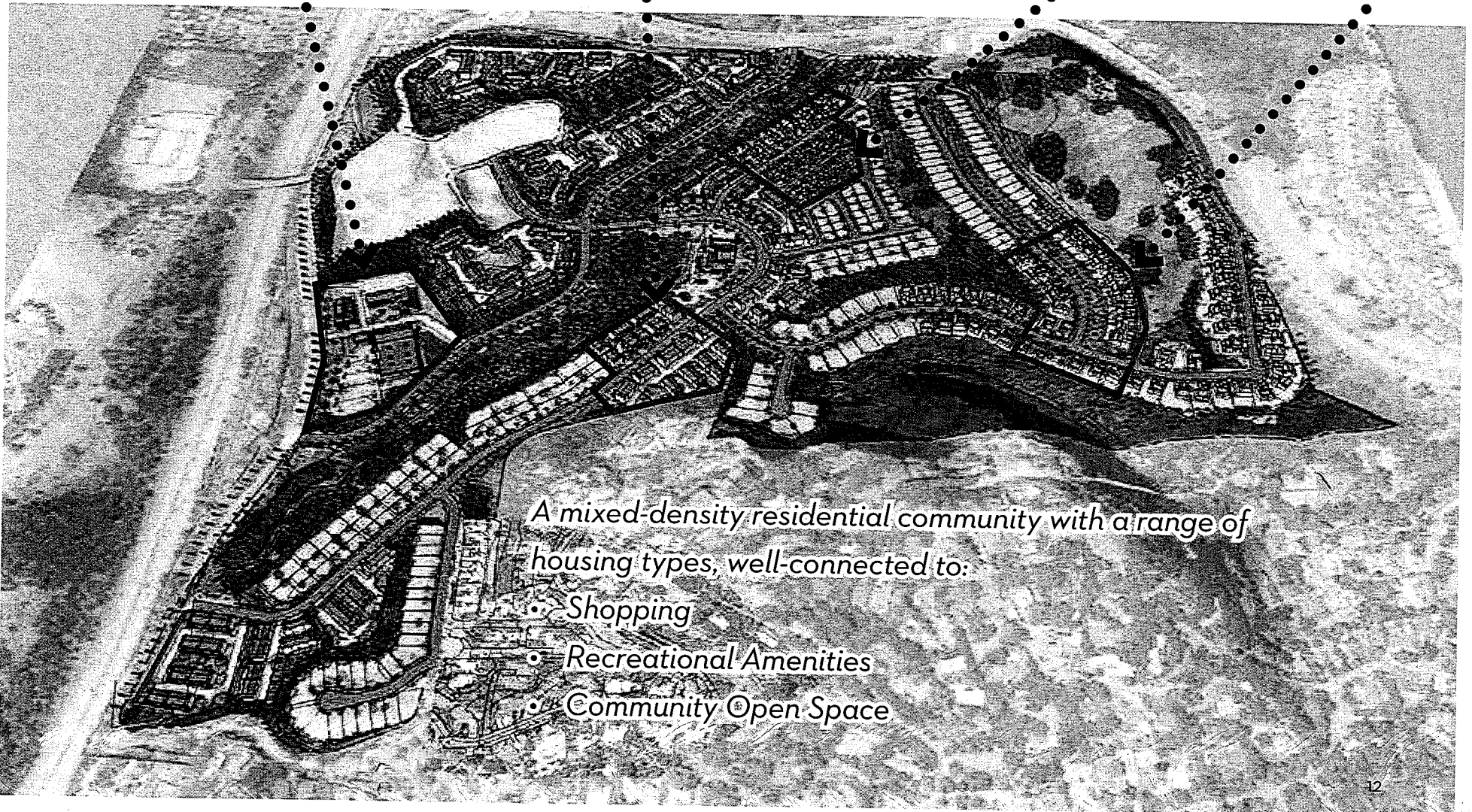
Townhomes



Courtyard / Small Lots

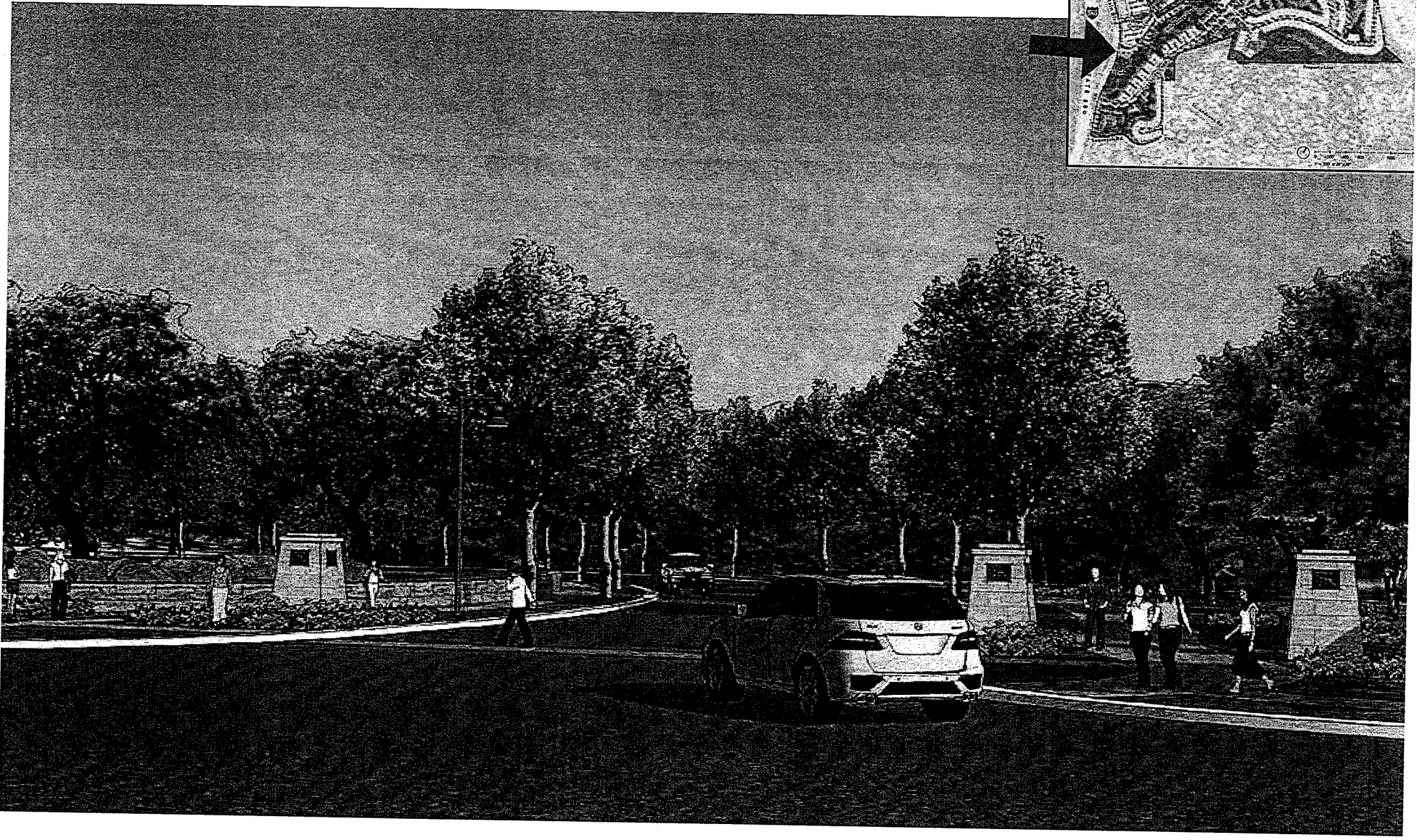
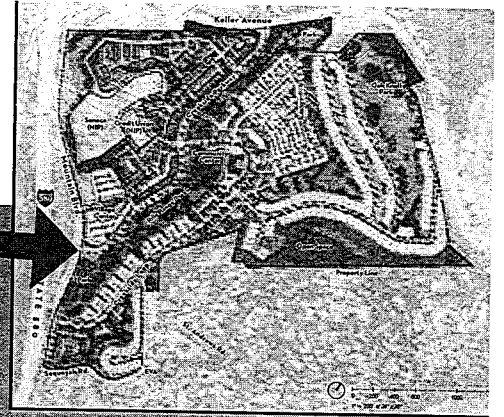


Hillside Lots

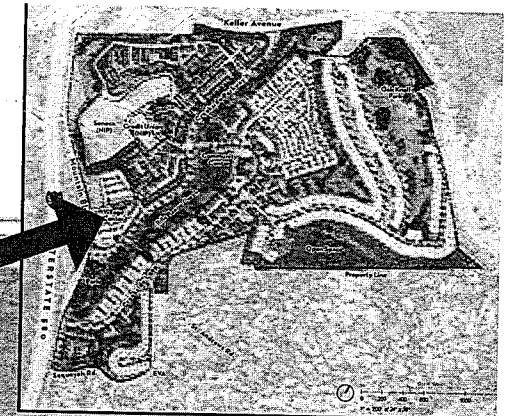
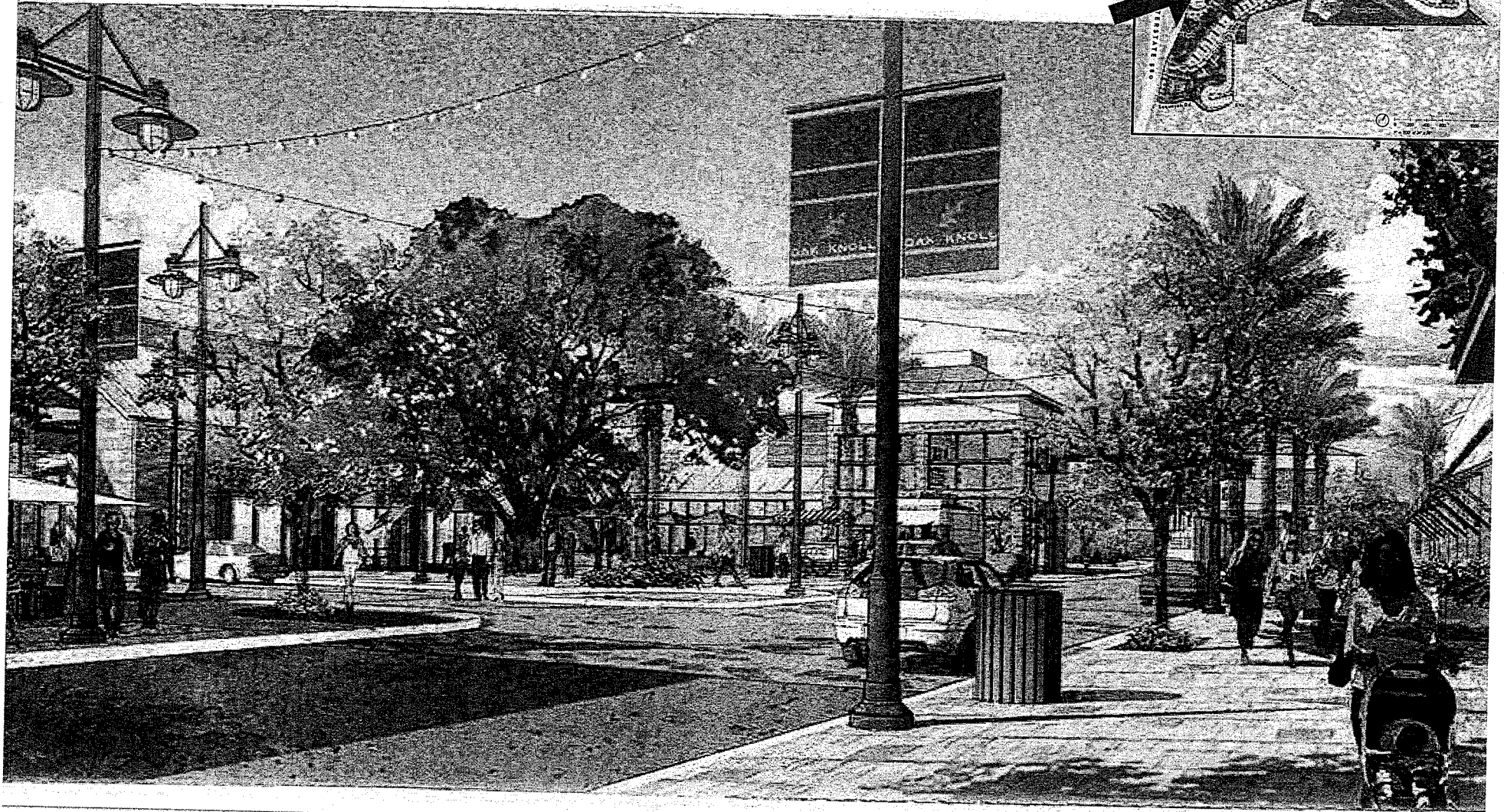


A mixed-density residential community with a range of housing types, well-connected to:

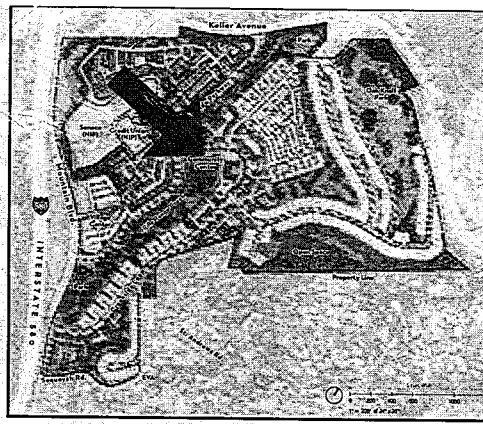
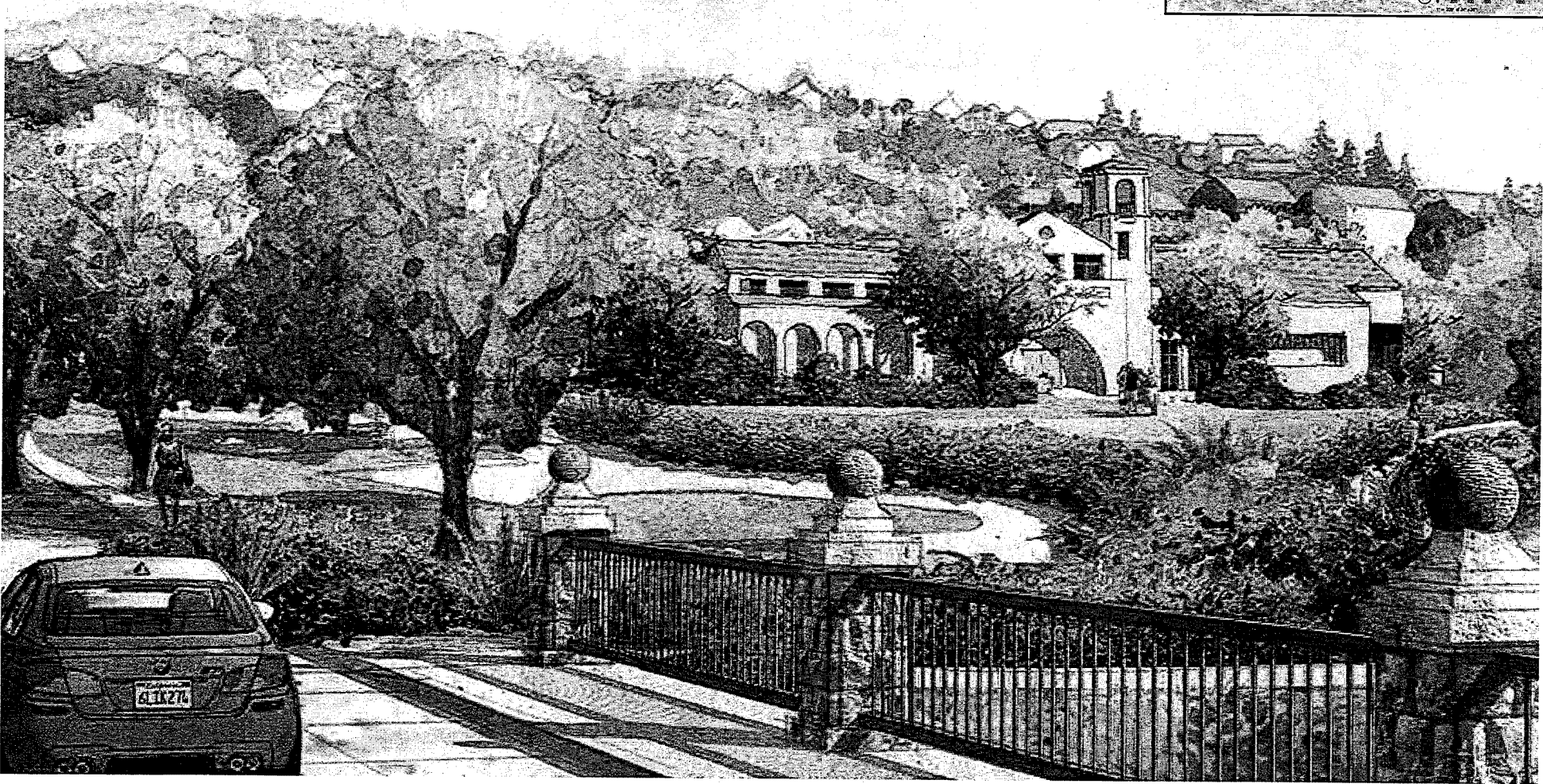
- Shopping
- Recreational Amenities
- Community Open Space



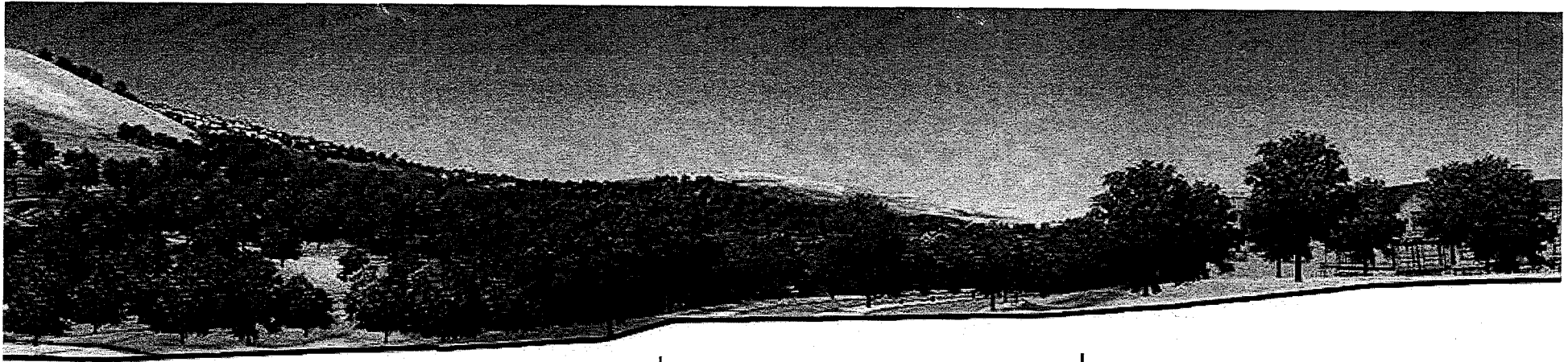
Entry at Mountain Boulevard



Village Center Plaza



Relocated and Renovated Oak Knoll Clubhouse



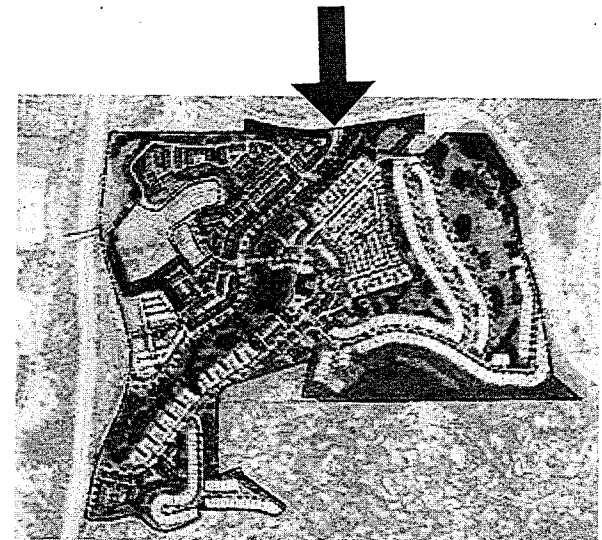
North Creekside Park

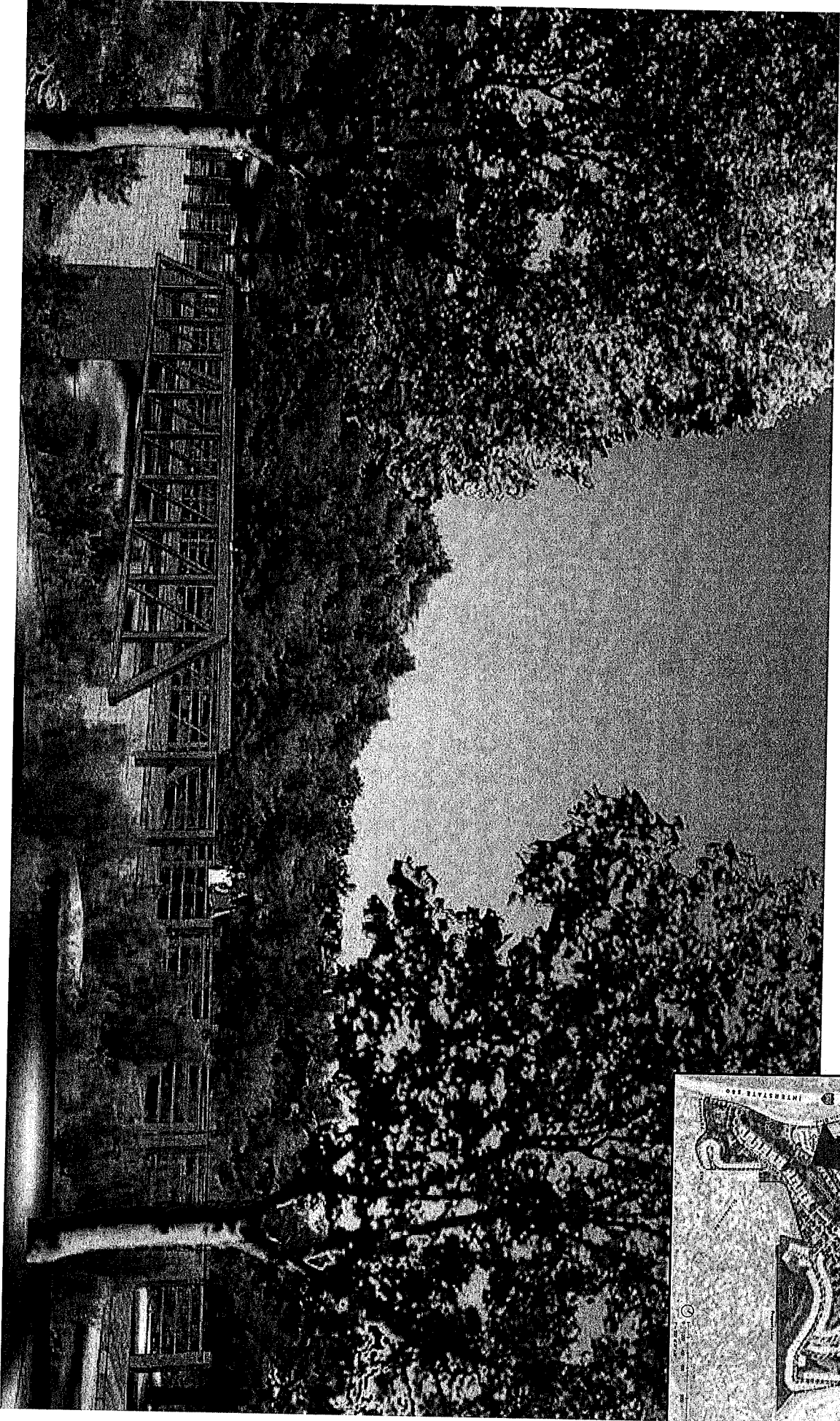
Creek
Restoration

Project Entry at Keller
Creekside Parkway

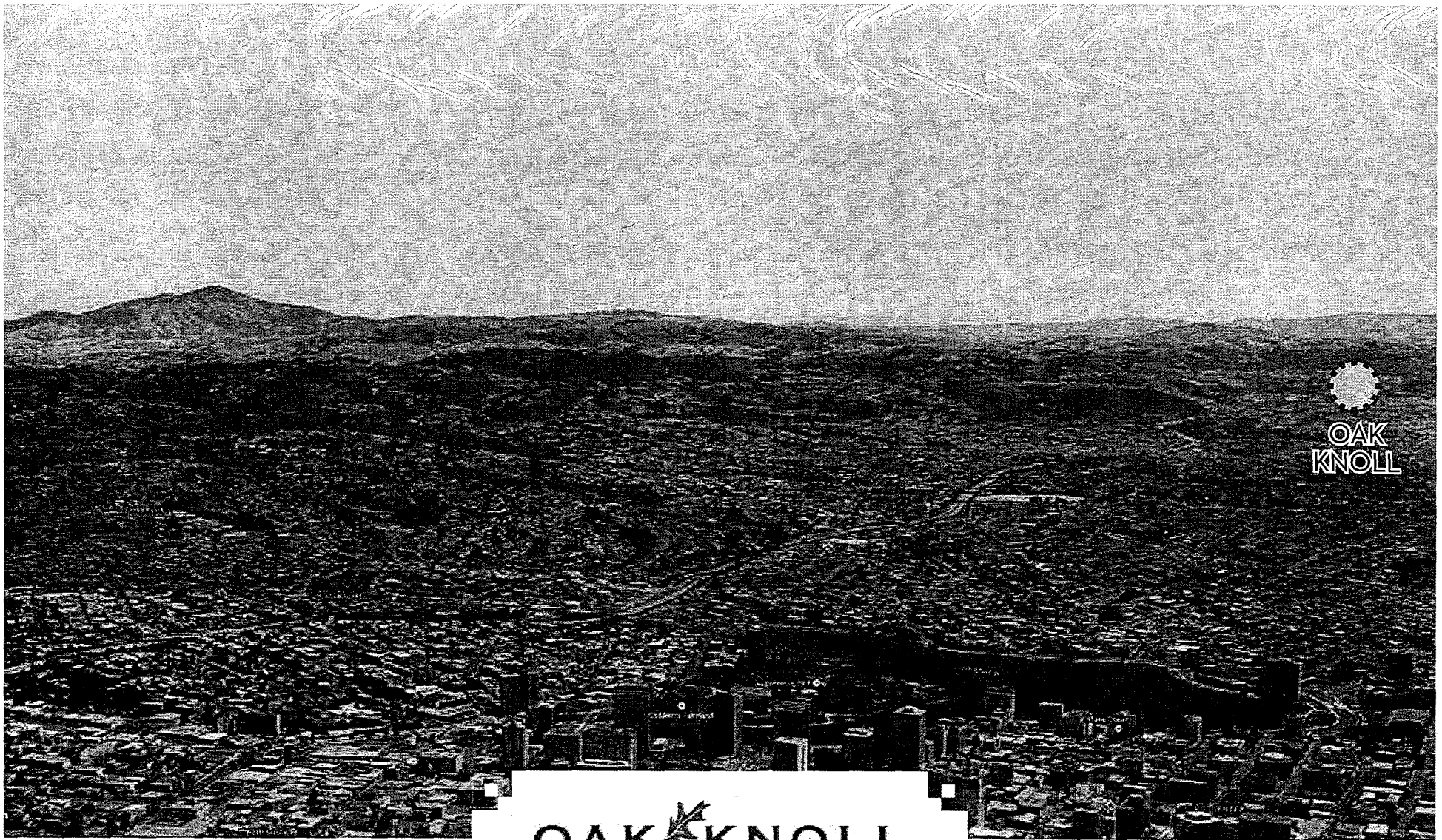
Project
Townhomes

Keller Avenue Project Entrance - Elevation





Pedestrian Bridge



Community & Economic Development
Committee of the City Council

October 31, 2017

Klein, Heather

From: Jim Hanson <jim.hanson.cnga@gmail.com>
Sent: Wednesday, October 18, 2017 4:55 PM
To: Adhi Nagra
Cc: Klein, Heather
Subject: Oak Knoll SEIR need for better native grassland mitigation
Attachments: Oak Knoll_Planning Commission_10-18-17_CNGA comments.pdf

Dear Planning Chair Nagra,

The California Native Grasslands Association requests that the SEIR and Conditions of Approval be revised to mitigate for any loss of the intact and rare native grassland that is not conserved in the design and construction at Oak Knoll.

Attached is our letter for tonight's hearing..

Thank you for your consideration of this request.

Jim Hanson
Chair, Conservation
510-388-7439



California
Native
Grasslands
Association

P.O. Box 72405
Davis, CA 95617

Phone/Fax 530.297.0500

www.cnga.org
admin@cnga.org

The mission of the California Native Grasslands Association is to promote, preserve, and restore the diversity of California's native grasses and grassland ecosystems through education, advocacy, research, and stewardship.

October 18, 2017

Adhi Nagra, Chair, and Members of the Planning Commission
Heather Klein, Planner
City of Oakland Planning Commission
250 Frank H. Ogawa Plaza Ste. 3315
Oakland, CA 94612
via Email: nagrajplanning@gmail.com, hklein@oaklandnet.com

RE: SEIR and Conditions of Approval need to be revised to mitigate for any loss of purple needlegrass grassland at Oak Knoll

Dear Planning Commission Chair Nagra, Commissioners, and City Staff,
Ms. Klein:

The California Native Grasslands Association is a statewide organization that celebrates and works to conserve the richness of our ecologically important native grasslands.

Despite the several comments during your public review, the proposed Supplemental Environmental Impact Report (SEIR) for the Oak Knoll project still unfortunately does not adequately avoid and/or mitigate for the proposed permanent loss of 3.86 acres of the rare and sensitive California native grassland community on the eastern knoll of the project site. Intact native grasslands are threatened and vulnerable across the Bay Area and our state. The SEIR Biological Resources Assessment (WRA, 2015) reports that the native purple needle grass population at Oak Knoll qualifies as a rare plant community in California (Manual of California Vegetation, second edition, 2008).

Based on an inadequate analysis, the SEIR states that permanently eliminating one-third of the intact native grassland and forb area in the Oak Knoll project site is not a significant environmental impact. The primary rationale is that some purple needle grassland still survives at Knowland Park and at other locations. Yet, as your Commission is aware, the Oakland Planning Commission and City Council required that any loss of native grassland for construction of the Oakland Zoo California Trail Project within Knowland Park had to be mitigated, not simply written off - the Commission and Council stipulated that any loss of the purple

needle grass community at Knowland Park had to be mitigated at a 3:1 ratio for any native grassland impacts.

Considering the rarity of the remaining intact purple needle grass grassland population at Oak Knoll, and consistent with the City's planning standards to correct for impacts to Oakland's native plant heritage, we recommend that the SEIR "BIO" section, as well as the project Conditions of Approval, be revised to provide a 3:1 mitigation ratio for any loss to the purple needlegrass grassland there.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Hanson", with a long horizontal flourish extending to the right.

Jim Hanson, Conservation Chair

Klein, Heather

From: joe <19jd71@sbcglobal.net>
Sent: Thursday, October 26, 2017 12:59 PM
To: Klein, Heather
Subject: RE: Upcoming CED and City Council hearings for Oak Knoll - CORRECTION

In looking over the material I could not find anything about the affordable housing impact fee at one time I thought the developer was going to provide this fee of 20,000,000 up front – is that no longer the case – thanks for your time.

Sent from [Mail](#) for Windows 10

From: [Klein, Heather](#)
Sent: Friday, October 20, 2017 8:54 AM
To: [Klein, Heather](#)
Subject: Upcoming CED and City Council hearings for Oak Knoll - CORRECTION

Dear Interested Parties,

CORRECTION from notice I sent out yesterday.

The following meeting has been scheduled before the CED Committee.

1. October 31, 2017 at **10:00 AM**. The Community & Economic Development Committee of the City Council will conduct a public meeting in Hearing Room 1, City Hall, 1 Frank H. Ogawa Plaza, Oakland CA 94612.

Sorry for the confusion. Please see the revised notice.

Heather Klein, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 |
Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Klein, Heather
Sent: Thursday, October 19, 2017 4:53 PM
To: Klein, Heather <HKlein@oaklandnet.com>
Subject: RE: Upcoming Planning Commission Hearing for Oak Knoll

Dear Interested Parties,

The purpose of this email is to let you know that last night the Planning Commission made a motion to recommend forwarding the Oak Knoll Project to the City Council.

The following meeting has been scheduled before the CED Committee.

1. October 31, 2017 at 1:30 pm. The Community & Economic Development Committee of the City Council will conduct a public meeting in Hearing Room 1, City Hall, 1 Frank H. Ogawa Plaza, Oakland CA 94612.

Depending on the outcome of the CED Committee meeting, the following meeting is pending before the full City Council.

2. November 7, 2017 at 6:30 pm. The City Council will conduct a public hearing at a regularly scheduled meeting of the City Council in Council Chambers, City Hall, 1 Frank H. Ogawa Plaza, Oakland, CA 94612.

Finally, the Tree Services Division has submitted the attached recommendation on the tree removal/preservation permit to the CED Committee and City Council.

Please don't hesitate to call or e-mail Scott Gregory or myself if you have any questions regarding this project. Scott Gregory can be reached at (510) 535-6671 or at sgregory@lamphier-gregory.com.

Best Regards,

Heather Klein, Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Klein, Heather

Sent: Saturday, September 30, 2017 10:55 AM

Subject: Upcoming Planning Commission Hearing for Oak Knoll

Dear Interested Parties,

The purpose of this e-mail is to let you know that the Planning Commission will consider a recommendation to the City Council regarding the requested entitlements and the Final Supplemental EIR for the Oak Knoll Mixed Use Community Plan Project. The meeting details are as follows and the agenda is attached:

Date: October 18, 2017

Time: 6:00 pm

Location: City Council Chambers, City Hall, 1 Frank H Ogawa Plaza, Oakland

Item number: 6

The Response to Comments/Final EIR may also be reviewed at the following website:

<http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009157> This is item 30.

The updated project description and additional information can be found on the project webpage at the link below.

<http://www2.oaklandnet.com/government/o/PBN/OurOrganization/PlanningZoning/OAK052335>

Please don't hesitate to call or e-mail Scott Gregory or myself if you have any questions regarding this project. Scott Gregory can be reached at (510) 535-6671 or at sgregory@lamphier-gregory.com.

Best Regards,

Heather Klein, Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-3659 | Fax: (510) 238-6538 | Email: hklein@oaklandnet.com | Website: www.oaklandnet.com/planning



Virus-free. www.avast.com

Klein, Heather

From: Mudge, Annie <amudge@coxcastle.com>
Sent: Monday, October 30, 2017 4:53 PM
To: Klein, Heather; Scott Gregory (sgregory@lamphier-gregory.com)
Cc: Klein, Linda C.; Sam Veltri (sveltri@suncal.com); Lee, Heather
Subject: Letter to Larry Reid
Attachments: Letter to Larry Reid-City Council 10-30-17.pdf

Dear Heather and Scott: Here is a letter refuting the CEQA arguments made in letter dated October 18, 2017 by Adams and Broadwell on behalf of Oakland Residents for Responsible Development. Please make sure this becomes part of the City Council's administrative record.

Thank you,

Annie

Arne E. Mudge



direct: 415.262.5107

amudge@coxcastle.com | [vcard](#) | [bio](#) | [website](#)



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Anne E. Mudge
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October 30, 2017

VIA E-MAIL

Mr. Larry Reid, Council President
Honorable Members of the City Council
City of Oakland
City Hall, City Council Chambers, 3rd Floor
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Oak Knoll Mixed-Use Community Plan Project: Responses to Comments from
Christina M. Caro on Behalf of Oakland Residents for Responsible
Development, dated October 18, 2017

Dear Council President Reid and Councilmembers:

Cox, Castle & Nicholson, LLP is legal counsel for Oak Knoll Venture Acquisition, LLC, the Applicant (“Applicant”) for the Oak Knoll Mixed-Use Community Plan Project (“Project”). On the afternoon of the Planning Commission’s October 18, 2017, hearing regarding the Project, Christina M. Caro of the law firm Adams, Broadwell, Joseph & Cardozo submitted a comment letter to the Commission, dated October 18, 2017, on behalf of Oakland Residents for Responsible Development (“ORRD”). As explained in more detail below, ORRD’s claims are unsupported by substantial evidence and, in many cases, based on false premises. The Project’s Supplemental Environmental Impact Report (“EIR”) is adequate in all respects and ORRD fails to provide any evidence that would undermine this conclusion.

1. Executive Summary

As summarized below, ORRD fails to provide evidence to support any of its claims:

- **Phasing.** The EIR accurately captures the Project’s impacts on air quality and traffic, which depend on construction phasing. The Project’s Conditions of Approval require Project construction to be phased in accordance with the assumptions in the EIR.
- **Tree Mitigation.** The EIR’s tree mitigation is effective and replacement trees will be required to mitigate for off-site as well as on-site tree impacts. More trees than required will be planted on the Project site (i.e., the portion of the site that does not include the Barcelona Parcel) to

mitigate for all of the Project's impacts to trees, including impacts to trees on the Barcelona Parcel that will be removed for roadway construction.

- **Fire Safety.** The EIR does not improperly defer mitigation for fire impacts. The requirement to prepare detailed Fire Safety Phasing and Vegetation Management Plans prior to construction rather than now makes sense because the precise architecture (i.e., development footprint of each individual residence) and landscaping for each lot is not yet known. In addition, Applicant has proposed clarifications to the EIR's fire-related mitigation measures that, if adopted, would provide additional assurance that the Project will be constructed in a manner that minimizes potential fire risks.
 - **General Plan Consistency.** The Project is fully consistent with the General Plan. The Project, which proposes to redevelop a former naval hospital site for commercial and residential uses, is compatible with surrounding development, which is mainly residential. It also provides a mix of housing types, which will result in homes offered at a range of prices. The Project's design minimizes environmental impacts, including by rehabilitating Club Knoll, restoring Rifle Range Creek, providing a mix of commercial and residential uses (this decreases driving and associated impacts), and reusing a previously developed site in an urban area rather than proposing greenfield development. The relocation and rehabilitation of Club Knoll will comply with the Secretary of the Interior's Standards for Rehabilitation and therefore will not result in a significant impact on that historic resource.
2. **Revised Conditions of Approval Nos. 23 and 24 Do Not Allow for Concurrent Construction of All Project Phases and No Undisclosed Traffic or Air Quality Impacts Would Occur**

As described in the Preliminary Development Plan, The Project is proposed to be constructed in three phases. Prior to the October 18, 2017 Planning Commission hearing, the Conditions of Approval for the Project were revised, which included Revised Conditions Nos. 23 and, to further address Project phasing and construction of improvements. Contrary to ORRD's assertion, Conditions of Approval Nos. 23 and 24 do not allow for the Applicant to construct all Phases concurrently. Therefore, ORRD's traffic and air quality allegations made in the October 18, 2017 letter, as supported by the letter reports from experts, lack merit.

Condition of Approval No. 23 sets forth a phasing schedule that provides for three distinct phases. The Condition contains certain timing requirements that are intended to ensure that necessary infrastructure and other public benefits of the Project (i.e. parks, roadway improvements, Club Knoll) are appropriately constructed to serve the residential units/phases as

they are built out. For example, subdivision (c) of the Condition provides that, “[p]rior to the issuance of any building permits for Phase 2 or 3, Developer shall grade and construct all remaining Creekside Parkway improvements from Mountain Boulevard to Keller Avenue”

Regarding Phase 2 and Phase 3 Improvements, Revised Condition of Approval No. 24 states:

“The Developer shall have the right to develop Phases 2 and 3 of the Project at such time as Developer deems appropriate; however, Developer may not proceed with development of Phases 2 or 3 until all public improvements for Phase 1 (see Condition #23 above) are completed” (Emphasis added.)

According to ORRD, Condition No. 24 could allow the Applicant to construct all phases concurrently, which could result in undisclosed traffic and air quality impacts. This is not the case. Instead, Condition of Approval No. 24 prohibits commencement of later phases until certain milestones are met (regardless of the assumptions in the EIR) and allows for the Applicant to delay later Phases, subject to market conditions and demand. The impacts alleged to occur by ORRD relate to faster build-out, not slower build-out.

Even if Conditions of Approval Nos. 23 and 24 were unclear, Condition of Approval No. 16 clarifies that the Conditions of Approval must be read to incorporate requirements in the technical studies and SCAMMRP, which, for traffic and air quality, incorporate the build-out phasing studied in the EIR.

Finally, to remove any remaining ambiguity with respect to Project phasing, the Planning Commission voted at its October 18, 2017 hearing to recommend amendment of Condition of Approval No. 23 to require compliance with the phasing assumed and studied in the technical reports relied upon by the EIR. Therefore, the Project will be constructed in phases as analyzed in the EIR which assumed serial, not concurrent, construction of the phases. Thus contrary to arguments made by ORRD, no new or substantially increased significant impacts will occur.

3. Removal of the Barcelona Parcel from the Project Does Not Create Flaws with the Tree Removal Package or Result In New Significant Biological Resources Impacts to Trees

ORRD incorrectly asserts that removal of the City-owned “Barcelona Parcel” from the Project creates flaws in the Tree Removal Package. According to ORRD, it is unclear whether the mitigation measures regarding tree removal would remain sufficient to mitigate the Project’s impacts, and whether tree mitigation requirements will apply to construction of the Barcelona Road Reservation improvements required by Condition of Approval No. 67. Contrary to ORRD’s claims, the Tree Removal Package and the mitigation identified therein remain sufficient to mitigate the impacts of the Project, and the analysis remains accurate. Further,

because off-site infrastructure required for a project are still part of the project, mitigation measures applicable to the project (such as Mitigation Measure BIO-2, here) remain applicable to such off-site infrastructure. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 733.) Thus, Mitigation Measure BIO-2 regarding tree replacement will be required to be implemented for construction of the Barcelona Road Reservation improvements.

A quantitative analysis of why the Tree Mitigation Plan is still adequate follows below. The City's Tree Protection Ordinance requires mitigation in the form of tree replacement only for native, protected trees. As provided in the March 24, 2017, memorandum from WRA Environmental Consultants regarding the Tree Removal Impact Mitigation Plan (the "Tree Mitigation Plan"), development of the Project with the Barcelona parcel would result in the removal of 2,518 native, protected trees. To compensate for the removal of these trees, the Tree Protection Plan proposed the planting of approximately 8,540 replacement trees. Consistent with this proposal, the Tree Permit Decision recommendation from the City of Oakland, Public Works Agency, dated October 19, 2017, requires replanting of approximately 8,500 native trees, for a greater than 4:1 overall mitigation ratio.¹ Even with removal of the Barcelona parcel from the Project, and including improvement of the Barcelona Road Reservation as required by Condition of Approval No. 67, the Project will continue to mitigate for tree removal at an overall ratio of greater than 4:1. Therefore, the Tree Removal Package remains accurate and is not flawed.

Under the Tree Mitigation Plan (which assumes more impacts than are now proposed to occur with the removal of the Barcelona parcel from the project), the Barcelona parcel was planned to accommodate 141 replacement trees for mitigation, consisting mostly of five-gallon and 15-gallon sized trees. Mitigation credits for five-gallon sized trees is provided at a ratio of 5:1 and credits for 15-gallon sized trees are provided at a ratio of 3:1. As originally proposed, development of the Barcelona parcel would have resulted in the removal of 85 native, protected trees from that parcel. At the proposed replacement ratios, mitigation for these 85 trees would have required use of all 141 replacement trees proposed on the Barcelona parcel, as well as additional replacement trees within the remainder of the Project.²

The more limited Barcelona Road Reservation improvements will require removal of only five native, protected trees from the Barcelona parcel, which is 80 fewer than originally planned. Thus, assuming replacement of these trees at ratios of between 3:1 and 5:1, these five trees will require between 15 to 25 replacement trees as mitigation, several hundred

¹ This ratio refers to the mitigation credit ratios provided in the Tree Replacement Plan and in the Tree Permit Decision recommendation. These are: 5:1 for five-gallon, 3:1 for 15 gallon, 1:1 for 24-inch box, 1:1.5 for 36-inch box, 1:2 for 48-inch box, and 1:3 for 60-inch box sized trees.

² Assuming the 85 native, protected trees to be removed from the Barcelona parcel would be mitigated solely with five-gallon and 15-gallon sized replacement trees, this would have required planting of between 255 and 425 replacement trees.

fewer replacement trees than would have been required with the residential development of the Barcelona parcel. The trees to be removed for the Barcelona Road Reservation improvements are as follows:

Common Name	Species	Origin	Total DBH	DBH Size Class	Condition	Protection
Myoporum	<i>Myoporum laetum</i>	Non-native	22	18.0-35.9	Poor	Protected
Myoporum	<i>Myoporum laetum</i>	Non-native	21	18.0-35.9	Poor	Protected
Brazilian pepper	<i>Schinus terebinthifolius</i>	Non-native	15	9.0-17.9	Poor	Protected
Brazilian pepper	<i>Schinus terebinthifolius</i>	Non-native	16	9.0-17.9	Poor	Protected
Monterey pine	<i>Pinus radiata</i>	Non-native	19	18.0-35.9	Poor	Non-protected
Coast live oak	<i>Quercus agrifolia</i>	<u>Native</u>	14	9.0-17.9	Moderate	Protected
Mexican fan palm	<i>Washingtonia robusta</i>	Non-native	23	18.0-35.9	Poor	Protected
Coast live oak	<i>Quercus agrifolia</i>	<u>Native</u>	19	18.0-35.9	Good	Protected
Coast live oak	<i>Quercus agrifolia</i>	<u>Native</u>	24	18.0-35.9	Good	Protected
Coast live oak	<i>Quercus agrifolia</i>	<u>Native</u>	30	18.0-35.9	Good	Protected
Coast live oak	<i>Quercus agrifolia</i>	<u>Native</u>	6	4.0-8.9	Moderate	Protected
Blackwood acacia	<i>Acacia melanoxylon</i>	Non-native	18	9.0-17.9	Poor	Protected
Red iron bark	<i>Eucalyptus sideroxylon</i>	Non-native	17	9.0-17.9	Poor	Non-protected
Red flowering gum	<i>Corymbia ficifolia</i>	Non-native	35	18.0-35.9	Poor	Non-protected

Even with 80 fewer native, protected trees being removed, all replacement trees shown in the Tree Replacement Plan to be planted on the remainder of the Project site will still be planted (approximately 8,400 trees). Further, approximately 40 replacement trees will still be planted on the Barcelona parcel for slope stabilization purposes as part of the required Barcelona Road Reservation improvements. Thus, the Project will provide only about 100 fewer replacement trees (approximately 8,440 total trees) than originally proposed, but will remove 80 fewer trees. Thus, because those 80 trees were proposed to be mitigated at ratios of 3:1 and 5:1, the Project will continue to exceed the Tree Permit recommendation requiring approximately 8,500 replacement trees and an overall mitigation ratio of more than 4:1. The Project as revised is consistent with the analysis in the EIR and no new significant impacts with respect to trees will occur.

4. Mitigation Measures HAZ-4 and HAZ-5 Do Not Constitute Deferred Mitigation and the EIR Was Not Required to Include a Fire Safety Plan or Vegetation Management Plan

According to ORRD, the City's Standard Condition of Approval HAZ-4 improperly defers creation of a Fire Safety Plan and Vegetation Management Plan until after Project approval and, thus improperly defers the development of fire safety response plans. ORRD are incorrect. When a local agency knows that mitigation is feasible, but it is impractical to devise specific measures during the planning process, a local agency "can commit itself to

eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval,” as long as further action to carry the project forward is contingent on meeting them. (*Sacramento Old City Ass’n v. City Council* (1991) 229 Cal.App.3d 1011, 1029.) Here, the exact timing of each phase of the Project and the final architectural and landscape design for the retail and residential structures is not yet known. It is therefore impracticable to develop a detailed Fire Safety Phasing Plan or Vegetation Management Plan until later in the development process.

Thus it is proper and appropriate that before approving any construction-related permit, SCA HAZ-4 requires the City to approve a detailed Fire Safety Phasing Plan that includes fire safety features for each phase of development and SCA HAZ-5 requires the City to approve a Vegetation Management Plan that includes specified measures.

While the existing mitigation is already adequate, the Applicant has suggested, including more explicit criteria for the Plans regarding compliance with the City’s Fire Codes, including those for its hillside areas, prior to being granted a construction permit.

Specifically, the Applicant has proposed to add the following conditions of approval:

- To further implement SCA HAZ-4, Fire Safety, each Developer’s Fire Safety Phasing Plan shall demonstrate to the satisfaction of the City’s Fire Safety Division that the construction proposed by the Developer during each phase meets the requirements of the City’s Fire Code (Municipal Code Chapter 15.12, including, but not limited to, Chapters 3, 5, 10, 33). The Plan’s details must include, but are not limited to, information addressing the following requirements:
 - Notification of the California Emergency Management Agency prior to and at the completion of construction,
 - Fire apparatus access by phase,
 - Fire protection water supply by phase,
 - Means of egress by phase, and
 - Storage of combustible materials during construction.
- To further implement SCA HAZ-5, Wildfire Prevention Area – Vegetation Management, the Vegetation Management Plan shall demonstrate to the satisfaction of the City’s Fire Safety Division that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements

pertaining to maintaining defensible space, clearance of brush and vegetative growth from electrical transmission and distribution lines, and ignition source control.

These detailed performance standards clarify the criteria that the City will use in deeming the Plans adequate to mitigate impacts regarding fire hazards. Thus, the mitigation requiring the future preparation of Plans is adequate and not improperly deferred mitigation. (See *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 912 [reliance on Building Code seismic safety standards not improper deferral of mitigation].)

5. The VTTM Complies with the City's General Plan and Municipal Codes

ORRD asserts that the Vesting Tentative Tract Map for the Project must be denied because the VTTM is inconsistent with the General Plan and is likely to cause unmitigated environmental damage and public health and safety concerns. However, these claims are unsupported and are demonstrably false and, therefore, the VTTM complies with the Subdivision Map Act and should be approved.

a. The Project Is Consistent with the General Plan Policy N.7.1 and Will Be Compatible with Existing Development

ORRD first claims that the Project is inconsistent with General Plan Policy N.7.1, which states that new residential development “should be compatible with the density, scale, design, and existing or desired character of surrounding development.” The Project is consistent with this Policy. As explained in the EIR (p. 6-253), the single-family homes proposed for the south side of the Project area would be compatible with the existing single-family homes to the south. That the lot sizes of these homes may be less than existing nearby lots does not make the homes incompatible. They are still single-family residences and will need to comply with the Oak Knoll Design Guidelines, which would lead to architecture that is compatible with the character of the neighborhood to the south. Compatibility does not require the exact same lot sizes or even housing types. Further, new single-family homes on the Eastern Ridge that would be silhouetted against the sky from public viewing points would be subject to additional requirements to ensure the Project respects the natural topography. Those homes must be custom designed using appropriate techniques to minimize the appearance of a monotonous row of sky-lined development visible from off-site vantage points, meeting the requirements of Mitigation Measure AES-1. In addition, the Project’s development would be setback from Rifle Range Creek, which would be day-lighted and restored or enhanced as part of the Project. Thus, the Project is compatible with existing development, consistent with Policy N.7.1.

b. The Project Is Consistent with General Plan Policy N.6.1 and Will Provide a Mix of Housing Types, Units Sizes, and Lot Sizes

ORRD next asserts that the Project is inconsistent with General Plan Policy N.6.1, which states that “the City will generally be supportive if a mix of projects that provide a variety

of housing types, unit sizes, and lot sizes which are available to households with a range of incomes.” This is not a policy requiring that projects provide “affordable units” on-site, as is suggested by ORRD, and it is not a requirement that every project provide housing units across the spectrum of size and affordability level. Instead, it directs the City to seek to approve “a mix of projects” that, together, help the City to meet this policy. Regardless, the Project is consistent with this Policy. The Project will provide a mix of housing types, consisting of townhomes, small-lot homes, and conventional single-family homes. Thus, the Project includes a mix of housing types, unit sizes, and lot sizes that, by their nature, will be available to households with a range of incomes. Further, we note that the Redevelopment Plans for Central City East and Oak Knoll express a desire for Oak Knoll to satisfy its affordable housing needs through use of surplus housing in Central City East. Therefore, contrary to ORRD’s claims, the Project is consistent with Policy N.6.1.

c. The Project’s Design Minimizes Environmental Impacts and So Is Consistent with General Plan Policy N.7.6

General Plan Policy N.7.6 states that “[d]evelopment on subdivided parcels should be allowed where site and building design minimize environmental impacts.” According to ORRD, the Project is inconsistent with the Policy because it would result in inadequately mitigated impacts. This, too, is incorrect. In fact, the Project has several design features and Project components that are specifically intended to minimize environmental impacts and, in some instances, to improve existing conditions.

For example, the Project would remove culverts and stabilize and enhance the creek channels (Rifle Range Creek and its two tributaries) that flow through the Project site. Under current conditions, four culverted road crossings have the potential to impede high flows in Rifle Range Creek. These crossings would be removed and replaced with two free-span structures (one vehicle bridge and one pedestrian bridge) that do not impede flows. In addition, the Project would “daylight” over 600 linear feet of Rifle Range Creek that is currently culverted under an existing parking lot. The culverted section would be replaced by an open channel designed to accommodate the natural flow of water through the Project site. The Project also would improve and enhance the riparian habitat and correct current slope instability issues in both Rifle Range Creek and its tributaries. The Power House Creek tributary will be realigned and stabilized to create a stable channel configuration, and both tributary outfalls will be modified to dissipate erosive flows, improve stability, and reduce erosion.

Also, the mixed-use Project, by its design, minimizes environmental impacts. The Project consists of the reuse of a previously developed infill site, not a greenfield site, and includes a mix of commercial and residential uses. The Project proposes neighborhood serving commercial uses near to and serving the new and existing residential neighborhoods. (See EIR, p. 4.6-35.) This mix of uses encourages the reduction of vehicle miles traveled and overall vehicle trips. The Project also includes a Transportation Demand Management Program that will reduce the Projects vehicle emissions by at least 10 percent and further reducing the Projects

environmental impacts with respect to GHG emissions. (See EIR, p. 4.6-32.) Thus, consistent with Policy N.7.6, the Project site and building design minimize environmental impacts.

d. Relocation of Club Knoll Will Not Result In a Significant Adverse Impact to the Historic Resource

ORRD asserts, without any evidence or support, that that relocation of Club Knoll would have significant adverse impacts on the building. According to ORRD, this impact renders the VTTM inconsistent with General Plan Policy HPE 3.1, which requires projects to “make all reasonable efforts to avoid or minimize adverse effects.” The Project is consistent with this Policy.

The EIR includes several Mitigation Measures designed to protect Club Knoll before, during, and after relocation (Measures CUL-1.2 through 1.5). Consistent with the Mitigation Measures, the Club Knoll Final Development Plan demonstrates that relocation of the building is possible and that rehabilitation of the building will be done in a manner that meets the Secretary of Interior’s Standards for Rehabilitation State CEQA Guidelines Section 15064.5(b)(3) provides:

Generally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

Therefore, because Club Knoll will be rehabilitated in a manner consistent with these Standards, and because the EIR requires additional Mitigation Measures to ensure that impacts are mitigated, pursuant to Section 15064.5(b)(3), the impacts resulting from relocating Club Knoll have been mitigated to a less than significant level.

Finally, consistent with standard City practice and Sections 15.44.030 and 15.44.070 of the Oakland Municipal Code, the City will require bonding for the relocation of Club Knoll to ensure the relocation of the structure is conducted pursuant to the Mitigation Measures. Thus, the Project is consistent with Policy HPE 3.1.

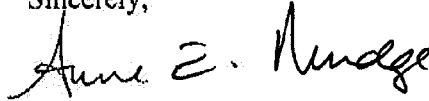
* * *

As demonstrated, ORRD has not identified any new or significantly increased significant impacts of the Project that were not disclosed in the EIR, and the Project is consistent with applicable General Plan policies and Municipal Code provisions.

Honorable Members of the City Council
October 30, 2017
Page 10

Thank you for your consideration of the above responses to ORRD's October 18, 2017 comments on the Project.

Sincerely,

A handwritten signature in black ink that reads "Anne E. Mudge". The signature is written in a cursive style with a large initial "A".

Anne E. Mudge

AEM/srs

Cc: Heather Klein (hklein@oakland.net)
Heather Lee (hlee@oaklandcityattorney.org)

071670\9196209v5

Klein, Heather

From: Christina Caro <ccaro@adamsbroadwell.com>
Sent: Monday, October 30, 2017 9:35 PM
To: Campbell Washington, Annie; Reid, Larry; Gallo, Noel; Marqusee, Alexander G.; LGibsonMcElhaney@oaklandnet.com; Parker, Candice M
Cc: Office of the Mayor; Guillen, Abel; Kalb, Dan; Brooks, Desley; At Large; Thao, Sheng; Klein, Heather; sgregory@lamphier-gregory.com; Lorrie J. LeLe
Subject: CED Committee Agenda Item 1: Oak Knoll Mixed Use Community Plan Project and City Owned Barcelona Parcel
Attachments: 3426-027j - ORRD Comments to CED Committee _Oak Knoll_.pdf; Exh A - 2017 06 21 Oak Knoll PC Comments.pdf

Dear Chair Campbell Washington and Honorable Members of the Community & Economic Development Committee:

Attached please find the comments of Oakland Residents for Responsible Development regarding CED Committee Agenda Item No. 1 for the Committee's October 31, 2017 Special Meeting, the Oak Knoll Mixed Use Community Plan Project and City-owned Barcelona Parcel.

Hard copies of the comments and exhibits will be presented in person at tomorrow's CED Committee meeting. Thank you.

Christina M. Caro
Adams Broadwell Joseph & Cardozo
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LINDA T. SOBECZYNSKI

October 31, 2017

Via Email and Hand Delivery

Ms. Annie Campbell Washington, Chair
Honorable Members of the Community & Economic Development Committee
Ms. Candice Parker-Trigg, City Clerk Staff for CED Committee
City of Oakland
Oakland City Hall, Hearing Room 1
1 Frank H. Ogawa Plaza,
Oakland, California 94612
Email: ACampbellWashington@oaklandnet.com; Lreid@oaklandnet.com;
NGallo@oaklandnet.com; AMarqusee@oaklandnet.com;
LGibsonMcElhaney@oaklandnet.com; CParker@oaklandnet.com

Via Email Only:

Mayor Libby Schaaf (officeofthemayor@oaklandnet.com)
City Councilmembers Abel J. Guillén, Dan Kalb, Desley Brooks, Rebecca Kaplan
(aguillen@oaklandnet.com; dkalb@oaklandnet.com; dbrooks@oaklandnet.com;
atlarge@oaklandnet.com; SThao@oaklandnet.com)
Heather Klein, Planner IV (hklein@oaklandnet.com)
Scott Gregory, Contract Planner (sgregory@lamphier-gregory.com)

Re: **Agenda Item No. 1: Oak Knoll Mixed Use Community Plan
Project and City Owned Barcelona Parcel
(File Numbers 17-0208, 17-0209, 17-0210, 17-0211)**

Dear Chair Campbell Washington and Honorable Members of the Community & Economic Development Committee:

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents")¹ regarding Agenda Item No. 1, the Oak Knoll Mixed Use

¹ Oakland Residents, also known as East Bay Residents for Responsible Development ("EBRRD") submitted written comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for

October 30, 2017

Page 2

Community Plan Project (“Project”) and the City-owned Barcelona Parcel, including Council President Reid’s recommendations that the Community & Economic Development Committee (“CED Committee”) recommend that the City Council adopt four pieces of legislation related to the Project.²

Our review of the Staff Report for the CED Committee meeting and proposed legislation for the Project (collectively, “Staff Report”) demonstrates that the Staff Report fails to incorporate recent revisions to the Project that were adopted by the Planning Commission and requested by the Applicant, fails to address Project

the Project in October 2016, written comments to the Landmarks Preservation Advisory Board (“LPAB”) on May 8, 2017, and written and oral comments to the Planning Commission on June 21, 2017 and October 18, 2017. All prior comments are incorporated by reference. Oakland Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

² The proposed CED Committee actions include recommending adoption of the following pieces of legislation to the City Council:

- 1) A Resolution (A) Certifying The Environmental Impact Report And Adopting Related CEQA Findings, Including Adoption Of A Statement Of Overriding Considerations; (B) Amending The General Plan Land Use Diagram For The Oak Knoll Site To Match The Project's Parcel-By-Parcel Specificity And Existing Site Conditions; (C) Adopting Planned Unit Development Permit, Preliminary Development Plan And Design Guidelines, Final Development Plan For Master Developer Site Improvements, Final Development Plan For Club Knoll Relocation And Rehabilitation, Vesting Tentative Tract Map, Conditional Use Permit For Shared Access Facilities, Creek Permit, Tree P Permit And Other Development Related Land Use Permits For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard; And
- 2) An Ordinance (A) Adopting CEQA Findings, Including Certification Of Environmental Impact Report; And (B) Rezoning, Including New Zoning Districts, New Zoning Text And Zoning Map Changes For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard, Oakland; And
- 3) A Resolution (A) Certifying The Supplemental Environmental Impact Report And Adopting Related CEQA Findings And (B) Amending The General Plan From Hillside Residential And Resource Conservation To Detached Unit Residential For The City Owned Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland; And
- 4) An Ordinance (A) Adopting CEQA Findings, Including Certification Of The Supplemental Environmental Impact Report And (B) Rezoning From RH-3 Hillside Residential Zone -3 To The Proposed D-OK-1 Oak Knoll District Residential Zone - 1 And The D-OK-7 Passive Open Space Zoning For The City-Owned Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland. See CED Committee Staff Report, p. 1.

changes resulting from removal of the Barcelona Parcel, and fails to respond to comments regarding traffic impacts.

First, the Staff Report fails to incorporate revised language in Conditions of Approval Nos. 23 and 24 that was unanimously adopted by the Planning Commission (“Commission”) at the October 18, 2017 hearing for recommendation to the City Council. The Planning Commission’s revisions would restrict the ability that the Applicant would otherwise have to construct the Project phases “at such time as the Developer deems appropriate” by limiting Project development to the phasing structure analyzed in the FSEIR.³

Second, the proposed Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (“SCA/MMRP”) fail to incorporate mitigation measures that have been requested by the Applicant to address the Project’s unlawful deferment of fire safety mitigation plans. As a result, the SCA/MMRP continues to unlawfully defer its analysis and mitigation of potentially significant fire impacts without any meaningful performance standards in place.

Third, the Staff Report attaches an October 19, 2017 Tree Permit Decision from the City’s Public Works department (“Tree Permit”). The Tree Permit was issued the day after the Planning Commission hearing, but fails to mention the removal of the 5.4-acre Barcelona Parcel from the Project. As a result, the Tree Permit authorizes the removal of all 3,567 protected trees that were originally requested by the Applicant, and fails to include revised terms that would restrict the Applicant from removing the protected trees that are located on the Barcelona Parcel. The City has explained that it intends to retain title to the Barcelona Parcel, and is uncertain of its future plans to develop the Parcel. The City therefore lacks substantial evidence to support the removal of protected trees from the Barcelona Parcel that is authorized under the Tree Permit, and is unable to make the findings required under Municipal Code Section 12.36.050 to approve the Tree Permit.

Finally, the Staff Report asks the CED Committee to recommend that the Council adopt a statement of overriding considerations due to the Project’s significant and unavoidable impacts to air quality and traffic. However, the Staff Report, proposed SCA/MMRP, and proposed CEQA findings fail to adopt all feasible

³ See Proposed Conditions of Approval Nos. 23 and 24.

mitigation measures that would reduce the Project's significant impacts to less than significant levels, including mitigation measures recommended by Oakland Residents' traffic consultant. Without requiring all feasible mitigation, the Council is unable to make the requisite findings under CEQA that the City has mitigated all significant environmental impacts to the greatest extent feasible, and that any remaining significant environmental impacts are acceptable due to overriding considerations.

These errors must be corrected in a revised FSEIR and revised Project approvals before the CED Committee can make a recommendation to the City Council to approve the Project.

I. STATEMENT OF INTEREST

Oakland Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Alan Guan, Risi Agbabiaka, Peter Lew, Bridgette Hall, Tanya Pitts, UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County.

Individual members of Oakland Residents and the its affiliated labor organizations live, work, recreate and raise their families in Alameda County, including the City of Oakland. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. THE STAFF REPORT FAILS TO ADVISE THE CED COMMITTEE OF REVISED CONDITIONS OF APPROVAL THAT WERE RECOMMENDED BY THE PLANNING COMMISSION TO PREVENT SIGNIFICANT IMPACTS FROM PROJECT CONSTRUCTION

The October 18, 2017 Planning Commission Staff Report included revised Conditions of Approval Nos. 23 and 24 which would have provided that “the Developer shall have the right to develop the Project at such time as the Developer deems appropriate” so long as the public improvements for Phase 1 were complete.⁴

Oakland Residents’ October 18, 2017 comments to the Planning Commission explained that Conditions 23 and 24 would allow the Developer to front-end construction of the public improvements required for Phase 1 of the Project (street and creek improvements), then to thereafter construct the building developments of Phase 1 together with the building developments for Phases 2 and 3, potentially resulting in simultaneous construction of all three Project phases. Oakland Residents provided reports from air quality expert Hadley Nolan of SWAPE, and expert traffic engineer Daniel Smith⁵ which demonstrated that concurrent construction of Project phases would result in significant, unmitigated air quality and traffic impacts that were not analyzed in the FSEIR.⁶ Conditions 23 and 24 are also a significant departure from the Project Description included in the FSEIR, which analyzed sequential, non-overlapping construction of Phases 1,2, and 3.⁷

At the October 18, 2017 hearing, in response to Oakland Residents’ comments, Planning Staff proposed revisions to the text of Conditions of Approval Nos. 23 and 24 which would require the construction of Project phases to occur “without exceeding the phasing assumptions of the FSEIR.”⁸ This revision would effectively prohibit the Applicant from constructing multiple Project phases at the same time because the FSEIR analyzed Project construction in sequential, non-overlapping phases. The Planning Commission voted unanimously to approve this revised language, yet the CED Staff Report fails to discuss these revisions, and fails to incorporate the revised language into the proposed final Conditions of Approval.

⁴ See 10/18/17 Revised Conditions of Approval

⁵ Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

⁶ See 10/18/2017 comments, Exhibits A and B.

⁷ *Id.*

⁸ See October 18, 2017 Planning Commission hearing, Commission deliberations and recommendations of Planner Scott Gregory.

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Instead, the Conditions of Approval Nos. 23 and 24 included the CED Staff Report contain the same language that the Planning Commission has already determined to be unlawful. Staff's failure to apprise the CED Committee and City Council of the Planning Commission's findings and recommendations violates Oakland Municipal Code requirements that the Planning Commission's recommendations on the Project be presented to the City Council for consideration.⁹

Failure to incorporate a restriction to ensure that Project construction does not "exceed[] the phasing assumptions of the FSEIR" is also likely to result in significant, unmitigated air quality and traffic impacts. We reincorporate our October 18, 2017 discussion of Conditions 23 and 24 below.

In order to correct these errors, the CED Committee must incorporate the revisions adopted by the Planning Commission to limit Project construction to phased sequencing that does not exceed the phasing assumptions analyzed in the FSEIR. Alternatively, the CED Committee must recommend that the Council remand the FSEIR to Staff to prepare a new analysis and new mitigation measures to address the concurrent construction of Project phases that would be allowed if Conditions 23 and 24 remain unchanged.

A. Concurrent Construction of Project Phases Would Result in Significant, Unmitigated Air Quality Impacts from Construction Emissions.

The FSEIR analyzed construction emissions separately for each phase of the Project, and did not analyze emissions for overlapping or concurrently constructed Project phases,¹⁰ and no Staff Report has quantified this impact.

Conditions of Approval Nos. 23 and 24 are nearly identical to the phasing terms that were previously proposed for the Project's Development Agreement ("DA").¹¹ The original DA term would have allowed construction of two or more Project phases to overlap, potentially allowing all three phases of the Project to be constructed at the same time. SWAPE conducted a quantitative analysis of the

⁹ See e.g. Oak. Muni. Code Sec. 17.130.080.

¹⁰ DSEIR, p. 4.2-23 ("Emissions were estimated separately for each of the construction phases of the Project, and for both on-site crushing and off-site hauling scenarios under Phase I.").

¹¹ The Applicant has withdrawn its request for a Development Agreement.

construction emissions associated with overlapping construction of the Project's three phases as proposed in the DA, which is almost identical to the scenario contemplated under revised Conditions 23 and 24. SWAPE's analysis demonstrated that, if the three Project phases were constructed concurrently, the Project would result in significant, unmitigated air quality impacts with respect to ROG and NOx emissions, as follows (ROGs = 57.1 lbs/day, NOx = 120 lbs/day)¹²:

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO_x	PM10	PM2.5
Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
Threshold Exceeded?	<u>Yes</u>	No	<u>Yes</u>	No	No

SWAPE concluded that these emissions would exceed the 54 pounds per day (lb/day) significance thresholds set by BAAQMD, resulting in significant air quality impacts.¹³ The City failed to respond to these comments, and has not disputed SWAPE's conclusions regarding the significant air quality impacts that would result from concurrent construction of the Project phases.

Without the revisions adopted by the Planning Commission, Conditions 23 and 24 would create an almost identical scenario in which the Applicant could begin development of Phase 2 and Phase 3 at any time after the nominal street and creek improvements required for Phase 1 have been completed. This scenario was not analyzed in the FSEIR.

Each of the three Project phases involves substantial construction activities. The FSEIR explains that Phase 1 of the Project "would include removal of existing on site concrete pads and pipelines, creek improvements, grading and construction of roadways in the Village Center area of the site, development of the Village Center and construction of 232 townhomes and 100 single family homes as part of the residential development in the south and west portions of the site"¹⁴ Phase 2 involves the development of most of the Uplands neighborhoods, and Phase 3

¹² See SWAPE June 21, 2017 Comments re Oak Knoll, attached hereto, p. 3 and Exhibit A.

¹³ *Id.*

¹⁴ FSEIR, p. 4.2-23.

involves development of the North Creekside neighborhood.¹⁵ Phase 2 and 3 would involve grading and construction for 263 homes and 340 homes, respectively, as well as roadway development in the east, west, and north areas of the site. The earthwork volume for cut and fill is anticipated to be approximately 1 million cubic yards in Phase 2 and approximately 430,000 cubic yards in Phase 3.¹⁶

SWAPE subsequently reviewed the proposed Conditions of Approval Nos. 23 and 24 that were included in the October 18, 2017 Planning Commission Staff Report. SWAPE found Conditions 23 and 24 to be almost identical to the DA phasing proposal and concluded that, if Conditions 23 and 24 were approved as drafted, it would effectively allow the Developer to develop Phase 2 and Phase 3 concurrently with the Phase 1. SWAPE concluded that this would result in potentially significant construction emissions:¹⁷

As currently proposed, Conditions of Approval No. 23 and 24 would allow the same development schedule, save for the public improvements required for Phase 1, which would have to be constructed before any work is initiated on the other phases. Thus, construction emissions associated with concurrent Project phase construction under Conditions 23 and 24 would be equal to amounts we identified in our June 2017 comments (57.1 lbs/day of ROG, 190.7 lbs/day of CO, 120 lbs/day of NO_x, 29.1 lbs/day of PM₁₀, and 11.5 lbs/day of PM_{2.5}), minus the emissions associated with those public improvements...It is likely that any reductions in construction emissions associated with separating out the construction of public improvements of Phase 1 may not reduce the Project's ROG or NO_x emissions to less than significant levels.

The FSEIR did not separately quantify the construction emissions related to the public improvement portions of Phase 1 from the construction emissions associated with remaining portions of Phase 1 (construction of the townhomes and single family homes), and no Staff Report contains this analysis. Thus, the City has failed to demonstrate that the cumulative air quality impacts that would occur if Project phases were constructed concurrently, as proposed in Conditions of Approval No. 23 and 24, would be any less than the emissions identified in

¹⁵ FSEIR, p. 3-44.

¹⁶ FSEIR, p. 4.2-23.

¹⁷ See Staff Report, Attachment 2-S, Public Comments, 10/18/17 comments of SWAPE, pp. 3-4.

SWAPE's June 2017 comments. Moreover, because the FSEIR did not analyze concurrent construction, the air quality mitigation measures currently proposed in the FSEIR do not address the increased emissions from overlapping construction phases. Therefore, the City has no evidence on which to conclude that the Project's construction air quality emissions would be mitigated to less than significant levels with the existing mitigation measures described in the FSEIR if Conditions of Approval No. 23 and 24 are approved as drafted.

The CED Committee must recommend that the City Council adopt revisions to Conditions 23 and 24 that will restrict Project construction to the phasing assumptions analyzed in the FSEIR.

B. Concurrent Construction of Project Phases is Likely to Result in Significant, Unmitigated Traffic Impacts.

Traffic engineer Daniel Smith similarly concluded that Conditions of Approval No. 23 and 24 are likely to cause more severe construction-related traffic impacts than were disclosed in the FSEIR.

In his October 18, 2017 comments,¹⁸ Mr. Smith explained that, if Conditions 23 and 24 are approved, the Applicant may choose to front-end construction of the public improvements for Phase 1, and then simultaneously construct the remainder of Phase 1 together with Phases 2 and 3, resulting in considerably more severe construction traffic impacts than the impacts that were disclosed in the FSEIR.¹⁹ Mr. Smith explained that the FSEIR's traffic study analyzed a straight line growth in non-Project background traffic from the existing conditions to the Year 2040 projection. The traffic study then projected the growth of Project traffic related to the sequential time schedule for completion of the three phases of the Project, with Phase 1, Phase 2, and Phase 3 being completed at different times. Finally, the FSEIR selected the timing of the Project's required off-site traffic improvements based on the Project's projected contribution of traffic at each intersection during and following each Project construction phase, resulting in MMRP requirements that presently allow off-site traffic improvements to occur at later stages of the Project.²⁰

¹⁸ See Staff Report, Attachment 2-S, Public Comments, 10/18/17 comments of Daniel T. Smith.

¹⁹ *Id.*, p. 2.

²⁰ *Id.*

The FSEIR does not currently require the Project's off-site traffic mitigation measures to be constructed as part of the Project's Phase 1 public improvements. Hence, Conditions of Approval No. 23 and 24 would give the Applicant the right to develop the Project well in advance of the timeline for traffic mitigation measures that is currently defined in the FSEIR. Mr. Smith concluded that this revised phasing is likely to cause the public to experience significant traffic impacts that go unmitigated for years. Mr. Smith recommended that FSEIR be amended to require acceleration of traffic mitigation implementation to address the accelerated traffic impacts that are likely to occur under revised Conditions 23 and 24.²¹

The Staff Report fails to respond to Mr. Smith's comments. In order to ensure that Project phasing does not result in significant traffic impacts that were not analyzed in the FSEIR, the CED Committee must recommend that the City Council adopt revisions to Conditions 23 and 24 that will restrict Project construction to the phasing assumptions analyzed in the FSEIR.

III. THE SCAMMRP FAILS TO INCLUDE ADEQUATE PERFORMANCE STANDARDS FOR THE PROJECT'S FIRE SAFETY PLANS.

Both Oakland Residents and the International Association of Firefighters, Local 55 ("Firefighters") previously commented in June and September 2017 that *SCA HAZ-4: Fire Safety Plan* and *SCA HAZ-5: Wildfire Prevention Area – Vegetation Management* constitute unlawfully deferred analysis and deferred mitigation because they defer the creation of critical fire safety plans and Project features related to fire prevention until after Project approval, outside the purview of public comment.²²

In response to these comments, the City's Fire Prevention Bureau submitted a revised memo on September 29, 2017, listing over a dozen conditions which the Bureau recommended be required for the Project in order to ensure adequate site access and firefighting capability for fire personnel in the event of a fire emergency

²¹ *Id.*

²² See Oakland Residents 6/21/2017 Comments, pp. 17-18; Firefighters 9/7/2017 letter re Oak Knoll Mixed Use Community Plan Project; 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735; *Comtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy' v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.

at the Project site. These recommendations were adopted in proposed Condition of Approval 43. On October 18, 2017, the Applicant submitted a letter to the Planning Commission addressing the lack of performance standards in SCA HAZ-4 and SCA HAZ-5.²³ The Applicant asked that the Commission adopt two additional mitigation measures to “clarify and reinforce the requirements already encompassed by SCAs HAZ 4 and HAZ-5,” including the following:

SCA Implementation Measure HAZ-4.2: To further implement SCA HAZ-4 - Fire Safety, each Developer's Fire Safety Phasing Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the construction proposed by the Developer during each phase meets the requirements of the City's Fire Code (Municipal Code Chapter 15.12). The Plan's details must include, but are not limited to information addressing the following requirements:

- o Fire apparatus access by phase,
- o Fire protection water supply by phase,
- o Means of egress by phase, and
- o Storage of combustible materials during construction.

SCA Implementation Measure HAZ-5.1: To further implement SCA HAZ-5 - Wildfire Prevention Area - Vegetation Management, the Vegetation Management Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements pertaining to maintaining defensible space, clearance of brush and vegetative growth from electrical transmission and distribution lines, and ignition source control.²⁴

The Staff Report fails to respond to the Applicant's request, and the SCA/MMRP fails to incorporate these additional mitigation measures. The City must revise and recirculate the FSEIR and SCA/MMRP to add the additional mitigation measures requested by the Applicant. Without these measures, the SCA/MMRP lacks any measureable performance standards to ensure that the

²³ See Attachment 2-S, Public Comments, October 18, 2017 letter from Sam Veltri to City re Oak Knoll.

²⁴ *Id.* at p. 4.

Project's fire safety plans will mitigate potentially significant fire impacts. The FSEIR should also be revised and recirculated to include full drafts of the Fire Safety and Wildfire Plans prior to Project approval.

IV. THE TREE PERMIT FAILS TO ACCOUNT FOR REMOVAL OF THE BARCELONA PARCEL

The Barcelona Parcel is a 5.4 acre, City-owned parcel located in the southwest corner of the site near Barcelona Street and St. Andrews Road. It had been considered for sale to the Applicant as part of an Exclusive Negotiating Agreement for the Project.²⁵ The October 18 Planning Commission Staff Report explained that the Applicant is no longer pursuing purchase of the Barcelona Parcel. The Report explained that the City intends to retain title to the Barcelona Parcel, but is uncertain of its future plans to develop the Parcel since it will no longer be part of the Project.²⁶

A. Protected Trees.

Oakland Residents submitted comments from biologist Scott Cashen at the Planning Commission's October 18, 2017 hearing, explaining that the Barcelona Parcel contains protected trees that were proposed for removal as part of the Project.²⁷ Neither the Planning Commission Staff Report nor the CED Staff Report included an updated Tree Removal Plan to account for removal of the Barcelona Parcel trees from the Plan. Instead, the City simply issued a Tree Permit which authorizes the removal of **all 3,567 protected trees** that were originally requested by the Applicant, with no explanation as to why the Barcelona Parcel trees were included in the Permit.

The City's Tree Ordinance requires that a tree removal permit application be denied if "removal could be avoided by reasonable redesign of the site plan prior to construction."²⁸ The Project's Planned Unit Development Permit ("PUD"), Preliminary Development Plan ("PDP"), Final Development Plan ("FDP"), and Vesting Tentative Tract Map ("VTM") have all been revised to remove the

²⁵ 10/18/17 Commission Staff report, p. 3.

²⁶ *Id.*

²⁷ See Attachment 2-S, Public Comments, 10/18/17 Oakland Residents' Comments, Exhibit C.

²⁸ Oak. Muni. Code Section 12.36.050(B).

Barcelona Parcel from the Project's development program.²⁹ Thus, the site plan for the Barcelona Parcel has already been redesigned to eliminate *all planned development from the Parcel*, and the City acknowledges that there is no specific development planned for the Parcel at this time. The Tree Permit therefore violates the Tree Ordinance, and the City has no justification for issuing a permit to remove protected trees from the Barcelona Parcel. The Permit must be rescinded and an updated Tree Removal Plan prepared for the Project that removes the Barcelona Parcel trees from the Tree Permit.

B. On-Site Mitigation.

The Applicant's original Tree Removal Impact Mitigation Plan identifies a relatively large planting area within the Barcelona parcel that is intended as mitigation for the Project's impacts to biological resources. Because the Barcelona parcel is no longer a part of the Project, the Applicant can no longer use that planting area to help satisfy its on-site mitigation requirement under Mitigation Measure BIO-2. The Staff Report fails to address this issue, and fails to propose any replacement mitigation for the lost planting acreage. The FSEIR and SCA/MMRP must be amended to require replacement mitigation that will assure full compliance with Mitigation Measure BIO-2.

V. THE FSEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING OF OVERRIDING CONSIDERATIONS.

In order to approve the Project, the City must certify the FSEIR and make mandatory CEQA findings. Those findings include (1) that the FSEIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.³⁰ Where, as here, the Project will have a significant effect on the environment, the City may not approve the Project unless it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."³¹

²⁹ Planning Commission Staff Report, pp. 3, 4 ("The revised VTTM now shows the Barcelona parcel as remaining "Lands of the City of Oakland" and not a part of the Project.").

³⁰ 14 CCR sections 15090, 15091.

³¹ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

The City must also certify find that the project's benefits outweigh its environmental risks.³²

The FSEIR identifies significant and unavoidable impacts on traffic and air quality. In order to certify the FSEIR and approve the Project, the City Council must first determine and make findings that the FSEIR includes *all feasible mitigation measures* available to reduce those impacts to the greatest extent feasible before the impacts can be declared "significant and unavoidable."³³ As discussed below, and as Oakland Residents previously commented to the Planning Commission, the FSEIR fails to incorporate all feasible mitigation to reduce the Project's traffic impacts to less than significant levels. The City failed to respond to these comments, and failed to respond to, or incorporate, the additional traffic mitigations proposed by traffic engineer Daniel Smith to further reduce significant traffic impacts. These deficiencies are discussed below, and must be addressed in a revised FSEIR before the City Council can make the CEQA findings necessary to approve the Project.

A. The FSEIR Fails to Adopt Feasible Mitigation Recommended by Caltrans.

The FSEIR characterizes impacts Trans-1, Trans-2, Trans-3, Trans-5, Trans-8, Trans-9, Trans-10, Trans-12, and Trans-14 as significant and unavoidable because they involve impacts to transportation facilities not under the City of Oakland's jurisdiction.

In a letter dated October 12, 2016, Caltrans commented that the City and the applicant should implement feasible mitigations to these impacts as required Project mitigation on a fair share basis, operating through the Caltrans encroachment permit process. The FSEIR's response to Caltrans' comment was ambiguous, stating simply that "the City will coordinate with Caltrans and the Project applicant on design, funding, and timing for implementation of the mitigation measures that require coordination with Caltrans." This response is dismissive in that it fails to require any concrete actions by the Applicant to ensure that all necessary steps are taken to obtain Caltrans' approval of the off-site improvements.

³² 14 CCR section 15093.

³³ 14 CCR sections 15090, 15091.

The FSEIR subsequently concluded that all mitigation measures related to roadways under Caltrans jurisdiction cannot go through the Caltrans encroachment permit process until the FSEIR is certified, and that the traffic impacts which those measures are designed to mitigate are therefore significant and unavoidable. This conclusion is unsupported. The Caltrans encroachment permit process is structured to ensure that improvements or mitigation measures constructed by other jurisdictions or private parties on Caltrans facilities are operationally sensible, conform to State and (when applicable) U.S. Department of Transportation highway design standards or qualify for reasonable exceptions to design standards and assure that traveler and worker safety is reasonably protected during the construction period. Caltrans generally consults with the applicant agency following preparation of its CEQA document. The fact that Caltrans may not issue final approval for proposed traffic mitigations until after Project approval does not preclude the City from requiring a funding commitment for the mitigation measures from the Applicant as a condition for the FSEIR approval. The courts have upheld funding commitments for off-site traffic improvements as feasible mitigation.³⁴

In his June 2017 comments, traffic engineer Mr. Smith recommended that the FSEIR's MMRP be amended to require the Applicant to commit to specified amounts of fair share funding toward each mitigation measure to an escrow account for that purpose and coordinate with Caltrans regarding how any other fair share fees will be made good to enable implementation.³⁵ The City failed to revise the FSEIR to include this mitigation, and failed to provide any reasoning to reject it. The City therefore lacks substantial evidence to support a finding of overriding considerations with regard to the Project's traffic impacts.

B. Additional, Feasible Mitigation for Intersection Impacts.

Mitigation Measure Trans-6 at the intersection of Golf Links Road and Mountain Boulevard attempts to resolve traffic impacts by restriping lanes at the intersection, signaling it and coordinating the new signal with signals at the intersections of Golf Links Road with freeway ramps on both sides of I-580. However, as the FSEIR observes, the mitigation measure might result in queue blockages at the nearby intersections of Golf Links Road with both sets of I-580

³⁴ See *City of Hayward v. Bd. Of Trustees of Cal. State University* (2015) 242 Cal. App 4th 833, 857.

³⁵ See Oakland Residents' 6/21/17 Comments, Exhibit B, p. 3.

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ramps.³⁶ Mr. Smith commented that these blockages alone do not render traffic impacts at the intersection of Golf Links with Mountain “significant and unavoidable” as the FSEIR claims. Rather, Mr. Smith explained that there is sufficient undeveloped land to the east of Mountain Boulevard near Golf Links Road that the alignment of Mountain Boulevard could be shifted to the east, significantly increasing the separation between the intersection of Mountain with Golf Links and the intersection of Golf Links with the eastbound I-580 ramps, thereby potentially curing the queue blockage problem.³⁷

The City failed to respond to these comments, and failed to address this potentially feasible and effective mitigation measure. CEQA requires the environmental analysis to consider all feasible mitigation measures before declaring that an impact is significant and unavoidable. The FSEIR should be revised to analyze this proposed mitigation measure.

VI. CONCLUSION

For the reasons discussed herein, Oakland Residents respectfully requests that the CED Committee recommend that the City Council remand the Project to City Staff to make all necessary revisions to the FSEIR, Project permits, and proposed Project legislation that are necessary to bring the City’s proposed actions on the Project into compliance with CEQA and applicable land use laws.

Thank you for your consideration of these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:

³⁶ DSEIR, p. 4.13-69.

³⁷ See Oakland Residents’ 6/21/17 Comments, Exhibit B, p. 3.

EXHIBIT A

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June 21, 2017

Via Email and Hand Delivery

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Re: Public Hearing: Oak Knoll Mixed Use Community Plan Project

Dear Chairperson Nagraj and Honorable Members of the Planning Commission:

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents") regarding Oak Knoll Mixed Use Community Plan Project ("Project").¹

Oakland Residents and its technical consultants have reviewed the Planning Commission Staff Report for the Project ("Staff Report"). The Staff Report introduces new Project elements which were not analyzed in the Project's Final Supplemental Environmental Impact Report ("FSEIR"), and which the Staff Report admits Staff did not have adequate information to meaningfully analyze prior to this hearing.

¹ Oakland Residents submitted comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for the Project in October 2016, and comments to the Landmarks Preservation Advisory Board ("LPAB") on May 8, 2017. Those comments are incorporated by reference. Oakland Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
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For the first time, the Staff Report acknowledges that the Project's Development Agreement is still under consideration, and has not yet been developed. Rather than attach a proposed Agreement, the Staff Report identifies a list of potential terms that the Development Agreement "may" include. This fails to meet basic Planning Code requirements, and fails to enable either the public or the Planning Commission to meaningfully consider the proposed Development Agreement under the California Environmental Quality Act ("CEQA").² Furthermore, the Staff Report makes clear that some of the proposed terms for the Development Agreement may result in significant environmental impacts that were not analyzed in the FSEIR.

The Staff Report also proposes establishing a Community Facilities District ("CFD") to manage Project infrastructure development. The Staff Report explains that "[s]taff has not had adequate time to consider a CFD or other financing options available, what should be included in the CFD, the recent changes in state law regarding formation of a CFD and the draft Condition of Approval may or may not be adequate to protect the residents and the City and provide clear obligations to the developer."³

Finally, Oakland Residents has reviewed the FSEIR along with our technical consultants. The FSEIR fails to adequately respond to expert comments on traffic and biological resources issues, fails to adequately mitigate several potentially significant impacts, proposes impermissibly deferred mitigation, and contains numerous other errors and omissions that preclude a meaningful analysis of the Project's environmental impacts. The Commission may not recommend certification of the FSEIR until it fully complies with CEQA.

The Commission lacks adequate information and the requisite substantial evidence to make the necessary recommendations to the City Council to approve the Project. The Commission should follow the recommendation in the Staff Report to continue its hearing on the Project to a future date after the proposed Development Agreement has been drafted and circulated to Commission members and the public for review, and after the City has corrected the errors and omissions in the FSEIR.⁴

² Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq.

³ Staff Report, p. 31.

⁴ Furthermore, the Commission must offer further public comment on all aspects of the Project at the continued hearing. The Commission may not close public comment or public testimony on this item
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We prepared these comments with the assistance of air quality expert Jessie Jaeger of SWAPE;⁵ expert traffic engineer Daniel Smith;⁶ and conservation biologist and wildlife ecologist Scott Cashen.⁷ Their comment letters and all attachments thereto are incorporated by reference as if fully set forth herein.

I. STATEMENT OF INTEREST

Oakland Residents for Responsible Development (“Oakland Residents”) is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Alan Guan, Risi Agbabiaka, Peter Lew, Bridgette Hall, Tanya Pitts, UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County.

Individual members of Oakland Residents and the its affiliated labor organizations live, work, recreate and raise their families in Alameda County, including the City of Oakland. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. THE COMMISSION MAY NOT RECOMMEND APPROVAL OF THE PROJECT IN THE ABSENCE OF A PROPOSED DEVELOPMENT AGREEMENT

because both the Development Agreement and the FSEIR will require further public comment following the release of the proposed Development Agreement.

⁵ SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

⁶ Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

⁷ Mr. Cashen’s technical comments and curriculum vitae are attached hereto as Exhibit B.

The Staff Report explains that the City and the Applicant are “considering” a Development Agreement with respect to the development of the property and the Project. A Development Agreement would vest the Applicant with the right to develop the Project in accordance with the land use entitlements, Conditions of Approval (including payment of certain fees and construction and/or funding of certain improvements) adopted concurrently with the Development Agreement, and the land use policies in the General Plan and other existing City regulations in existence as of the adoption date.⁸ This commitment by the City would provide an economic benefit to the Applicant and the Project. In exchange, the City may request that the Applicant provide economic benefits, affordable housing, and other comparable benefits to the City in exchange for the concessions granted by the Development Agreement.⁹

The Staff Report correctly explains that City Planning Codes require the Planning Commission consider, hold a public hearing, and make a recommendation to the City Council to approve or deny a proposed Development Agreement Application based on terms of the proposed Development Agreement.¹⁰ As discussed below, the Commission is not able to make a recommendation to the City Council to approve the Project or the Development Agreement in the absence of a draft Agreement. Instead, the Commission must continue this hearing until a proposed Development Agreement has been prepared and circulated to both the Commission and the public for review.

A. The Commission Must Consider the Proposed Development Agreement Before Making a Recommendation to the City Council

1. The Development Agreement is Part of the Project.

The Project application, the FSEIR, and the Agenda identify a Development Agreement as one of the planning permits required for the Project.¹¹ When a development agreement is required to implement a project, it is considered

⁸ Staff Report, p. 14.

⁹ Planning Code Section 17.138.030.

¹⁰ Staff Report, p. 31.

¹¹ See DSEIR, pp. 3-54, 3-55.

part of the project.¹² Development agreements must be enacted in accordance with the Government Code and applicable local planning codes, and require environmental review at the time of adoption. Therefore, any development agreement for the Project must be considered by the City's decision-makers at the same time as the rest of the Project approvals.

2. City Planning Codes Require the Planning Commission to Consider Proposed Development Agreements Before They Are Considered by the City Council.

The City's procedure for approving development agreements is set forth in City Planning Code Chapter 17.138, Development Agreement Procedure. The Chapter describes the criteria for approving development agreements, required components for development agreement applications, and requires independent consideration of the proposed agreement by both the Planning Commission and City Council.

a. Development Agreement Application.

Development agreement applications must include a fee, a copy of the proposed development agreement, and any other supporting materials necessary to describe the agreement, its proposed duration and terms, any special conditions to be imposed pursuant to Section 17.138.015, and a program for periodic review of the agreement.¹³

The Applicant submitted its development agreement application for the Project ("Application") on November 25, 2015. The Application failed to include a copy of the proposed development agreement, and no development agreement was included in the FSEIR. Recent responses to Public Records Act obtained by this office disclosed that, as of March 8, 2017, the Applicant failed to pay the development agreement processing fee required under Planning Code Section 17.138.020, and, as of May 22, 2017, had not yet submitted a proposed development

¹² See Gov. Code § 65864; 14 Cal. Code Regs. ("CCR") §§15352(a), (b), 15378; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

¹³ Planning Code, Section 17.138.020.

agreement to the City.¹⁴ Thus, as of May 22, 2017, the development agreement application remained incomplete.

b. Planning Commission Action.

Planning Code Section 17.138.030 requires that “[a]n application for a development agreement shall be considered by the City Planning Commission which shall hold a public hearing on the application.”¹⁵ Because Section 17.138.020 requires the application to include the proposed development agreement, Section 17.138.030 necessarily requires that the Commission consider the underlying development agreement at this hearing.

Section 17.138.030 further requires that the Commission determine whether the development agreement application is consistent with the Oakland General Plan and any applicable district plans and development maps, and whether it provides adequate benefits to the City in exchange for the regulatory concessions provided to the developer.¹⁶ Finally, Section 17.138.030 requires that the Commission make a recommendation to the City Council on whether or not to approve the development agreement application based on these factors.¹⁷ In order to make this recommendation, the Commission must be familiar with the terms proposed in the agreement.

The Agenda identifies the development agreement as one of its planned actions on the Project, and states that the Commission will “provide a recommendation to City Council regarding...the Development Agreement.”¹⁸ In order to make this recommendation, the Commission must review and consider the proposed development agreement prior to the hearing. The proposed development agreement must also be provided to the public for review prior to the hearing.¹⁹ The

¹⁴ See March 8, 2017 and January 30, 2017 emails from Planner Heather Klein to Applicant re outstanding planning fees.

¹⁵ Planning Code Section 17.138.030.

¹⁶ *Id.* (“The Commission shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 17.138.060.”).

¹⁷ *Id.*

¹⁸ See June 21, 2017 Agenda, p. 9.

¹⁹ See Gov. Code §§ 65092, 65867.

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Staff Report failed to attach a proposed Development Agreement. Therefore, the Commission is not in a position to take action on the proposed Agreement.

c. Council Action.

The Planning Code prohibits the City Council from setting a public hearing on a proposed development agreement until the Planning Commission issues its recommendation on the agreement.²⁰ Once the Commission recommendation has been made, the Council then sets its own a public hearing on the agreement. Prior to the Council hearing, the Council may refer the matter back to the Planning Commission for further consideration and advice.²¹ At the Council hearing, the Council must consider the recommendation of the Planning Commission, and must determine whether the development agreement is consistent with the Oakland General Plan and any applicable district plans and development maps, and whether it provides adequate benefits to the City in exchange for the regulatory concessions provided to the developer.²² The Council then decides whether to approve the development agreement, approve it subject to changes or conditions, or deny it.²³

Section 17.138.04 makes clear that the Council may not act on a proposed development agreement unless it has first been considered by the Planning Commission. Thus, because the Planning Commission is unable to consider the Project's proposed development agreement at this hearing, the City Council is prohibited from setting a separate hearing to consider the development agreement.

3. The Planning Commission Cannot Recommend Certification of the FSEIR to the City Council Until the Commission Has Considered the Development Agreement.

²⁰ Planning Code section 17.138.040 ("After a recommendation has been rendered by the Commission, the City Council shall set the date for consideration of the matter.").

²¹ *Id.*

²² *Id.* ("The Council shall review the recommendation of the Commission and shall determine whether the proposal conforms to the criterion set forth in Section 17.138.050, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.138.060.").

²³ *Id.*

CEQA requires that an EIR consider the “whole of an action.”²⁴ This includes all phases of a project that are reasonably foreseeable.²⁵ This also includes development agreements.²⁶ The City has identified the development agreement as one of the Project’s necessary planning permits. Therefore, it must be analyzed under CEQA before the Project can be approved.²⁷

In order to recommend certification of the Final SEIR to the City Council, the Planning Commission must make mandatory finding that the EIR has been “completed in compliance with CEQA”; that the Commission has reviewed and considered the information contained in the Final SEIR; and that the Final EIR reflects the lead agency's independent judgment and analysis.²⁸

The Commission cannot make these findings if it has not reviewed and considered the development agreement. It would be arbitrary and capricious for the Commission to do so. Moreover, any recommendation to approve the Final SEIR in the absence of the development agreement would lack the substantial evidence necessary for the Council to rely on the Commission’s findings.

B. The Terms Currently Proposed for the Development Agreement May Result in New and Potentially Significant Environmental Impacts That Were Not Analyzed in the FSEIR.

The Staff Report contains outline of some proposed Development Agreement terms, but contains no analysis of the environmental impacts of these proposed terms. This violates CEQA’s requirement that an EIR consider the “whole of an action,”²⁹ and results in a failure to disclose potentially significant impacts.

1. Concurrent Construction of Project Phases.

²⁴ 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

²⁵ *Id.*

²⁶ *Save Tara*, 45 Cal.4th 116; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 926-927.

²⁷ *Save Tara*, 45 Cal.4th 116.

²⁸ 14 CCR § 15090(a)(1)-(3).

²⁹ 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

The Staff Report explains that one of the Development Agreement terms currently under consideration would give the Applicant the right to develop “any phase of the Project at any particular time” in order to meet market demand.³⁰ The Project involves three distinct phases which would build out geographically distinct portions of the Project site during each phase.³¹ Since these phases involve buildout of different neighborhoods, if incorporated into the Development Agreement, this concession could conceivably mean that some or all Project construction phases could overlap, or be constructed concurrently. This could exponentially increase the Project’s construction impacts, including impacts on air quality from construction emissions and traffic impacts.

The Development Agreement was not included in the FSEIR, and the FSEIR did not analyze overlapping and concurrent construction of Project phases. Therefore, the City has conducted no analysis of the potentially significant impacts of this proposal, and has no evidence on which to conclude that this proposed Development Agreement term would not cause significant impacts beyond what was analyzed in the FSEIR.

a. Construction Emissions.

The FSEIR analyzed construction emissions separately for each phase of the Project, and did not analyze emissions for overlapping or concurrently constructed Project phases.³² The Staff Report also fails to quantify this potentially significant impact.

SWAPE concludes that overlapping or concurrent construction of Project phases would significantly increase construction emissions over applicable significance thresholds set by the Bay Area Air Quality Management District (“BAAQMD”), even with existing mitigation, as follows:

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO _x	PM10	PM2.5

³⁰ Staff Report, p. 16.

³¹ DSEIR, p. 3-42.

³² DSEIR, p. 4.2-23 (“Emissions were estimated separately for each of the construction phases of the Project, and for both on-site crushing and off-site hauling scenarios under Phase I.”).

Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
<i>Threshold Exceeded?</i>	<u>Yes</u>	<i>No</i>	<u>Yes</u>	<i>No</i>	<i>No</i>

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As demonstrated above, when construction emissions are evaluated assuming that all three construction phases are developed together, the Project’s construction-related ROG and NO_x emissions would both exceed the 54 pounds per day (lb/day) threshold set forth by BAAQMD. This demonstrates that, under the terms of the DA, the proposed Project could result in significant air quality impacts which were not previously evaluated in the FSEIR.

This is significant impact that was not disclosed in the FSEIR, and for which the City has not provided any mitigation. The Commission cannot recommend approval of this Development Agreement term unless and until these impacts are fully mitigated.

b. Construction Traffic.

The FSEIR did not analyze cumulative Project construction traffic from overlapping or concurrent construction of Project phases.

The FSEIR acknowledges that Project construction may cause potentially significant traffic impacts during each individual phase of construction:

During the construction of each phase of the Oak Knoll development, temporary and intermittent transportation impacts may result from truck movements as well as construction worker vehicles to and from the construction site. The construction-related traffic may temporarily reduce capacities of roadways in the vicinity because of the slower movements and larger turning radii of construction trucks compared to passenger vehicles.³⁴

The FSEIR then concludes that construction traffic for each individual phase will be less than significant with implementation of SCA TRA-1.³⁵ However, the

³³ Exhibit A, p. 2.

³⁴ DSEIR, p. 4.13-96.

³⁵ DSEIR, p. 4.13-97.

FSEIR did not analyze whether SCA TRA-1 would be effective to mitigate construction traffic impacts of all phases of the Project were constructed concurrently.³⁶ Therefore, the City lacks substantial evidence on which to conclude that this proposed Development Agreement term.

c. Reduction in Traffic Mitigations.

The Staff Report proposes that the Development Agreement would give the Applicant a reduction in its Traffic Impact Fee (“TIF”) in return for doing the intersection improvements at beginning of Project construction.³⁷ However, the Applicant should not be entitled to any TIF reductions since the FSEIR has concluded that traffic impacts are significant and unavoidable. This concession would violate City’s duties under CEQA to apply all feasible mitigation measures to the Project before declaring an impact to be significant and unavoidable.

III. THE FSEIR FAILS TO COMPLY WITH CEQA

The Commission cannot recommend certification of the FSEIR because the FSEIR fails to comply with CEQA.

A. The FSEIR Fails to Adequately Disclose and Mitigate Potentially Significant Impacts.

1. Traffic Impacts.

a. The Project’s Proposed Transportation Demand Management Program Provides Inadequate Public Transit Service.

In addressing transit services to the Project area, the FSEIR includes school trip routes as if they were services available to the general public. This analysis is incorrect, and obscures the true sparsity of transit services to the Project area. The FSEIR also fails to note that the limited routes available to general public use are

³⁶ Moreover, as discussed below, SCA TRA-1 impermissibly defers creation of the Project’s Construction Management Plan. Therefore, the City lacks substantial evidence on which to conclude that even the Project’s traffic impacts during separately constructed Project phases will be effectively mitigated.

³⁷ Staff Report, p. 15.
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downhill of the Project site. As Mr. Smith explains, as a result, persons accessing or returning to the Project site face a steep uphill walk to complete their trip.³⁸

In this circumstance, Mr. Smith opines that the shuttle service to BART proposed in the Transportation Demand Management Program (DSEIR Appendix BB) is a potentially excellent mitigation measure.³⁹ However, he explains that the proposed headway between stops, possibly as long as 40 minutes between shuttle stops during the peak morning and evening peak periods, is too infrequent to achieve meaningful ridership. With such infrequent service, persons who just missed a shuttle are likely to resort to a ride-hailing service, defeating the purpose of the shuttle. To be effective, Mr. Smith recommends that the FSEIR's traffic mitigation measures be updated to require shuttles to operate at a headway of about 20 minutes.⁴⁰

b. The FSEIR Fails to Adopt Feasible Mitigation Recommended by Caltrans.

The FSEIR characterizes impacts Trans-1, Trans-2, Trans-3, Trans-5, Trans-8, Trans-9, Trans-10, Trans-12, and Trans-14 as significant and unavoidable because they involve impacts to transportation facilities not under the City of Oakland's jurisdiction.

In a letter dated October 12, 2016, Caltrans commented that the City and the applicant should implement feasible mitigations to these impacts as required Project mitigation on a fair share basis, operating through the Caltrans encroachment permit process. However, the City's response is ambiguous, stating "the City will Coordinate with Caltrans and the Project applicant on design, funding, and timing for implementation of the mitigation measures that require coordination with Caltrans". This response is inadequate, and fails to take Caltrans proposed mitigation plan seriously. Consistent with Caltrans' comments, Mr. Smith recommends that the FSEIR's MMRP be amended to require the Applicant to commit to specified amounts of fair share funding toward each mitigation measure to an escrow account for that purpose and coordinate with Caltrans regarding how any other fair share fees will be made good to enable implementation.⁴¹

³⁸ Exhibit B, p. 1-2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Exhibit B, p. 3.

The Staff Report asserts that the mitigation measures that relate to roadways under Caltrans jurisdiction cannot go through the Caltrans encroachment permit process until the FSEIR is certified. The Caltrans encroachment permit process is meant to assure that improvements or mitigation measures constructed by other jurisdictions or private parties on Caltrans facilities are operationally sensible, conform to State and (when applicable) U.S. Department of Transportation highway design standards or qualify for reasonable exceptions to design standards and assure that traveler and worker safety is reasonably protected during the construction period. Caltrans generally consults with the applicant agency following preparation of its CEQA document. However, this does not preclude the local jurisdiction from requiring a funding commitment for the mitigation measures from the Applicant as a condition for the FSEIR approval.

c. There is Additional, Feasible Mitigation for Intersection Impacts that the FSEIR Should Incorporate.

Mitigation Measure Trans-6 at the intersection of Golf Links Road and Mountain Boulevard attempts to resolve traffic impacts by restriping lanes at the intersection, signaling it and coordinating the new signal with signals at the intersections of Golf Links Road with freeway ramps on both sides of I-580. However, as the FSEIR observes, the mitigation measure might result in queue blockages at the nearby intersections of Golf Links Road with both sets of I-580 ramps.⁴² Mr. Smith explains that these blockages alone do not render traffic impacts at the intersection of Golf Links with Mountain “significant and unavoidable” as the FSEIR claims. Rather, Mr. Smith explains that there is sufficient undeveloped land to the east of Mountain Boulevard near Golf Links Road that the alignment of Mountain Boulevard could be shifted to the east, significantly increasing the separation between the intersection of Mountain with Golf Links and the intersection of Golf Links with the eastbound I-580 ramps, thereby potentially curing the queue blockage problem.⁴³ CEQA requires the environmental analysis to consider all feasible mitigation measures before declaring that an impact is significant and unavoidable. The FSEIR should be revised to analyze this potentially effective mitigation measure.

⁴² DSEIR, p. 4.13-69.

⁴³ Exhibit B, p. 3.

2. **Biological Resources.**

a. **The FSEIR Fails To Adequately Disclose Existing Conditions Regarding Oak Woodlands.**

In an attempt to correct prior deficiencies in its baseline analysis, the FSEIR added the following text regarding the status of oak woodlands in Alameda County:

According to the CALVEG dataset (a classification of Californian Vegetation. 2009. U.S. Dept. of Agriculture, U.S. Forest Service, Regional Ecology Group, San Francisco. Accessed October, 2016), there are approximately 103,000 acres of hardwood forests/ woodlands in Alameda County, the vast majority of which are likely oak woodlands. Of the 103,000 acres, approximately 39,000 acres (37 percent) are located within protected areas that are included in the California Protected Areas Database (CPAD, 2016). The approximately 16.97 acres of oak woodlands that would be either temporarily or permanently impacted by the Project represent approximately 0.016 percent of the oak woodlands in Alameda County.⁴⁴

This information is misleading for two reasons. First, it does not correspond to the geographic scope of the City's cumulative impacts assessment, which was limited to development projects in the City of Oakland. If the City has determined that all of Alameda County is the appropriate geographic scope for analyzing cumulative impacts to oak woodlands, then it must also disclose and analyze all other past, present, and probable future projects in Alameda County that are contributing to cumulative impacts. Alternatively, if the City has determined that the City of Oakland is the appropriate geographic scope for analysis, then it must present data pertaining to the amount of oak woodlands in the City of Oakland. However, the FSEIR may not use data on impacts at the City-level, and then apply them to data on existing conditions at the County-level, as was done in the FSEIR. This applies an arbitrary set of baseline conditions to the FSEIR's impact analysis.

Second, the information provided in the FSEIR fails to distinguish between coast live oak woodlands (which occur on the Project site) and other types of oak woodlands. According to the Conservation Lands Network, there are 35,924 acres of Coast Live Oak Woodland in Alameda County. Of those, there are only 8,644

⁴⁴ Response to Comment M10. FSEIR, p. 6-152.
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acres of Coast Live Oak Woodland in the “Middle East Bay Hills,” and only 4,421 of those acres are protected (Attachment 1). As explained by Mr. Cashen, this inaccuracy belies the FSEIR’s failure to recognize critical qualities of the existing Oak woodland conditions at the Project site, resulting in a failure to adequately analyze the Project’s impacts on this sensitive resource.⁴⁵

B. The FSEIR Fails to Adequately Disclose and Mitigate Cumulative Impacts to Biological Resources.

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR.⁴⁶ The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur.⁴⁷ While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are “individually limited but cumulatively considerable.”⁴⁸ The term “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.⁴⁹

Finally, analysis of cumulative impacts must examine reasonable, feasible options for reducing or avoiding the project’s significant cumulative effects,⁵⁰ and may adopt mitigation measures to reduce those effects to less than significant levels.⁵¹ Mere conclusory statements about cumulative impacts are inadequate, as are cumulative impact discussions that ignore or minimize a project’s cumulative impacts.⁵² An agency’s determination that cumulative impacts of a project are, or

⁴⁵ Exhibit C, pp. 1-4.

⁴⁶ 14 §§ CCR 15130(a); 15065(a); 15355(b); *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 109.

⁴⁷ 14 CCR § 15130(b); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729 (“Kings County”) (EIR inadequate for failure to include “some data” on cumulative groundwater impacts).

⁴⁸ PRC § 21083(b)(2); 14 CCR §§ 15064(h)(1), 15065(a)(3). 14 CCR § 15130(b).

⁴⁹ PRC § 21083(b)(2).

⁵⁰ 14 CCR § 15130(b)(5).

⁵¹ 14 § CCR 15130(a)(3).

⁵² See *San Joaquin Raptor V. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 733-734; *Mtn. Lion Coal. V. Fish & Game Comm’n* (1989) 214 Cal. App. 3d 1043, 1052-53; *Kings County*, 221 Cal.App.3d at 729.

are not, significant must be supported by substantial evidence and reasoned, good faith analysis.⁵³

The FSEIR failed to make a reasonable or good faith attempt to disclose the Project's cumulative impacts in conjunction with other reasonably foreseeable projects in the vicinity of the Project. The City's cumulative impacts assessment was limited to development projects in the City of Oakland.⁵⁴ Expert Scott Cashen brought this issue to the City's attention in his comments on the DSEIR. However, the FSEIR fails to address or resolve those issues.

For example, the City's response to Comment M14 states: "...the Draft SEIR inaccurately stated that the 1998 EIR for the redevelopment of site did not address cumulative impacts on biological resources. In fact, the 1998 EIR/EIS concluded:

Reuse of [the site] in combination with other regional development would not significantly contribute cumulatively to the regional loss of sensitive wildlife habitat and native vegetation. Rifle Range Creek riparian corridor is the only sensitive habitat and existing regulations require mitigation for any impacts to this area, including those measures identified in the OUSD's Developer Fee Justification Study (OUSD, 1996). (1998 EIR/EIS at p. 5-5)."⁵⁵

The excerpt above represents a bare conclusion, with no analysis, and no analytic bridge to establish how the EIR/EIS prepares reached this conclusion. As explained by Mr. Cashen, this issue is compounded because the riparian corridor *is not* the only sensitive habitat, and there is no discussion of cumulative impacts to other sensitive habitats, or to sensitive species.⁵⁶

According to the FSEIR: "[t]he amount of habitat lost through past and present projects is captured in the discussion of the area's existing conditions, discussed on pages 4.3-2-4.3-25 of the Draft SEIR."⁵⁷ This statement is incorrect. Nowhere does the DSEIR quantify or discuss the amount of habitat lost through past and present projects. The FSEIR further states that "[t]he effect of reasonably foreseeable future projects and the Project on biological resources is discussed on

⁵³ *Preserve Wild Santee* (2012) 210 Cal.App.4th 260, 276-80.

⁵⁴ DSEIR, Appendix G.

⁵⁵ Response to Comment M14. FSEIR, p. 6-157.

⁵⁶ See Exhibit C, p. 11.

⁵⁷ Response to Comment M14. FSEIR, p. 6-158.

pages 4.3-84–4.3-85 of the Draft SEIR.”⁵⁸ The DSEIR did indeed identify the potential for various cumulative effects. For example, the DSEIR indicates: “other cumulative development in proximity to the Project site could affect the same habitat, species, and wildlife corridor (Rifle Range Creek)...”⁵⁹ However, the DSEIR did not quantify those cumulative effects. For example, nowhere did the DSEIR quantify how much oak woodland habitat existed historically, how much has been lost due to past and present projects, and how much more is expected to be lost due to reasonably foreseeable future projects. Thus, the FSEIR fails to include any analysis to support its conclusion that the Project’s cumulative impacts to biological resources would not be cumulatively considerable, in violation of CEQA.⁶⁰

C. The FSEIR Contains Impermissibly Deferred Mitigation.

It is generally improper to defer the formulation of mitigation measures.⁶¹ An exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.⁶² As the courts have explained, deferral of mitigation may be permitted only where the lead agency: (1) undertakes a complete analysis of the significance of the environmental impact; (2) proposes potential mitigation measures early in the planning process; and (3) articulates specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.⁶³

The mitigation measures discussed below are examples of impermissibly deferred mitigation. The City must revise these measures to correct their deficiencies and include specific and measureable performance standards, and must recirculate the DSEIR for public review.

1. Fire Safety Plan.

⁵⁸ *Ibid.*

⁵⁹ DSEIR, p. 4.3-85.

⁶⁰ DSEIR, p. 4.3-85.

⁶¹ 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735.

⁶² *POET*, 218 Cal.App.4th at 738.

⁶³ *Comtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy' v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.

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SCA HAZ-4 requires the creation of a Fire Safety Plan following Project approval. The FSEIR explains that SCA HAZ-4 requires “preparation of a Fire Safety Plan that specifies all of the fire safety features incorporated into each phase of the Project and the schedule for implementation of the features.”⁶⁴ However, the SCA HAZ-4 improperly defers development and disclosure of critical fire safety response plans based on a subsequent analysis of the severity of potential fire impacts, thereby relegating critical analysis of fire impacts a post-approval stage, out of sight of public input. This deferred analysis is prohibited by CEQA, and fails to demonstrate the diligence in addressing fire hazards within the City that Oakland’s citizens deserve.

2. Landslides.

SCA Implementation Measures GEO-2 and GEO-2.3 improperly defer both analysis and mitigation of potentially significant impacts from landslides at the Project site to a post-approval geotechnical report. In particular, SCA GEO-2 defers analysis of seismically-induced landslides, slope instability, and necessary measures for geologic hazard abatement.⁶⁵

By deferring analysis of seismic impacts and landslides to future compliance with SCA GEO-2, the FSEIR unlawfully defers its environmental analysis of these impacts, and omits critical information that the public is entitled to review and comment on.⁶⁶ City cannot defer its threshold significance determination to a post-approval phase. Because its analysis of landslide impacts is deferred, the FSEIR lacks substantial evidence to support its conclusion that the soil stabilization measures identified in SCA GEO 2.3 will be effective to reduce landslide impacts to less than significant levels. Moreover, SCA GEO 2.3 lacks adequate performance standards because it fails to include any requirement for regulatory or engineering oversight to ensure that the Applicant properly implements the soil stability measures enumerated in this SCA.

3. Historic Resources.

⁶⁴ DSEIR, p. 4.12-9.

⁶⁵ See DSEIR, p. 2-24 (“SCA Implementation Measures GEO-2.3: To further implement SCA GEO-2, the Project applicant shall implement these following corrective measures to repair existing unstable site conditions, as applicable, ***based on the site-specific geotechnical report to be developed pursuant to SCA GEO-2.***”).

⁶⁶ See *Madera Oversight Coalition, Inc. v. County Of Madera* (2011) 199 Cal. App. 4th 48, 82-83. 3426-018acp

Mitigation Measure CUL-1.2 improperly defers analysis and disclosure of baseline structural building conditions at Club Knoll, and of the relocation work plan.⁶⁷ This is particularly egregious given that FSEIR relies on the dilapidated existing condition of Club Knoll to justify the extensive structural and aesthetic alterations proposed in the rehabilitation plan. Similarly, Mitigation Measure CUL-1.3: Relocation Travel Route, impermissibly defers creation of the Relocation Travel Route Plan for the historic building. Finally, the FSEIR's New Mitigation Measure CUL-1.4 (Building Features Inventory and Plan) impermissibly defers preparation of a Building Features Inventory and Plan. These measures effectively preclude the public from analyzing the Applicant's relocation plan for Club Knoll, in violation of CEQA.

4. Other Deferred Plans.

The FSEIR defers the creation of several other plans to a post-approval stage, without adequate performance standards, and without the opportunity for public scrutiny. These include:

- SCA TRA-1, Construction Traffic and Parking, which requires that a Construction Traffic Management Plan be developed as part of a larger Construction Management Plan to address potentially significant impacts during a project's construction.⁶⁸
- SCA BIO-3: Creek Protection Plan.
- SCA HYD-1: Erosion and Sedimentation Control Plan for Construction
- SCA HAZ-3: Hazardous Materials Business Plan.
- SCA Implementation Measure HAZ-2.2b: Deferred creation of Soil Management Plan to outline required procedures for handling and disposing impacted soil.

These plans must be developed and circulated for public review in a revised DSEIR prior to Project approval.

⁶⁷ DSEIR, p. 2-19, MM CUL-1.2 Baseline Building Conditions Study (Structural). ("Prior to approval of a construction-related permit for Club Knoll, the Project sponsor shall prepare a Baseline Building Conditions Study to establish the baseline condition of the building and determine what kind of stabilization might be necessary to relocate the building."); DSEIR, p. 2-21.

⁶⁸ DSEIR, pp. 4.13-96 to -97.

IV. THE PROJECT'S PROPOSED ZONING CHANGES ARE INCONSISTENT WITH THE GENERAL PLAN

The Project proposes to change the zoning at the Project site from the existing Hillside Residential land use classifications of RH-3 (single family dwellings with 12,000 sf lots) and RH-4 (single family homes with lots of 6500 to 8000 sf), and create 7 new zones that are specific to the Project (D-OK-1 through D-OK-7). The new zoning would allow development of:

- Up to 5 residential units/acre (i.e. 5 units per 8000 sf) (D-OK-1 through D-OK-3).
- Commercial zone for “neighborhood-serving retail,” such as supermarkets, banks, cafes, and dry-cleaners (D-OK-4).
- District Community Zone to create maintain, and enhance areas for community activities and commercial uses that provide a community amenity. This District would apply only to the relocation area for Club Knoll (D-OK-5).
- Open Space Zone for parks and outdoor recreation (D-OK-6).
- Passive Open Space Zone for open space preservation (D-OK-7).⁶⁹

While the City is authorized by State law to amend its zoning codes, any changes to the zoning code must be consistent with the General Plan. Under California law, a general plan serves as a “charter for future development,”⁷⁰ and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”⁷¹ The general plan has been aptly described as “the constitution for all future developments” within a city or county.⁷² Further, the “propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”⁷³ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth

⁶⁹ Staff Report, pp. 16-18.

⁷⁰ *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

⁷¹ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

⁷² *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

⁷³ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

with the force of law.”⁷⁴ In this case, the Project’s proposed residential density, open space uses, and commercial uses would result in violations of key General Plan policies.

First, the Project’s proposal to increase density will create incompatibility with other neighboring residential densities which remains at 1 unit per 8000 sf. This would violate GP LU Policy 7.1, Ensuring Compatible Development.

Second, the Project would violate General Plan policies regarding affordable housing. The General Plan encourages development that provides housing to households with “a range of incomes.”⁷⁵ Here, since the Applicant is proposing to buy affordable housing “credits” in another area of the City rather than include on-site affordable housing. This is inconsistent with GP LU Policy 6.1.

Third, the Project’s proposed zoning changes, and the Project generally, fail to comply with GP LU Policy 7.6, which requires subdivided parcels to minimize environmental impacts.⁷⁶ Oakland Residents’ DSEIR comments provided evidence documenting that Project has significant and inadequately mitigated environmental impacts. The comments provided herein demonstrate that the FSEIR fails to adequately respond to those comments, and fails to adequately mitigate significant impacts to air quality, traffic, and biological resources. As a result, the Project remains inconsistent with GP LU Policy 7.6.

Finally, the Project fails to minimize significant adverse impacts on historic resources, in violation of GP HPE Policy 3.1.⁷⁷ This Policy requires projects to “make all reasonable efforts to avoid or minimize adverse effects” on landmarked historic properties.⁷⁸ The proposed zoning changes would require relocation of Club Knoll in order to place it in the new “commercial zone.” As discussed in Oakland Residents’ comments to the LPAB, the proposed relocation of Club Knoll will have significant adverse impacts on Club Knoll that the City has failed to mitigate. Thus, the zoning change to D-OK-5 is inconsistent with this Policy.

⁷⁴ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

⁷⁵ GP LU Policy 6.1.

⁷⁶ GP LU Policy 7.6.

⁷⁷ GP HPE Policy 3.1.

⁷⁸ *Id.*

V. CONCLUSION

For the reasons discussed herein, Oakland Residents respectfully requests that the Commission follow the first recommendation in the Staff Report and continue this hearing to a later date following the release of a proposed Development Agreement, the development of the CFD proposal, and after the City has made all necessary revisions to, and recirculation of, the FSEIR.

Thank you for your consideration of these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:acp



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June 21, 2017

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Oak Knoll Mixed-Use Community Plan Project

Dear Ms. Caro:

We reviewed the Draft Supplemental Environmental Impact Report ("DSEIR") for the proposed Oak Knoll Mixed-Use Community Plan Project ("Project") and submitted an October 12, 2016 letter addressing the deficiencies in the DSEIR's impact analyses. On June 18, 2017 the Oakland City Planning Commission released a Staff Report for a June 21 hearing which describes several land use entitlements that the Project Applicant is seeking City approval for. According to the Staff Report, the Project Applicant and the City of Oakland ("City"), which has jurisdiction over the proposed Project, are proposing to enter into a Development Agreement ("DA") pursuant to California Government Code Section 65864, et seq. and Oakland Planning Code Section 17.138.00 et seq., with respect to the development of the property and the Project. Review of the Staff Report, which specifies the terms of the DA, however, demonstrates that the City's approval of the DA could result in potentially significant air quality impacts that have not previously been evaluated. Therefore, per CEQA Guidelines, an updated EIR must be prepared in order to adequately evaluate the potential environmental impacts resulting from approval of the DA.

Air Quality

Failure to Assess Air Quality Impacts from Overlapping Construction Phases

As stated above, the City and Project Applicant are considering to enter into a DA for the proposed Project. There are four key deal terms of the DA, one of which has the potential to result in a significant air quality impact (Staff Report, p. 14). According to the DSEIR, the proposed Project is expected to be developed in three separate construction phases and as such, “emissions were estimated separately for each of the construction phases of the Project and for both on-site crushing and off-site hauling scenarios under Phase I” (DSEIR, p. 4.2-23). Review of the terms of the DA described in the Staff Report, however, demonstrate that if the DA is approved, the Project’s construction phases could be developed arbitrarily. The Staff Report states,

“The Project has an anticipated phasing sequence, but the Developer has requested the right to develop any phase of the Project at any particular time, consistent with the SEIR, to meet market demand” (p. 16).

Thus, this condition not only allows for any phase of construction to be developed at any time, but it also allows the Developer to potentially pursue all three phases of construction concurrently. The Staff Report, however, fails to conduct an air quality analysis that evaluates the Project’s potential air quality impacts in these scenarios – i.e. if construction of two or more Project phases were to overlap, or the worst-case scenario, in which construction of all three phases of the Project occurs at the same time. In order to provide an analysis of the air quality impacts that may occur under the proposed Development Agreement, as is required by the California Environmental Quality Act (“CEQA”), the Staff Report should have prepared an updated air quality analysis that models the Project’s construction-related emissions assuming that all phases of construction occur at the same time. By failing to prepare such an analysis, the additional air quality impacts that would occur if the Development Agreement is approved are unknown and potentially significantly underestimated.

In an effort to account for the overlap that would occur if all three phases of construction were developed at the same time, we conducted a simple, conservative analysis. Using the criteria air pollutant emissions estimates provided by the FSEIR’s CalEEMod model, we added all of the criteria air pollutant emissions generated during each phase of Project construction and then compared the sum of these emissions to the Bay Area Air Quality Management District’s (“BAAQMD”) significance thresholds.¹ This method of determining significance provides an accurate representation of the Project’s potential air quality impacts under the terms of the DA, as it reflects a worst-case scenario in which all three of the Project’s construction phases are developed simultaneously.

¹ See BAAQMD’s May 2017 CEQA Air Quality Guidelines, available at http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, at p. 2-6.

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO _x	PM10	PM2.5
Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
Threshold Exceeded?	Yes	No	Yes	No	No

As demonstrated above, when construction emissions are evaluated assuming that all three construction phases are developed together, the Project's construction-related ROG and NO_x emissions would both exceed the 54 pounds per day (lb/day) threshold set forth by BAAQMD. This demonstrates that, under the terms of the DA, the proposed Project could result in significant air quality impacts which were not previously evaluated in the FSEIR.

It should be noted that construction will also generate substantial toxic air contaminant ("TAC") emissions, such as diesel particulate matter ("DPM"), throughout the three phases of construction. It is possible that overlapping or concurrent construction of the Project's different phases, if allowed under the DA, would also increase the Project's TAC emissions above applicable thresholds of significance, causing a significant health risk to the public. For this reason, the City must also prepare an updated health risk assessment to analyze TAC emissions from overlapping or concurrently constructed Project phases, as contemplated in the proposed DA. This analysis is necessary to accurately determine the worst-case health risk impact from Project construction if the DA were approved.

By failing to conduct a proper analysis of the Project's construction-related air quality impact under the terms of the DA, the Project's impacts on local and regional air quality are greatly underestimated. As such, an updated SEIR should be prepared with an updated air quality analysis that accurately describes the Project's air quality impact under the proposed terms of the DA.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Jessie Jaeger



SMITH ENGINEERING & MANAGEMENT

June 20, 2017

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

**Subject: Oak Knoll Mixed Use Community Plan Project Supplemental EIR
(ER 15-004)**

Dear Ms. Caro:

Per your request, I reviewed the Oak Knoll Mixed Use Community Plan Project Supplemental EIR. My review is specific to the Transportation and Circulation section of the document and the supporting Appendix V. I have also reviewed the California Department of Transportation (Caltrans) comments on the Draft Supplemental EIR and the City's response thereto.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 48 years professional consulting engineering practice in the traffic and parking field. I have both prepared and reviewed the transportation and circulation sections of CEQA environmental review documents. My professional resume is attached hereto.

My technical comments follow.

The FSEIR Obscures the Sparsity of Transit Service Available To The Project. The Shuttle Service To/From BART Proposed in the Transportation Demand Management Program Is Too Infrequent To Have Optimum Effect

Because the FSEIR includes school tripper routes in the figures and tables addressing transit services to the Project area as if they were services available to the general public, the FSEIR obscures the true sparsity¹ of transit services to the Project area. The FSEIR also fails to note that the limited routes available to

¹ Limited routes and low frequency of services.

general public use are downhill of the Project site. As a result, persons accessing or returning to the Project site face a steep uphill walk to complete their trip. In this circumstance, the shuttle service to BART proposed in the Transportation Demand Management Program (DSEIR Appendix BB) is a potentially excellent mitigation measure. However, the proposed headway, possibly as long as 40 minutes between shuttles, and that only in 3 hour morning and evening peak periods, is too infrequent to achieve meaningful ridership. With such infrequent service, persons who just missed a shuttle are likely to resort to a ride-hailing service, defeating the purpose of the shuttle. To be effective, shuttles would need to operate at a headway of about 20 minutes.

The City's Response to Caltrans Comments Is Inadequate

The FSEIR characterizes impacts Trans-1, Trans-2, Trans-3, Trans-5, Trans-8, Trans-9, Trans-10, Trans-12, and Trans-14 as significant and unavoidable because they involve impacts to transportation facilities not under the City of Oakland's jurisdiction. In a letter dated October 12, 2016, Caltrans commented that the City and the applicant should implement feasible mitigations to these impacts as required Project mitigation on a fair share basis, operating through the Caltrans encroachment permit process. However, the City's response is ambiguous, stating "*the City will coordinate with Caltrans and the Project applicant on design, funding, and timing for implementation of the mitigation measures that require coordination with Caltrans*". This is inadequate. The SEIR should require the applicant to commit specified amounts of fair share funding toward each mitigation measure to an escrow account for that purpose and coordinate with Caltrans regarding how any other fair share fees will be made good to enable implementation.

The City's Staff Report for the June 21, 2017 Planning Commission meeting makes note that the mitigation measures that relate to roadways under Caltrans jurisdiction cannot go through the Caltrans encroachment permit process until the FSEIR is certified. The Caltrans encroachment permit process is meant to assure that improvements or mitigation measures constructed by other jurisdictions or private parties on Caltrans facilities are operationally sensible, conform to State and (when applicable) U.S. Department of Transportation highway design standards or qualify for reasonable exceptions to design standards and assure that traveler and worker safety is reasonably protected during the construction period. Because Caltrans does not wish to waste staff time reviewing plans for projects that may not be approved by local authorities, it requires that environmental review be completed before entering the encroachment permit process. However, this does not preclude the local jurisdiction from requiring a funding commitment for the mitigation measures from the applicant as a condition for the FSEIR approval.

Caltrans letter of October 12, 2016 also observed that the I-580 off-ramps to Golf Links Road queue excessively and that this must be indicative of worse Level-of-Service at the ramp terminus intersections than presented in the FSEIR. The City's response presents a tedious technical explanation of why it believes the analysis as presented is correct, referring to appendix tables and computation work sheets. Then finally, the response admits that the queuing on the off-ramps is excessive and states that mitigation measures Trans-14 and Trans-15 will address this situation by widening the off-ramps. However, this ignores the fact that those impact conditions are classified as significant and unavoidable and that the City has not yet required the applicant to commit fair share funding toward implementation of mitigation.

Mitigation Trans-6 Is Clearly Ineffective and Not A Feasible Mitigation

Purported mitigation measure Trans-6 at the intersection of Golf Links Road and Mountain Boulevard attempts to resolve traffic impacts by restriping lanes at the intersection, signaling it and coordinating the new signal with signals at the intersections of Golf Links Road with freeway ramps on both sides of I-580. However, as the FSEIR observes at page 4.13-69, the mitigation measure might result in queue blockages at the nearby intersections of Golf Links Road with both sets of I-580 ramps. But this does not make traffic impacts at the intersection of Golf Links with Mountain 'significant and unavoidable' as the FSEIR claims. It just means the FSEIR preparers may not have worked diligently enough to define a feasible mitigation.

In fact, aerial views show that there is sufficient undeveloped land to the east of Mountain Boulevard near Golf Links Road that the alignment of Mountain Boulevard could be shifted to the east, significantly increasing the separation between the intersection of Mountain with Golf Links and the intersection of Golf Links with the eastbound I-580 ramps, thereby potentially curing the queue blockage problem. CEQA requires the environmental analysis to consider all feasible mitigation. The DSEIR clearly has not done so in this instance. The preparers must go back to the drawing board and analyze this option.

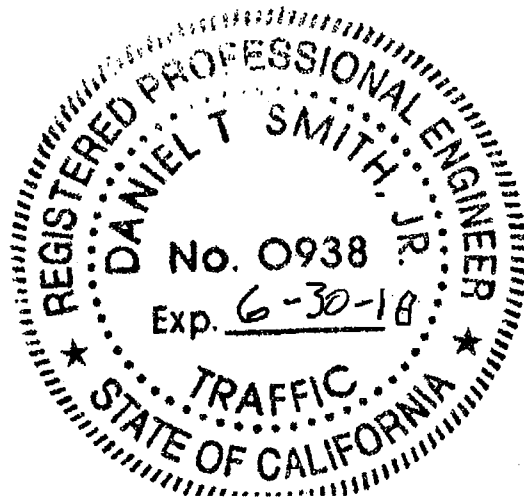
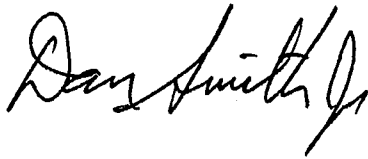
Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
June 20, 2017
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Conclusion

Given the above, I believe that the FSEIR is inadequate and that the Transportation Demand Management shuttle service and process for fair share implementation of mitigation measures involving Caltrans must be refined.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President

SMITH ENGINEERING & MANAGEMENT



DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
DeLeuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-50N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

June 18, 2017

Ms. Christina M. Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Subject: Comments on the Final Supplemental Environmental Impact Report for
the Oak Knoll Mixed Use Community Plan Project**

Dear Ms. Caro:

I submitted a comment letter that addressed deficiencies with the Draft Supplemental Environmental Impact Report (“DSEIR”) prepared for the Oak Knoll Mixed Use Community Plan Project (“Project”) by the City of Oakland (“City”). That comment letter established my professional qualifications and described the actions I took to evaluate the DSEIR and underlying analyses. The subsequent comments address the Final Supplemental Environmental Impact Report (“FSEIR”) that has been prepared for the Project.

Existing Conditions – Oak Woodlands

In my previous letter I explained how the DSEIR failed to establish the context necessary for the public and decision makers to understand the relative importance of oak woodlands on the Project site, and consequently, the relative significance of Project impacts to those woodlands.¹ As a result, the FSEIR added the following text regarding the status of oak woodlands in Alameda County:

According to the CALVEG dataset (a classification of Californian Vegetation. 2009. □U.S. Dept. of Agriculture, U.S. Forest Service, Regional Ecology Group, San Francisco. Accessed October, 2016), there are approximately 103,000 acres of hardwood forests/ woodlands in Alameda County, the vast majority of which are likely oak woodlands. Of the 103,000 acres, approximately 39,000 acres (37 percent) are located within protected areas that are included in the California Protected Areas Database (CPAD, 2016). The approximately 16.97 acres of oak woodlands that would be either temporarily or permanently impacted by the Project represent approximately 0.016 percent of the oak woodlands in Alameda County.²

This information is misleading for two reasons. First, it does not correspond to the geographic scope of the City’s cumulative impacts assessment, which was limited to development projects in the City of Oakland.³ If the City has determined that all of

¹ Comments M30 and M31. FSEIR, pp. 6-103 and -104.

² Response to Comment M10. FSEIR, p. 6-152.

³ DSEIR, Appendix G.

Alameda County is the appropriate geographic scope for analyzing cumulative impacts to oak woodlands, then it must also disclose and analyze all other past, present, and probable future projects in Alameda County that are contributing to cumulative impacts. Alternatively, if the City has determined that the City of Oakland is the appropriate geographic scope for analysis, then it must present data pertaining to the amount of oak woodlands in the City of Oakland. However, it cannot use data on impacts at the City-level,⁴ and then apply them to data on existing conditions at the County-level, as was done in the FSEIR.

Second, the information provided in the FSEIR does not distinguish between coast live oak woodlands (which occur on the Project site) and other types of oak woodlands. According to the Conservation Lands Network, there are 35,924 acres of Coast Live Oak Woodland in Alameda County.⁵ Of those, there are only 8,644 acres of Coast Live Oak Woodland in the “Middle East Bay Hills,” and only 4,421 of those acres are protected (Attachment 1).

In my previous comment letter I cited evidence that many oak woodlands are not regenerating naturally, and thus, even oak woodlands that are protected from development are not truly secure.⁶ In response, the FSEIR claims coast live oaks, which are the dominant oak species on the Project site, have not had major issues with natural regeneration.⁷ The FSEIR’s claim contradicts information collected from forest inventory plots throughout the State, and is therefore unsupported. Those data indicate regeneration has been relatively sparse in most coast live oak stands.⁸

According to the City’s response to my comment: “[o]ak woodland regeneration has been identified as a problem with three species in particular (valley oak, blue oak, and Engelmann oak; http://ucanr.edu/sites/oak_range/Oak_Regeneration/).”⁹ The website cited in the City’s response actually states: “[t]hree California oak species (blue oak, valley oak and Engelmann oak) have been repeatedly identified as species that have inadequate regeneration to maintain current stand densities.” The website *does not* state regeneration is not a problem in coast live oak stands. Indeed, the website provides a link to a publication on oak regeneration, which states: “[i]n addition to these three species, coast live oak may also have insufficient recruitment to maintain existing stand structures in certain areas (Muick and Bartolome 1986; Bolsinger 1988).”¹⁰ This statement is supported by sampling data compiled by Bolsinger (1988), which indicated only six

⁴ See FSEIR, p. 6-153, which states: “[t]here are no other large projects proposed in the vicinity that would contribute to cumulative temporal impacts [to oak woodlands].”

⁵ Available at: <<http://www.bayarealands.org/explorer/>>. (Accessed 20 May 2017).

⁶ Comment M30.

⁷ Response to Comment M10. FSEIR, p. 6-152.

⁸ Bolsinger CL. 1988. The Hardwoods of California's Timberlands, Woodlands, and Savannas. Resource Bulletin PNW-RB-148. US Forest Service, Pacific Northwest Research Station, Portland, Oregon. 148 pp.

⁹ Response to Comment M10. FSEIR, p. 6-152.

¹⁰ McCreary DD. 2009 (Rev). Regenerating Rangeland Oaks in California. University of California, Sierra Foothill Research and Extension Center. Available at: <http://ucanr.edu/sites/oak_range/Oak_Regeneration/>

percent of plots in coast live oak stands were well stocked with seedlings.¹¹ Thus, the FSEIR's response is not supported by the evidence it cites.

In an attempt to support its argument, the City refers to the abundance and size class of oak trees on the Project site as evidence that coast live oak regeneration is not a problem.¹² Just because oak regeneration is not a problem at the Project site does not mean that it is not a problem at many other sites. Indeed, the fact that oak regeneration is not a problem at the Project site only heightens its conservation value and the significance of Project impacts to the existing oak woodlands.

The FSEIR indicates an aerial photograph from 1939 suggests the Project site historically supported a larger proportion of open grasslands (i.e., not oak woodlands).¹³ However, Oak Knoll Golf and Country Club was developed in the 1920s. As a result, it is unclear how a photograph from 1939 (i.e., after development of the golf course and country club) provides evidence that the site historically supported grasslands and not oak woodlands.

Oak Woodland Habitat Quality

According to the FSEIR:

[Oak Woodland Bird Conservation Plan] Measures 1.5 and 1.7 identify that prioritization should be given to sites that are large, unfragmented and connected, and are not surrounded by high-levels of urban or suburban development. These measures identify that fragmented sites surrounded by urbanization may negatively impact the quality of habitat for native birds and host non-native species which directly compete for resources and are more readily adapted to living in urban areas. Considering the long-standing history of disturbance on the Oak Knoll Project area, and the surrounding level of urbanization, the majority of oak woodland that remains on the Project site would be considered of a lower quality than some of the surrounding preserved open-space areas (*i.e.* Knowland Park).¹⁴

I acknowledge the Project site has a history of disturbance and that it is surrounded by suburban development. However, those factors alone cannot be used to characterize the site as "low quality." As noted in the FSEIR, the presence and abundance of non-native birds provides an index of habitat quality (for native birds).¹⁵ Three non-native birds are particularly deleterious to native birds that occur in oak woodlands: European starling, brown-headed cowbird, and house sparrow.¹⁶ The Applicant's biological resources consultant, WRA, did not detect any of these species in the Project area during their

¹¹ Bolsinger CL. 1988. The Hardwoods of California's Timberlands, Woodlands, and Savannas. Resource Bulletin PNW-RB-148. US Forest Service, Pacific Northwest Research Station, Portland, Oregon. p. 62.

¹² Response to Comment M10. FSEIR, p. 6-152.

¹³ Response to Comment M10. FSEIR, p. 6-152.

¹⁴ Response to Comment M15. FSEIR, p. 6-163.

¹⁵ Response to Comment M15. FSEIR, p. 6-163.

¹⁶ CalPIF (California Partners in Flight). 2002. Version 2.0. The oak woodland bird conservation plan: a strategy for protecting and managing oak woodland habitats and associated birds in California (S. Zack, lead author). Point Reyes Bird Observatory, Stinson Beach, CA.

surveys.¹⁷ Indeed, wild turkey was the only non-native bird species detected.¹⁸ Thus, WRA's survey data do not support the argument that oak woodlands on the Project site should be considered "lower quality."

Impacts to Oaks and Other Native Trees

Comment O26 from the Oak Knoll Coalition was that the DSEIR text, tables and appendixes that discuss tree surveys and removal plans are rife with contradictions and inconsistencies.¹⁹ I too found inconsistencies in the tree numbers presented in the DSEIR and appendixes. As a result, I concur with the Oak Knoll Coalition's statement that: "[w]ithout clear and consistent data throughout a DSEIR and its Appendixes, it is impossible for the public, staff and decision makers to adequately evaluate the tree removal plan and its overall environmental impact."²⁰

The FSEIR and appendixes continue to provide inconsistent and confusing information on the number of trees that would be impacted by the Project. For example,

1. Table 2 (Summary of Impacted Native Trees by Size Class) in the Updated Oak Knoll Tree Removal Impact Mitigation Plan indicates a total of 2,518 coast live oak (*Quercus agrifolia*) trees would be impacted by the Project.²¹ However, Table 3 (Summary of Impacted Native Trees by Condition) indicates only 2,298 coast live oak trees would be impacted.
2. The sum of tree numbers provided in each column of Table 2 do not add up to the "Total" provided in the final row of the table. For example, the table indicates 921 *Quercus agrifolia* trees in the 9.0-17.9 inch size class, *plus* an additional 105 native trees (among 11 species) in that size class, for a total of 1,026 native trees in the 9.0-17.9 inch size class. However, the table indicates a "Total" of only 921 native trees in the 9.0-17.9 inch size class—not 1,026 trees (Figure 1).

¹⁷ DSEIR, Appendix B to Appendix M (Biological Resources Assessment).

¹⁸ *Ibid.*

¹⁹ FSEIR, p. 6-200.

²⁰ Comment O26. FSEIR, p. 6-201.

²¹ FSEIR, Appendix E.

Table 2. Summary of Impacted Native Trees by Size Class

Species	Size Class				Total
	4.0-8.9	9.0-17.9	18.0-35.9	>36.0	
Native					
<i>Quercus agrifolia</i>	817	921	595	185	2,518
<i>Umbellularia californica</i>	-	40	14	1	55
<i>Salix laevigata</i>	-	15	14	1	53
<i>Salix lasiolepis</i>	-	12	16	9	37
<i>Alnus rhombifolia</i>	-	16	7	2	25
<i>Sequoia sempervirens</i>	-	2	7	2	11
<i>Sambucus nigra</i> ssp. <i>caerulea</i>	-	5	4	1	10
<i>Prunus ilicifolia</i>	-	6	4	-	10
<i>Aesculus californica</i>	-	4	5	-	9
<i>Arbutus menziesii</i>	-	1	4	-	5
<i>Platanus racemosa</i>	-	3	1	-	4
<i>Heteromeles arbutifolia</i>	-	1	-	-	1
Total	817	921	595	185	2,518

Figure 1. Copy of Table 2 from the Updated Oak Knoll Tree Removal Impact Mitigation Plan (Appendix E to the FSEIR). Numbers in each column do not equate to the totals indicated.

Impacts to Oak Woodlands

Response to comment M10 states:

the cumulative analysis (Impact BIO-7) factors in oak woodland and the beneficial long term effects the Project would offer over existing conditions, which will benefit the local and regional enhancement of oak woodlands locally and regionally.²²

The City’s response fails to explain how the Project would “benefit the local and regional enhancement of oak woodlands locally and regionally.” Planting oaks in the interstitial spaces between streets and housing developments does not replace the functions and values associated with the oak woodlands that would be impacted by the Project.²³ Furthermore, the 13.49 acres of oak woodlands that would remain untouched by development activities are a part of the existing conditions. Thus, “preserving” those oak woodlands does not further benefit existing conditions.

Impacts Associated with the Proposed Trails and Parks

The Project includes development of a 3.5-mile system of parks, trails, and walkways through the Project site (including some of the preserved and/or restored woodlands,

²² Response to Comment M10. FSEIR, p. 6-152.
²³ See Appendixes A and B to FSEIR, Appendix E.

grasslands, and hillside areas).²⁴ According to the DSEIR, those proposed parks and trails “would absorb a substantial part of demand of new residents and employees, as well as that of nearby residents and users.”²⁵

In my previous comment letter I criticized the DSEIR for failing to disclose and analyze the direct, indirect, and cumulative impacts associated with: (a) the hiking trail through the Hardenstine parcel, (b) the hiking trail through the preserved hillside grassland, and (c) the 2-acre Oak Knoll Memorial Park.²⁶ The FSEIR’s response is that proposed trail corridors are generally along existing trails, sidewalks, and roads. This includes the trail proposed through the Hardenstine Parcel, which the FSEIR claims “follows an existing hard-packed dirt road that is currently used as a hiking trail by community members and that will remain as open space.”²⁷ Although not described in the DSEIR, an old road through the hillside grassland is apparent on Google Earth and the Biological Communities map provided in the Biological Resources Assessment (“BRA”).²⁸ However, the claim that the proposed trail through the Hardenstine Parcel would be located on an existing hard-packed dirt road appears to conflict with the figures provided in the DSEIR and BRA.²⁹ Furthermore, even if the proposed trail corridors would be located on existing trails, sidewalks, and roads, the City’s response does not address potentially significant impacts associated with development of the Oak Knoll Memorial Park. This issue is compounded by the City’s failure to describe the park, including the features that would be installed and the habitat that would be disturbed to develop the park. Indeed, I could not find any information in the DSEIR, FSEIR, or BRA regarding development of the Oak Knoll Memorial Park, other than a map that depicts the boundaries of the park and a proposed picnic area.³⁰

Even if the proposed trails and parks do not have any direct impacts on habitat, they could cause significant indirect impacts to biological resources by facilitating a substantial amount of human activity in places where it does not currently exist. As discussed in my previous comment letter, the DSEIR failed to disclose and analyze those potentially significant indirect impacts.³¹ The FSEIR fails to address or resolve that issue; it simply states: “[p]edestrian travel through the area on an established trail will not have a significant adverse impact on biological resources.”³² This statement is not supported by evidence and ignores the fact that the Oak Knoll Parcel is currently closed off to recreational use. Furthermore, even if recreationalists currently use the Hardenstine Parcel, the number of recreationalists that use it will increase substantially after development of the Project. This is important because numerous studies have shown a direct correlation between intensity of recreational use (e.g., number of trail users) and severity of impacts to biological resources (Attachment 2). Thus, existing

²⁴ DSEIR, pp. 4.12-15 through -17.

²⁵ DSEIR, p. 4.12-17.

²⁶ Comment M32.

²⁷ Response to Comment M11. FSEIR, p. 6-153.

²⁸ DSEIR, BRA, Figure 2.

²⁹ See DSEIR, Figures 3-5, 3-11, and BRA Figure 2.

³⁰ FSEIR, Appendix F, Figure 4.2.

³¹ Comment M32.

³² Response to Comment M11. FSEIR, p. 6-153.

evidence demonstrates that the Project could have potentially significant indirect impacts that were not disclosed, analyzed, or mitigated by the DSEIR and FSEIR.

Purple Needlegrass Grassland

In my previous comment letter I stated that the information provided in the DSEIR's discussion of native purple needlegrass grassland in the Project region was not supported by evidence.³³ Specifically, the DSEIR indicates several hundred acres of purple needlegrass grassland occur in parks and open space areas within a 5-mile radius of the Project site (e.g., at Knowland Park, Anthony Chabot/Fairmont Ridge, Skyline Serpentine Prairie Preserve, and Upper San Leandro Reservoir/Las Trampas Ridge). However, it does not indicate *who* estimates several hundred acres (of purple needlegrass grassland) occur in parks and open space areas within a 5-mile radius of the Project site, *how* the estimate was made, or *when* it was made. The FSEIR does not address or resolve this issue, and fails to cite any quantitative evidence to support its position.

By contrast, I commented that purple needlegrass grasslands in parks and open space areas may not be as secure as the DSEIR implies.³⁴ Specifically, I cited long-term monitoring data collected by researchers at U.C. Berkeley, which indicated a widespread decline in purple needlegrass at parks managed by the East Bay Regional Park District. Those monitoring data were presented in the 2009 (Year 8) Annual Report for the East Bay Regional Park District Grassland Monitoring Project (Bartolome and Barrett 2009). However, according to the FSEIR, the 2011 (Year 10) Annual Report "clearly contradicts the assertion made by the commenter regarding the 'widespread decline' of purple needlegrass." The FSEIR's argument is based on the following quote from the 2011 Annual Report:

*"Because this Project was set up to evaluate the effect of livestock grazing on the Valley grassland species community, it is not possible to generate specific trends for individual plant species. The data generated by the Project can only suggest that purple needlegrass populations in the District fluctuate due to causes other than livestock grazing, probably weather-related factors (see 2009 annual report)."*³⁵

The FSEIR's argument is not valid for several reasons. First, I did not assert a widespread decline of purple needlegrass; that assertion was made by the authors of the 2009 Annual Report. They reported:

As noted in previous reports, the bunchgrass Purple needlegrass (*Nassella pulchra*) has exhibited a steady decline over the course of the project; purple needlegrass is the most abundant native species in our study plots. This decline in Purple needlegrass has occurred in all parks and on grazed and ungrazed plots leading us to surmise that the decline was related to regional environmental factors rather than management activities. In 2008, this decline slowed somewhat; however, in 2009, annual average cover of Purple needlegrass

³³ Comment M34.

³⁴ *Ibid.*

³⁵ Response to Comment M13. FSEIR, p. 6-156.

dropped once again. This decrease in Purple needlegrass cover occurred at all parks sampled in 2009 except for Pleasanton Ridge. Fluctuations in Purple needlegrass cover appear to be driven primarily by regional environmental factors with livestock grazing exerting little influence. The installation of additional grazed and ungrazed plots at Vasco Caves should help confirm or refute this hypothesis over the next few years.

Second, the 2011 report did not provide any additional data or analysis diminishing the results presented in the 2009 report. Indeed, the 2011 report provided very little new data, and the new data that were provided only further support the findings of the 2009 report (i.e., that purple needlegrass was declining).³⁶ For example, unlike the 2009 report, the 2011 report discusses the monitoring results for Chabot-Fairmont Ridge, which is one of the sites the City references to diminish the value of purple needlegrass grasslands at the Project site.³⁷ The 2011 report states: “[t]he annual fluctuations and general declining trend in purple needlegrass cover at Chabot-Fairmont Ridge were also observed at other parks and have no clear relationship to grazing status or site variables.”

Third, although the data reflected minor fluctuations in purple needlegrass cover among years, the overall trend was a statistically significant decline ($P < 0.03$) (Figure 2).

³⁶ Bartolome JW, RH Barrett. 2013. Range Ecology Grassland Management and Monitoring options for the East Bay Regional Park District: Final Report 2011 □ Grassland Monitoring Project (Year 10). Tables 5.4-3, 5.7-3, and 5.7-8.

³⁷ DSEIR, p. 4.3-68. *See also* FSEIR, p. 6-155.

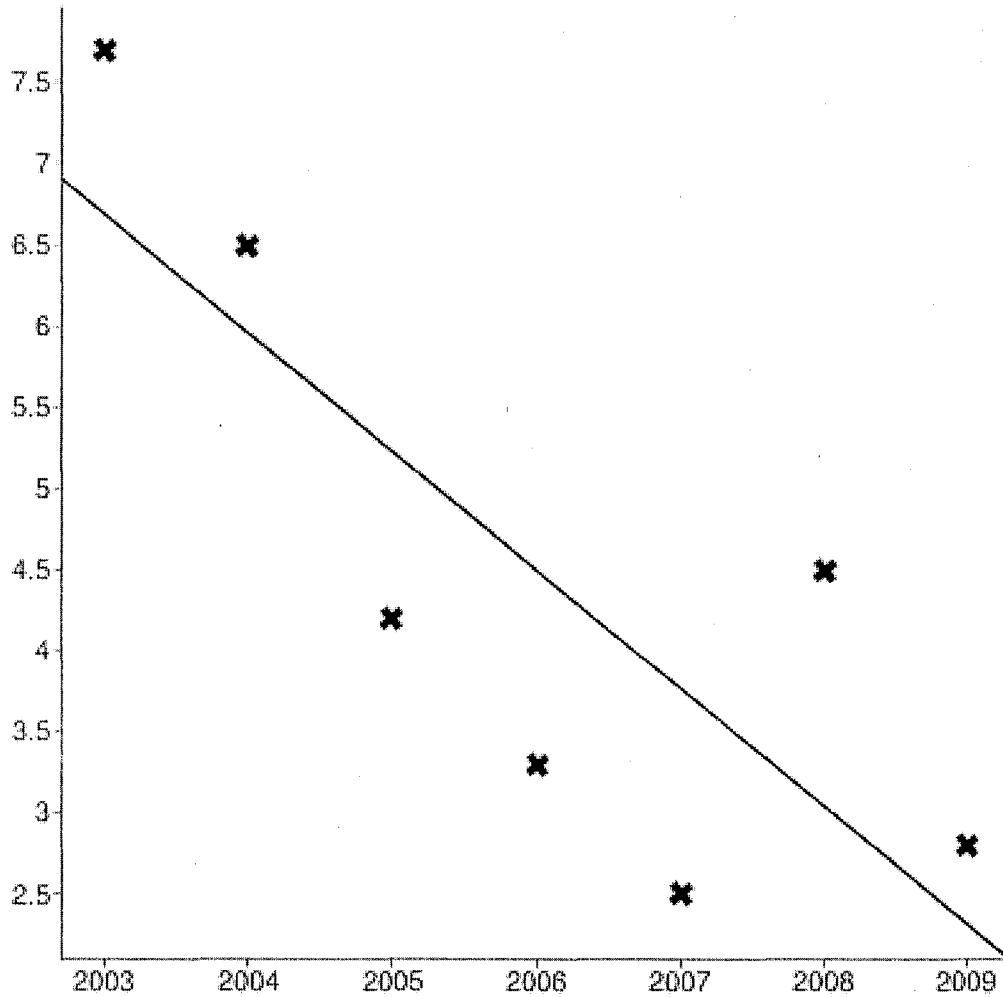


Figure 2. Percent cover of purple needlegrass at four East Bay Parks (Morgan Territory, Pleasanton Ridge, Sunol, Vasco Caves) between 2003 and 2009.³⁸ The decline was statistically significant ($P < 0.03$). There was also a “general declining trend in purple needlegrass cover at Chabot-Fairmont Ridge.”³⁹ However, cover data for that park were not provided, and thus could not be statistically analyzed.

³⁸ Data obtained from Bartolome JW, RH Barrett. 2009. Annual report for the East Bay Regional Park District Grassland Monitoring Project, 2009 Field Season (Year 8). Table 5.1.

³⁹ Bartolome JW, RH Barrett. 2013. Range Ecology Grassland Management and Monitoring options for the East Bay Regional Park District: Final Report 2011 □ Grassland Monitoring Project (Year 10). p. 35.

Impacts to Purple Needlegrass Grassland

I raised the following two issues in my previous comment letter:⁴⁰

1. The DSEIR failed to disclose or analyze the impacts associated with the proposed hiking trails and Oak Knoll Memorial Park.⁴¹ These features would have direct and indirect impacts on the native purple needlegrass grassland.⁴² Therefore, the statement that the majority (6.62 of the 10.48 acres) of the purple needlegrass at the Project site will not be impacted by development is inaccurate.
2. The DSEIR's statement that the majority of the native grassland at the Project site will be "preserved" is not supported by evidence. Specifically, the DSEIR does not require a conservation easement, deed restriction, or other mechanism that would ensure the purple needlegrass grassland would be preserved and appropriately managed for conservation in perpetuity.

The FSEIR failed to address or resolve these two issues.

Cumulative Impacts

I raised several issues regarding the inadequacy of the cumulative impacts analyses provided in the DSEIR. The FSEIR fails to address or resolve those issues. For example, the City's response to Comment M14 states: "...the Draft SEIR inaccurately stated that the 1998 EIR for the redevelopment of site did not address cumulative impacts on biological resources. In fact, the 1998 EIR/EIS concluded:

Reuse of [the site] in combination with other regional development would not significantly contribute cumulatively to the regional loss of sensitive wildlife habitat and native vegetation. Rifle Range Creek riparian corridor is the only sensitive habitat and existing regulations require mitigation for any impacts to this area, including those measures identified in the OUSD's Developer Fee Justification Study (OUSD, 1996). (1998 EIR/EIS at p. 5-5)."⁴³

The excerpt above does not provide any actual analysis (just a conclusion). This issue is compounded because the riparian corridor *is not* the only sensitive habitat, and there is no discussion of cumulative impacts to other sensitive habitats, or to sensitive species.

According to the FSEIR: "[t]he amount of habitat lost through past and present projects is captured in the discussion of the area's existing conditions, discussed on pages 4.3-2-4.3-25 of the Draft SEIR."⁴⁴ This statement is incorrect. Nowhere does the DSEIR quantify or discuss the amount of habitat lost through past and present projects.

According to the FSEIR: "[t]he effect of reasonably foreseeable future projects and the Project on biological resources is discussed on pages 4.3-84-4.3-85 of the Draft SEIR."⁴⁵

⁴⁰ Comment M34.

⁴¹ See DSEIR, Figures 3-10 and 3-11. See also BRA, Figure 8.

⁴² *Ibid.*

⁴³ Response to Comment M14. FSEIR, p. 6-157.

⁴⁴ Response to Comment M14. FSEIR, p. 6-158.

⁴⁵ *Ibid.*

The DSEIR did indeed identify the potential for various cumulative effects. For example, the DSEIR indicates: “other cumulative development in proximity to the Project site could affect the same habitat, species, and wildlife corridor (Rifle Range Creek)...”⁴⁶ However, the DSEIR did not quantify those cumulative effects. For example, nowhere did the DSEIR quantify how much oak woodland habitat existed historically, how much has been lost due to past and present projects, and how much more is expected to be lost due to reasonably foreseeable future projects. This precludes the ability to independently analyze: (a) the significance of cumulative impacts to biological resources, and (b) the DSEIR’s conclusion that the Project’s contribution to cumulative impacts would not be cumulatively considerable.⁴⁷ The FSEIR fails to resolve this issue.

In my previous comment letter I stated:

The DSEIR provides no evidence that the City’s SCAs [Standard Conditions of Approval] have effectively mitigated cumulative impacts. Moreover, existing evidence demonstrates the City has not required “all projects” to comply with SCAs. For example, there is substantial evidence showing the City has failed to enforce SCAs for the “California Trail Project” (on the ridgeline of Oakland’s Knowland Park), and that failure to comply with the SCAs has resulted in significant impacts to sensitive biological resources.

The City’s response was that: “[e]ven if this [Oakland Zoo] example showed a failure to enforce its SCAs (a claim which the City disputes in any event), the commenter has presented no evidence that work on the trail in the zoo is causing significant *cumulative* environmental impacts.”⁴⁸

As discussed above, the City has not provided any quantitative data pertaining to other “cumulative” projects, including the project at the zoo. Therefore, the FSEIR is correct that I presented no evidence that work at the zoo is causing significant *cumulative* environmental impacts, because the City has not disclosed the data I would need to present that evidence. However, I presented substantial evidence showing the City has failed to enforce SCAs for the zoo project, and that failure to comply with the SCAs has resulted in significant impacts to sensitive biological resources. This is important because the DSEIR points to the SCAs as the basis for the City’s conclusion that cumulative impacts would be less than significant. Therefore, if the City fails to enforce SCAs for other projects (or even just one other project), the conclusion that SCAs make cumulative impacts less than significant is invalid.

In my previous comment letter I stated that: (a) the cumulative impacts scenario has changed considerably since 1998 (i.e., when the City certified the EIS/EIR), and (b) the status of some sensitive biological resources has changed substantially since 1998. To substantiate those statements I provided two brief examples: one illustrating how the cumulative impacts scenario has changed (i.e., Sudden Oak Death has become an epidemic) and one illustrating how the status of some sensitive biological resources has

⁴⁶ DSEIR, p. 4.3-85.

⁴⁷ DSEIR, p. 4.3-85.

⁴⁸ Response to Comment M14. FSEIR, p. 6-158. [emphasis added].

changed (i.e., the burrowing owl population has continued to decline despite efforts to conserve the species and its habitat). The FSEIR's response to my comment focuses on those two examples. It does not address the issue I raised, which is that the City needs to make a dedicated attempt at cumulative impacts analysis and cannot rely on analysis conducted in 1998. Indeed, instead of providing updated cumulative impacts analyses, the FSEIR references additional analysis conducted nearly 20 years ago for the 1998 General Plan.⁴⁹

I commented that the DSEIR's list of cumulative projects was inappropriately limited to projects in the City of Oakland. In response to this comment the FSEIR claims: "[t]his statement is incorrect...The impacts of development projects on private land in the City and other nearby jurisdictions was taken into account when considering cumulative biological impacts." The City's response is inconsistent with evidence in the record. Appendix G to the DSEIR identifies the "Active Major Development Projects Considered in the Cumulative Setting."⁵⁰ The title of the table presented in Appendix G is "City of Oakland – Active Major Development Projects." Moreover, the "location" information provided in the table confirms that all the projects considered in the cumulative setting are located in the City of Oakland. Therefore, the FSEIR's claim that projects in other nearby jurisdictions were taken into account when considering cumulative impacts contradicts the information provided in the DSEIR.

Project Impacts to Wildlife Habitat

Impacts to Wildlife Associated with Mature Trees

According to the FSEIR: "the temporary reduction in the number of mature trees on the Project site would not significantly impact birds or special status wildlife species."⁵¹ This conclusion is not supported by evidence. The following special-status wildlife species have at least a moderate potential of occurring at the Project site⁵² and are associated with habitats containing mature trees (although some are not limited to habitats with mature trees): Cooper's hawk, oak titmouse, red-tailed hawk, red-shouldered hawk, olive-sided flycatcher, white-tailed kite, Nuttall's woodpecker, Allen's hummingbird, pallid bat, western red bat, silver-haired bat, hoary bat, Yuma myotis, and San Francisco dusky-footed woodrat.⁵³

As the DSEIR and FSEIR acknowledge: (a) "[n]ew plantings will take a few decades to mature,"⁵⁴ and (b) "[r]emoval of foraging and nesting habitat at the Project site would be

⁴⁹ Response to Comment M14. FSEIR, p. 6-157.

⁵⁰ DSEIR, p. ii.

⁵¹ Response to Comment M14. FSEIR, p. 6-160.

⁵² DSEIR, Table 4.3-2.

⁵³ Western Bat Working Group. 2005 [updated]. Species accounts. Available at: <<http://wbwg.org/western-bat-species/>>. (Accessed 16 Jun 2017). See also California Department of Fish and Wildlife. California Interagency Wildlife Task Group. 2014. CWHR version 9.0 personal computer program. Sacramento, CA. Available at: <<https://www.wildlife.ca.gov/Data/CWHR/Life-History-and-Range>>. (Accessed 16 Jun 2017).

⁵⁴ Response to Comment M14. FSEIR, p. 6-160.

considered a direct impact if sensitive birds species were taken or deterred from traditional nesting locations.”⁵⁵ Because several of the species listed above depend on mature trees for nesting, removal of those trees would “deter” those species from “traditional nesting locations.”

Animals that are forced to move from their territory often become stressed. This may lead to the increased production of lactic acid or “stress hormones” in the organism.⁵⁶ These physiological changes often cause a non-trivial amount of mortality. In addition, when an animal is forced to move to an unfamiliar location, it has no knowledge of the habitat resources essential for its survival (e.g., food, water, and cover). For example, when a prey species is forced into an area where it is unfamiliar with cover resources, it becomes an easy target for predators. Even if the displaced animal moves into an area with readily available resources, aggressive competitors may prevent the displaced animal from accessing those resources, and from mating.

Most bird species are territorial, and many exhibit high fidelity to breeding sites (i.e., they breed at the same location every year). Thus, birds that are displaced by removal of mature trees (and other habitat) at the Project site cannot simply move to the Hardenstine Parcel (or other location), as the FSEIR suggests.⁵⁷ In reality, birds that are displaced by the Project will be forced to use unoccupied, suboptimal habitat where long-term survival and reproductive success are lower. Similarly, dominant birds that are displaced by the Project will force subordinate birds that currently occupy the Hardenstine Parcel to abandon their territories, such that those birds are forced to use suboptimal habitat. Both scenarios constitute a significant impact.

Due to the information provided above, the removal of mature trees (and other habitat) from the Project site would cause significant impacts that were not disclosed or analyzed in the DSEIR and FSEIR.

Duration of Impacts to Avian Habitat

Several of the special-status species that have the potential to occur at the Project site depend on the structure and habitat elements (e.g., cavities) provided by large, mature trees. Development of large, mature oak trees requires 60 to 80 years.⁵⁸ Thus, as stated in my previous letter, the removal of mature trees from the Project site is not a “temporary” impact.⁵⁹ For wildlife, this equates to multiple generations of lost habitat, and consequently, a considerable loss of reproductive output. This could have serious implications on a species’ ability to maintain a viable population in the Project area. The

⁵⁵ DSEIR, p. 4.3-51.

⁵⁶ Tracy CR, KE Nussear, TC Esque, K Dean-Bradley, CR Tracy, LA DeFalco, KT Castle, LC Zimmerman, RE Espinoza, AM Barber. 2006. The importance of physiological ecology in conservation biology. *Integrative and Comparative Biology*. pp. 1-15.

⁵⁷ Response to Comment M14. FSEIR, p. 6-160.

⁵⁸ California Wildlife Habitat Relationships System. 2005 [update]. *Wildlife Habitats: Coastal Oak Woodland*. California Department of Fish and Game. California Interagency Wildlife Task Group. Available at: <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=67344&inline>>.

⁵⁹ Comment M36.

majority of the hillside between Memorial Park and the riparian corridor is comprised of native purple needlegrass grassland.⁶⁷ Whereas planting trees at that location could create a “functional oak woodland habitat,” it could also threaten persistence of the purple needlegrass grassland.⁶⁸ The DSEIR and FSEIR failed to disclose and analyze this potentially significant impact.

Third, even if the Applicant is successful in creating large corridors of functional oak woodland habitat, the City provides no evidence that those corridors would not be ecological traps. To the contrary, the corridors would be subject to repeated disturbance (e.g., from humans and pets), which could result in an ecological trap. In addition, the Project would create features (including suburban areas with lawns, bird feeders, parks, picnic areas, and internal and external edges created by development) that attract and support brown-headed cowbirds.⁶⁹ This too could create an ecological trap because the brown-headed cowbird parasitizes nests of woodland and riparian bird species. Finally, the Project will introduce new predators (i.e., domestic cats), and it is likely to benefit the existing mesopredator population, both of which could cause an ecological trap.

Oak Woodland Mitigation

The FSEIR suggests compensatory mitigation would be provided at a 2:1 ratio (preserved/created acres: impacted acres) for Project impacts to oak woodlands.⁷⁰ There are 28.9 to 30.1 acres of coast live oak woodlands on the Project site.⁷¹ The Project would result in the conversion or development of 16.61 acres of those woodlands.⁷² This leaves 12.29 to 13.49 acres of oak woodlands that would be preserved. In addition, the Applicant proposes tree planting to create new oak woodlands.⁷³ According to the FSEIR, this would satisfy the mitigation requirement by achieving approximately 42.5 acres of oak woodlands (preserved woodlands plus created woodlands), post construction.⁷⁴

As reflected in the comment from the San Francisco Bay Regional Water Quality Control Board: “[a]ny mitigation action will require that the mitigation feature be preserved in perpetuity with some legal instrument to prevent future impacts to the mitigation feature. Therefore, planting trees would only be acceptable as mitigation if the land on which the trees are planted is placed under a restrictive covenant.”⁷⁵ The FSEIR does not resolve

⁶⁷ DSEIR, BRA, Figure 2.

⁶⁸ Bartolome JW, RH Barrett. 2013. Range Ecology Grassland Management and Monitoring options for the East Bay Regional Park District: Final Report 2011□Grassland Monitoring Project (Year 10). pp. 3, 30, and 35.

⁶⁹ U.S. Department of the Interior, Bureau of Reclamation. 2004. Brown-headed Cowbird Management Techniques Manual. p. 11. *See also* Riparian Habitat Joint Venture. 2004. Version 2.0. The riparian bird conservation plan: a strategy for reversing the decline of riparian associated birds in California. California Partners in Flight. p. 76.

⁷⁰ Response to Comment M9. FSEIR, p. 6-151.

⁷¹ FSEIR, p. 3-12 indicates 30.1 acres. Page 9 of Appendix E to the FSEIR indicates 28.9 acres.

⁷² DSEIR, BRA, p. 37.

⁷³ FSEIR, Appendix E, p. 5.

⁷⁴ FSEIR, Appendix E, p. 9 and Table 4.

⁷⁵ Comment B4. FSEIR, p. 6-14.

FSEIR does not address this issue. Instead, it continues to refer to impacts to habitat provided by mature trees as “temporary.”⁶⁰

The FSEIR responded to my comments concerning the loss of large, mature oak trees by providing a quote from the Oak Woodland Bird Conservation Plan. The quote states (in part): “[o]ther recommendations focus on the need to promote nest success, by retaining mature oaks in altered landscapes to provide nest cavities and by keeping down the number of native and introduced nest predators.”⁶¹ This quote does not alleviate the issues I raised. Indeed, it provides additional evidence that the Project would significantly impact oak woodland bird habitat because: (a) the Project entails removal of approximately 1,394 mature coast live oak (*Quercus agrifolia*) trees,⁶² and (b) the FSEIR does not include any mitigation measures to control nest predators that may benefit from the Project.

Planting Areas for Oak Woodland Mitigation

According to the FSEIR:

The vast majority of mitigation trees (more than 8,500) that will be planted on the property are in large contiguous swaths along the riparian corridor and on hillsides located between Memorial Park and the riparian corridor. These large corridors will serve as functional oak woodland habitat that would not be considered “ecological traps.”⁶³

These statements are not supported by evidence. First, the Applicant has proposed four conceptual planting areas: (1) open space/woodland slope areas, (2) street tree planting areas, (3) the community center area, and (4) in-tract areas.⁶⁴ To comply with defensible fuel space requirements, mitigation (planting) areas located within 100 feet of proposed structures would be maintained with a sparse understory and well-pruned, well-spaced trees.⁶⁵ Many of the trees proposed for planting areas 2, 3, and 4 would be located within 100 feet of proposed structures.⁶⁶ Thus, in addition to being subject to numerous adverse effects associated with the adjacent housing developments, roads, and parks, many of the trees in planting areas 2 through 4 would be “well-spaced,” well-pruned, and maintained with a sparse understory. Swaths of trees with those conditions do not provide “functional oak woodland habitat.”

Second, the FSEIR indicates the vast majority of trees will be planted along the riparian corridor and on hillsides located between Memorial Park and the riparian corridor. The

⁶⁰ Response to Comment M14. FSEIR, p. 6-160.

⁶¹ Response to Comment M15. FSEIR, p. 6-162.

⁶² *Quercus agrifolia* trees with a diameter at breast height (dbh) of ≥ 12 inches are considered mature (http://ucanr.edu/sites/oak_range/Californias_Rangeland_Oak_Species/Coast_Live_Oak/#dbh). The Project would impact 921 *Quercus agrifolia* that have a dbh in the 9.0-17.9 inch size class (plus an additional 780 oaks ≥ 18 inches dbh). Assuming uniform distribution of trees in this size class, 614 trees have a dbh ≥ 12 inches. See FSEIR, Appendix E, Table 2.

⁶³ Response to Comment M15. FSEIR, p. 6-163.

⁶⁴ FSEIR, Appendix E, p. 5.

⁶⁵ *Ibid*, p. 7.

⁶⁶ FSEIR, Appendix B to Appendix E.

this issue because it only requires a restrictive covenant or similar instrument to protect the 7.28 acres⁷⁶ of “existing riparian woodland habitat.”⁷⁷ As a result, the FSEIR provides no assurances that the 42.5 acres of oak woodland mitigation lands would be preserved in perpetuity, and thus, that they would mitigate Project impacts to a less-than-significant level.

Furthermore, although the City claims the Project would benefit the local and regional enhancement of oak woodlands⁷⁸ by planting over 8,500 trees,⁷⁹ the FSEIR continues to allow the Applicant to satisfy its mitigation requirement by paying an in-lieu fee.⁸⁰ According to the FSEIR, the in-lieu fee would be paid to a natural resource agency or non-profit organization that would use the fee to protect or enhance oak woodland habitat in the region.⁸¹ This is important for two reasons:

First, there is no in-lieu fee-based arrangement currently in place between the City of Oakland and a natural resource agency (or non-profit organization) to mitigate impacts to oak woodlands. Therefore, if the Applicant elects to pay the in-lieu fee as mitigation for Project impacts to oak woodlands, it must identify the specific project that would be accomplished to satisfy the mitigation requirement.⁸² In addition, the City would be responsible for ensuring that the off-site mitigation project is successful.⁸³ However, the FSEIR does not identify the specific project that would be accomplished by paying an in-lieu fee, nor does it establish a mechanism that ensures success of that project.

Second, the City’s conclusion that Project impacts to oak woodland habitat would be less than significant is based in part on the premise that tree planting would occur on site, and thus, it would restore habitat for species impacted by the Project.⁸⁴ However, the City does not have the basis for that conclusion if in fact it is allowing the Applicant to pay an in-lieu fee instead of restoring habitat on the Project site.

Mitigation Performance Standards

The FSEIR states:

Overall and in the context of the larger landscape of suitable avian habitats, post construction, the site will provide a substantial amount of habitat suitable for avian species including raptors, songbirds and riparian dependent species and along with the mitigation measures to be implemented during construction, will result in less than significant impacts overall.⁸⁵

⁷⁶ DSEIR, BRA, Table 3.

⁷⁷ FSEIR, p. 3-16.

⁷⁸ Response to Comment M10. FSEIR, p. 6-152.

⁷⁹ FSEIR, p. 2-19.

⁸⁰ FSEIR, p. 3-16. *See also* Response to Comment B4. FSEIR, p. 6-18.

⁸¹ FSEIR, p. 3-16.

⁸² Comment B4. FSEIR, p. 6-14.

⁸³ Comment B4. FSEIR, p. 6-14.

⁸⁴ Response to Comments M10, M14, M15, and M17.

⁸⁵ Response to Comment M15. FSEIR, p. 6-162.

Although this is an appropriate goal, the City cannot automatically assume “the site will provide a substantial amount of habitat suitable for avian species” (post-construction). Wildlife-habitat relationships are complex because they are dependent on a suite of biotic and abiotic factors.⁸⁶ Furthermore, “habitat” is properly defined as the resources and conditions present in an area that affect occupancy by a species.⁸⁷ Thus, an area that is not occupied by the species is not habitat, regardless of the area’s physical and biological characteristics. As a result, under CEQA, the City cannot conclude impacts to avian habitat (including habitat for special-status bird species) would be less than significant, without also establishing appropriate performance standards for the habitat. Because habitat is defined by occupancy of the species, the performance standards must include measures of occupancy. The performance standards established in the FSEIR fail to incorporate any measures of occupancy.

The City’s response to this issue is that:

Although the project is not actively monitoring wildlife species responses to habitat restoration, efforts are focused on ensuring the long-term survivability of the thousands of plant species proposed for the restoration area, which will in turn, provide long-term breeding, feeding and cover habitat for avian and other wildlife species.⁸⁸

The City is misapplying the concept of “habitat” with the concept of “habitat type” (i.e., land units having approximately the same capacity to produce vegetation).⁸⁹ As discussed above, “habitat” includes much more than just vegetation. At most, ensuring the long-term survivability of plants within the restoration area would promote the habitat type associated with various wildlife species, but it does not assure that the restoration area provides *habitat* for those species. As a result, the FSEIR fails to incorporate performance standards that ensure Project impacts to avian habitat would be less than significant.

Mitigation for Avian Collisions

I had several comments regarding the avian collision hazard posed by the Project.⁹⁰ Specifically, I commented that the DSEIR does not identify what bird collision reduction measures “reasonably apply,” nor does it establish any performance standards to guide the Applicant in selecting the appropriate measures. As a result, there is not enough information in the record to support a determination that the forthcoming Bird Collision Reduction Plan will be sufficient to reduce impacts below a level of significance.

⁸⁶ Morrison ML, BG Marcot, and RW Mannan. 2006. *Wildlife-Habitat Relationships: Concepts and Applications*. 3rd ed. Washington (DC): Island Press. 493 p.

⁸⁷ Morrison ML. 2002. *Wildlife Restoration: Techniques for Habitat Analysis and Animal Monitoring*. Island Press: Washington (DC). *See also* Hall L, P Krausman, M Morrison. 1997. The Habitat Concept and a Plea for Standard Terminology. *Wildlife Society Bulletin* 25(1):173-182.

⁸⁸ Response to Comment M15. FSEIR, p. 6-164.

⁸⁹ Morrison ML, BG Marcot, and RW Mannan. 2006. *Wildlife-Habitat Relationships: Concepts and Applications*. 3rd ed. Washington (DC): Island Press. p. 10.

⁹⁰ Comment M37. FSEIR, p. 6-114.

In response, the City modified SCA BIO-2 (Bird Collision Reduction Measures) such that it now states:

The Oak Knoll Project-specific Bird Collision Reduction Plan shall incorporate all mandatory measures that apply to the Project. Implementation and Project compliance with SCA BIO-2, as administered and monitored by the City will avoid and/or minimize adverse effects of avian collisions resulting from the proposed Project to a less-than-significant level.⁹¹

SCA BIO-2 remains insufficient because it does not identify the “mandatory measures that apply to the project.” Furthermore, although SCA BIO-2 states that implementation and compliance would be monitored by the City, the FSEIR fails to: (a) provide any information pertaining to that monitoring, and (b) establish performance standards that ensure avian collision reduction measures are implemented and successful. As a result, the avian collision hazard posed by the Project remains a potentially significant, unmitigated impact.

This concludes my comments on the FSEIR.

Sincerely,



Scott Cashen, M.S.
Senior Biologist

⁹¹ FSEIR, p. 3-15.

**Attachment 1: Conservation Lands Network Biodiversity
Portfolio Report for Alameda County.**

Attachment 2: Wildlife Species and Population Responses to Recreationists.

Klein, Heather

From: Don Mitchell and Jeannette <earthstravelers@sbcglobal.net>
Sent: Monday, October 30, 2017 11:23 PM
To: Klein, Heather; Scott Gregory; Reid, Larry; Mossburg, Pat; Campbell Washington, Annie; Gallo, Noel; McElhaney, Lynette
Cc: Schaaf, Libby; Kalb, Dan; Guillen, Abel; Brooks, Desley; At Large
Subject: Urgent Communication regarding Oak Knoll development and the Community and Economic Development Committee meeting
Attachments: OKC Letter_10-30-17.pdf

Dear Ms. Klein and Mr. Gregory,
Please ensure that this communication from Oak Knoll Coalition is provided to members of the City of Oakland Community and Economic Development Committee prior to the public meeting scheduled for the morning of October 31st.

Best Regards,
Oak Knoll Coalition

Oak Knoll Coalition

— Associated Residents of Sequoyah Highlands
— Oak Knoll Neighborhood Improvement Association
— Sequoyah Heights
— Sequoyah Hills
— Sequoyah Hills/Oak Knoll Neighborhood Association
— Shadow Woods Homeowners Association

October 30, 2017
To: City of Oakland Community and Economic Development Committee
City Hall, One Frank H. Ogawa Plaza
Oakland, CA 94619

CC:
Mayor Libby Schaaf
Councilmember Dan Kalb
Councilmember Abel J. Guillen
Councilmember Desley Brooks
Councilmember Rebecca Kaplan

Re: Oak Knoll Mixed-Use Community Plan Project (PLN15378)

Dear Community & Economic Development Committee Members,

Oak Knoll Coalition, representing six neighborhood groups and more than 2,500 homeowners residing closest to the proposed Oak Knoll project referenced above, respectfully urge you to support and approve this project as was recently and unanimously recommended for approval by the Oakland City Planning Commission. During the planning commission's recent meeting, commission members publicly recognized positive neighbors' effort regarding the project and the current overwhelming community support it has garnered. Additionally, the planning commission chair offered that community effort—and support of the project—by neighbors as being "unprecedented" in his experience.

The Oak Knoll Coalition (OKC) was created in the 1990s to bring long-term public benefits to the closed Oakland Naval Medical Center. From the first design charrettes during the Harris administration, to working closely with SunCal on the plan before you, OKC members have been involved in all aspects of this long planning process. (See oakknollcoalition.org for more on OKC involvement.)

In recent months, criticism of the SunCal community plan has been suddenly foisted upon the community by outside interests never active in this process, and clearly based on erroneous and dubious information.

Density. Some have argued that higher density in both residential and commercial is needed to satisfy the housing shortage and to expand the sales-tax base. Some have even made the claim that higher density will be followed by public transportation.

During the past twenty-five years, no transit agency has indicated that they would invest capital on extending public transportation in the I-580 corridor. In addition, the forty-five-year history of BART clearly illustrates that housing follows (very slowly) public transportation. Consequently, the Oak Knoll development is totally dependent on the automobile. Even with a BART shuttle, the success of this development will be linked to the carrying capacity of the surface streets, intersections, and freeway access. The traffic mitigations as outlined in the SEIR, many of which are long overdue, are scaled to the proposed density. Those who are familiar with East Oakland and have taken the time to study the traffic mitigations should conclude that there are few, if any, mitigation options beyond what's being proposed. Any suggestion of increased density is not based on reality.

Suburbia. It has been suggested that homes valued between \$700K and \$1.5M would create an exclusive community serving the elite few. Unfortunately, these home values are the norm throughout most of Oakland. The proposal before you, with a few exceptions, is identical to the plan developed in 2004-2007. It was designed by Peter Calthorpe, a founding member of the Congress for New Urbanism. The proposed mix of housing types is an alternative to low-density suburban developments and can, in no way, be compared to 1950s suburbia.

Affordable Housing. The City of Oakland had ample opportunity to acquire this property through the Public Benefit Land Conveyance, Economic Development Land Conveyance, and negotiated sale. If the City had succeeded, there would clearly be requirements for on-site affordable housing. If the Redevelopment Districts were still in effect and the developer used Redevelopment funds, there would be requirements for on-site affordable housing. However, the City failed to acquire the land and the Redevelopment District no longer exists. The 180 acres is now private property, and the proposed development will be privately funded. The only requirement by the City of Oakland for affordable housing will be the recently-enacted impact fees.

\$20M in affordable-housing impact fees will be collected by the City. The City of Oakland's Housing and Community Development Department will determine the most effective use of these funds, and they may find that one or more of their affordable-housing tools will work at Oak Knoll.

OKC support. During the land-conveyance process, the surrounding community identified open space with hiking trails, parks, and Rifle Range Creek restoration as public benefits. Once the land was sold to a private developer, the residents of the surrounding neighborhoods continued to lobby for these benefits, even though they would be privately funded. When SunCal returned to the property after the economic recession, they submitted a plan that had some significant changes. No longer was the knoll and adjoining oak woodland going to be developed. Fourteen acres of adjacent private property was going to be purchased, with ten acres added to the open space, bringing the total to approximately eighty acres. OKC feels that SunCal has captured many of the ideas expressed over the past twenty-five years.

OKC found the original commercial layout to be very problematic and is pleased that the current commercial proposal for Mountain Blvd., which was reviewed by the Design Review Committee, has resolved many of our concerns. We believe that the Village Center will provide needed services to the existing surrounding neighborhoods as well as the new residents.

Traffic has always been a major concern of OKC. The draft SEIR and final SEIR contain evasive and non-committal language, leaving many readers to conclude that the mitigations could be postponed until 2040. We are very pleased that SunCal has agreed to complete all the mitigations during the build-out, in exchange for a TIF credit, because many of the mitigations bring relief to problematic intersections that would never be corrected by the City.

It's been almost a year since the draft SEIR studies have been completed. This shamefully slow process needs to end now. The Oak Knoll Coalition requests that you approve the Oak Knoll project so that City Council can conclude this business before the upcoming holidays.

Sincerely,

Oak Knoll Coalition

Tamara Thompson, Oak Knoll Neighborhood Improvement Association

Sohini Chan, Oak Knoll Neighborhood Improvement Association

Lee Ann Smith, Sequoyah Heights

Robert Clark, Sequoyah Hills

Kris Drobocky Baitoo, Sequoyah Hills

Gaile Hofmann, Sequoyah Hills/Oak Knoll Neighborhood Association

Donald Mitchell, Sequoyah Hills/Oak Knoll Neighborhood Association

Peter Madsen, Shadow Woods Homeowners Association

Phillip Dow, ex officio, Oak Knoll Neighborhood Improvement Association

Jeannette Yusko, ex officio, Sequoyah Hills/Oak Knoll Neighborhood Assoc.

Roland Peterson, ex officio, Sequoyah Hills/Oak Knoll Neighborhood Assoc.

Sandra Marburg, ex officio, Associated Residents of Sequoyah Highlands

MEETING OF THE
OAKLAND CITY COUNCIL