

# CITY OF OAKLAND

## Agenda Report

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2007 OCT 11 PM 2:10

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: October 23, 2007

RE: **A Report And Resolutions Conditionally Accepting Dedications Of Public Right-Of-Way From Pulte Home Corporation And Mother Fish LLC For A New Street In The Arcadia Park Subdivision To Connect With 92nd Avenue**

---

### SUMMARY

Two (2) resolutions have been prepared conditionally accepting dedications of public right-of-way from Pulte Home Corporation, the developer of the Arcadia Park residential subdivision, and Mother Fish LLC, owner of an abutting parcel. The pair of adjoining dedications will allow the developer to extend a portion of Ellington Way, which is one of the twelve (12) public streets currently under construction, to connect directly with 92nd Avenue. The dedications would be accepted after construction of the street network has been completed without cost to the City.

### FISCAL IMPACT

Staff costs for processing the proposed dedication are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The dedications of public right-of-way and construction of the street extension will be without cost to the City.

### PROJECT DESCRIPTION

The Arcadia Park development is bounded by 98th Avenue, San Leandro Street, and 92nd Avenue. The developer is constructing an internal network of twelve (12) public streets for the three-hundred and sixty-five (365) unit subdivision. The subdivision map for the project (FM 7640) dedicated a twenty (20) feet wide public path to connect 92nd Avenue with one of the new streets, Ellington Way. The developer now wishes to construct a "full-width" street in lieu of the "half-width" public path. This will provide a third street connection with 92nd Avenue and will enhance pedestrian, automobile, and emergency vehicle access to the project. To do so requires the proposed dedications of the pair of twenty (20) feet wide rights-of-way. The proposed extension of Ellington Way conforms with the land use approvals for the project.

### KEY ISSUES AND IMPACTS

In general, the City can obtain privately owned real property by dedication, where the underlying fee title interest does not transfer to the City, or by purchase, foreclosure, gift, exchange, or

Item No. \_\_\_\_\_  
Public Works Committee  
October 23, 2007

---

eminent domain, where the fee title interest transfers to the City. The following are some of the legislation means that enable the City to obtain private property:

- Oakland Municipal Code

OMC Sections 16.12.080 and 16.20.050 provide that the City Engineer and City Council can accept real property by dedication and that the City Council can acquire real property by purchase as a condition of land subdivision.

- Oakland City Charter

Charter Section 219.6 requires that the City Council acquire real property and improvements by ordinance when the purchase price exceeds five thousand dollars (\$5,000).

- Oakland City Ordinance

Ordinance 9960 C.M.S. provides that the City Council can acquire real property with distressed improvements (substandard improvements) through eminent domain.

Ordinance 11836 C.M.S. provides that the Manager of Real Estate Services can accept public easements by dedication and acquire real property by purchase when the price does not exceed five thousand dollars (\$5,000).

- California Government Code

Section 7050 allows a City to accept privately owned real property by dedication for any public purpose, including use as public right-of-way for streets and sidewalks.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

Construction of the new streets will provide opportunities for professional services and construction related jobs.

### **Environmental**

Construction permits for infrastructure improvements require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and pollutant runoff.

### **Social Equity**

The residential subdivision will provide home ownership opportunities for the Oakland community.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits will conform to State and City requirements for handicapped accessibility.

---

## RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolutions accepting the dedications of public right-of-way.

## ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolutions conditionally accepting dedications of public right-of-way from Pulte Home Corporation and Mother Fish LLC for a new street to connect with 92nd Avenue.

Respectfully submitted,



---

**CLAUDIA CAPPIO**

Development Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO  
THE PUBLIC WORKS COMMITTEE



---

OFFICE OF THE CITY ADMINISTRATOR

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

*F. Falz*

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
City Attorney

2007.OCT 11 PM 2:11

**OAKLAND CITY COUNCIL**

**RESOLUTION No. \_\_\_\_\_ C.M.S.**

**RESOLUTION CONDITIONALLY ACCEPTING IRREVOCABLE DEDICATIONS  
OF PUBLIC RIGHT-OF-WAY FROM PULTE HOME CORPORATION AND  
MOTHER FISH LLC FOR A NEW STREET IN THE ARCADIA PARK  
SUBDIVISION TO CONNECT WITH 92nd AVENUE**

**WHEREAS**, Pulte Home Corporation (Grantor), a Michigan corporation doing business in California (no. C1637972) and Mother Fish LLC (Grantor), a California limited liability company (no. 200633610246), owners of two (2) properties described in Grant Deeds recorded March 1, 2007, series no. 200789805, and April 4, 2007, series no. 2007128979, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as parcel numbers 044-4989-016-00 and 044-4988-006-01, and identified by the City of Oakland as 921 98th Avenue and 888 92nd Avenue, and more particularly described in Exhibit A attached hereto, have individually and voluntarily made irrevocable dedications to the City of Oakland, a municipal corporation, of portions of said real properties for use in perpetuity by the general public as right-of-way for an extension of a publicly maintained street, herein after identified as Ellington Way; and

**WHEREAS**, said dedications and the textural descriptions and graphical delineations of said portions of real property for said extension of Ellington Way are attached hereto in Exhibit B; and

**WHEREAS**, pursuant to Resolution 80602 C.M.S. of the Council of the City of Oakland, the Grantor, Pulte Home Corporation, has previously filed with the Alameda County Clerk-Recorder a Final Map, identified as Tract 7640 for the Arcadia Park subdivision, that has

- voluntarily merged said parcel 044-4989-016-00 with adjoining parcels it owns in fee simple interest, and has
- subdivided the platted land for development of individual lots for residential home ownership, and has
- dedicated right-of-way for publicly maintained streets and an easement for a publicly maintained pathway; and

**WHEREAS**, pursuant to said Resolution, acceptance by the City of Oakland of said dedications were condition upon acceptance by the City Engineer of the City of Oakland of necessary public infrastructure improvements which are currently being constructed by the Grantor, Pulte Home Corporation with permit number PX0600089; and

**WHEREAS**, the Grantor, Pulte Home Corporation, now desires to expand the use of said public pathway to accommodate the ingress and egress of automobiles, delivery and service trucks, and emergency vehicle traffic; and

**WHEREAS**, pursuant to California Streets and Highways Code section 1805 , said expanded use shall require the dedication of a minimum width of forty (40) feet (measured orthogonally to the longitudinal axis) of public right-of-way; and

**WHEREAS**, the Grantor, Pulte Home Corporation, desires to re-dedicate without cost to the City of Oakland the full-width and full-length of said public pathway as public right-of-way; and

**WHEREAS**, said public pathway is delineated on said Final Map as twenty (20) feet wide (measured orthogonally to the longitudinal axis); and

**WHEREAS**, the Grantor, Mother Fish LLC, similarly desires to dedicate without cost to the City of Oakland a companion strip of real property twenty (20) feet wide (measured orthogonally to the longitudinal axis) that adjoins said public pathway to the northeast;

**WHEREAS**, the Grantor, Pulte Home Corporation, understands and agrees that construction of supplemental public infrastructure improvements required for the full use of said dedications as a public street shall be without cost to the City of Oakland and shall be an indistinguishable part of said permit PX0600089 and shall further be an indistinguishable part of the Subdivision Improvement Agreement executed by the Grantor pursuant to said Resolution 80602 C.M.S.; and

**WHEREAS**, said supplemental infrastructure improvements shall conform in all manners with the plans and specifications approved with said permit PX0600089 for construction of Ellington Way and companion public streets within said Arcadia Park subdivision; and

**WHEREAS**, said dedications and supplemental infrastructure improvements conform with the approved Tentative Map (TM 7640) and land use permits (ER05003, CMV05446, GP05331, GP05331) for the Arcadia Park subdivision; and

**WHEREAS**, on September 21, 2005, the Planning Commission certified the EIR, adopted CEQA findings in connection with the approval of this project; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the dedication contemplated herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and in CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED:** That the City Council's action approving dedications of public right-of-way, as conditioned herein, complies with the California Environmental Quality Act; and be it

**FURTHER RESOLVED:** That the dedications of public right-of-way, as conditioned herein after and described and delineated in Exhibit B, are hereby accepted to extend a new public street, identified as Ellington Way, to connect with 92nd Avenue; and

**FURTHER RESOLVED:** That the dedications of public right-of-way are hereby conditioned by the following special requirements:

1. the Grantor, Pulte Home Corporation, shall be responsible for the construction of supplemental public infrastructure improvements without cost to the City of Oakland to extend Ellington Way to 92nd Avenue; and
2. construction by the Grantor, Pulte Home Corporation, of the supplemental public infrastructure improvements shall conform with the plans, specifications, and general and special conditions of permit PX0600089 and all revisions thereto; and
3. pursuant to Resolution 80602 C.M.S., all requirements, restrictions, conditions, limitations, and time durations set forth in the Subdivision Improvement Agreement executed by the Grantor, Pulte Home Corporation, for approval of the Final Map for the Arcadia Park subdivision shall apply equally to construction of the supplemental public infrastructure improvements and acceptance of the dedications of public right-of-way and subsequent maintenance of public streets; and
4. the hereinabove conditions shall be binding upon the Grantors and their successive owners and assigns thereof; and be it

**FURTHER RESOLVED:** That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth after notice and failure to cure such conditions in a reasonable manner; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA,** \_\_\_\_\_, 2007

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

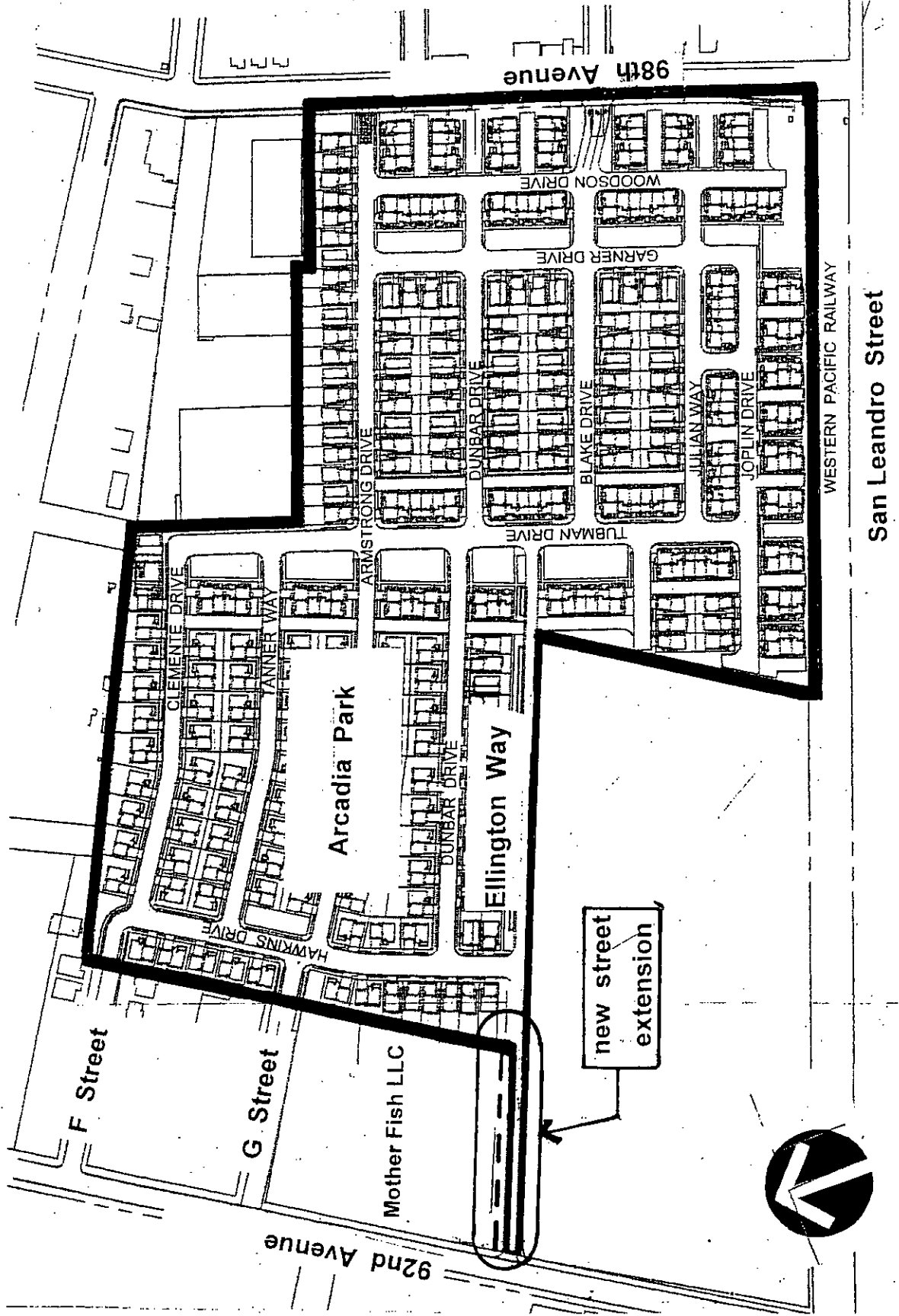
NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California



San Leandro Street

WESTERN PACIFIC RAILWAY



recording requested by:

**CITY OF OAKLAND**

when recorded mail to

City of Oakland  
CEDA - Building Services  
Datziel Administration Building  
250 Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
Attention: City Engineer

----- space above for Recorder's use only

## **IRREVOCABLE OFFER OF DEDICATION**

Pursuant to California Government Code Section 7050, the undersigned, as owners of the fee simple interest in the real property described in the Grant Deed, Series No. 200789805, recorded March 1, 2007, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as a portion of Parcel No. 044-4989-016, do hereby make an irrevocable offer of dedication of a strip of land, as delineated in Exhibit A attached hereto, to the City of Oakland, a municipal corporation, for its use in perpetuity as public right-of-way.

Pursuant to California Streets and Highways Code Section 8300 et seq., in the event that some or all of said land should be vacated by the City at some future date, as yet undetermined, the owners and their representatives, heirs, successors, and assigns hereby retain the unqualified right unto themselves to the underlying fee simple interest in said land.

Pulte Home Corporation, a Michigan Corporation

By: \_\_\_\_\_  
Daniel J. Carroll, Attorney In Fact



EXHIBIT "A"

LOT R OF TRACT MAP 7640, FILED JULY 25, 2007, IN BOOK  
299 OF MAPS, PAGES 89 THROUGH 97, INCLUSIVE, OFFICIAL  
RECORDS OF ALAMEDA COUNTY.

APN: 044-4989-016 (PORTION)

LANDS OF JEANNE WU

N60°36'24"E  
22.88'

N39°52'36"W 340.41'  
LOT R  
N39°52'36"W 340.41'

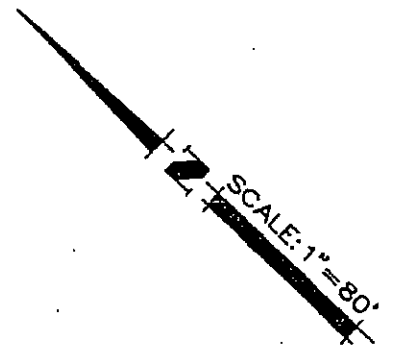
N60°36'24"E  
POINT OF BEGINNING

5'  
30'  
30'  
60'  
489.60'

MONUMENT LINE

92ND (KINSELL) AVENUE  
N60°36'24"E

LANDS OF STEVENS & STEPHENS VIII, LLC



72'

WESTERN PACIFIC RAILWAY CO.

**EXHIBIT "B" - LOT R**

CEA FILE NAME: 04125PLAT2



**Civil Engineering Associates**  
Civil Engineers • Planners • Surveyors  
2580 North First Street • Suite 290 • San Jose, CA 95131  
T: (408) 435-1066 • F: (408) 435-1075

BY: L.C.  
DATE: 08-15-07  
SCALE: 1"=80'  
JOB NO. 04-125 SHT.NO.

22

RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY

AND WHEN RECORDED MAIL TO

Pulte Home Corporation  
6210 Stonridge Mal Rd., 5th Fl.

Pleasanton, CA 94588



2007089805

03/01/2007 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 21.00  
COUNTY TAX: 8423.80  
CITY TAX: 114870.00



2 PCS

*1 yr  
pre  
by  
2  
put*

Escrow No. 913570-2-CW  
Order No. 913570-2-MO OAK

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No:  
044-4989-016

GRANT DEED

The undersigned declares that the documentary transfer tax is \$8,423.80

and is

- computed on the full value of the interest or property conveyed, or is
- computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale.

The undersigned declares that the city/county transfer tax is \$114,870.00

The land, tenements or realty is located in  unincorporated area  City of Oakland

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
CALIFORNIA REFRIGERATED EXPRESS INCORPORATED, A CALIFORNIA CORPORATION.

hereby GRANT(S) to  
PULTE HOME CORPORATION, A MICHIGAN CORPORATION

the following described real property in the City of Oakland  
County of Alameda, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE  
AS EXHIBIT "A"

Dated February 21, 2007

STATE OF CALIFORNIA  
COUNTY OF Alameda, SS.

California Refrigerated Express, Inc., a  
California corporation

On 2/22/07 before me,  
C.J. WILSON

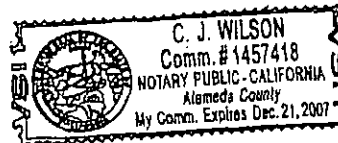
By: Ronald Dreisbach  
Ronald Dreisbach  
Its: President

a Notary Public in and for said County and State, personally appeared

Ronald Dreisbach

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

WITNESS my hand and official seal.



C. J. Wilson #1457418  
Alameda County, CA, Exp. 12/21/07  
FOR NOTARY SEAL OR STAMP

[Signature]  
Signature of Notary

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE  
same as above

Name Street Address City, State & Zip

LEGAL DESCRIPTION EXHIBIT "A"

CITY OF OAKLAND

PARCEL ONE:

PARCEL A, AS SHOWN ON THE PARCEL MAP NO. 3323, FILED SEPTEMBER 9, 1980 IN BOOK 121 OF PARCEL MAPS, PAGE 11, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR ROADWAY PURPOSES, APPURTENANT TO PARCEL ONE, HEREIN DESCRIBED, OVER AND ALONG THE LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERN LINE OF 92ND AVENUE, DISTANT THEREON NORTH 58° 59' 45" EAST, 512.48 FEET FROM THE NORTHEASTERN LINE OF THE RIGHT OF WAY, 72 FEET WIDE, OF THE WESTERN PACIFIC RAILROAD COMPANY; AND RUNNING ALONG SAID LINE OF 92ND AVENUE, NORTH 58° 59' 45" EAST, 27.96 FEET; THENCE SOUTH 41° 29' 15" EAST, 340.41 FEET; THENCE SOUTH 58° 59' 45" WEST, 27.96 FEET; THENCE NORTH 41° 29' 15" WEST, 340.41 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 044-4989-016

recording requested by:

**CITY OF OAKLAND**

when recorded mail to

City of Oakland  
CEDA - Building Services  
Dalziel Administration Building  
250 Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
Attention: City Engineer

----- space above for Recorder's use only

## **IRREVOCABLE OFFER OF DEDICATION**

Pursuant to California Government Code Section 7050, the undersigned, as owners of the fee simple interest in the real property described in the Grant Deed, Series No. 2007128979, recorded April 4, 2007, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as Parcel No. 044-4949-006-01 and by the City of Oakland as 888 92<sup>nd</sup> Avenue, do hereby make an irrevocable offer of dedication of a strip of land, as delineated in Exhibit A attached hereto, to the City of Oakland, a municipal corporation, for its use in perpetuity as public right-of-way.

Pursuant to California Streets and Highways Code Section 8300 et seq., in the event that some or all of said land should be vacated by the City at some future date, as yet undetermined, the owners and their representatives, heirs, successors, and assigns hereby retain the unqualified right unto themselves to the underlying fee simple interest in said land.

Mother Fish LLC, a California limited liability company, by:

\_\_\_\_\_  
  
\_\_\_\_\_

04-125

May 21, 2007

EXHIBIT "A"

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

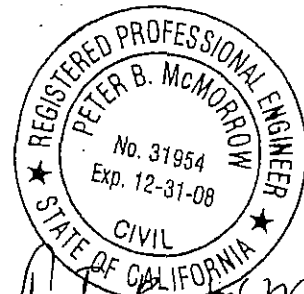
BEGINNING AT A POINT ON THE SOUTHEASTERN LINE OF 92<sup>ND</sup> AVENUE DISTANT THEREON NORTH 60° 36' 24" EAST 512.48 FEET FROM THE NORTHEASTERN LINE OF THE RIGHT OF WAY 72 FEET WIDE, OF THE WESTERN PACIFIC RAILROAD COMPANY;

THENCE CONTINUING NORTH 60° 36' 24" EAST ALONG SAID SOUTHEASTERN LINE OF 92<sup>ND</sup> AVENUE A DISTANCE OF 27.96 FEET;

THENCE SOUTH 39° 55' 46" EAST A DISTANCE OF 340.47 FEET;

THENCE SOUTH 60° 36' 24" WEST A DISTANCE OF 28.28 FEET;

THENCE NORTH 39° 52' 36" WEST A DISTANCE OF 340.41 FEET TO THE POINT OF BEGINNING.



*Peter B. McMorrow*  
5/22/07

LANDS OF JEANNE WU

S60°36'24"W  
28.28'

S39°55'46"E 340.47'

N39°52'36"W 340.41'

N60°36'24"E  
27.96'

N60°36'24"E

POINT OF BEGINNING

5'  
30'  
30'  
60'

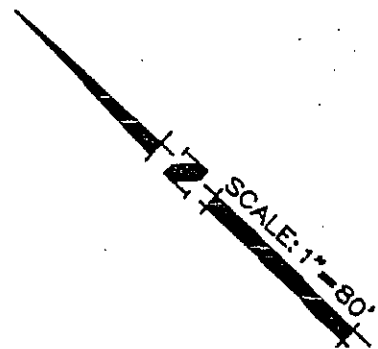
MONUMENT LINE  
92ND (KINSELL) AVENUE

512.48'

LANDS OF STEVENS & STEPHENS VIII, LLC



*Peter B. McMorrow*  
5/22/07



WESTERN PACIFIC RAILWAY CO.

EXHIBIT "A"

CEA FILE NAME: 04125PLATT



**Civil Engineering Associates**

Civil Engineers • Planners • Surveyors

2580 North First Street • Suite 290 • San Jose, CA 95131

T: (408) 435-1066 • F: (408) 435-1075

BY: C.H.

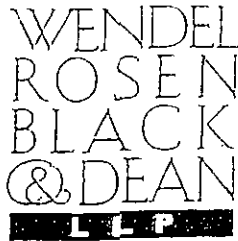
DATE: 5-21-07

SCALE: 1"=80'

JOB NO. 04-125

SHT.NO.

ATTACHMENT B



ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
zwasserman@wendel.com

December 4, 2007

DELIVERED BY HAND AND EMAIL

The Honorable Ignacio De La Fuente  
President of the Oakland City Council  
City Council Members  
Oakland City Hall  
One Frank H. Ogawa Plaza, Second Floor  
Oakland, CA 94612

Re: Acceptance of Dedication of Roadway from Pulte Homes re Arcadia Park  
Project; Agenda Item N.24-CC, City Council Meeting of November 6, 2007

Dear President De La Fuente and City Council Members:

This letter is a follow up to our letter of November 15, 2007, requesting reconsideration of the Council's acceptance of the dedication of a public street leading from the Arcadia Park Project to 92<sup>nd</sup> Avenue. We want to provide you with additional information and analysis regarding Pulte's actions and intent regarding the Arcadia Park Project which directly affect the legality of the Council's actions on November 6<sup>th</sup>.

Attached to this letter is the termination letter from Pulte to our clients, the Dreisbach family, clearly stating that Pulte is not going to purchase the remaining parcels, located at the intersection of 98<sup>th</sup> Avenue and San Leandro Street and known as the Fleischmann parcels. We are informed that Pulte has also delivered a letter to the City stating that they intend to develop a smaller project on the property they do already own.

Neither the City nor the Dreisbachs knew on November 6<sup>th</sup> that Pulte did not intend to build the entire Arcadia Park Project as proposed to and approved by the City. Indeed, the Dreisbachs did not learn that Pulte intended to create this new public street for vehicle traffic as the major entrance and exit from the project until after the Council action.

The EIR for the Arcadia Park Project did not evaluate this new public street with vehicular access to 92<sup>nd</sup> Avenue, and in particular did not evaluate the Project with this new street as the main access route, rather than the originally proposed and approved access to 98<sup>th</sup> Avenue which will apparently no longer be constructed, due to Pulte's decision not to acquire the



Fleischmann site.<sup>1</sup> Therefore, we believe the finding in the Resolution accepting the dedication of this new street that the previous EIR "fully analyzes the potential effects of the project, including the dedication contemplated herein . . ." is clearly erroneous. In addition, Pulte as the applicant offering this dedication surely knew as of November 6<sup>th</sup> that it was not going to proceed with the full Project. Therefore, the findings in the Resolution that (1) there were no changes in the Arcadia Park Project that would require "major revisions" of the EIR and (2) there was no "new information of substantial importance" were also erroneous and known to the party offering the dedication.

We believe the Council is obligated to consider this new information before the Resolution truly becomes final. Since the Council can decide to reconsider the Resolution accepting the dedication only at tonight's Council meeting, now is the appropriate time to move to allow this new information to be considered. Whether the new information will require additional evaluation under the CEQA Guidelines cannot be determined until staff has the opportunity to review Pulte's new plans and the effect of the proposed changes on the analyses and conclusions contained in the approved EIR. Additionally, moving to reconsider now would not prejudice anybody's rights but failing to move to reconsider the Resolution at tonight's meeting in light of the new information available now, may well prejudice the rights of adjoining property owners as well as the rights of the businesses and residents using the streets around the Arcadia Park Project, including the new residents in the Project.

*Thank you for your consideration of our comments on this matter.*

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

R. Zachary Wasserman

cc: Gary Patton, Mark Wald, Raymond Derainia,  
Ron and Marianne Dreisbach

---

<sup>1</sup> The fact that this was not fully studied is demonstrated by the conclusion that a new traffic signal at 92<sup>nd</sup> and International would not necessarily be required but that Pulte is obligated to monitor that intersection. With 92<sup>nd</sup> becoming a major access to and from the Project, this conclusion should be reviewed now. See EIR page III A.15, Traffic Mitigation-1.

ATTACHMENT C

WENDEL  
ROSEN  
BLACK  
& DEAN

LLP  
ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
zwasserman@wendel.com

November 15, 2007

**DELIVERED BY HAND AND EMAIL**

The Honorable Ignacio De La Fuente  
President of the Oakland City Council  
City Council Members  
Oakland City Hall  
One Frank H. Ogawa Plaza, Second Floor  
Oakland, CA 94612

**Re: Acceptance of Dedication of Roadway from Pulte Homes re Arcadia Park  
Project; Agenda Item N.24-CC, City Council Meeting of November 6, 2007**

Dear President De La Fuente and City Council Members:

We represent Ron and Marianne Dreisbach and their family, the current owners of the property located at 98<sup>th</sup> Avenue and San Leandro Street commonly known as the Fleischmann property. We hereby request that the members of the City Council reconsider and rescind the resolution of November 6, 2007 accepting of the dedication of a 40 foot roadway leading from the Fleischmann parcel to 92nd Avenue ("Dedication"), direct City staff to conduct the requisite environmental inquiry with respect to the Dedication, and re-review the Dedication and the results of that inquiry at a future Council meeting, where the Dreisbachs and other interested members of the public are afforded the opportunity to comment. The basis for this request is that the Dreisbachs have been informed by officials of Pulte Homes that Pulte does not intend to purchase the Fleischmann property or to proceed with development on the Fleischmann property as described in the PUD for the Arcadia Park Project. If the Fleischmann property is not developed, then the City's reliance on the EIR for the Arcadia Park Project regarding the acceptance of the dedication of the roadway is fatally flawed and violates both CEQA and any sense of fair process.

As I believe you know, the Dreisbachs entered into a contract with Pulte Homes to sell approximately 27 ½ acres they owned adjacent to San Leandro Street between 98<sup>th</sup> Avenue and 92<sup>nd</sup> Avenue, including the Fleischmann property. The Dreisbachs supported and the City approved the PUD and a general plan amendment based upon the development of the entire site. The EIR for this project was certified based on the development of the entire site. Many of the environmental mitigations and fulfillment of City requirements depend upon development of the Fleischmann property, including open space, traffic circulation and noise mitigations to be

The Honorable Ignacio De La Fuente  
City Council members  
November 15, 2007  
Page 2

WENDEL, ROSEN, BLACK & DEAN LLP

implemented on the Fleischmann property. As described in more detail in the attached memorandum, if the Fleischmann property is not going to be developed then clearly the EIR cannot be relied upon to justify the City's action in accepting the dedication of the roadway leading to 92nd Avenue.

The Dreisbachs are not opposed to the development of this roadway, but they, the surrounding neighbors and businesses and the City Council are entitled to proper review of the consequences of the roadway if the full project proposed by Pulte and approved by the City is not going to be developed.


The Dreisbachs did not receive any notice of the proposed Dedication from Pulte Homes or from the City. In order to avoid this problem in the future, by way of this letter, the Dreisbachs request, pursuant to Government Code Sections 66451.3 and 65092, that they be provided written notice of any future public hearing on the Project (including, without limitation, any consideration of any discretionary approval with respect to the Project as part of a consent calendar) by any board or commission of the City, including, without limitation, the City Council or Planning Commission.

A memo with more details regarding the inadequacies of the CEQA revision is attached. The Dreisbachs are still reviewing this matter, and we reserve the right to submit additional comments and testimony with respect to the Dedication (and/or any other changes to the Project) as this matter proceeds. Please ensure this letter is made part of the administrative record for this matter.

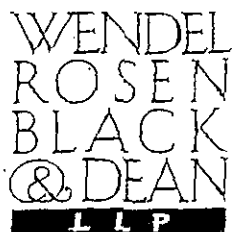
I would be happy to answer any questions you may have.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP

  
R. Zachary Wasserman

RZW:pq  
cc: Gary Patton  
John Russo  
Ron and Marianne Dreisbach



ATTORNEYS AT LAW

1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

Post Office Box 2047  
Oakland, CA 94604-2047

Telephone: (510) 834-6600  
Fax: (510) 834-1928  
zwasserman@wendel.com

## MEMORANDUM

November 15, 2007

**TO:** Oakland City Council

**FROM:** R. Zachary Wasserman

**RE:** Arcadia Park Residential Project (the "Project"); City of Oakland ("City")  
Acceptance of a Dedication of Public Right-of-Way for a New Public Street from the  
Project connecting to 92<sup>nd</sup> Avenue (the "Dedication"); November 6, 2007 City  
Council Agenda Item 10.24-CC

---

This memo is submitted on behalf of our clients, Ronald and Marianne Dreisbach and their family (collectively, the "Dreisbachs"), who are the owners of the property located 921 98<sup>th</sup> Avenue, Oakland, California (the "Fleischmann Property") as part of the request to reconsider and rescind the City Council resolution of November 6, 2007 accepting of the dedication of a 40 foot roadway leading from the Fleischmann parcel to 92nd Avenue ("Dedication"), direct City staff to conduct the requisite environmental inquiry with respect to the Dedication, and re-review the Dedication and the results of that inquiry at a future Council meeting, where the Dreisbachs and other interested members of the public are afforded the opportunity to comment..

The Fleischmann Property was formerly occupied by the Fleischmann's Yeast plant, and is further identified as Alameda County APN 044-4989-011-02. The Fleischmann Property is part of Pulte Homes' Arcadia Park Project ("Project") which was approved by the City Council in 2005. The primary purpose of this memo is to set forth in more detail the reasons that the resolution should be rescinded.

In accepting the Dedication, the City Council relied on the EIR prepared for the Project.

Page 2 of the Resolution, third paragraph from the bottom, states:

"...the City Council hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project, including the dedication contemplated herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with

CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and in CEQA Guidelines, including without limitation Public Resources Code Section 21666 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity (o)f previously identified significant effect; and (2) there is no "new information of substantial importance as described in CEQA Guidelines Section 15162(a)(3)..."

This finding is not supported by the facts because the Project EIR did not address utilizing the dedicated route as a public street, because the Project has apparently been very significantly changed by Pulte Homes, and there is no analysis of the effect of losing the Blake Drive/98<sup>th</sup> Avenue access. As a result, the City improperly failed to conduct any environmental investigation of the type and degree required by the California Environmental Quality Act prior to accepting the Dedication.

As an initial matter, it is important to note that the Dreisbachs were not provided with any notice of the Council's consideration of the Dedication notwithstanding the obvious affect on the Fleischmann Property. They learned of the Dedication only after it had been accepted. Had they received notice of the Council's consideration of the Dedication, they would have taken the opportunity to comment thereupon and otherwise raise the points expressed in this memo.

The Agenda Report supporting the Resolution identifies the Dedication as serving the purpose of allowing Pulte to extend Ellington Way to 92<sup>nd</sup> Avenue, thus providing a third access from 92<sup>nd</sup> Avenue to the Project. I have attached the Project site plan included with the Agenda Report to this memo for your easy reference.

The above-cited text incorporating the Project EIR not only contains several misstatements of fact, the text also fails to account for the potential significant effects of the utilization of the land that is subject to the Dedication as a public street and fails to include the fact that the Project will have to be redesigned if it does not include development of the Fleischmann Property. First, the text claims that the Project's EIR (dated September 8, 2005, and which incorporates the Project's Draft EIR dated July 1, 2005) analyzes the Dedication, which is clearly not the case. The Project's EIR does not contemplate any vehicular traffic utilizing the extension of Ellington Way, and therefore, does not address any traffic or other environmental impacts caused by this new public street. The Agenda Report acknowledges that the Project's subdivision map showed the extension of Ellington Way as a twenty (20) foot "public path," and not a public or private street. The Agenda Report further states that, "(t)he proposed extension of Ellington Way conforms with the land use approvals for the project." We are not aware of any land use approvals for the Project which contemplate vehicular traffic on Ellington Way east of Hawkins Drive; please provide us with copies of those land use approvals to which the extension of Ellington Way conforms.

Secondly, the Fleischmann Property is slated to be a part of the Project. The Dreisbachs contract with Pulte allowed Pulte to buy the land parcel by parcel. Pulte has bought all of the

property except for the Fleischmann Property. The Dreisbachs have recently been informed by Pulte that it does not intend to close escrow on the Fleischmann Property or proceed with development on that part of the Project. In the event that Pulte does not, in fact, purchase the Fleischmann Property (and develop the entire Project consistent with its land use approvals), the potential exists that the Project will be dramatically altered. Without being all-inclusive, the absence of the Fleischmann Property from the Project would result in there being only one (1) access point from the Project to 98<sup>th</sup> Avenue. The access point that would remain would be the intersection of Armstrong Drive and 98<sup>th</sup> Avenue. As noted in the Project's draft EIR, this intersection creates a potentially hazardous design feature because the Armstrong/98<sup>th</sup> intersection is offset from Gould Street "...by about 75 feet" (Please see page III.A.17 of the draft EIR). As a result of this design feature, the draft EIR proposed, among other things, that: (1) the Armstrong/98<sup>th</sup> intersection be restricted to right-turn-in and right-turn-out movements only; and (2) the Project's driveway located across from Medford Avenue on the Fleischmann Property would become the primary egress from the Project site (please see pages III.A.17 and III.A.18 of the draft EIR). Therefore, if the driveway located across from Medford Avenue (i.e., the proposed intersection of Blake Drive and 98<sup>th</sup> Avenue) is not built as part of the Project, then the only access from the Project to 98<sup>th</sup> Avenue is an offset, restricted intersection that the draft EIR notes should not be the primary means of egress from the Project.

Furthermore, the draft EIR notes (on page III.A.17 thereof) that the potential lone remaining access point to 98<sup>th</sup> Avenue (i.e., along Armstrong Drive) will be aligned so that it encourages through traffic from 92<sup>nd</sup> Avenue in that it is a straight shot through the Project for those drivers who wish to avoid congestion on San Leandro Street. The loss of the driveway across from Medford Avenue (as well as the loss of the housing units and associated infrastructure originally to be built on the two [2] aforementioned parcels) would result in a dramatically different project than what the EIR contemplates. In addition, if all of the traffic exiting the Project onto 98<sup>th</sup> Avenue must utilize the Armstrong Drive egress point, then it is entirely possible that intersection will need to be signalized. While the exit along the Dedication might affect this problem, it has not been analyzed at all.

The above-referenced text of the Resolution makes the assertion that none of the triggers for additional environmental review of the Project under CEQA are implicated by the Dedication with respect to the Project. This assertion is erroneous in several respects.

Public Resources Code Section 21166 and CEQA Guidelines Section 15162 require the City to prepare a subsequent EIR if: (a) substantial changes in the Project are proposed (and/or substantial changes occur with respect to the circumstances under which the project is undertaken), which will require major revisions of the EIR as a result of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (b) new information of substantial importance which was not known and could not have been known through the exercise of reasonable diligence at the time the EIR was certified, shows that the project will have additional significant environmental effects or that previously examined effects will be substantially more severe than previously described. Section 15163 of the CEQA Guidelines permits the City to prepare a supplement to the EIR in the event that the

presence of any of the conditions set forth in Section 15162 causes only minor modifications to the EIR.

There is no question that the Dedication, by itself, necessitates revisions to the EIR, the only question is the extent of the revisions. The Dedication, by itself, represents a significant change in the design of the Project that will cause new significant effects and/or increase the severity of otherwise existing effects. For example, the EIR does not discuss the delays cars making left turns from the extension of Ellington Way onto 92<sup>nd</sup> Avenue might experience as a result of existing traffic on 92<sup>nd</sup> Avenue. The EIR also does not consider the delays drivers may experience exiting the Project from Ellington Way as a result of other drivers exiting the Project further to the east. Moreover, the EIR does not consider any pedestrian, bicycle or other safety impacts that might result from having an egress from the Project further west along 92<sup>nd</sup> Avenue closer to the heavy truck and other traffic on San Leandro Street.

If the impacts of the Dedication are combined with any failure by Pulte to purchase and develop the Fleischmann Property, as contemplated by the EIR and the PUD, then the extent and significance of resulting additional and changed impacts (and necessary revisions to the EIR) are clearly very significant. Whether you categorize the exclusion of the Fleischmann Property from the Project as either a significant change in the Project, a significant change in the circumstances of the Project, and/or new information that will show there will be additional significant environmental effects (and/or that previously examined effects will become more severe), it is clear that the exclusion of those parcels will have a tremendous effect on the environmental impacts caused by the project and necessitate major revisions to the EIR. The loss of the Blake Drive/98<sup>th</sup> Avenue intersection alone will necessitate the redrafting of most or all of the EIR's discussion of transportation and circulation. For example, the loss of an access point from the Project to 98<sup>th</sup> Avenue may accelerate the need for a traffic signal at the corner of 92<sup>nd</sup> Avenue and International Boulevard, as a result of additional drivers leaving the Project via 92<sup>nd</sup> Avenue. In addition, the loss of the Blake Drive/98<sup>th</sup> Avenue intersection (as indicated above) may cause certain mitigations identified in the EIR to become infeasible. Additionally, the turning restrictions applicable to the Armstrong Drive/98<sup>th</sup> Avenue intersection identified on Page III.A.19 of the EIR will likely be infeasible if Armstrong Drive is the only means of exiting the Project onto 98<sup>th</sup> Avenue. The result will be a significant effect that has already been identified becoming unmitigated; the identified significant effect will also be further exacerbated by the loss of the Blake Drive access point (an issue not discussed in the EIR). In addition, the loss of housing units and attendant infrastructure on those parcels may dramatically alter the engineering of the entire Project and necessitate further revisions to the EIR.

The Dedication alone requires some form of additional attention from the City in terms of environmental review. The potential loss of the Fleischmann Property, combined with the Dedication, requires the City to readdress the entirety of the Project's EIR and to redraft (and recirculate) it to coincide with the Project as it is actually being developed.

The Dreisbachs are still reviewing this matter, and we reserve the right to submit additional comments and testimony with respect to the Dedication (and/or any other changes to the Project) as this matter proceeds.



ATTACHMENT D



November 16, 2007

VIA FACSIMILE

Dreisbach Family Trust  
P.O. Box 7509  
Oakland, California 94601

Dear Ron and Marianne:

Reference is made to the Purchase and Sale Agreement and Preliminary Escrow Instructions dated as of April 28, 2004, as amended (collectively, the "Agreement") between Pulte Home Corporation ("Pulte") and Ronald T. Dreisbach and Marianne Dreisbach, co-trustees of the Dreisbach Family Trust U/D/T March 2, 1992 as amended, JWD-Fleischmann, LLC, a California limited liability company (successor in interest to Jason Dreisbach, Trustee of the Jason W. Dreisbach Living Trust U/D/T April 23, 2001) and SMD-Fleischmann, LLC, a California limited liability company (successor in interest to Sarah M. Dreisbach, Trustee of the Sarah M. Dreisbach Living Trust U/D/T October 24, 2000) and California Refrigerated Express Incorporated, a California Corporation (collectively, "Seller").

This letter shall constitute Pulte's election to terminate the Agreement and Escrow. Pulte will not close escrow on the remaining parcel (the "Fleischmann Parcel") in accordance with the following:

- 1) Pursuant to Section 2 of the Sixth Amendment, Seller shall pay to Pulte One Million Dollars within five (5) business days after the date of this letter.
- 2) Pursuant to Section 4.2 of the Agreement, Pulte shall deliver without warranty at no cost to Seller copies of all governmental permits obtained by Pulte and studies and reports prepared by third parties for Pulte's evaluation of the Fleischmann Parcel, other than confidential information, marketing and financial studies, internal reports and analyses, and architectural plans and specifications, prepared by Pulte's employees or architects, which will belong exclusively to Pulte.
- 3) The Lease shall be deemed terminated as of the effective date of this letter.
- 4) Pursuant to Section 4.3 of the Agreement, Pulte shall record the Quitclaim Deed.

Pulte Home Corporation  
6210 Stoneridge Mall Rd., 5th Floor  
Pleasanton, California 94588  
925.249.3200 925.249.4371

- 5) Pursuant to Section 4.5 of the Agreement, Pulte shall return all Documents (as defined in the Agreement) to Seller.
- 6) Pursuant to Section 4.6 of the Agreement, Pulte shall assign, to the extent that it is legally able, and without warranty, express or implied, any Subdivision Processing (as defined in Section 7.2 of the Agreement) performed by Pulte up to the date of this letter, at no cost to Seller.
- 7) Pursuant to Section 4.7 of the Agreement, Pulte will pay any escrow cancellation charges of Title Company.
- 8) Pursuant to Section 7.3 of the Sixth Amendment, Pulte will cause any stockpiled dirt on the Fleischmann Parcel to be removed.
- 9) Pursuant to Section 4 of the Agreement, this letter will become effective five (5) days after the effective date of its delivery.
- 10) Seller shall be responsible for the costs of the drainage improvements required by the Lot Line Agreement entered into between Seller and Pacific Paper. The sum of Three Hundred Fifty Thousand Dollars should be held back in Escrow to pay for the completion of the drainage improvements.

I am disappointed that Pulte will not be pursuing the purchase of the final phase of the Property and I appreciate your cooperation in this transaction. Please don't hesitate to contact me as we work together to achieve the orderly termination of the Agreement.

Very truly yours,

Pulte Home Corporation



Daniel J. Carroll

cc: Mel Mark, Esq. (via Federal Express)  
Kris Owens (via Federal Express)  
Norman Eggen (via Federal Express)  
Chris Hunter, Esq. (via facsimile (925) 943-1106)



November 29, 2007

Mr. Gary Patton  
City of Oakland  
150 Frank Ogawa Plaza  
Oakland, CA

RE: Tract 7640, Arcadia Park

Dear Gary,

As you are aware, Pulte Homes is no longer in contract to purchase a portion of the Dreisbach property. Attached is Exhibit A which illustrates the portion of the property owned by Pulte and that portion owned by Dreisbach. In an effort to expedite the timely and orderly development of the subdivision, Pulte hereby requests that the City accept the offer of dedication of certain public streets as shown on Exhibit B, which will in turn allow Pulte to complete the public improvements located within the referenced areas. Said acceptance would occur upon Pulte posting acceptable financial security to guarantee the completion of the improvements. This would enable Pulte to complete certain improvements located within the community which serve both the Pulte property as well as the Dreisbach property. It would also be consistent with the Dreisbach's Irrevocable Offer of Dedication which was made upon their execution of the Final Map for Tract 7640.

Please review our proposal and contact me to discuss any questions you may have.

Sincerely,

PULTE HOMES  
Bay Area Division

A handwritten signature in cursive script, appearing to read "Daniel J. Carroll".

Daniel J. Carroll  
Vice President of Land

cc: Don Smith

# EXHIBIT A



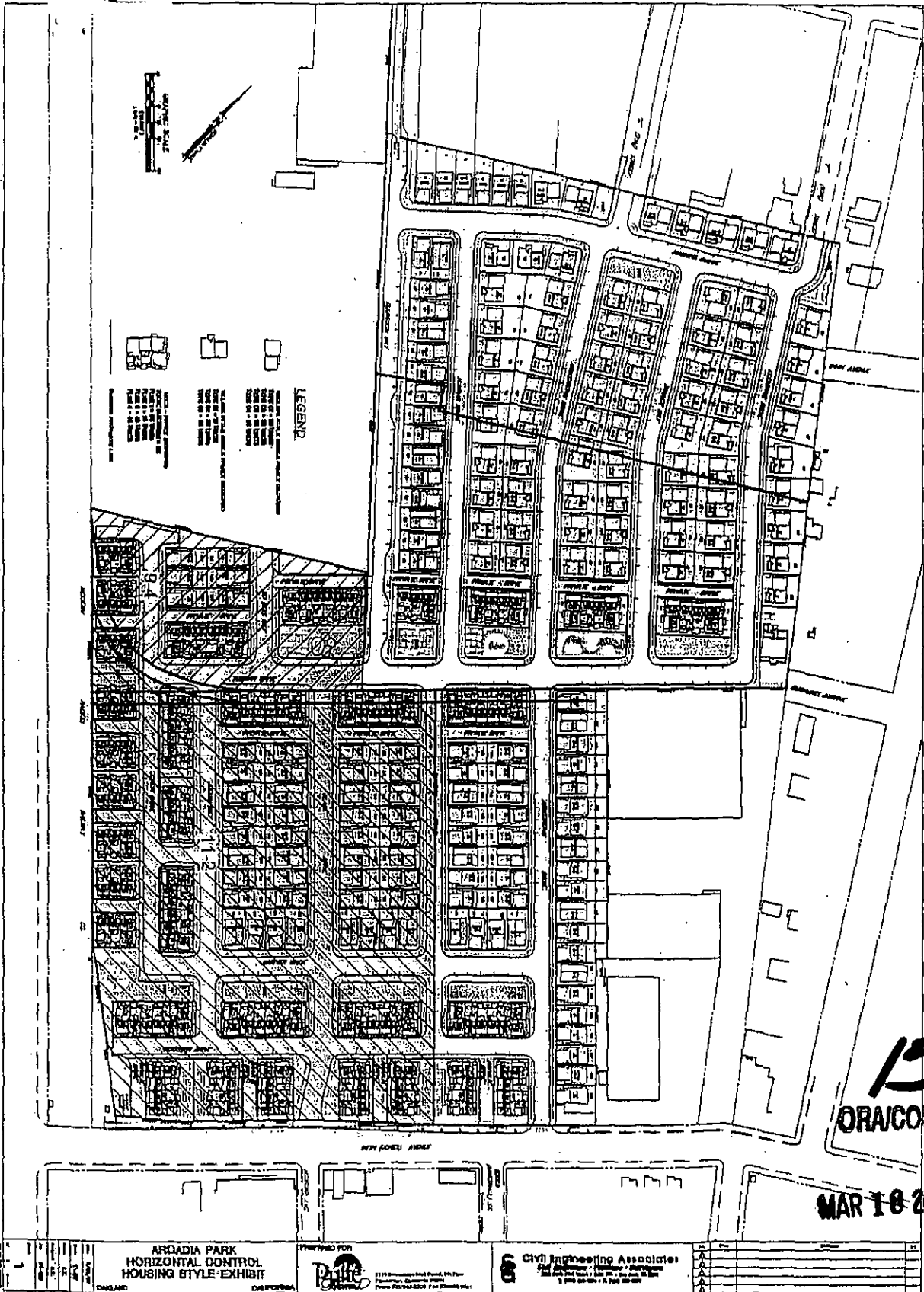
/// DREISBACH PROPERTY  
 Pullie Property

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100</p>	<p>ARGADIA PARK          HORIZONTAL CONTROL          HOUSING STYLE EXHIBIT          CALIFORNIA</p>	<p>Prepared For            4114 Argadia Road, Suite 200          Orange, California 92667          Phone 949/744-2222 Fax 949/744-2222</p>	<p>6 Civil Engineering Associates          2415 East Street, Suite 100          Orange, California 92667          Phone 949/744-2222 Fax 949/744-2222</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100</p>
--	--	--	---	--

~~ORANGE COUNCIL  
 MAR 4 2008~~

~~ORANGE  
 DEC 18 2007~~


EXHIBIT B



AREA TO BE ACCEPTED  
BY CITY OF  
OAKLAND

**15**  
ORA/COUNCIL

MAR 18 2008

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
ARCADIA PARK HORIZONTAL CONTROL HOUSING STYLE EXHIBIT															PREPARED FOR  2115 Avenue of the Stars, Suite 100 Encinitas, California 92024 Phone: (760) 941-1111 Fax: (760) 941-1112										CIVIL ENGINEERING ASSOCIATES 11111 El Camino Real, Suite 100 San Diego, California 92121 Phone: (619) 594-1111 Fax: (619) 594-1112										MAR 18 2008																																																																

~~ORA/COUNCIL  
MAR 4 2008~~

~~ORA/COUNCIL  
DEC 18 2007~~