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REVISED

APPROVED AS TO FORM AND LEGALITY

Mark P. Ward  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. 80365 C.M.S.

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**A RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE PLANNING COMMISSION CERTIFYING THE EIR AND APPROVING THE SUBDIVISION OF TWO PARCELS INTO FOUR LOTS FOR THE DEVELOPMENT OF FOUR SINGLE FAMILY RESIDENCES LOCATED AT THE INTERSECTION OF CRESTMONT DRIVE AND WESTFIELD WAY (CASE FILE NUMBER(S) A06-532; ER05-007; & TPM7940), WITH REVISED CONDITIONS OF APPROVAL**

**WHEREAS**, the subject property has been the focus of a number of previous development applications, none of which received final City approval, for various reasons; and

**WHEREAS**, on March 31, 2005, the developer Andalucia Properties, LLC applied for a Tentative Parcel Map and Environmental Review, to subdivide two parcels into four lots for the construction of four single family detached dwellings located at the intersection of Crestmont Drive and Westfield Way; and

**WHEREAS**, an Initial Study was prepared and the applicant requested that a Focused Environmental Impact Report (EIR) be prepared; and

**WHEREAS**, a Notice of Preparation (NOP) of a Draft EIR (DEIR) was issued on December 9, 2005 and the City of Oakland took comments on the appropriate scope of the EIR from members of the public as well as other governmental agencies; and

**WHEREAS**, on May 2, 2006 the DEIR was released for a 45-day public review and comment period;

**WHEREAS**, the DEIR focused on analyzing issues of biological resources, geology and soils, and traffic, as well as responding to the NOP comments submitted during the EIR scoping period; and

**WHEREAS**, on June 7, 2006 a duly noticed public hearing was held before the City Planning Commission for the project as well as to receive comments on the adequacy of the DEIR; and

**WHEREAS**, on June 16, 2006 the comment period for the DEIR closed and city staff and the project sponsor's environmental consultant began compiling comments and preparing responses; and

**WHEREAS**, on October 6, 2006 the Final Environmental Impact Report (FEIR) was published; and

**WHEREAS**, on October 18, 2006, the Planning Commission held a duly noticed public hearing and certified the Environmental Impact Report and approved the application for a Tentative Parcel Map (TPM); and

**WHEREAS**, an appeal of the Planning Commission's October 18, 2006 actions were filed by Markus Alexis on October 27, 2006, on behalf of the Crestmont Neighbors ("Appellant"); and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on January 16, 2007; and

**WHEREAS**, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on January 16, 2007; now, therefore, be it

**RESOLVED:** That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the January 16, 2007, City Council Agenda Report and the October 18, 2006, Planning Commission report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's environmental determination is upheld, and the Planning Commission's decision approving the TPM is upheld, subject to the final conditions of approval adopted by the Planning Commission, as may be amended here; and be it

**FURTHER RESOLVED:** The Mitigation Monitoring and Reporting Program is hereby revised to add additional Standard Conditions of Approval relating to asbestos. Specifically, *MMRP No. II (Air Quality-Asbestos)* is revised as follows (*new additions in underscore*):

<b>Construction Grading Operation Requirements</b>	
<b>Administrative</b>	<ol style="list-style-type: none"> <li>1. <u>Asbestos Dust Mitigation Plan submitted to the District and approved prior to engaging in the any construction or grading operation.</u></li> <li>2. <u>Notify APCO next business day upon discovery of naturally asbestos, serpentine, or ultramafic rock.</u></li> <li>3. <u>Submit Asbestos Dust Mitigation Plan within 14 days upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock.</u></li> <li>4. <u>Report bulk sampling results conducted by the owner/operator to document applicability done at the request of APCO.</u></li> </ol>
<b>Dust Control</b>	<ol style="list-style-type: none"> <li>1. Vehicle speed &lt; 15 mph</li> <li>2. Sufficient water applied to the area prior to disturbance to prevent visible emissions from crossing project boundaries.</li> <li>3. Areas to be graded or excavated kept adequately wetted to prevent visible emissions from crossing project boundaries.</li> <li>4. Storage piles kept adequately wetted, treated with chemical dust suppressant, or covered when the material is not being added or removed.</li> <li>5. <u>Storage piles must be stabilized when inactive for more than 7 days by adequately wetting, establishing surface crusting, chemical dust suppressant, covering with tarps or vegetative cover, installation of wind barriers around three sides or open areas, or any measure as effective.</u></li> <li>6. <u>Equipment must be washed down before moving from the property onto paved roadway.</u></li> <li>7. <u>Track-out prevention device installed (gravel pad, tire shaker, wheel wash system, 50 feet of pavement extending from intersection with paved public road, or other measure as effective.</u></li> <li>8. Visible track-out on paved public road must be cleaned using wet sweeping or HEPA filter equipped vacuum device within 24 hours.</li> <li>9. <u>Post project stabilization of disturbed surfaces using vegetative cover, 3" of non- asbestos-containing material, paving, or other measure deemed sufficient to prevent 10 mph winds from causing visible emissions.</u></li> <li>10. <u>Implement the preceding dust control measures within 24 hours upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock.</u></li> <li>11. <u>Implement provisions of District approved Asbestos Dust Mitigation Plan within 14 days of approval after discovery of naturally occurring asbestos, serpentine, or ultramafic rock.</u></li> </ol>

; and be it

**FURTHER RESOLVED:** The Mitigation Monitoring and Reporting Program is hereby revised to add additional Standard Conditions of Approval relating to slope stability. Specifically, *MMRP No. V, SCA 3 (Geology and Soils)* is revised as follows (*new additions in underscore*):

Project elements shall meet the Uniform Building Code Seismic Zone 4 design standards or better to withstand expected earthquake ground shaking, liquefaction, or other ground failures. The Geotechnical Report shall also analyze slope stability and the addition of private landscaping and drainage impacts of the new houses on overall slope stability. Design shall be in accordance with the recommendations of the final Geotechnical Report, and shall be verified for seismic loading by California-registered Professional Civil and Geotechnical Engineers, recommendations by the same regarding site preparation and design shall be incorporated into project plans. The final Geotechnical Report shall be reviewed by a city approved peer reviewer prior to issuance of the building permits.

; and be it

**FURTHER RESOLVED:** The Conditions of Approval is hereby revised to add additional Standard Conditions of Approval relating to permit processing. Specifically, condition 8b *is revised as follows (new additions in underscore)*:

- b. *Prior to the issuance of the Final Map or permits for any grading or commencement of land disturbance activity*

The applicant shall consult with and obtain all necessary permits from the US Fish and Wildlife Service and the California Department of Fish and Game as may be required. Proof of such permits shall be furnished to the Zoning Division of CEDA.

**FURTHER RESOLVED:** That prior to denying the appeal and upholding the Planning Commission's decision to approve the TPM, the City Council independently reviewed and considered the EIR and the Planning Commission's CEQA findings and hereby determines that in support of the City Council's decision to certify the EIR and approve the TPM, the City Council affirms and adopts, as its findings, the January 16, 2007, City Council Agenda Report and the October 18, 2006, Planning Commission report, including without limitation the CEQA findings; and be it

**FURTHER RESOLVED:** That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Draft and Final EIR, underlying technical studies and all related/supporting materials, and all notices relating to the Project application and attendant hearings;
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning

Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 16 2007, 2007

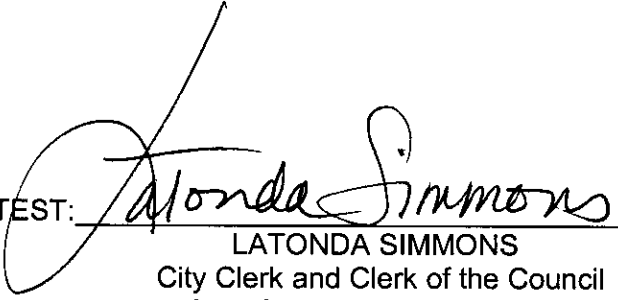
**PASSED BY THE FOLLOWING VOTE:**

AYES- **BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,  
REID, QUAN, AND PRESIDENT DE LA FUENTE** — 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

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

**LEGAL NOTICE:**

**ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.**