

**CITY OF OAKLAND**  
**COUNCIL AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2005 JUL -7 PM 2:31

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community & Economic Development Agency  
DATE: July 19, 2005  
RE: A PUBLIC HEARING AND ADOPTION OF A RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A PLANNED UNIT DEVELOPMENT FOR SEVEN SINGLE-FAMILY RESIDENTIAL LOTS ON KENILWORTH ROAD (OFF STRATHMOOR DRIVE, IN THE GENERAL AREA BETWEEN DRURY ROAD AND NORFOLK ROAD)

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### **SUMMARY**

This project, to develop a 2.9 acre site for the construction of seven single-family dwellings, was approved by the Planning Commission on May 4, 2005 after two public hearings. On May 13, 2005, Jim Heldman filed an appeal of the Planning Commission's approval on behalf of himself and seven neighbors (Attachment A). The appellants allege that the Planning Commission violated the California Environmental Quality Act (CEQA) by improperly applying the Categorical Exemption for in-fill developments to the project. The appellants state in their appeal that they are not opposed to the development itself, but rather question the procedural validity of the Planning Commission's approval. Staff responses to the grounds for appeal are discussed in the Key Issues and Impacts section of this report. Staff recommends that the Council uphold the Planning Commission's approval of this project and deny the appeal.

### **FISCAL IMPACT**

The project involves a private development that does not request or require public funds. The appellant submitted the required appeal fees. If constructed, the project would provide a positive fiscal impact to the City of Oakland through increased property tax valuation.

### **BACKGROUND**

The subject site is approximately 2.9 acres located in the Oakland hills, on Kenilworth Road, off of Strathmoor Drive in the general area between Drury Road and Norfolk Road. This application would establish a PUD (Planned Unit Development) to prepare the site for the sale and construction of seven custom single-family dwellings, which will be maintained through a maintenance agreement among the seven property owners. In addition, the project will create a boundary conservation easement to prevent the future extension of Kenilworth Road.

The proposed PUD includes the following components: (1) a tentative parcel map to subdivide and reconfigure four existing legal lots into seven lots, (2) development of the subdivision

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improvements for the project site and specific development footprints for seven custom-built, single-family residences, including parking, landscaping, and post-construction stormwater management facilities, (3) roadway improvements, including widening and paving the unpaved portion of Kenilworth Road, (4) wildland fire protection, (5) geotechnical and erosion stabilization of the site and of upslope properties, (6) enhancement and protection of a small on-site wetland and drainage course, including establishment of a creek boundary conservation easement and, (7) various other improvements incorporated as part of the project that address lighting, air quality, trees, archeological, seismic, erosion, hazardous materials, water quality, noise and solid waste.

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

Staff has determined that the project meets the conditions for the In-Fill Development Projects exemption contained in CEQA Guidelines Section 15332 (“Infill Exemption”):

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as applicable zoning designation and regulations;
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- (c) The project site has no value as habitat for endangered, rare or threatened species;
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- (e) The site can be adequately served by all required utilities and public services.

An Environmental Evaluation prepared for the project demonstrates that the project meets CEQA Guidelines section 15332 (Infill Exemption), that no exceptions apply that would invalidate use of the CEQA exemption and the project will not have a significant impact on the environment. Therefore, staff has determined that the project is exempt from Environmental Review pursuant to the Infill Exemption.

On May 4, 2005, the Planning Commission made the required findings and approved the Planned Unit Development, Tentative Parcel Map, and Creek Permit, as well as staff’s environmental determination.

### **KEY ISSUES AND IMPACTS**

The appellants’ letters are attached as Attachment A. The grounds for the appeal, as contained in the appeal letters, are shown verbatim below in bold text. A staff response follows each ground in italic type.

**The CEQA exemption applied to the project by the Planning Commission is not applicable/legal because:**

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**1. The project does not comply with specific criteria in the exemption with respect to endangered species.**

*Staff Response: A condition of the In-Fill Exemption is that the project site has no value as habitat for endangered, rare or threatened species. The appeal raises concerns regarding the potential for special-status plant species and the Alameda whipsnake to occur on the site.*

*Literature research and field surveys were conducted to establish the biological setting of the project site (LSA Associates, Inc., 2001; Olberding Environmental, 2003a, 2003b, 2003c). Fall and subsequent spring surveys did not identify the presence of any candidate, sensitive or special-status plant species on the site and concluded that conditions at the project site are not likely to support such plant species. This was confirmed in a June 28, 2005 clarification letter from Olberding Environmental.*

*According to two separate habitat analyses for the site, the site does not provide suitable habitat for special status wildlife species, including the Alameda whipsnake. This was confirmed in the June 28, 2005 clarification letter.*

*Appellants allege that the biological survey excluded an assessment of potential whipsnake habitat on an acre subsequently added to the site. In fact, the entire 2.9 acre site was addressed in the habitat analyses, as well as the site's location adjacent to a large, privately owned undeveloped area (apparently part of a large residential estate), as explained in the June 28, 2005 clarification letter.*

*The Army Corps of Engineers and California Department of Fish and Game (DFG) were also consulted in 2003 for the 1.4 acre portion of the property that contains the creek and wetland features. The Corps verified a small wetland and drainage swale, and DFG issued Lake and Streambed Alteration Agreement (No. 1600-2003-5143-3) that authorized the proposed removal and pruning of riparian vegetation (there are no impacts to the wetland or creek features proposed or authorized). In its authorization of this vegetation removal and pruning activity, DFG did not express any concerns with any rare, threatened or endangered species, nor require any species-related mitigations/conditions or future notification. (The 3 lots that were subsequently added to the PUD application do not contain any wetland or creek features that are subject to DFG or Corps jurisdiction.)*

*Accordingly, staff found that the project site has no value as habitat for endangered, rare or threatened species.*

**2. The Creek Protection Permit is not a Development Permit and therefore not subject to this exemption.**

*Staff Response: Appellants allege that because a Category 3 Creek Protection Permit (required for the proposed infrastructure improvements) is a discretionary project "subject to CEQA review" per section 13.16.140 of Oakland's Creek Protection Ordinance it does not qualify for the Infill Exemption.*

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*CEQA requires that the entire project be evaluated for environmental impacts. Here, the proposed project is the development of seven single-family dwellings. Numerous approvals/permits are necessary for the development project, including a Tentative Parcel Map, Planned Unit Development and a Creek Protection Permit. Contrary to Appellants' contentions, the Creek Protection Permit is a development permit, as it is required to develop the property. The CEQA In-fill Exemption is not limited to a specific type of permit.*

*Oakland's Creek Protection Ordinance provides that Creek Permit Categories I and II are ministerial and therefore not subject to any CEQA review whatsoever. Categories III and IV, on the other hand, are discretionary actions, and therefore subject to some level of CEQA review. As discussed at the May 4, 2005 Planning Commission hearing, the use of an exemption is one appropriate method of satisfying the requirement for "CEQA review" of a project required by section 13.16.140. Indeed, the vast majority of Category III and IV Creek Protection Permits issued by the City are eventually found to be consistent with at least one or more of the 33 classes of CEQA exemptions.*

*Oakland Municipal Code section 17.158.170 specifically provides in relevant part: "Projects requiring any discretionary approvals may be subject to environmental review under CEQA unless otherwise exempt..."(underline added). As required by sections 13.16.140, because the Category 3 Creek Protection Permit is discretionary, the City performed the "environmental review under CEQA" required by Section 17.158.170 and determined the project was exempt because it was consistent with the In-Fill Exemption.*

**3. Use of this exemption is prohibited by CEQA's Article 19, Section 15300.2, Exceptions to Categorical Exemptions, as supported by clear recent case law.**

*Staff Response: Appellants identify three exceptions to the use of Categorical Exemptions that could potentially apply to this project. These exceptions are based on location (section 15300.2(a)), cumulative impact (section 15300.2(b)), and unusual circumstances (section 15300.2(c)). Appellants also cite the California Court of Appeal's decision in Salmon Protection and Watershed Network et al. v. The County of Marin (Case No. A105592, January 18, 2005) ("SPAWN") in support of their appeal.*

*Staff determined, on the basis of a detailed environmental evaluation, that none of these exceptions apply to the project.*

*The section 15300.2(a) exception expressly applies only to class 3, 4, 5, 6 and 11 exemptions. It does not apply to the exemption used here (class 32, In-Fill Development Projects).*

*The section 15300.2(b) exception applies if the cumulative impact of successive projects over time is significant. Staff has determined, based on an evaluation of potential environmental impacts, that this project would not have any cumulatively considerable impacts.*

*Lastly, the exception in section 15300.2(c) applies if there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. This*

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*exception also does not apply here as staff found, based on a detailed environmental evaluation, that this project could not have a significant effect on the environment and there were no unusual circumstances here. This site presents similar challenges as other creek side development projects in Oakland. There is nothing unusual about this site that sets it apart from the over 3,000 other creek side properties, containing over 40 miles of unculverted creeks.*

*In the SPAWN case cited by appellants, the County of Marin's approval of a project to build a four-bedroom house in a designated "stream conservation area" was set aside because the County wrongly applied CEQA's "New Construction or Conversion of Small Structures" exemption to the project. The court held that the exemption did not apply because the project fell within a stream conservation area and had the potential to impact a County designated environment resource of critical concern, thereby falling within the exception to Categorical Exemptions contained in CEQA Guidelines section 15300.2(a).*

*The County Board of Supervisors in SPAWN found that the project had potential "adverse impacts on the habitat of threatened or endangered species," and created "possible disharmonies with the creek." Both the County Community Development Agency and the County Planning Commission imposed comprehensive mitigation measures on the project to address these impacts. The Board then concluded that the project, as mitigated, would not result in adverse effects. The court held that the Board's original findings of potential adverse impacts disqualified the project for a categorical exemption, and that it should not have taken the mitigation measures into account when it ultimately determined whether the project would have significant environmental effects.*

*The present case differs significantly from SPAWN. Here, the project itself was designed in such a way to avoid potential significant environmental impacts and to meet City requirements for issuance of development-related permits. No mitigation measures were imposed on the project by the City and both the Oakland Community & Economic Development Agency and the Planning Commission found that the project would not have a significant impact on the environment. The improvement measures that form part of the project (relating to noise, air quality, habitat, etc.) are standard conditions of approval for hillside/creekside lots and/or urban in-fill development, which are designed to meet City requirements. CEDA's Planning and Zoning Division has developed standard conditions of approval, some of which the project applicant chose to incorporate into his project; other standard conditions were imposed by the City (see "Standard Conditions of Approval—A List of Conditions of Approval Templates for projects approved under the Oakland Planning Code (Version 10/01/03)). All relevant standard conditions would have been imposed regardless of CEQA. Thus, even if the project were found to be statutorily exempt from CEQA, the relevant standard conditions of approval would have been applied. Staff went through its normal course of project review for such properties, which includes habitat review and creek ordinance requirements, and found no "unusual circumstances" requiring special mitigation measures. This project is typical of small developments in the Oakland hills.*

*Appellants argue that the SPAWN decision means that a categorical exemption cannot be used whenever a project is structured in such a way as to minimize environmental impacts or meet*

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*City requirements. This reading is untenable as it would mean that no project containing standard conditions of approval, designed to meet City requirements for development-related permits, would ever qualify for an exemption. Infill projects that contain standard conditions of approval and do not pose a significant threat to the environment, such as this one, should be good candidates for categorical exemptions.*

**4. The CEQA Exemption applied to the project by the Planning Commission is not applicable/legal because use of that exemption is not provided for in the City's Review Regulations (Municipal Code Section 17.158.280).**

*Staff Response: Section 17.158.280 lists "activities that are considered to be within the twenty-nine (29) classes of categorical exemptions listed in Article 19 of the Guidelines." Section 17.158.280 was drafted before the in-fill housing exemption was promulgated, when there were only 29 classes of Categorical Exemptions (now there are 33). Regardless, section 17.158.280 specifically states that the list is not exhaustive ("These activities include but are not limited to the following...").*

**5. The project site is neither urban nor infill.**

*Staff Response: CEQA Guidelines section 15332(b) requires a project site to be "substantially surrounded by urban uses." Although CEQA does not expressly define "urban uses," CEQA Guidelines section 15387 defines "urbanized area" as "a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile." Under section 15387, the City can determine whether a project is in an urbanized area by referring to the U.S. census maps, which designate certain areas as urban. As discussed at both the April 20 and May 4, 2005 Planning Commission hearings, the 2000 U.S. census maps indicate that the entire City of Oakland is an urbanized area. For the 2000 census, the U.S. Census Bureau classified all territory, population and housing located within an urbanized area or urban cluster as urban.*

*Moreover, the site is also zoned R-30, a One-Family Residential zone, intended to "create, enhance and preserve areas for single-family dwelling in desirable settings for urban living, and is typically appropriate to already developed lower density dwelling areas of the City." The site is also designated as Hillside Residential in the general plan. Key objectives of the Hillside Residential land use classification are*

- Develop high-quality custom detached single family structures in keeping with surrounding residential development.
- Foster healthy, vital, and distinctive neighborhoods with adequate open space.
- Encourage high-quality housing for a range of incomes in Oakland's neighborhoods.
- Construct housing to meet current and future needs of the Oakland community.
- Preserve, protect, and enhance riparian areas and biological resources.

*Thus, the general plan and zoning call for urban uses at the project site.*

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*In addition, the actual physical development pattern of the surrounding area demonstrates that the project site is in a low density, urbanized residential setting. The project site is completely surrounded by residential development, including single-family dwellings to the east, west and north and multi-family dwellings to the south. Although there is a large privately owned hillside, residential estate to the south and west, it is not publicly owned or designated open space. Further, the site, including the right-of-way of Kenilworth Road, was platted as part of the original 1925 Gwen Units of the Highlands of Oakland subdivision which contains approximately 373 residential lots. Although the April 20, 2005 Staff Report to the City Planning Commission (page 4) described the subject site as "located at the edge of existing development," a more accurate description would be that the "site is separated from the edge of existing development by other urban residential uses, including roadways and residential structures, and that development of the site would not extend the urban boundaries but rather fill-in some of the checkerboard development pattern, which typifies in-fill development."*

*In sum, the project site is substantially surrounded by urban uses.*

## **SUSTAINABLE OPPORTUNITIES**

This section describes the sustainable opportunities that are being addressed or will be implemented as part of the item, such as:

- Economic: The project will expand the available housing inventory in the City of Oakland.
- Environmental: The project has been found to be exempt under Section 15332 "In-Fill Development Projects" of the State of California Environmental Quality Act (CEQA). Furthermore, the project would provide additional benefits in the form of slope stabilization, improved stormwater and sanitary sewer infrastructure, improvements to Kenilworth Road, and creek protection and enhancement.
- Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

## **STAFF RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council adopt the attached Resolution upholding the Planning Commission approval and denying the appeal.

1. The Planning Commission's decision was based on its thorough review of all pertinent aspects of the project.
2. An environmental evaluation prepared for the project demonstrates that the project will not have a significant impact on the environment.
3. The project meets the conditions for the In-Fill Exemption.

## **ALTERNATIVE CITY COUNCIL ACTIONS**

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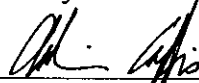
The City Council also has three other options in addition to the recommended action above.

1. The City Council could uphold the appeal and reverse the Planning Commission decision to apply the In-Fill Exemption to this project, thereby requiring preparation of an Initial Study in order to determine the appropriate level of environmental scrutiny under CEQA.
2. The appeal could be denied, but with additional conditions imposed on the project.
3. The item could be continued pending new information or further clarification of conditions or property inspection.

**ACTION REQUESTED OF THE CITY COUNCIL**

1. Affirm staff's environmental determination to apply an In-fill Exemption to this project under CEQA guidelines Section 15332.
2. Adopt the attached Resolution upholding the Planning Commission approval and denying the appeal.

Respectfully submitted,



\_\_\_\_\_  
**CLAUDIA CAPRIO**

**Development Director**

**Community & Economic Development Agency**

Approved and Forwarded to the City Council:



\_\_\_\_\_  
**DEBORAH EDGERLY**

**Office of the City Administrator**

**ATTACHMENTS:**

- A. Appellant's letter of May 12, 2005 and May 13, 2005
- B. Planning Commission April 20, 2005 Staff Report and May 4, 2005 Addendum
- C. Clarification letter from Biologist

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OFFICE OF THE CITY CLERK  
OAKLAND

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OAKLAND CITY COUNCIL

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

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Mark P. Wald*

**RESOLUTION DENYING THE APPEAL AND SUSTAINING THE  
DECISION OF THE CITY PLANNING COMMISSION IN  
APPROVING THE APPLICATION FOR A PLANNED UNIT  
DEVELOPMENT FOR SEVEN SINGLE-FAMILY RESIDENTIAL  
LOTS ON KENILWORTH ROAD ( OFF STRATHMOOR DRIVE, IN  
THE GENERAL AREA BETWEEN DRURY ROAD AND NORFOLK  
ROAD)**

**WHEREAS**, the property owners, David McDonald and Eva Gero, filed an application on April 28, 2004 for a Planned Unit Development for seven single-family residential lots on Kenilworth Road (Project); and

**WHEREAS**, the application was duly noticed for the City Planning Commission meeting of April 20, 2005 and the Commission took testimony and considered the matter but the matter was continued to the May 4, 2005 Planning Commission meeting; and

**WHEREAS**, the May 4, 2005 City Planning Commission meeting was also duly noticed and the Commission took testimony and considered the matter, closed the public hearing, deliberated and voted to affirm staff's environmental determination and approve the Project (6-0-1); and

**WHEREAS** on May 13, 2005, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was received; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on July 19, 2005; and

**WHEREAS**, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on July 19, 2005;

*14.2*  
ORA/COUNCIL

JUL 19 2005

**Now, Therefore, Be It**

**RESOLVED:** The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15332 "In-Fill Development" of the State CEQA Guidelines.

**FURTHER RESOLVED:** That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown that the City 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, based on the April 20, 2005 Staff Report and the May 4, 2005 Staff Report Addendum to the City Planning Commission (attached as Exhibit "A") and the July 19, 2005, City Council Agenda Report (attached as Exhibit "B") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's CEQA findings and decision are upheld, and the Project is approved (the Planned Unit Development, Tentative Parcel Map and Creek Protection Permit), subject to the findings and conditions of approval contained in Exhibits "A."

**FURTHER RESOLVED:** That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the April 20, 2005 Staff Report and the May 4, 2005 Staff Report Addendum to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval) all attached as Exhibit "A", as well as the July 19, 2005, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions relating to CEQA), except where otherwise expressly stated in this Resolution.

**FURTHER RESOLVED:** That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

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

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all

related/supporting final materials, and all final notices relating to the application and attendant hearings;

5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;

6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

**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, 3<sup>rd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA.

**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, \_\_\_\_\_, 2005

**PASSED BY THE FOLLOWING VOTE:**

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

NOES-

ABSENT-

ABSTENTION-

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

LaTonda Simmons  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California

19.2  
ORA/COUNCIL

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**CITY OF OAKLAND**  
**REQUEST FOR APPEAL OF DECISION TO**  
**PLANNING COMMISSION OR CITY COUNCIL**

(REVISED 8/14/02)

**PROJECT INFORMATION**

Case No. of Appealed Project: PUD 04-195, ERO40006, TYP 8228, CREEK PROTECTION PERMIT  
Project Address of Appealed Project: KENILWORTH ROAD (OFF STRATHMOOR DRIVE)

**APPELLANT INFORMATION:**

Printed Name: JAMES R. HELDMAN Phone Number: (510) 486-1645  
Mailing Address: 7067 DEVON WAY Alternate Contact Number: (510) 845-1945  
City/Zip Code OAKLAND 94705 Representing: \_\_\_\_\_

An appeal is hereby submitted on:

**AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)**

**YOU MUST INDICATE ALL THAT APPLY:**

- Approving an application for an Administrative Project
- Denying an application for an Administrative Project
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) \_\_\_\_\_

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
- Other (please specify) \_\_\_\_\_

RECEIVED  
MAY 18 2006  
CITY PLANNING COMMISSION  
ZONING DIVISION

**A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)**     Granting an application to:    OR     Denying an application to:

EVA GERO and DAVID McDONALD

(continued on reverse)

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

RECEIVED  
MAY 18 2005  
CITY PLANNING COMMISSION  
ZONING DIVISION

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) CEQA EXEMPTION, (per OPC section 17.158.220 (F.))

An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

The appeal is based on the following: (Attach additional sheets as needed.)

1. Project invalid because CEQA Exemption invalid.
2. CEQA Exemption invalid because:  
See attached explanation dated May 12, 2005

Supporting Evidence or Documents Attached. (The appellant must submit all supporting evidence along with this Appeal Form.)

James R. Heldman  
Signature of Appellant or Representative of  
Appealing Organization

May 13, 2005  
Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

**James Ronald Heldman**  
7067 Devon Way  
Berkeley, CA 94705  
(510) 486-1645 Telephone  
(510) 841-6708 FAX  
jim@heldman.com

**CITY OF OAKLAND**

**May 13, 2005**

I am submitting this Appeal on behalf of seven of our neighbors whose homes have addresses on either Devon Way or Norfolk. This appeal has the support (both agreement about the issue and financial in the sense that each of us have contributed to the filing fee).

Our primary concern is that the process for approval of a major development of seven spec homes in our neighborhood is proceeding without adherence to the procedures of the City of Oakland or compliance with CEQA as described in the attached letter from Richard Grasseti dated May 12, 2005.

Attached also is a copy of Assessors Map 48H which shows Kenilworth Road as well as the locations of the property owners whose property abuts Kenilworth (their properties are outlined to show how they represent ALL of the neighbors with developed properties who are on the East side of Kenilworth). Their names and addresses are:

Mark and Margie Medress	7061 Devon Way
Jim and Tina Heldman	7067 Devon Way
Dr. Howard Cohen	7079 Norfolk
Joe and Nicky Dovener	7089 Norfolk
Don and Janice Holve	7101 Norfolk
Joe and Nora Ching	7107 Norfolk
Leslie Becker	119 Strathmoor
Gary and Amy Jones	149 Strathmoor
Ken and Joann Nitzberg	7011 Devon

Regards,



Jim Heldman

Highlands of Oakland (BK 5 Pg 39)  
 Parcel Map 1562 (BK 4 Pg 72)

win unit of the

471 7614

Stathamoor

Kenilworth

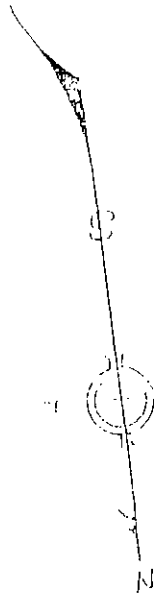
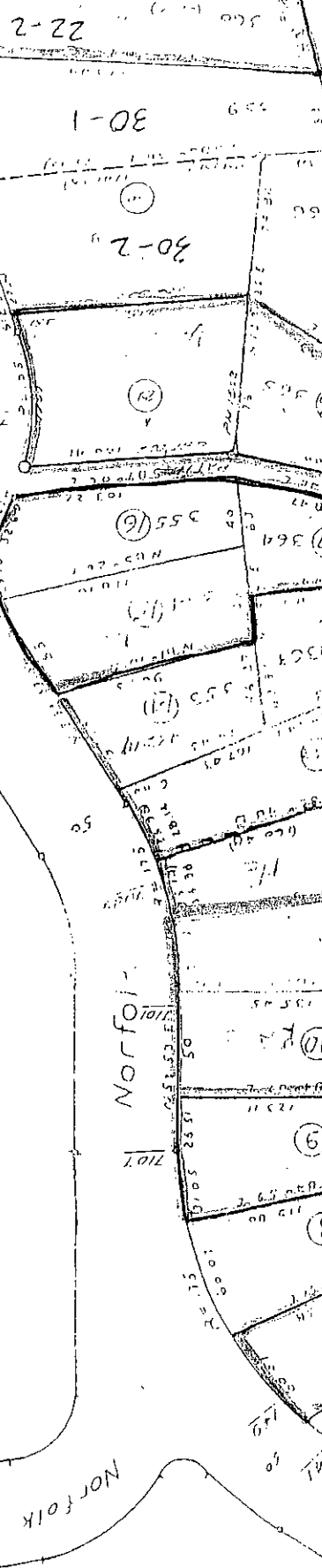
Norfolk Road

Drive

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Oakland City Council  
City Hall  
Oakland California

May 12, 2005

**SUBJECT: OVERVIEW OF APPEAL OF PLANNING COMMISSION APPROVAL  
OF PUD 04-195, TPM 8228, CREEK PROTECTION PERMIT, AND CEQA  
EXEMPTION FOR KENILWORTH DRIVE PROJECT**

Dear Councilmembers:

This letter summarizes the reasons for our appeal of the above-referenced Planning Commission approvals. The primary reason for this appeal is the Planning Commission's clear and blatant violation of the California Environmental Quality Act (CEQA), upon which the other approvals (PUD, TPM, CPP) were based. Absent an adequate CEQA approval, the other approvals also are not valid. However, appellants are not opposed to the development itself, but rather are concerned that we, and the Citizens of Oakland, are being denied the due process and transparent decision-making, and informed self-governance afforded by proper implementation of the CEQA process. It has become apparent that this is but one of many instances where the City Planning Commission has abused and, as a matter of policy, is willfully continuing to abuse its discretion with respect to the CEQA exemption process through the illegal exemption of development. Consequently, we have also contacted the California Attorney General's Office and are keeping them apprised of developments on this issue.

The reasons for our appeal of the CEQA Exemption and the subsequent approvals that rely on that exemption are summarized below, and are elaborated in the supporting documents.

The CEQA Exemption applied to the project by the Planning Commission is not applicable/legal because:

1. The project does not comply with specific criteria in the exemption with respect to endangered species. The exemption, to be applicable, requires that a site "have no value as habitat for endangered, rare, or threatened species." This criteria does not state that the site must have no endangered species on it to be exempt, but rather that it "has *no* value *as habitat*" [emphases added] for those species. The biological report for the project (LSA Associates, Inc, December 13, 2001, on file at the City Planning Department and hereby incorporated by reference) found that "Five special-status plant species could potentially occur on the Kenilworth site." The report further goes on to say that "...five rare plant species cannot be ruled out as potentially occurring on the property." This clearly indicates that the site was habitat for these rare, threatened, or



endangered species. In fact, this possibility was taken so seriously that a series of three surveys were taken in 2001 for these species. Although they were not found in those surveys, this does not preclude the species from occurring on the site habitat. Similarly, the potential for the federally listed Alameda whipsnake habitat to occur on the site is noted in the LSA report "patches of habitat...are marginally suitable", however this potential is discounted because of the extent of eucalyptus forest and urban development surrounding the site make it highly unlikely that a whipsnake could move onto this property. Yet that analysis fails to note or account for the large (30+ acre) exposed grassland area on the Fenton property immediately adjacent to the property. This omission exposes another critical weakness of the exemption - it was based on a biological survey for a much smaller 4-lot PUD that excluded any biological assessment of the potential whipsnake habitat on the acre subsequently purchased from Felton by the applicant and added to the project site. **There is zero evidence in the record that that portion of the site, the portion most likely to have whipsnake habitat, was ever evaluated in any of the project's biological assessments.**

2. **The Creek Protection Permit (CPP) is not a Development Permit and therefore not subject to this exemption.** The project proposes work setbacks of 20 feet of the onsite creek. Under the City's Creek Protection Ordinance (CPO), a Category 3 Creek Protection Permit (CPP) would be applicable to the proposed project<sup>1</sup>. A Category 3 CPP is a discretionary project subject to CEQA review (per section 13.16.140 of the CPO). The CPP is not a development permit, nor is it an urban infill permit. Rather, the CPP is required for the Creek Protection Plan and associated activities near the protected creek, (infill or otherwise). The CPP is not for infill development, but rather for creek-related activities therefore, the CPP is not subject to the infill development exemption.
3. **Use of this exemption is prohibited by CEQA's Article 19, Section 15300.2, Exceptions to Categorical Exemptions, as supported by clear recent case law.** The City's Environmental Review regulations specifically state that exemptions are only appropriate "provided that none of the exceptions to categorical exemptions identified in Guidelines Section 15300.2, nor any of the qualifiers listed in the individual exemption classes...apply." Section 15300.2 unambiguously states that, "All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." Development in the project area is systematically eliminating larger and larger areas of potential habitat for the endangered plants and animals identified in the LSA Biological Report. This development is the very reason that these species are endangered, rare, or threatened. This was discussed in detail in the U.S. Fish and Wildlife Service's Draft Recovery Plan for Chaparral and Scrub Community Species East of San Francisco Bay (November 2002), which is hereby incorporated by reference (See p 1-15, which enumerates some of the specific developments responsible for the decline of the whipsnake).

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<sup>1</sup> It is unclear why a Category 3 Creek Protection Permit is applied by the City. G will be within 4 feet of the onsite creek/wetland, which would seem to require a Category 4 permit.

Further guidance on this issue is provided in a very recent California Appeals Court decision, *Salmon Protection and Watershed Network et. al v. The County of Marin (SPAWN)*, (January 18, 2005). That decision, a copy of which was provided to each member of the Planning Commission and is hereby incorporated by reference, clearly states that categorical exemptions are valid only where “it can be seen with certainty that the activity in question will not have a significant effect on the environment. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study and if that study demonstrates that the project ‘will not have a significant effect’, the agency may so declare in a brief Negative Declaration.”

The SPAWN decision quotes previous court decisions that clearly found that “It is the *possibility* of a significant effect... which is at issue, not a determination of the actual effect, which would be subject of a negative declaration or an EIR.” The court also held that “proposed mitigation measures cannot be used to support a categorical exemption; they must be considered under the standards that apply to a mitigated negative declaration.” It is quite clear from the record, including the 90-page document prepared to support the exemption, as well as the project’s biological analyses, and the fact that such analyses were omitted altogether from a sensitive portion of the site, that the Kenilworth project had and has the *possibility* of a significant effect.

The SPAWN case further states that :

*Categorical exemptions, however are subject to important exclusions based on factors such as location, cumulative impact, or unusual circumstances. A categorically exempt project...loses its exempt status where the project may impact on an environmental resource of...critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.....A CEQA exemption is also inapplicable “when the cumulative impact of the successive projects of the same type in the same place, over time is significant”. Nor may a categorical exemption “be used of any activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances”.*

As with the SPAWN project, the Kenilworth project has specifically delineated and protected natural features including the federal CWA-protected wetland and the City’s CPO-protected creek.

The SPAWN decision concludes that “An agency should not be permitted to evade standards governing the preparation of a mitigated negative declaration “by evaluating the proposed mitigation measures in connection with the significant effect exception to a categorical exemption”, and that “Reliance on mitigation measures (*whether included in the application or later adopted*)[emphasis added] involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process

must be conducted under CEQA standards and procedures for EIRs or negative declarations.”

Thus, the SPAWN decision clearly dictates that a City may not set up a parallel evaluative process to justify an exemption and evade CEQA requirements for Initial Studies and EIRs.

In the Kenilworth case, the City of Oakland could not tell without exhaustive investigation, including three separate rare plant surveys, that the project did not host any such plants. Similarly, detailed analyses for other topics including geological hazards, visual quality, noise, and plan compliance were required (and only partially performed) to determine if the project may have a significant effect on the environment. A 90+ -page assessment not including technical studies supporting that document was required to be prepared to determine whether or not the project could affect the environment. Seventeen separate “Improvement Measures” which, by whatever name, are actually mitigation measures, were identified to reduce the project’s impacts. The City Attorney has argued that these are not mitigations but simply standard City conditions of approval applied to all projects. No evidence has been provided that the City has adopted any such standard conditions, and, even if it had, this project includes numerous site-specific measures with respect to the onsite creek and wetland, among other items.

In any case, this *ad hoc* City process that strives to evade CEQA’s public disclosure and review requirements is clearly illegal. As clearly stated in the SPAWN decision, “that process must be conducted under CEQA standards and procedures for EIRs or negative declarations.” In addition, the fact that the City needed numerous, detailed studies to determine whether or not there was the potential for a significant impact excluded the project from the exemption.

4. The CEQA Exemption applied to the project by the Planning Commission is not applicable/legal because use of that exemption is not provided for in the City’s Environmental Review Regulations (Municipal Code Section 17.158.280). The City’s regulations specifically state that exemptions are limited to 29 classes of categorical exemptions listed in CEQA Guidelines sections 15301 through 15329, inclusive. This enumeration of exemptions clearly does not include the exemption in CEQA Guidelines Section 15332, which was used by the City for this project.
5. The project site is neither urban nor infill. The exemption, to be applicable, requires that a site “be substantially surrounded by urban uses” (CEQA Guidelines Section 15332(b)). As detailed in the attached documents, the site is adjacent to, and physically a part of, a large (hundred-acre-plus) wildland area at the headwaters of Vicente Creek/Claremont Canyon. Although there is low-density (suburban/rural residential) development on two sides (to the north and east), the other two sides (to the west and south) are open space/wildlands. Therefore, the site is not “infill”.

The site itself includes a creek and a wetland. As described above, and reiterated in the applicant's biological assessment (on file at the City Planning Department and hereby incorporated by reference), and by the large color photograph presented to the Planning Commission by the applicant (and hereby incorporated by reference), "The site is located in an area of residential-wildland interface". Therefore the site is neither infill, nor is it "substantially surrounded by urban uses." The City Attorney claims that the exemption is appropriate because all of Oakland is defined as "urban". That interpretation is a manipulative semantic diversion that is proved false by the plain physical realities of the site.

These issues are addressed in detail in the attached letters and documents. They clearly indicate that the exemption is not permissible for this project, and that preparation of an Initial Study is the appropriate next step under CEQA. Such a requirement by the Council would not only rectify the Planning Commission's errors, but would not place an undue burden on the applicant. The applicant actually had prepared a CEQA Initial Study for the project. It was this very document that was manipulated by the City Attorney's Office into a document supporting the exemption. You may ask what's the difference if the document was presented as an Initial Study or as some non-CEQA document? The difference is the following:

- CEQA provides for a 30-day public review and comment period, which the exemption does not provide.
- CEQA provides for state expert agency (i.e. Department of Fish and Game) review and comment on the adequacy and veracity of the technical studies, their conclusions, and mitigating measures. The City's parallel process excludes such review as a normal part of the process.
- CEQA provides for the preparation of a Mitigation Monitoring and Reporting Program (MMRP) to assure implementation of mitigation measures. The City's parallel process has no such requirement.
- CEQA provides a clear path for both analyzing project impacts and citizen enforcement in the case of inadequate studies or mitigations. The City's parallel system has no such paths.

Simply stated, the City's abuse of the exemption process cuts the citizens of Oakland out of the environmental review process. It turns the process away from the "show us" approach mandated by CEQA to a "trust us" approach, which limits transparency and legal recourse. It is just plain bad government.

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ORA/COUNCIL

JUL 19 2005

**KENILWORTH ROAD RESIDENTIAL PLANNED UNIT DEVELOPMENT (PUD)**

**ADDENDUM TO APRIL 20, 2005 STAFF REPORT**

The Planning Commission continued this application from the April 20<sup>th</sup> hearing to May 4, 2005. The Commission directed staff to provide additional information on the Creek Protection Permit (CP04-068) and to investigate the temporary closure of Kenilworth Road. As of this writing (April 27<sup>th</sup>), the Public Works Agency is reviewing the issue of a Kenilworth Road closure but has not provided any information to Planning staff. A verbal update will be provided at the Commission meeting. The creek permit is discussed in greater detail below.

Staff would also take this opportunity to address a speaker's question at the hearing regarding the City's use of an initial study for an earlier 2002 Kenilworth Road project. Staff offers the following explanation:

In 1998 the California Resources agency approved a new "Class 32" exemption – the infill exemption. This exemption was challenged by Communities for a Better Environment in 2000. Because the infill exemption was being challenged, it was not available for use by the City in 2002 when the other proposal along Kenilworth Road was being considered. The issues surrounding the infill exemption were addressed, however, in 2002, when the California Court of Appeals upheld the infill exemption in Communities for a Better Environment v. California Resources Agency. This explains why an initial study, not the infill exemption was considered for the earlier 2002 Kenilworth Road project. The initial study was never approved nor released for public review by the City.

A speaker at the meeting also pointed out that on one page of the supporting environmental document (supporting the exemption) the term initial study was used. The information prepared indicates that an exemption would apply to the project and reference to that supporting document/evidence as an initial study was a misplaced or a typographical error. It is not intended to be an initial study and simply supports the City's finding that an exemption is appropriate.

**CREEK PROTECTION PLAN**

A creek has been identified on the subject site (Olberding 2002). A Category 3 Creek Protection Permit is required for the proposed infrastructure improvements. Because this permit is discretionary, the City performed environmental review under CEQA and determined the project to be consistent with the In-fill Exemption (CEQA Guidelines section 15332). A Creek Protection Plan which incorporates protection measures adapted from several hydrological, geological, geotechnical, biological studies, and recommendations from City of Oakland Engineers and Environmental Services staff has been prepared.

In addition to including standard best management practices for compliance with the City's Creek Protection Ordinance, the proposed Creek Protection Plan would establish a wetland/riparian protection zone during and after construction. During construction, no ground disturbing activities would occur within four feet from the edge of the delineated wetland and creek bank. For permanent wetland and drainage course protection, a minimum 20-foot to 25-foot creek boundary and conservation easement from the edge of the delineated wetland or creek bank would be established. To prevent future activities that could adversely affect the wetland or creek from occurring within the conservation easement, a deed-restriction would be established.

***Oakland City Planning Commission***

**ADDENDUM to April 20 Staff Report**

Case File Numbers: PUD 04-195, ER 040006, CP04068, TPM 8228

May 4, 2005

**RECOMMENDATIONS:**

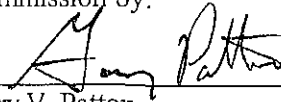
1. Affirm staff's environmental determination.
2. Approve the Planned Unit Development, Tentative Parcel Map, and Creek Permit subject to the attached findings and conditions.

Prepared by:



Leigh A. McCullen  
Planner III

Approved for forwarding to the City Planning  
Commission by:



Gary V. Patton  
Deputy Director of Planning and Zoning

Attachments: April 20, 2005 Staff Report

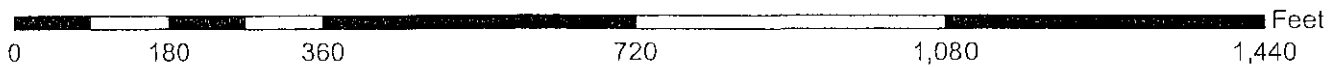
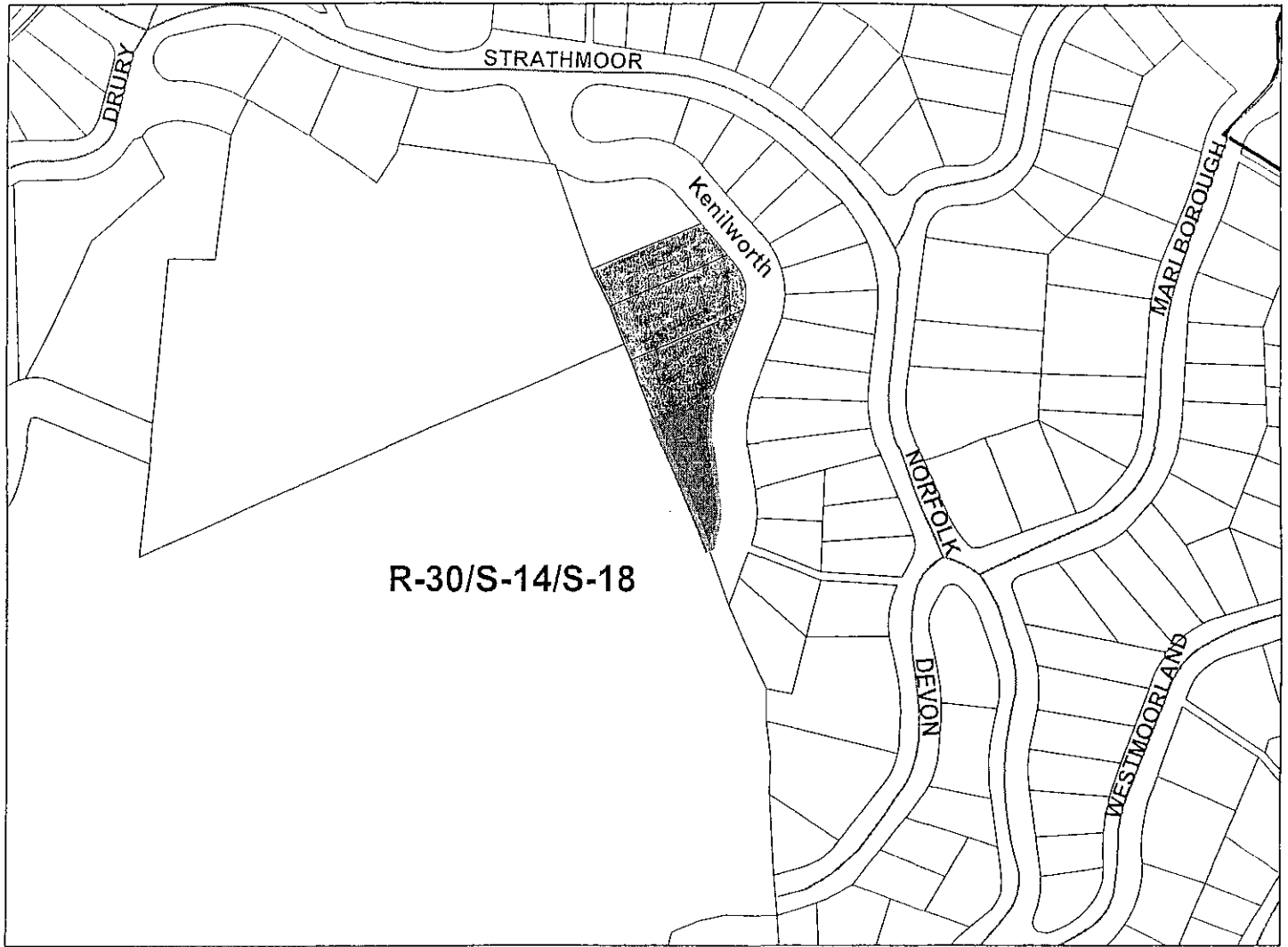
**KENILWORTH ROAD RESIDENTIAL PLANNED UNIT DEVELOPMENT (PUD)**

<b>Location:</b>	<b>Kenilworth Road</b> (off Strathmoor Drive, in the general area between Drury Road and Norfolk Road) (see map on reverse)
<b>APN:</b>	048H-7615-007-00
<b>Proposal:</b>	The proposed project would provide for the construction of seven single-family dwellings by means of a Planned Unit Development (PUD). The proposed PUD includes the following components: (1) a tentative parcel map to subdivide four existing lots as follows: existing lot nos. 1 and 2 would be merged into one lot, existing lot no. 3 would remain, and existing lot no. 4 would be divided into four lots and a designated remainder for a total of seven lots, (2) development of the project site and footprints for seven custom-built, single-family residences, including parking, landscaping, and post-construction stormwater management facilities, (3) roadway improvements, including widening and paving the unpaved portion of Kenilworth Road, (4) wildland fire protection, (5) geotechnical stabilization of the site and of upslope properties, (6) enhancement and protection of a small on-site wetland and drainage course, including establishment of a creek boundary conservation easement and, (7) various other improvements incorporated as part of the project that address lighting, air quality, trees, archeological, seismic, erosion, hazardous materials, water quality, noise and solid waste.
<b>Applicant:</b>	Eva Gero and David McDonald.
<b>Owner:</b>	Eva Gero and David McDonald.
<b>Planning Permits Required:</b>	Planned Unit Development (PUD), Creek Protection Permit, Tentative Parcel Map
<b>General Plan:</b>	Hillside Residential
<b>Zoning:</b>	R-30, One-Family Residential Zone, S-14 Community Restoration Combining Zone, and S-18 Mediated Residential Design Review Combining Zone.
<b>Environmental Determination:</b>	Exempt CEQA Guidelines Section 15332 Infill Development Project
<b>Historic Status:</b>	Vacant Parcel – No Historic Status
<b>Service Delivery District:</b>	II
<b>City Council District:</b>	1
<b>Status:</b>	Pending
<b>Action to be Taken:</b>	Planned Unit Development Authorization, Tentative Parcel Map Approval, Affirmation of Environmental Determination
<b>Finality of Decision:</b>	Decision is appealable to City Council within 10 days.
<b>For Further Information:</b>	Contact case planner <i>Leigh McCullen</i> , 510-238-4977 or by email: <a href="mailto:lmccullen@oaklandnet.com">lmccullen@oaklandnet.com</a>

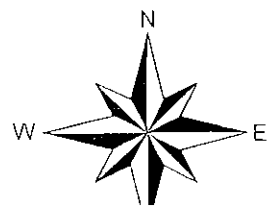
**SUMMARY**

The subject site is approximately 2.9 acres located in the Oakland hills, on Kenilworth Road, off of Strathmoor Drive in the general area between Drury Road and Norfolk Road. This application will establish a PUD (Planned Unit Development) to prepare the site for the sale and construction of seven custom single-family dwellings and create a boundary conservation easement, to prevent the future extension of Kenilworth Road, which will be maintained through a maintenance agreement among the seven property owners. The project also includes the following components: (1) development of the project site and facilities;

# CITY OF OAKLAND PLANNING COMMISSION



Case File: PUD04-195, ER04-0006, CP04-068, TPM8228  
Applicant: Eva Gero and David McDonald  
Address: Kenilworth Rd.  
Zone: R-30 / S-14 / S-18





footprints for seven single-family dwellings, including parking, landscaping, and post-construction stormwater management landscaping, and post-construction stormwater management facilities; (2) roadway improvements, including widening and paving the unpaved portion of Kenilworth Road; (3) wildland fire protection; (4) geotechnical stabilization of the site and of upslope properties; (5) enhancement and protection of a small on-site wetland and drainage course, including establishment of a creek boundary conservation easement, and (6) various other improvements incorporated as part of the project that address lighting, air quality, trees, archeological, seismic, erosion, hazardous materials, water quality, noise and solid waste..

Once the infrastructure is complete, each lot will then be sold for the construction of a custom-designed dwelling on the designated building sites. Each dwelling will be required to obtain separate design review approvals consistent with the requirements of the S-18 Mediated Residential Design Review Combining Zone, comply with the conditions applicable to the PUD and Tentative Map and obtain any other necessary permits including but not limited to a Creek Protection Permit.

**BACKGROUND**

Preliminary site plans and public improvement plans for the proposed project have been preliminarily reviewed by City of Oakland Planning and Zoning Services, Engineering Services, and Fire Department staff, and site stabilization design has been peer reviewed by a City consultant. The project applicant has worked with City staff and neighboring property owners to refine the site design in response to comments received throughout the review process.

Neighborhood concerns include creek and wetland protection, hill stability, landscaping, lighting, roof design, and noise.

*Creek and Wetland Protection*

Neighbors have expressed concerns regarding the delineation of wetlands and creeks on the site. Potentially regulated wetlands/waters of the U.S. were identified at the project site (on Parcel 2), comprising a total of approximately 0.017 acre. An investigation/delineation of these features was performed on January 10, 2003, and approximately 0.012 acre of potential low-grade seasonal wetlands and 0.005 acre (2 feet wide by 115 feet in length) of a drainage course were identified (Olberding 2003a). These features were delineated pursuant to Corps protocols, and the delineation submitted to the Corps. The Corps verified this delineation in April 2003 (Corps 2003 *the verification is included in this document as Attachment C, U.S. Army Corps of Engineers' Determination of Waters of the U.S.*). Pursuant to this wetland delineation and the City's Creek Protection Ordinance, A creek protection plan, detailing wetland and creek enhancement and preservation, has been submitted to and reviewed by Environmental Services. The creek protection plan covers the protection and restoration of the creek and wetland area during the installation of the proposed infrastructure improvements. Construction of a dwelling on creek side properties of the development will require a separation creek protection permit.

*Hillside Stability*

Neighbors have expressed concerns regarding the applicant's plans for stabilization of the hillside. The project site has been subject to landslides and is geotechnically unstable, as are portions of properties located upslope of Kenilworth Road. The applicant's geotechnical consultants have submitted detailed analyses of the slope stability and recommendations for grade and hillside stabilization. Geotechnical stabilization would occur in accordance with the recommendation of a Certified Engineering Geologist and Geotechnical Engineer and would include the following features and activities: retaining walls, restrained

retaining walls, demolition and stripping, subgrade preparation, keyways, slope stabilization, subsurface drainage, and engineered fill. The City of Oakland Engineering Services Division has reviewed the proposed geotechnical stabilization plans.

*Design*

- The purpose of the Planned Unit Development is primary to provide a framework for the installation of infrastructure. Although general massing studies have been prepared for the expected dwellings, final designs for each dwelling has not been submitted. Per the Conditions of Approval, design review will be required for any construction or alteration in accordance with the City's Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone. Final building designs and exterior building materials will be determined during the design review process. The S-14 Design Guidelines and the S-18 Design Review Procedures are intended to protect nearby properties, especially with respect to a proposal's massing and bulk, and any view, privacy, or solar access impacts of the proposal on neighboring properties. It is also the purpose of these provisions of the S-18 Zone to establish a procedure where the project sponsors and owners of neighboring properties have the opportunity to resolve, through mediation, any issues concerning the proposed design.

*Landscaping and Trees*

A preliminary landscape plan has been submitted. The plan includes restoration of the riparian zone along the creek bank, street tree plants, and landscaping on each parcel. Removal of trees will be subject to the City's Tree Protection Ordinance.

*Lighting*

Neighbors have expressed concerns regarding glare from any proposed lighting. To prevent unnecessary glare the project design will incorporate downward directed lighting ("cut-off luminaires") to direct security lighting downward and reduce off-site light scatter, while providing sufficient illumination for security and safety. Final lighting plans will be reviewed by the Zoning Administrator to ensure compliance.

*Noise*

To address noise generated from construction activities the project application incorporated Improvement Measures 16, 17, 18 and 19 which will be implemented during construction (See Attachment B).

*Future Development*

To address neighborhood concerns about potentially extending Kenilworth Road to provide for future development, the applicant has included a 5-foot boundary and conservation easement along the south property boundary of the remainder parcel.

**PROJECT SITE AND SURROUNDING AREA**

The proposed project site is located in the hills in the northern portion of the City of Oakland. It is a low-density urbanized residential setting. Terrain of the project site and surrounding area is moderately steep to steep. Dwellings in the vicinity enjoy scenic vistas of San Francisco Bay. The nearest local landmark is the

Caldecott Tunnel, approximately 0.65 mile to the southeast. Established residential communities exist in the vicinity. The nearest residential land uses are immediately north and east. In addition, low density residential uses are located more at a distance to the south and west. The project site is located at the edge of existing development.

The site is approximately 2.9 acres in size, with the right-of-way for Kenilworth Road being 0.7 acres and the parcel area being the remaining 2.2 acres. The site is steep with slopes ranging from 3:1 (horizontal: vertical) to 1.5:1 (33 to 66 percent). The project site and the vicinity require improvements to correct the following conditions:

- The project site has been subject to landslides and is geotechnically unstable, as are portions of properties located upslope of Kenilworth Road;
- The northern parcels of the project site have been used by adjacent uphill landowners as a discharge point for diverted (by pipe) and concentrated stormwater runoff, resulting in substantial site erosion and degraded runoff quality;
- A seep located within Parcel 2 feeding the wetland area may be connected to nearby septic systems located on adjacent parcels, creating intermittent odor problems;
- The seep-fed wetland appears to be degraded; and
- Stands of eucalyptus located on-site pose a wildland fire hazard to the project site and adjacent properties.

**PROJECT DESCRIPTION**

The proposed project would construct seven single-family dwellings by means of a Planned Unit Development (PUD). Through recordation of a parcel map, existing four lots would be divided as follows: existing Lot Nos. 1 and 2 would be merged into one lot; existing Lot No. 3 would remain; and existing Lot No. 4 would be divided into four lots and a designated remainder for a total of seven buildable lots and a designated remainder. Proposed parcel frontages would average 75 to 80 feet, which is greater than most parcels along nearby Strathmoor Drive, where frontages average approximately 60 feet.

**Project Components**

The proposed project includes the following components and they are each described below in more detail: (1) construction of seven single-family residences, (2) roadway improvements, (3) wild fire protection, (4) geotechnical stabilization, and (5) creek protection.

**1. Construction of Seven Single-family Dwellings.**

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

- **Structures.** The project proposes construction of seven custom single-family residences. Proposed building heights are a 35-foot maximum at finished grade and an 18-foot maximum at the Kenilworth Road property line (at the midpoint). These heights are similar to those of surrounding structures. The buildings would be supported by piers and a grade beam foundation

system. Setbacks would be similar to those of existing development, and meet the needs of wetland and drainage course preservation. The front of the property on Kenilworth Road would have a minimum setback of five feet and a rear setback of 15 to 65 feet. Side yard setbacks would be a minimum of five feet or 10 percent of the lot width except creek side parcels may have a minimum side yard setback of five feet.

- **Sewage Collection.** The proposed project would include the installation of a gravity main within the entire Kenilworth Road right-of-way and flow into a privately maintained lift station located in the private access easement portion of the Kenilworth cul-de-sac. At that point the wastewater would be transported under pressure up grade to the public sewer main located in Devon Way via 5-foot private sewer and utility easement. In addition, two neighborhood homes could abandon their leach fields and connect to this system.
- **Access and Parking.** Kenilworth Road would be the only access to all of the residences. It would be widened to 20 feet, and extended 700 feet (see subsection on Road Widening, below). Parking would be on grade and on wooden structures with concrete decks. Each residence would include off-street parking spaces on car decks to be determined at the time of design review
- **Landscaping and Screening.** The project sponsors will prepare a Landscape Plan that conforms to City Development Standards for landscape coverage, screening and fire prevention. The Landscape Plans will address the following: landscaping types, screening types, landscaping walls, revegetation of slopes, preservation of mature trees, and wetland and drainage course enhancement, as appropriate.

## 2. Kenilworth Road Improvements (700 linear feet)

Kenilworth Road improvements would include stormwater management and emergency access features. Approximately 200 linear feet of Kenilworth Road are improved from its intersection with Strathmoor Drive to the project site boundary. The project as proposed would improve another 700 linear feet of this roadway. As shown on Figure 2-5, the right-of-way would be re-graded to achieve appropriate cross-slopes and widths to meet municipal standards. Compacted sub-base would be overlain with aggregate base, and then with asphalt. Retaining walls would be constructed at the edge of right-of-way where required to achieve acceptable slope stability.

- **Stormwater Management.** Swales would collect stormwater on the upslope side of the roadway, and transport runoff to inlets protected by retaining walls. Existing upslope landscaping and on-site native oak trees would be preserved as much as possible through design.
- **Emergency Access.** Emergency access to the area would be via the entire 900-foot length of improved Kenilworth Road (existing 200 linear feet, and 700 linear feet improved by the proposed project). The project would include a dedicated cul-de-sac turnaround, unobstructed at all times, and designed to City standards, for emergency access vehicles. The 900-foot length of Kenilworth Road exceeds the maximum length allowed for a dead-end road in the City's fire hazard area, and in consultation with the City's Fire Prevention Bureau, the Applicant would implement the approved Fire Department conditions stipulated in memorandum April 21, 2003. (see Wildland Fire Protection section, below). (City of Oakland 2002)

## 3. Wildland Fire Protection

The project site is located in the fire hazard area. This area was burned in the Oakland Firestorm, and at

least once prior to the Firestorm. In addition to improved emergency access, described above, the proposed project would include the following features to reduce the current and future risk from fire to the proposed houses and surrounding properties:

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

#### 4. Geotechnical Stabilization

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

- **Retaining Walls.** To reduce the potential for triggering upslope slide movement, a retaining wall would be constructed along the upslope side of Kenilworth Road. Construction would occur prior to grading and excavation. The wall would be designed to resist lateral loads exerted by uphill landslide debris. Retaining walls would be provided with drainage facilities to prevent the build-up of hydrostatic pressures behind the walls.
- **Restrained Retaining Walls.** In conjunction with construction of homes and driveways (see above), retaining walls would be restrained and not free to deflect at the top of the wall. Walls and abutments would be provided with backdrain facilities.
- **Demolition and Stripping.** Grading would begin with removal of any buried pipes, leachfields, debris piles, trees and associated root systems, and other deleterious materials. Existing non-engineered fill, vegetation and soft or compressible soils would be removed as necessary. Areas to receive fill, slabs-on-grade, or structural foundations and those areas that serve as borrow for fill would be stripped of existing vegetation. Site strippings (soils) would be reserved for replacement on graded slopes prior to installation of proposed erosion control measures.
- **Subgrade Preparation.** Following demolition, clearing and stripping, areas to receive fill, slabs-on-grade or pavement would be scarified to a depth of at least 12 inches, then moisture conditioned, and compacted.
- **Keyways.** After stripping, grading would begin with construction of keyways and subdrains. Fills would be adequately keyed into firm natural materials unaffected by shrinkage cracks. Filling above keyways would be benched into firm competent soil or bedrock and drained as appropriate.
- **Slope Stabilization.** The identified landslides, which pose a potential hazard to the proposed project, would be removed and replaced as shown on the attached plans (see Attachment A). Where removal and replacement of a landslide is recommended, the excavation would be

observed by the project Engineering Geologist to verify complete removal of the landslide debris. A keyway and subsurface drainage would be provided as recommended by the Geologist.

- **Construction of Subsurface Drainage Facilities.** Subsurface drainage systems would be installed in keyways and landslide removal areas. A trench sub-drain would then be installed through the center of the sub-excavation. The wetland and drainage course would be protected and not disturbed during this activity. One or more subdrains could be directed to filter subsurface water to the wetland to enhance hydrology of this feature.
- **Engineered Fill.** Import materials, if any are needed, must meet requirements contained in Section 2.02B, Part I of the Guide Contract Specifications. The Geotechnical Engineer would be informed if importation of soil is contemplated. A sample of the proposed import material would be submitted to the Geotechnical Engineer for evaluation at least 72 hours prior to delivery at the site. Fill material, generally comprising retained stripped materials, would be moisture conditioned and compacted. Maximum dry densities and moisture contents would be determined in accordance with ASTM D-1557, latest edition. Fills would be placed in lifts not exceeding 8 inches or the depth of penetration of the compaction equipment used, whichever is less.
- **Graded Slopes.** Graded cut and fill slopes would be designed and constructed at gradients no steeper than 2:1 (horizontal: vertical). All cut slopes would be examined by the Engineering Geologist during slope grading for adverse bedding, seepage, or bedrock conditions that could affect slope stability; over-excavation of adverse geologic conditions could require over-excavation and re-construction of these slopes.

## **5. Post-Construction Stormwater Management**

In order to reduce the amount and rate of site runoff, and to reduce the amount of pollutants in site runoff, design would include post-construction stormwater controls. In order to reduce the amount and rate of site runoff, and on-site runoff, the design would include post-construction stormwater controls. To slow the rate of stormwater from upslope properties and the rate of runoff, the design includes the construction of a below-grade stormwater retention system that would collect the stormwater and disperses the runoff that slowly and continuously drains the system into a dispersion systems of perforated drain pipes.

- **In order to further pre-treat and to detain and slow the release of runoff**, upslope v-ditches would discharge to one of four inlets located on the upslope margin of Kenilworth Road (two inlets are associated with each project). The inlets would each be connected to a 40 foot length of 48-inch diameter pipeline located beneath the roadway. These pipes would serve to detain runoff, which would be further pre-treated, then slowly discharged to subdrains. The subdrains would transport runoff from the roadway west across the project site to energy dissipaters located near the western boundary of each project site. The energy dissipaters would spread water slowly across a geotextile and rock basin, where runoff would infiltrate or would slowly dissipate to downslope properties.
- **The swale/detention/dissipater system is intended to provide pre-treatment at several points in the system** and to substantially slow the rate of runoff from Kenilworth Road and the project site. This would improve the quality of site runoff, and correct current erosion issues related to concentrated site runoff. In order to increase infiltration and reduce runoff volume, runoff and downspouts would be routed to vegetated areas. To increase infiltration and reduce the amount of site runoff, pervious pavers would be used in parking areas where practicable and appropriate. Post-construction controls would be designed to pre-treat runoff in accordance with

RWQCB policy. These controls of surface water would not discharge to the wetland or to the on-site drainage course area.

**6. Wetland Enhancement and Preservation**

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

- **Setbacks and Protection – Conservation Easement.** Both the wetland and drainage course would be protected during construction and permanently. During construction, a minimum four-foot wetland/riparian protection zone would be established and fenced off by an inner silt fence and an outer construction fence. No ground disturbing activities would occur within the outer construction fence, which would be located a minimum of four feet from the edge of the delineated wetland or bank of the drainage course. To achieve permanent wetland and drainage course protection, the proposed project would establish a minimum 20-foot and maximum 25-foot creek boundary conservation easement from the edge of the delineated wetland or bank of the drainage course.
- **Deed Restriction.** The conditions of this deed-restricted conservation easement will be established by the City, and will prevent activities that could adversely affect wetlands or creeks from occurring within the conservation boundary. Vegetated enhancement of the wetland and drainage course would occur outside the delineated limits of the actual features, but some enhancement may occur within the setbacks to stabilize these areas, and further develop the natural wetland and riparian regimes. All enhancement of the drainage course would occur in accordance with the Landscape Plan and the site-specific Creek Protection Plan.

**ENVIRONMENTAL REVIEW**

California Environmental Quality Act (CEQA) Guidelines include a list of projects which have been determined not to have a significant effect on the environment and are therefore exempt from the provisions of CEQA. An Environmental Evaluation prepared for the project demonstrates that the project, including all improvement measures, will not have a significant impact on the environment. The Environmental Evaluation is available for review at the Planning Department office at 250 Frank Ogawa Plaza, Suite 3315.

The project, including all improvement measures, meets the following conditions for in-fill development projects:

- the project is consistent with the General Plan and Zoning Regulations,
- the site is less than five acres in size and surrounded by urban uses,
- the site has no value as habitat for endangered, rare or threatened species,
- the project will not result in any significant effects to traffic, noise, air quality, or water quality, and
- the site can be adequately served by all utilities and public services.

Therefore, the project is exempt from Environmental Review pursuant to CEQA Guidelines Section 1533, In-Fill Development Projects.

**GENERAL PLAN ANALYSIS**

The General Plan land use designation for the project site located in the North Hills Planning Area is Hillside Residential. The desired character and uses of this land use designation is single unit residential structures. The intent of this land use classification is to “. . . *create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots*” (Land Use and Transportation Element, Oakland General Plan, 1998). Desired characteristics of future development are residential in nature. Allowable intensity/density is a maximum of five principal units per gross acre (or up to 14 units on the 2.9 acre site). Key objectives for the Hillside Residential land use classification of the Land Use and Transportation Element of the General Plan are as follows:

- Develop high-quality custom detached single family structures in keeping with surrounding residential development.
- Foster healthy, vital, and distinctive neighborhoods with adequate open space.
- Encourage high-quality housing for a range of incomes in Oakland’s neighborhoods.
- Construct housing to meet current and future needs of the Oakland community.
- Preserve, protect, and enhance riparian areas and biological resources.

The residential development is consistent with the General Plan land use designation. The proposed project’s density of seven new residential units on 2.9 acres is well within the density of five principal units per gross acre allowed by the General Plan. The following table details the proposed project’s conformity with policies and objectives of the General Plan.



Project Conformity with the Oakland General Plan			
Relevant GP Topic	Relevant Objective/Policy	Project Conforms ?	Substantiation/Comment
<b>Land Use and Transportation Element (LUTE)</b>			
Neighborhoods	<b>Objective N3:</b> Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community.	Yes	The proposed project includes construction of housing that would meet the needs of the Oakland community.
	<b>Policy N3.9 Orienting Residential Development:</b> Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.	Yes	The proposed project would orient residences toward sunlight and view, and would not block the enjoyment of same for existing homes.
	<b>Policy N3.10 Guiding the Development of Parking:</b> Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.	Yes	The proposed project includes adequate convenient parking consistent with site conditions
	<b>Objective N6:</b> Encourage a mix of housing costs, unit sizes, types, and ownership structures.	Yes	The proposed project would fulfill the need for a specific type of housing for which there is demonstrated effective demand in the City.

Project Conformity with the Oakland General Plan			
Relevant GP Topic	Relevant Objective/Policy	Project Conforms ?	Substantiation/Comment
	<b>Policy N7.2 Defining Compatibility:</b> Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing parcel size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining "compatibility". These factors should be balanced with the citywide need for additional housing.	Yes	Proposed project design, which will be developed with input from City staff and in accordance with City conditions placed on the project will fully address all aspects of this policy.
	<b>Policy N7.4 Designing Local Streets:</b> Local streets should be designed to create an intimate neighborhood environment and not support high speed or large volumes of traffic. Providing on-site parking for cars and bicycles, planting and maintaining street trees, and landscaping, minimizing the width of driveway curb cuts, maintaining streets, bike routes, and sidewalks, and orienting residential buildings toward the street all contribute to the desired environment.	Yes	Kenilworth Road would be improved fundamentally in its historic location, and would be slightly realigned to avoid protected trees. While providing adequate residential and emergency access, the street will maintain its historic character, and the houses will be oriented as appropriate for site conditions.
	<b>Policy N7.6 Developing Subdivided Parcels:</b> Development on subdivided parcels should be allowed where site and building design minimize environmental impacts, building intensity and activity can be accommodated by available and planned infrastructure, and site and building designs are compatible with neighborhood character.	Yes	The proposed project is designed to blend with the adjacent natural and surrounding built environments, and is protective of views from adjacent parcels. Existing and project-designed infrastructure is adequate to serve the proposed project.

Project Conformity with the Oakland General Plan			
Relevant GP Topic	Relevant Objective/Policy	Project Conforms ?	Substantiation/Comment
<b>Open Space, Conservation, and Recreation Elements (OSCAR)</b>			
Open Space	<b>Policy OS-1.3: Development of Hillside Sites:</b> On large sites with subdivision potential, generally conserve ridges, knolls, and other visually prominent features as open space. Maintain development regulations which consider environmental and open space factors such as land stability, plant and animal resources, earthquake and fire hazards, and visual impacts. in the determination of allowable density. Where hillside development does occur, encourage creative architecture and site planning which grading and protects the natural character of the hills.	Yes	While not a “large” site development, the proposed project would protect and stabilize hillside conditions that would not otherwise be improved, and the project would not intrude on adjacent views.
	<b>Policy OS-4.2: Protection of Residential Yards:</b> Recognize the value of residential yards as a component of the City’s open space system and discourage excessive coverage of such areas by buildings or impervious surfaces.	Yes	The proposed project would provide substantial yard space. In addition, they would protect existing natural site features (drainage and wetland features). Yards would be in keeping with downslope natural areas.

**ZONING ANALYSIS**

The project site is located within the R-30 Zoning District, a One-Family Residential Zone, intended to create, enhance, and preserve areas for single-family dwellings, typically appropriate to already developed lower density dwelling areas of the City. The project site is also located within two combining overlay zones. The S-14 combining overlay zone is intended to guide construction of residential facilities in the area damaged by the 1991 Oakland firestorm (Oakland Municipal Code §§ 17.16.010–17.16.10-120 and §§ 17.98.010–17.98.030). The S-18 combining overlay zone (Mediated Residential Design Review) is intended to protect nearby properties, especially with respect to a proposal’s massing or bulk, and any view, privacy, or solar access impacts of the proposal on neighboring properties. It is also the purpose of these provisions to establish a procedure where the project sponsors and owners of neighboring properties have the opportunity to resolve, through mediation, any issues concerning the proposed design. Another purpose is to encourage the applicant and neighboring owners to have early discussion on proposals so that these issues can be resolved prior to submittal of an application (Oakland Municipal Code Chapter 17.147).

*Planned Unit Development*

Per Sections 17.140.030 and 17.040.060 of the Zoning Regulations, the Planning Commission shall consider the applications for planned unit development permits. As described in the Findings below, subject the Conditions of Approval, the project is consistent with the Planned Unit Development zoning regulations.

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- The Planned Unit Development Regulations of the Oakland Planning Code permits a waiver or reduction of the minimum height and yard requirements otherwise applying to the underlying zoning district. Pursuant to the PUD regulations the normally required height and yard requirements would be waived. Proposed building heights are a 35-foot maximum at finished grade and a 18-foot maximum at the Kenilworth Road property line (at the midpoint). These heights are similar to those of surrounding structures. The buildings would be supported by piers and a grade beam foundation system. Setbacks would be similar to those of existing development, and meet the needs of wetland and drainage course preservation. The front of the property on Kenilworth Road would have a minimum setback of five feet and a rear setback of 15 to 65 feet. Side yard setbacks would be a minimum of five feet or 10 percent of the lot width except creek side parcels may have a minimum side yard setback of five feet. Other than the proposed height and setbacks, the development shall be subject to the regulations generally applying in the R-30 and S-18 Zones in which it is located. Design review would be required in accordance with the City’s Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone.

The intent of this Planned Unit Development is to establish requirements for, and installation of, all infrastructure improvements required to provide for the future construction of the proposed dwellings. The applicant has submitted a Project Phasing Plan which indicates that construction of the improvements will begin on June 1, 2005 and the final completion of improvements will occur by September 31, 2005.

Once the infrastructure is complete, each lot will then be sold for the construction of a custom-designed dwelling on the designated building sites. Each dwelling will be required to obtain separate design review approvals consistent with the requirements of the S-18 Mediated Residential Design Review Combining

Zone, comply with the conditions applicable to the PUD and Tentative Map and obtain any other necessary permits including but not limited to a Creek Protection Permit.

*Design Review*

- Per the Conditions of Approval, design review will be required for any construction or alteration in accordance with the City’s Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone.


**RECOMMENDATION**

The proposed Kenilworth Residential PUD project would produce residential development consistent with the intent of the General Plan and would provide additional benefits in the form of slope stabilization, improved stormwater and sanitary sewer infrastructure, and creek protection and enhancement. Based on the analysis contained within this report, the Categorical Exemption, and elsewhere within the administrative record, staff believes that the proposed project is appropriate in this location and will be well integrated into the surrounding area.


**RECOMMENDATIONS:**

1. Affirm staff’s environmental determination.
2. Approve the Planned Unit Development, Tentative Parcel Map, and Creek Permit subject to the attached findings and conditions.

Prepared by:

  
 Leigh A. McCullen  
 Planner III

Approved for forwarding to the City Planning Commission by:

  
 Gary V. Patton  
 Deputy Director of Planning and Zoning

**ATTACHMENTS**

- A. Project Plans
- B. Tentative Map and Conceptual Project Plans
- C. U.S. Army Corps of Engineers’ Determination of Waters of the U.S
- D. Project Phasing Plan

**FINDINGS FOR APPROVAL**

This proposal meets the required findings under Oakland Municipal Code Sections 17.140.080 (Planned Unit Development Permit Criteria), 17.140.060 (Final Planned Unit Development Criteria), 13.16.200 (Creek Protection Criteria), 16.080.030 (Tentative Parcel Map Criteria) and California Code of Regulations Title 14, Chapter 3 section 15332 (CEQA In-Fill Exemption) as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report, and elsewhere in the record.

**Section 17.140.080 (Planned Unit Development Criteria)**

The findings below apply to the revised Preliminary Development Plan for the Kenilworth Project

- A. That the location, design, size, and uses are consistent with the Oakland Comprehensive Plan and with any other applicable plan, development control map, or ordinance adopted by the City Council.**

The proposed project is for seven custom single family residential units and associated site and infrastructure improvements that are consistent with the Hillside Residential General Plan land use designation. The project is also consistent with the density (units per gross acre) allowed by the General Plan and Planning Code, as well as with General Plan policies regarding the provision of attractively designed residential hillside projects.

- B. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding uses, that the location and design will adequately reduce the impact of the development.**

The design and size of the project are appropriate for the location and compatible with the surrounding area. The scale of the project fits within the surrounding natural and built environment as an enhancement.

- C. That the location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will avoid traversing other local streets.**

A traffic analysis prepared for the project found that traffic impacts of the project will be less than significant.

- D. That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services.**

The proposed project site is located at the edge of a developed area that is adequately served by existing utilities and service systems including water supply, wastewater treatment, storm water drainage, and solid waste disposal. The proposed project will improve existing public infrastructure through its stormwater management and sanitary sewer system, paving of the Kenilworth Road extension, and the addition of a fire truck turn-around in the cul-de-sac.

- E. That the location, design, size, and uses will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations.**

The proposed project will result in an attractive set of seven residences compatible with the surrounding a single family hillside residential neighborhood.

- F. That the development will be well integrated into its setting, will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.

The proposed project will be well integrated into its setting, will not require excessive earth moving, will harmonize with surrounding areas, will not destroy desirable natural features and will enhance and protect a small creek, and will not substantially harm major views. Sufficient buffering will be provided in the form of spatial separation and landscaping.

**Section 17.140.060 (Planning Commission Action for Final Planned Unit Development):**

The findings below apply to the Final Development Plan for the Kenilworth Project.

The proposal conforms to all applicable criteria and standards and conforms in all substantial respects to the preliminary development plan, or, in the case of the design and arrangement of those portions of the plan shown in generalized, schematic fashion, it conforms to applicable design review criteria.

The proposed final development plan for the Kenilworth Residential PUD project conforms to all applicable criteria and standards. The site plan is appropriate for the location. The PUD includes all aspects of the proposed project except the design of each of the seven custom single-family dwellings. Prior to issuance of a building permit for the dwellings, the plans and design for each one will need to be reviewed for consistency with the terms and conditions of the PUD and for design review.

**Creek Protection Findings:**

Pursuant to OMC Section 13.16.200, the following findings are made in support of the decision to issue a Creek Protection Permit:

- A. Will the proposed activity (during construction and after project is complete) (directly or indirectly) cause a substantial adverse impact on the creek?

Yes/No:

The project will not cause a substantial impact on the creek since conditions of approval require that protection measures during and post construction shall be installed and implemented to prevent sedimentation of the creek and erosion of the creek bank. The project includes 21 specific practices for protecting the wetland and drainage course areas (See Attachment B).

In making the above finding, the Director of Building Services must, at a minimum, consider the following factors:

- 1. Will the proposed activity discharge a substantial amount of pollutants into the creek?

Yes/No:  The applicant's submitted landslide stabilization plan specifies a combination of retaining walls, landslide re-grading, and subsurface drainage facilities as a means of

providing structural slope stability. The site will be further stabilized by planting native riparian vegetation in the riparian zone of the creek. Site runoff will be filtered through the new plantings to prevent pollutants and sediments from discharging directly into creek. All of this will improve the existing conditions.

**2. Will the proposed activity result in substantial modifications to the natural flow of water in the creek?**

Yes/ No The project will not result in substantial modifications to the natural flow of water in the creek, since the conditions of project approval require: that no physical access to the creek be provided, and that all ground-disturbing activities shall occur behind installed silt curtains and/or hay bales that will be placed at the maximum distance feasible from the delineated creek corridor. Essentially, there will be no work in the creek or the Riparian Corridor and conditions of approval will ensure that the work be performed in a manner that does not result in substantial modifications to the natural flow. In regard to drainage discharging from the hillside, the applicant's hydrology consultant has prepared a report which demonstrates that the flows of surface water and subdrain water collected and discharged at the street are not more than those which currently discharge at this point.

**3. Will the proposed activity deposit a substantial amount of new material into the creek or cause substantial bank erosion or instability?**

Yes/ No See #2 above.

**4. Will the proposed activity result in substantial alteration of the capacity of the creek?**

Yes/ No The project will not expand or remove capacity of the creek. The applicant's hydrology consultant has prepared a report which demonstrates that the flows of surface water and subdrain water collected and discharged at the street are not more than to those which currently discharge at this point. The conditions of approval will ensure that the work be performed in a manner that does not result in substantial alterations to the capacity of the creek.

**5. Are there any other factors which would indicate that the proposed activity will adversely affect the creek?**

Yes/ No As indicated in the Environmental Evaluation for this project there are no other factors which would indicate that the project will adversely affect the creek.

**B. Will the proposed activity substantially adversely affect the riparian corridor, including riparian vegetation, animal wildlife or result in loss of wildlife habitat?**

Yes/ No As explained above in # A2, the project will not impact the riparian corridor.

**C. Will the proposed activity substantially degrade the visual quality and natural appearance of the riparian corridor?**

Yes/ No The project improves the surrounding setting through stabilization of the surrounding hillside slope and restoration of the creek and riparian habitate. The project will have improve the visual quality and natural appearance of the riparian corridor through the installation of native plant materials and appropriate conditions are imposed to ensure that site work and road construction does not impact the creek.

**D. Is the proposed activity inconsistent with the intent and purposes of OMC Chapter 13.16?**



Yes/No:  Conditions of approval for the construction have been designed to prevent impacts to the creek. The work is consistent with OMC section 13.16.020 by seeking to prevent damage to public and private property, drainage facilities, creeks and riparian corridors, and also protecting the public health and safety. The project also seeks to limit the discharge of materials into the creek and maintain and enhance the creek. The project further advances the goals of the Creek Protection Ordinance by stabilizing the loose soils on the site that might harm the creek corridor if there were to be another slide in the future.

**E. Will the proposed activity substantially endanger public or private property?**

Yes/No:  The work will protect public and private property from future landslides and provide access to existing parcels. The work will stabilize a landslide that threatens existing dwellings and the creek. The current condition of the hillside presents a threat to the abutting and surrounding dwellings, roadway, utility systems, and the creek. The work will prevent further damage to and maintain provision of these essential services and dwellings.

**F. Will the proposed activity (directly or indirectly) substantially threaten the public's health or safety?**

Yes/No:  The work will protect the public's health and safety by repairing a landslide and will provide access to existing parcels. The current condition of the hillside presents a threat to the abutting and surrounding residences, roadway, utility systems, and the creek. The work will prevent further damage to and maintain provision of these essential services to existing dwellings and provide an essential service and access to proposed dwellings.

**Tentative Parcel Map Findings**

This proposal meets all the required findings under the Tentative Parcel Map criteria contained in Section 16.080.030 as set forth in the Subdivision Regulations as set forth below and which are required to approve your application. Required findings are shown in **bold type**; reasons your proposal satisfies them are shown in normal type.

The Advisory Agency shall deny approval of a tentative map if it makes any of the following findings:

**A. That the proposed map is not consistent with applicable general and specific plans.**

The proposed tentative map would provide for a subdivision of a 2.9 acre parcel, currently consisting of 4 parcels, into a total of seven lots and one designated remainder. The Oakland General Plan designation for this site is Hillside Residential. This designation is intended to create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots, with typical lot size ranging from 8,000 square feet and one acre. The Guidelines for determining General Plan Conformity indicate that the minimum square feet of site area for a unit shall be 6,530 square feet. All of the proposed lots, ranging from approximately 17,000 to 8,500 square feet, exceed 6,530 square feet. In addition to exceeding the minimum lot area requirements of the General Plan, at 2.4 units per acre, the subdivision falls well below the maximum density of 5 units per acre. Given the size of the proposed lots, the subdivision clearly conforms to the General Plan.

**B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.**

The design proposed for the subdivision provide for seven lots which exceed the minimum lot area requirement outlined in the General Plan. The subdivision includes provisions for access, drainage, creek protection, and hillside stabilization to accommodate the proposed development of seven single-family dwellings.

**C. That the site is not physically suitable for the type of development.**

The project incorporates numerous improvement measures to ensure that the site is physically suitable for the proposed development. All proposed provisions for access, drainage, creek protection, and hillside stabilization will be implemented prior to the construction of a dwelling unit.

**D. That the site is not physically suitable for the proposed density of development**

The project incorporates numerous improvement measures to ensure that the site is physically suitable for the proposed development. All proposed provisions for access, drainage, creek protection, and hillside stabilization will be implemented prior to the construction of a dwelling unit.

**E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

The potential environmental impacts of the proposed Kenilworth Residential PUD were evaluated and it was determined that the project, including proposed Improvements, would not have significant effects on the environment.

**F. That the design of the subdivision or the type of improvements is likely to cause serious public health or safety problems.**

The potential public health or safety problems of the proposed Kenilworth Residential PUD were evaluated and it was determined that the project, including proposed Improvements, would not have significant effects on the environment.

**G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.**

The proposed division would not conflict with existing easements.

**G. That the design of the subdivision does not provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating and cooling opportunities include subdivision design which permits orientation of a structure in an east-west alignment for southern exposure and subdivision design which permits orientation of a structure to take advantage of shade and prevailing breezes.**

**H.**

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided and to other design and improvement requirements, and such provisions shall not

result in reducing allowable densities or the provisions of a lot which may be occupied by a building or structure under applicable zoning in force at the time the tentative map is filed.

For the purposes of this section "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

The proposed design not conflict with passive or natural heating or cooling opportunities in the subdivision.

**Finding For CEQA In-Fill Exemption Section 15332**

- 1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations:**

The proposed tentative map would provide for a subdivision of a 2.9 acre parcel, currently consisting of 4 parcels, into a total of seven lots and one designated remainder. The Oakland General Plan designation for this site is Hillside Residential. This designation is intended to create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots, with typical lot size ranging from 8,000 square feet and one acre. The Guidelines for determining General Plan Conformity indicate that the minimum square feet of site area for a unit shall be 6,530 square feet. All of the proposed lots exceed 6,530 square feet. In addition to exceeding the minimum lot area requirements of the General Plan, at 2.4 units per acre, the subdivision falls well below the maximum density of 5 units per acre. Given the size of the proposed lots, the subdivision clearly conforms to the General Plan.

- 2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses:**

The subject site is less than five acres and located within the San-Francisco-Oakland urbanized area as defined below.

CEQA Guidelines section 15387 defines urbanized areas as "a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile." Under CEQA, the City can determine whether a project is in an urbanized area by referring to the U.S. census maps which designate certain areas as urban. The 2000 U.S. census maps indicate that the entire City of Oakland is within an urbanized area.

For 2000, the U.S. Census Bureau classified all territory, population and housing united located within an urbanized area or urban cluster as urban. Urbanized areas and urbanized clusters are densely populated areas where the core census blocks have a population of at least 1,000 people per square mile and the surrounding census blocks have an overall density of at least 500 people per square mile. In addition, in certain conditions less densely populated areas may be part of an urbanized area or urbanized cluster.

According to the 2000 census, the City of Oakland is part of the San Francisco-Oakland urbanized area. This urbanized area has a population density of 3418.7 per square mile. This is consistent with the 2000 U.S. Census maps which show all of the City of Oakland as an urbanized area.

- 3. The project site has no value as habitat for endangered, rare or threatened species:**

Literature research and field surveys were conducted to establish the biological setting of the project site. It was found that the project site has not value as habitat for endangered, rare or threatened species.

**4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality:**

The Environmental Evaluation prepared for the project indicates that it would not have significant effects on traffic, noise, air quality, or water quality.

**5. The site can be adequately served by all required utilities and public services:**

All utilities and services will be provided to the site.

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**ORA/COUNCIL**

**JUL 19 2005**

CONDITIONS OF APPROVAL

**Kenilworth Residential Development**

**1. Approved Use**

*a. Ongoing*

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

Approval of a Planned Unit Development (“PUD”) for the Kenilworth Residential PUD, under Oakland Municipal Code Section 17.140

Approval of a Creek Protection Permit (“CPP”) for the project’s infrastructure improvements, under Oakland Municipal Code Section 13.16, subject to the memorandum, dated November 24, 2004, from the City of Oakland Public Works Agency Environmental Services.

Approval of the Tentative Parcel Map (“TPM”) for the subdivision of the project site, under Oakland Municipal Code section 16.080

*b. Ongoing.*

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans dated February 5, 2004, project amendments dated April 11, 2005 and as amended by the following conditions of approval. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

*c. Ongoing.*

These approvals apply to the Kenilworth Residential PUD.

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

*a. Ongoing through project completion.*

The applicant shall be responsible for the installation of all proposed infrastructure and improvements as outlined in the Project Phasing Plan file-dated April 11, 2005 (Exhibit D). Installation of all infrastructure and improvements shall be subject to the timeline outlined in the Project Phasing Plan. Modifications to the Phasing Plan may be granted by the Zoning Administrator. All infrastructure and improvements shall be installed within one year of the date of this report. Upon written request, the Planning and Zoning Division may grant a one year extension of the deadline, with additional extensions subject to approval by the City Planning Commission. These approvals shall become effective upon satisfactory compliance with these conditions.

*b. Prior to issuance of building permit*

The project sponsor shall submit a Construction Phasing and Management Plan, incorporating all Improvement Measures. The plan shall also include the following additional measures and standards:

- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.
- c. A construction period litter/debris control plan to ensure the site and surrounding area is kept free of litter and debris.

*c. Prior to issuance of certificate of occupancy.*

Final inspection and a certificate of occupancy for any unit or other structure within a phase, as set forth above, shall not be issued until (a) all landscaping and on and off-site improvements for that phase are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, or other form of security (collectively "security"), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a subdivision improvement agreement approved by the City. For purposes of these Conditions of Approval, a *certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.*

**3. Scope of This Approval**

*a. Ongoing.*

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to the approvals may be approved administratively by the Planning Director; major changes to the approvals shall be subject to review and approval by the City Planning Commission.

**4. Design Review Requirements for the Construction of Dwelling Units** *a. Prior to issuance of building permit*

Design review will be required for any construction or alteration for individual dwellings in accordance with the City's Hillside Design Guidelines Design Review Criteria and the S-18 Mediated Design Review Overlay Zone. The footprints and elevations of the proposed structures shown in the Planned Unit Development and Tentative Map are conceptual only and are subject to change as part of the Residential Design Review process. However, the basic locations shall be generally consistent with the site plan submitted as part of this application.

**5. Creek Protection for Construction of Dwellings**

*a. Prior to the issuance of a building permit*

Development of the individual lots with a single-family dwelling shall be subject to the Creek Protection Ordinance and Creek Permit requirements.

**6. Modification of Conditions or Revocation**

*a. Ongoing.*

The City reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations, or operates as or causes a public nuisance.

**7. Recording of Conditions of Approval**

*a. Prior to issuance of building permit or commencement of activity.*

The project sponsor shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

**8. Reproduction of Conditions and Improvements on Building Plans**

*a. Prior to issuance of building permit.*

These conditions of approval and the shall be reproduced on page one of all plans submitted for a building permit for this project.

**9. Indemnification**

*a. Ongoing.*

The project sponsor shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the project sponsor of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

**10. Recycling Space Allocation Requirements**

*a. Prior to issuance of building permit*

The design, location and maintenance of recycling collection and storage areas shall comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28 and with the recycling space requirements of the Planning Code. The recycling location and area shall be clearly delineated on the building permit plans.

**11. Lighting Plan**

*a. Prior to issuance of building permit*

The applicant shall submit a lighting plan for review and approval by the Planning and Zoning Division, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

**12. Landscape and Irrigation Plan**

*a. Prior to issuance of building permit.*

The applicant shall submit for review and approval by the Planning and Zoning Division, a detailed landscape and irrigation plan prepared by a licensed landscape architect or other qualified person. Such plan shall show all landscaping on the site maintained by an automatic irrigation system or other comparable system. The landscaping plan shall include a detailed planting schedule showing sizes, quantities, and specific common and botanical names of plant species. Fire and drought-resistant species are encouraged.

**13. Landscaping Maintenance**

*a. Ongoing.*

All landscaping areas and related irrigation shown on the approved plans shall be permanently maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All landscaping shall be served by an automatic irrigation system. All paving or other impervious surfaces shall occur only on approved areas.

**14. Installation of Landscaping and Bonding**

*a. Prior to the finalization P-job Permit.*

The applicant shall install all proposed landscaping indicated on the approved landscape plan prior to the issuance of a certificate of occupancy, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code. The amount of such bond or cash deposit shall equal the greater of \$2500 or the estimated cost of the required landscaping, based on a licensed contractor's bid.

**15. Retaining Wall Landscaping.**

*a. Ongoing.*

The landscape plan shall indicate the use of landscape cover on all exposed retaining walls. The plan shall include size, species and location of all retaining wall vegetation.

**16. Street Trees**

*a. Prior to issuance of a permit.*

The applicant shall provide one street trees per every 25 feet of street frontage. The species, size at time of planting, and placement in the right-of-way, shall be subject to review and approval by the Office of Parks and Recreation and Building Services.

**17. Water, Wastewater and Storm Sewer Service**

*a. Prior to issuance of building permit*

The project sponsor shall provide the necessary information to the Public Works Agency, Design and Construction Services Division to confirm the existing capacity of the water, wastewater and storm service systems that serve the project site and the projected project demand. The project sponsor shall be responsible for payment of the required installation or hookup fees to the affected service providers. The project sponsor shall also be responsible for payment of sewer and/or storm water improvement fees as required by the Public Works Agency.

**18. Special Inspector**

*a. Throughout construction*

The project sponsor may be required to pay for on-call special inspector(s) as needed during the times of most intense construction or as directed by the Building Official. Prior to issuance of the demolition permit, the project sponsor shall establish a deposit with the Building Services Division to fund a special inspector who shall be available as needed, as determined by the Building Official or the Planning Director.

**19. Master Improvement Plan and Improvements in the Public Right-of-Way**

*a. Prior to Finalization of P-Job and related building permits*

The project sponsor shall submit a detailed improvement plan prepared by a licensed Civil Engineer, with all conditions and requirements as set forth in these Conditions of Approval for the private property and the rights of way, including but not limited to curbs, gutters, pedestrian ways, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design, specifications and locations of the water pumping facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements required to comply with all applicable City standards, including the approved landscape plans, the design of the pedestrian paths, and the street tree locations and planting specifications. This plan shall be reviewed and approved by the City Engineer.

**20. Underground Utilities**

*a. Prior to issuance of building permits.*

The applicant shall submit plans for review and approval of the Planning and Zoning Division, Building Services Division and the Public Works Agency, and other relevant agencies as



appropriate, plans that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground by the developer from the applicant's structures to the point of service. The plans shall show all electric and telephone facilities installed in accordance with standard specifications of the serving utilities.

**21. Construction Phasing Plan**

*a. Ongoing*

The applicant shall be responsible for the installation of all proposed infrastructure and improvements as outlined in the Project Phasing Plan file-dated April 11, 2005 (Exhibit D). All infrastructure shall be installed prior to the approval and recordation of the Final Map.

**22. Covenants, Conditions and Restrictions & Homeowner's Association**

*a. Within one year after issuance of the first certificate of occupancy.*

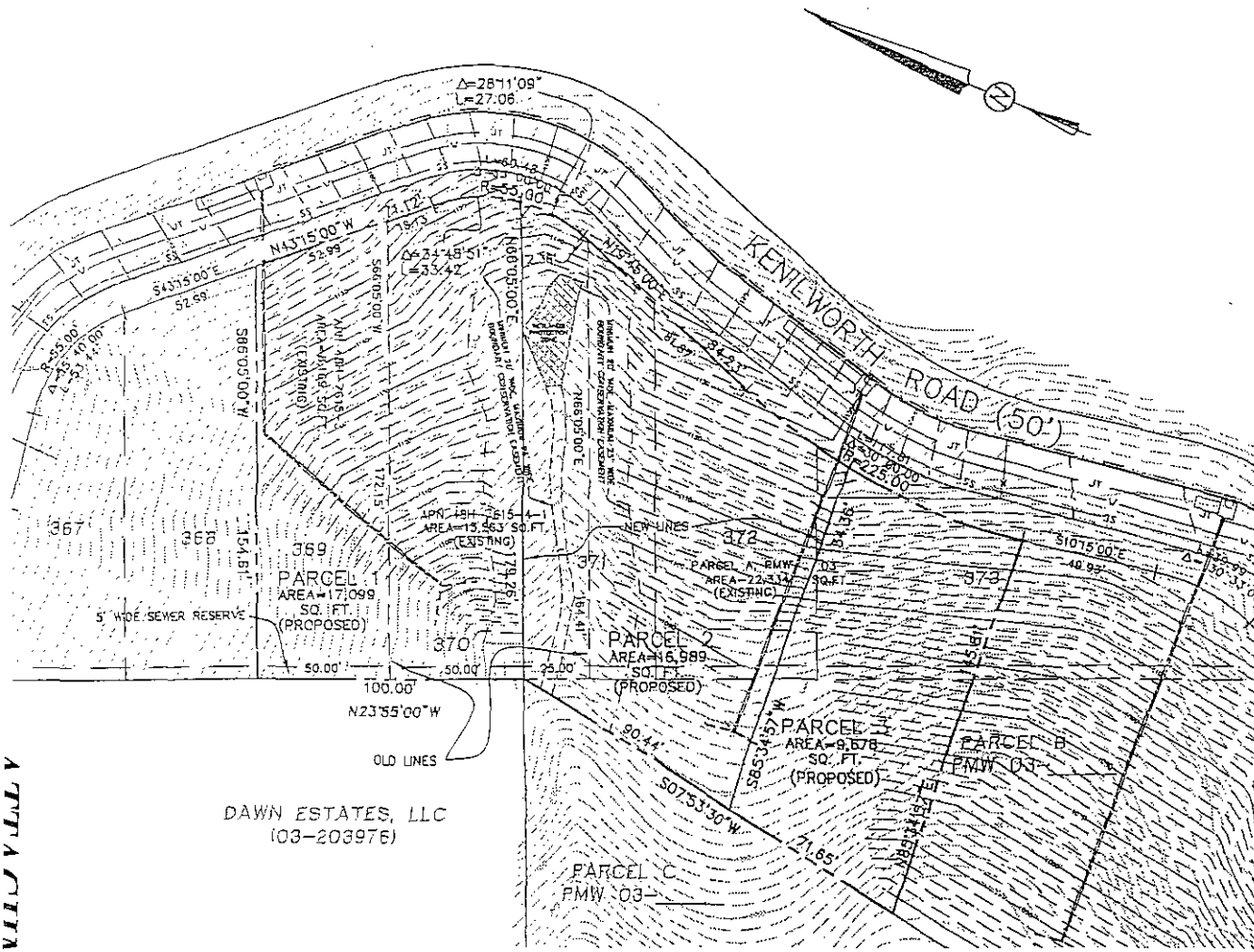
The Covenants, Conditions and Restrictions (CC&Rs) for the approved units shall be submitted to the Planning and Zoning Division for review. The CC&Rs shall provide for the establishment of a non-profit homeowners association responsible for the maintenance and operation of all on-site sidewalks, pathways, common open space and all common landscaping, driveways, and other facilities, in accordance with approved plans. Membership in the association shall be made a condition of ownership. The developer shall be a member of such association for its first five years of existence or until all units are sold.

**23. Technical Reports**

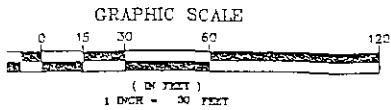
*a. Ongoing*

All improvement measures set forth in any submitted geotechnical, hydrological, and/or biological report(s) shall be incorporated in the project. Technical report consultant(s) shall be retained by the applicant to make site visits during all grading and construction activities within twenty (20) feet of the top of the creek bank; and as follow-up, submit to the Building Services Division a letter certifying that the improvement measures set forth in the Creek Permit submittal material and the Creek Protection Plan, prepared by G. Borchard and Associates and dated July 2004, have been instituted during construction of the project.

ATTACHMENT A



DAWN ESTATES, LLC  
(03-203976)



**BASIS OF BEARINGS:**  
THE BEARING OF S82°57'00"E BETWEEN THE MONUMENTS FOUND IN STRATHMOOR DRIVE AS SHOWN ON GWN UNIT OF THE HIGHLANDS OF OAKLAND (5 M 39) WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

**GENERAL NOTES**  
ELEVATIONS ARE BASED UPON CITY OF OAKLAND DATUM.

## PLANNED UNIT DEVELOPMENT

LOTS 369-370 AND A PORTION OF LOT 371,  
GWN UNIT OF THE HIGHLANDS OF OAKLAND (5 M 39)  
AND PARCEL A, PMW 03-\_\_\_\_\_  
CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA  
JULY, 2003 SCALE: 1" = 30'

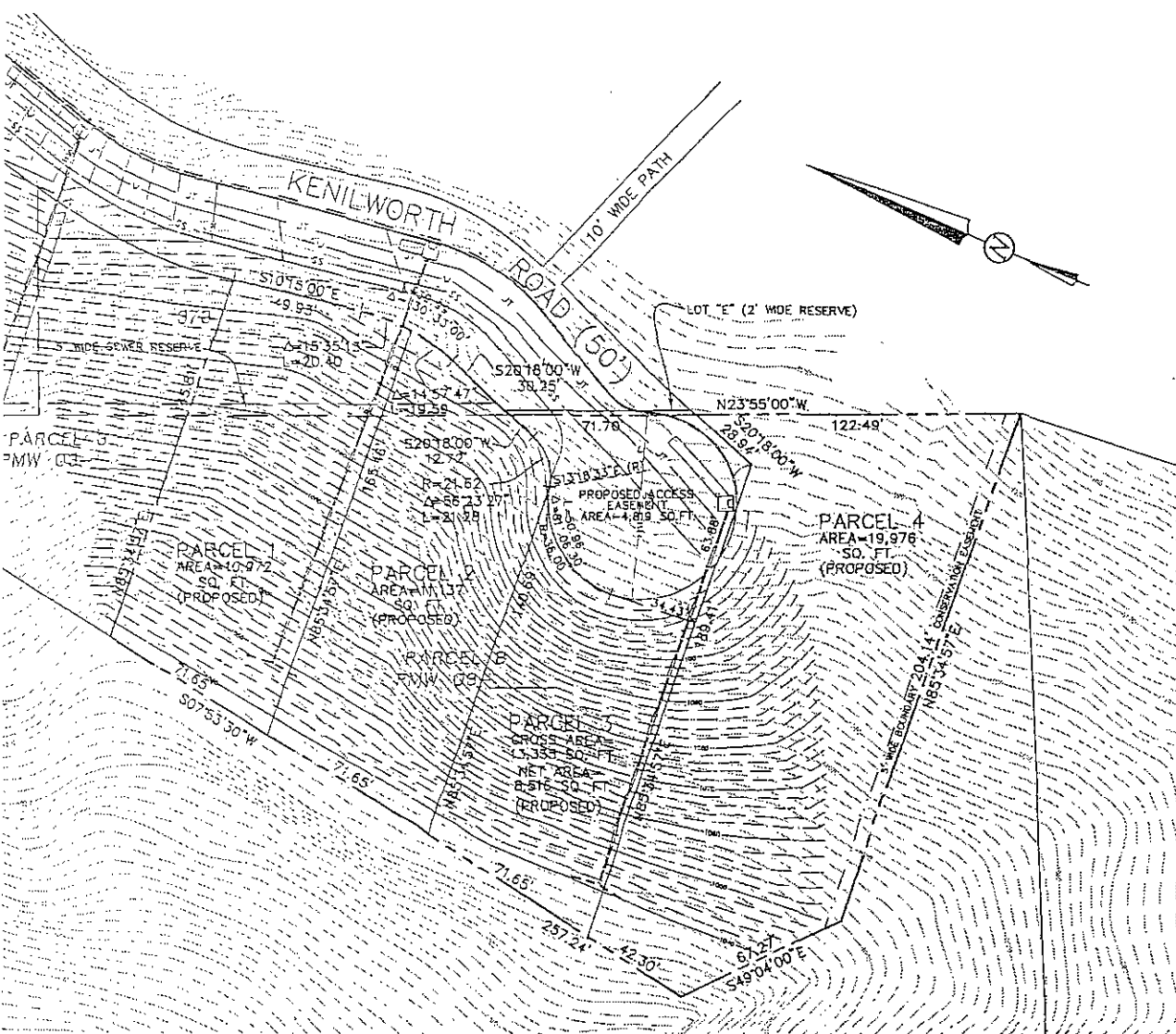
**MORAN ENGINEERING, INC.**

CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930

P.B. NO. 791/771.1

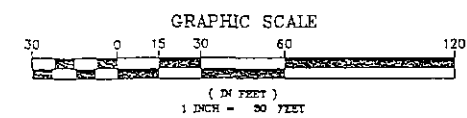
KENILWORTH-PMW02.DWG

JOB NO. 03-4512



**BASIS OF BEARINGS:**  
 THE BEARING OF S82°57'00"E BETWEEN THE MONUMENTS FOUND IN STRATHMOOR DRIVE AS SHOWN ON GWIN UNIT OF THE HIGHLANDS OF OAKLAND (5 M 39) WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

**GENERAL NOTES**  
 ELEVATIONS ARE BASED UPON CITY OF OAKLAND DATUM.

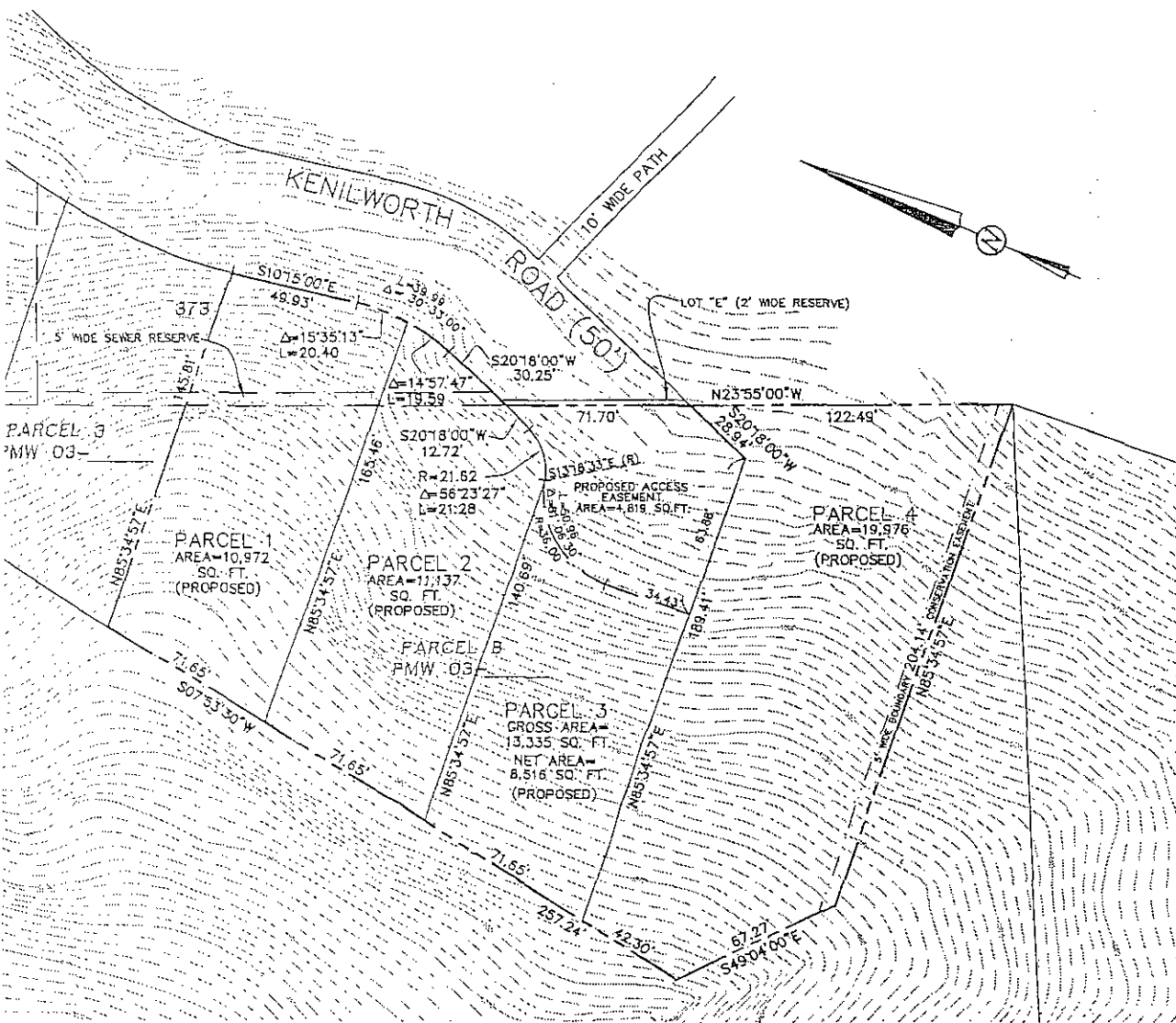


**PLANNED UNIT DEVELOPMENT**

PARCEL B, PMW 03—  
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA  
 JULY, 2003 SCALE: 1" = 30'

**MORAN ENGINEERING, INC.**

CIVIL ENGINEERS \ LAND SURVEYORS  
 1930 SHATTUCK AVENUE, SUITE A  
 BERKELEY, CALIFORNIA 94704  
 (510) 848-1930



**BASIS OF BEARINGS:**

THE BEARING OF S82°57'00"E BETWEEN THE MONUMENTS FOUND IN STRATHMOOR DRIVE AS SHOWN ON GWIN UNIT OF THE HIGHLANDS OF OAKLAND (S M 39) WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

**GENERAL NOTES**

ELEVATIONS ARE BASED UPON CITY OF OAKLAND DATUM.

**OWNER / SUBDIVIDER**

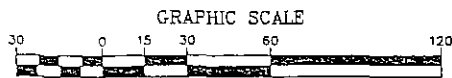
DAVID McDONALD  
9333 RED TAIL HAWK LANE  
COTATI, CA 94931  
707\483-6905

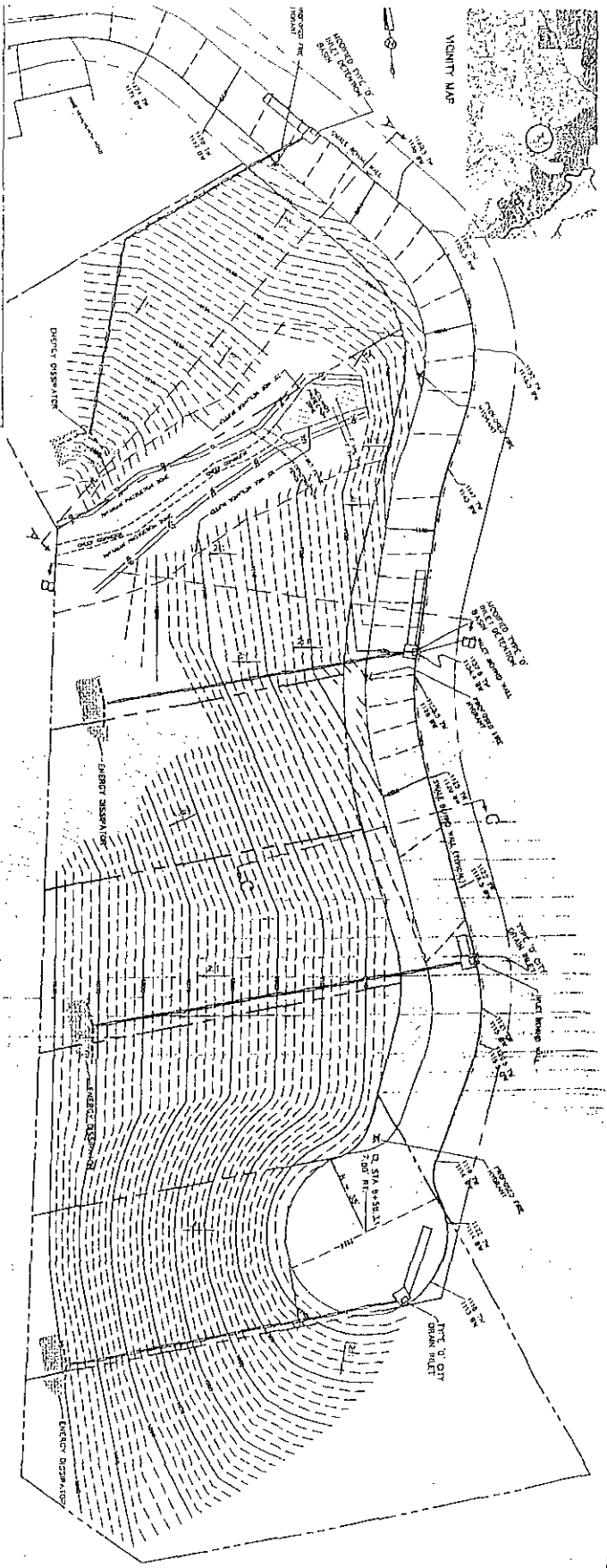
**TENTATIVE  
PARCEL MAP 8228**

PARCEL B, PMW 03—  
CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA  
JULY, 2003 SCALE: 1" = 30'

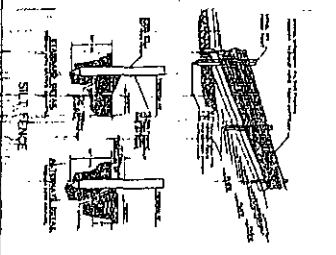
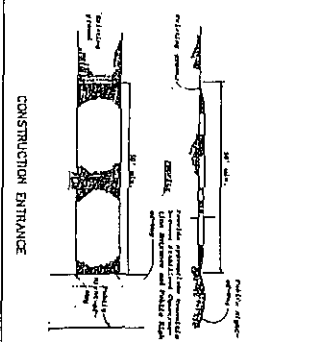
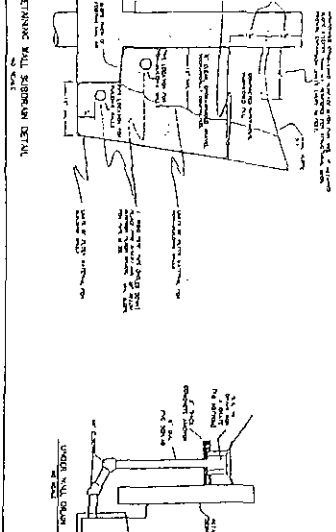
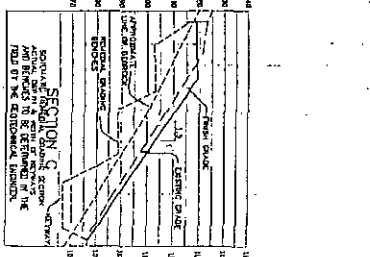
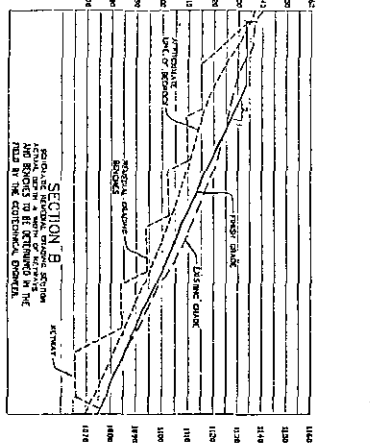
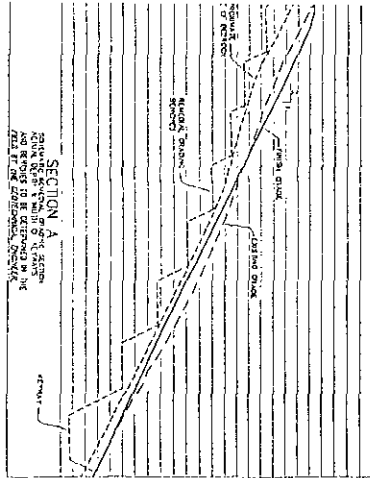
**MORAN ENGINEERING, INC.**

CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930





NEIGHBORHOOD MAP



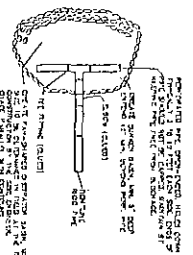
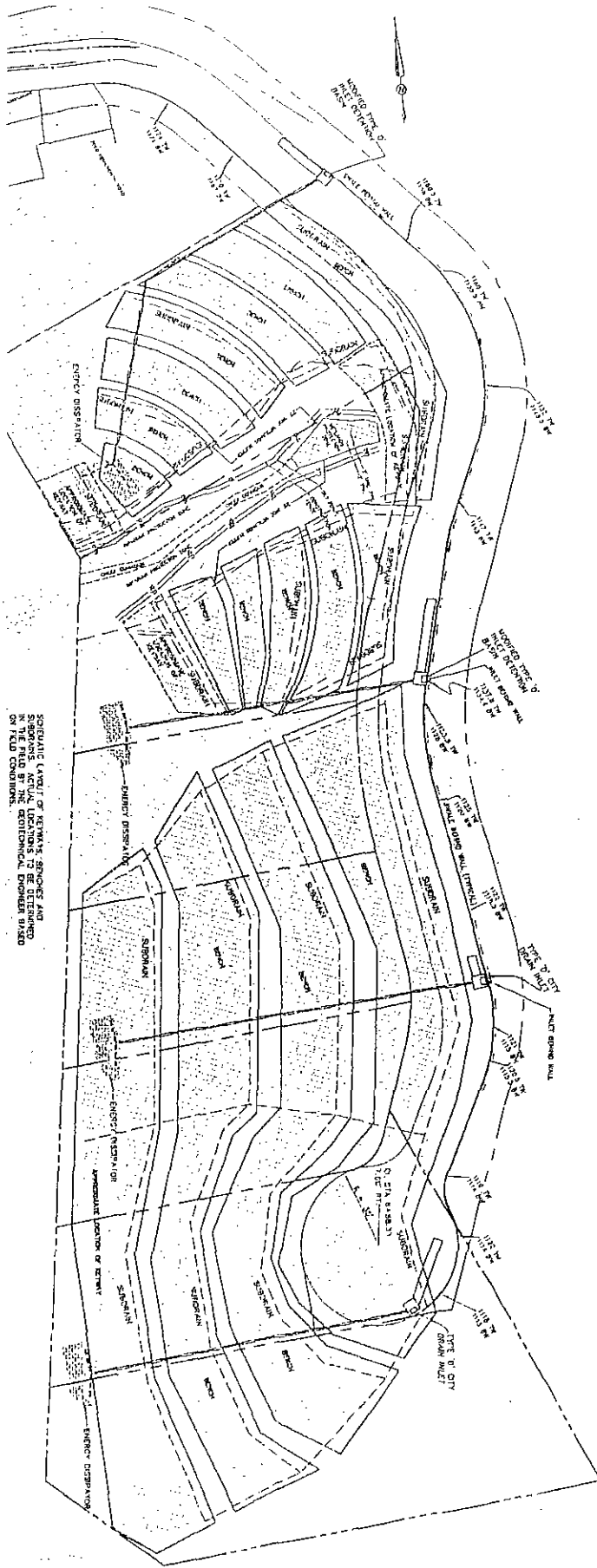
**CONTRACT NOTES:**

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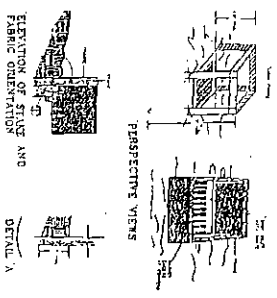
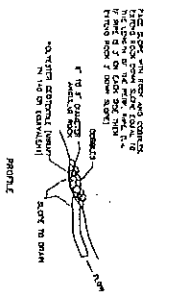
<b>MORAN ENGINEERING</b> CIVIL ENGINEERS 1930 SHATRUCK AVENUE, SUITE A BERKELEY, CALIFORNIA 94704 (510) 846-1630 FAX (510) 846-6725	<b>LAND SURVEYORS</b>
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DATE: 10/15/13  
 SHEET: 1 OF 1

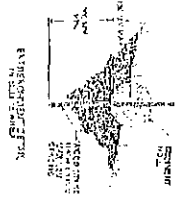
**GRADING PLAN FOR SLIDE REPAIR**  
 KENILWORTH ROAD  
 OAKLAND, CALIFORNIA



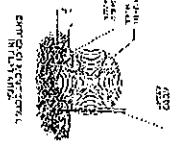
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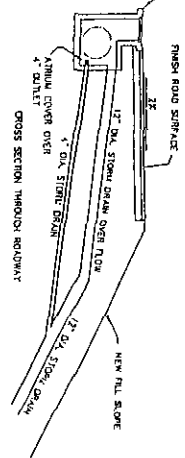
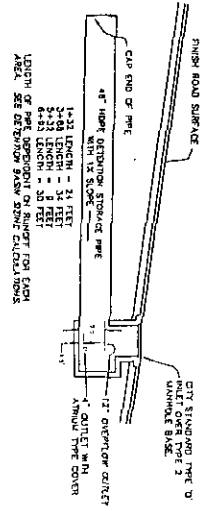
INLET PROTECTION



STRAW ROLL



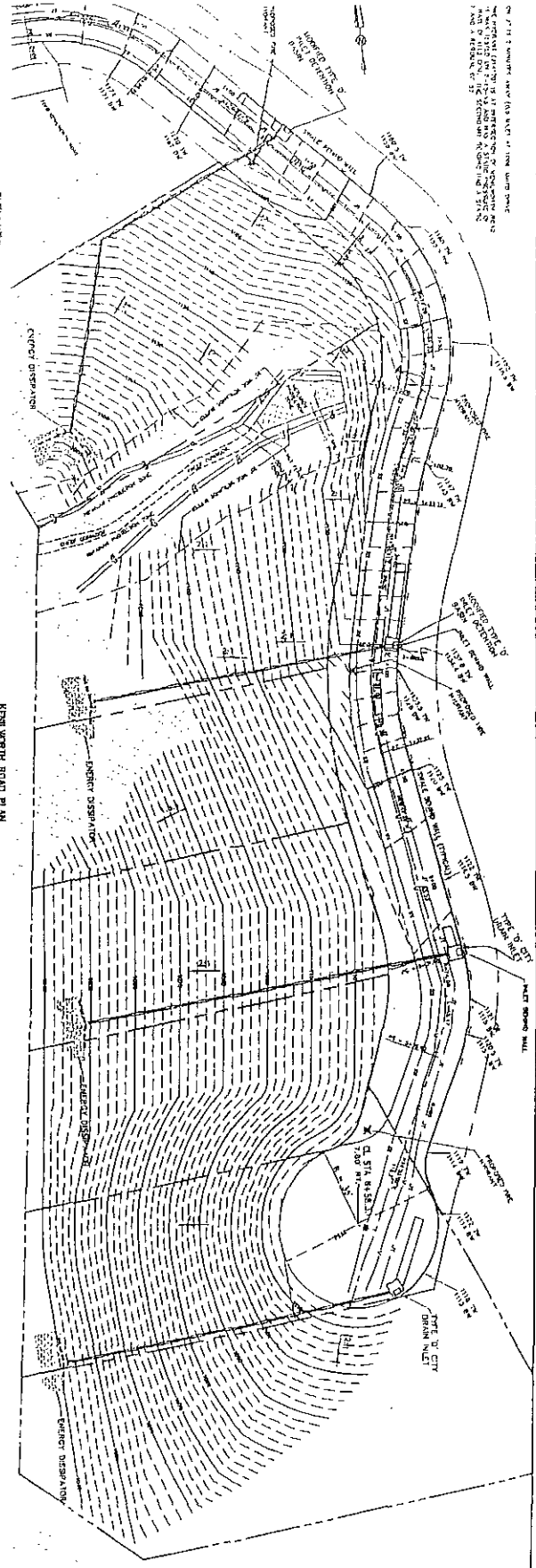
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NOT TO SCALE



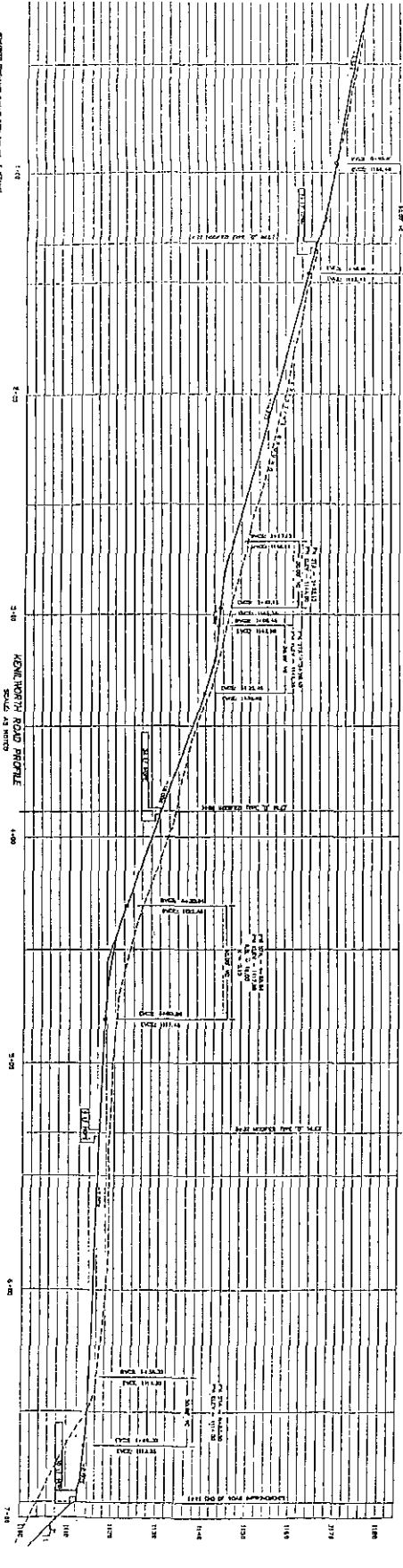
MORAN ENGINEERING  
CIVIL ENGINEERS LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1830 FAX (510) 848-9725

GRADING PLAN FOR SLIDE REPAIR  
KENILWORTH ROAD  
OAKLAND, CALIFORNIA

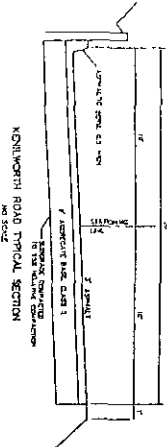
DATE	28 FEB 2003
REVISION	REVISION 1
BY	MM
CHECKED BY	MM
DATE	28 FEB 2003
APPROVED BY	MM
DATE	28 FEB 2003
PROJECT NO.	030203
PROJECT NAME	STRAW ROLL
PROJECT LOCATION	STRAW ROLL
PROJECT DESCRIPTION	STRAW ROLL
PROJECT DRAWING NO.	STRAW ROLL
PROJECT SHEET NO.	STRAW ROLL
PROJECT SHEET TOTAL	STRAW ROLL



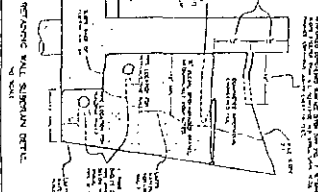
KENILWORTH ROAD PLAN  
SCALE: AS SHOWN



KENILWORTH ROAD PROFILE  
SCALE: AS SHOWN



KENILWORTH ROAD TYPICAL SECTION  
AS SHOWN



PROPOSED ROAD TYPICAL SECTION

- GENERAL NOTES:**
1. OBTAINING THE ASSETS ON THE PLAN IS THE DUTY OF THE OWNER.
  2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF OAKLAND AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC UTILITIES.
  3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF OAKLAND AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC UTILITIES.
  4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF OAKLAND AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC UTILITIES.
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- NOTES TO GENERAL NOTES:**
1. ALL SURVEY DATA IS THE PROPERTY OF MORAN ENGINEERING AND SURVEYORS.
  2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF OAKLAND AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND PUBLIC UTILITIES.
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CITY OF OAKLAND

DATE	10-15-2012
BY	J.P.
PROJECT	KENILWORTH ROAD
CLIENT	CITY OF OAKLAND
SCALE	AS SHOWN
DATE	10-15-2012
BY	J.P.
PROJECT	KENILWORTH ROAD
CLIENT	CITY OF OAKLAND
SCALE	AS SHOWN

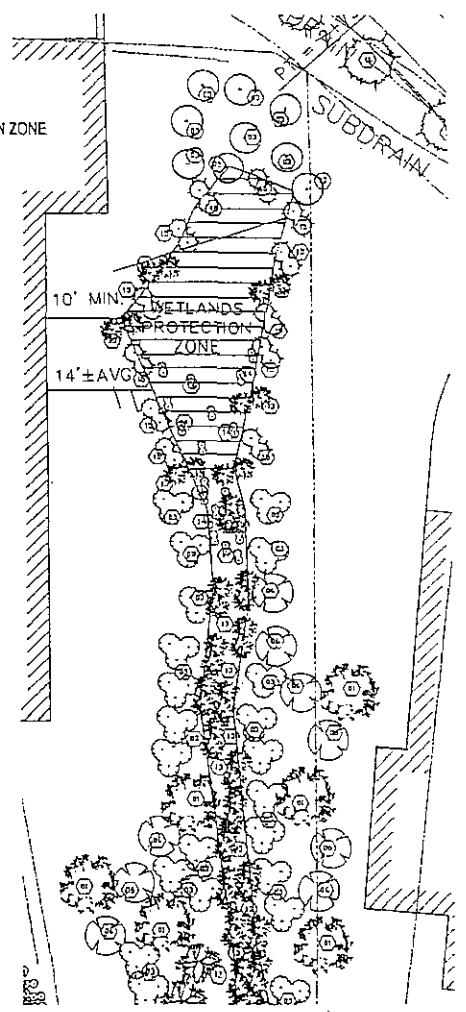
**MORAN ENGINEERING**  
 CIVIL ENGINEERS AND LAND SURVEYORS  
 1830 SHATTUCK AVENUE, SUITE A  
 BERKELEY, CALIFORNIA 94704  
 (510) 848-1930 FAX (510) 848-0725

**KENILWORTH ROAD IMPROVEMENT PLAN**  
 KENILWORTH ROAD  
 OAKLAND, CALIFORNIA

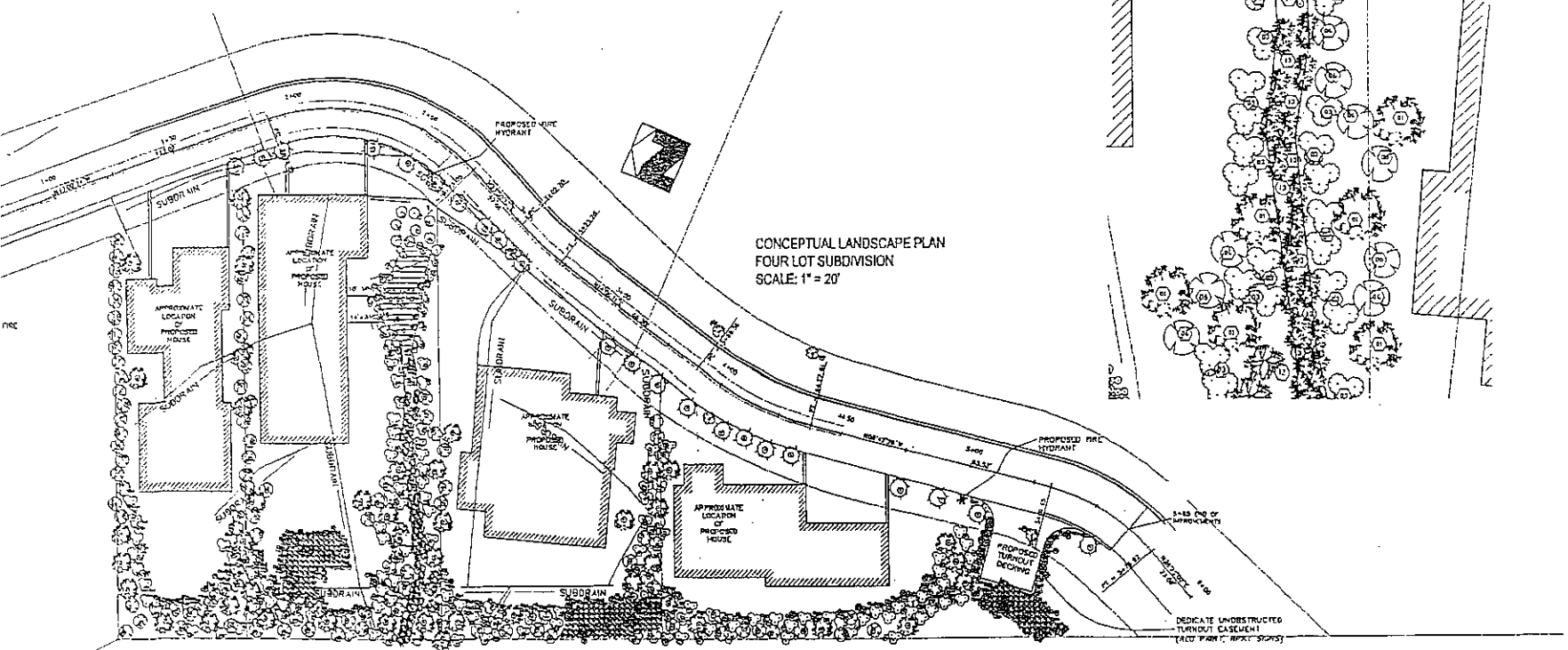
**LANDSCAPE ELEMENTS**

1	Concrete Slab	2	Grass
2	Grass	3	Grass
3	Grass	4	Grass
4	Grass	5	Grass
5	Grass	6	Grass
6	Grass	7	Grass
7	Grass	8	Grass
8	Grass	9	Grass
9	Grass	10	Grass
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91	Grass	92	Grass
92	Grass	93	Grass
93	Grass	94	Grass
94	Grass	95	Grass
95	Grass	96	Grass
96	Grass	97	Grass
97	Grass	98	Grass
98	Grass	99	Grass
99	Grass	100	Grass

WETLAND PROTECTION ZONE  
SCALE: 1/8" = 1'-0"



CONCEPTUAL LANDSCAPE PLAN  
FOUR LOT SUBDIVISION  
SCALE: 1" = 20'

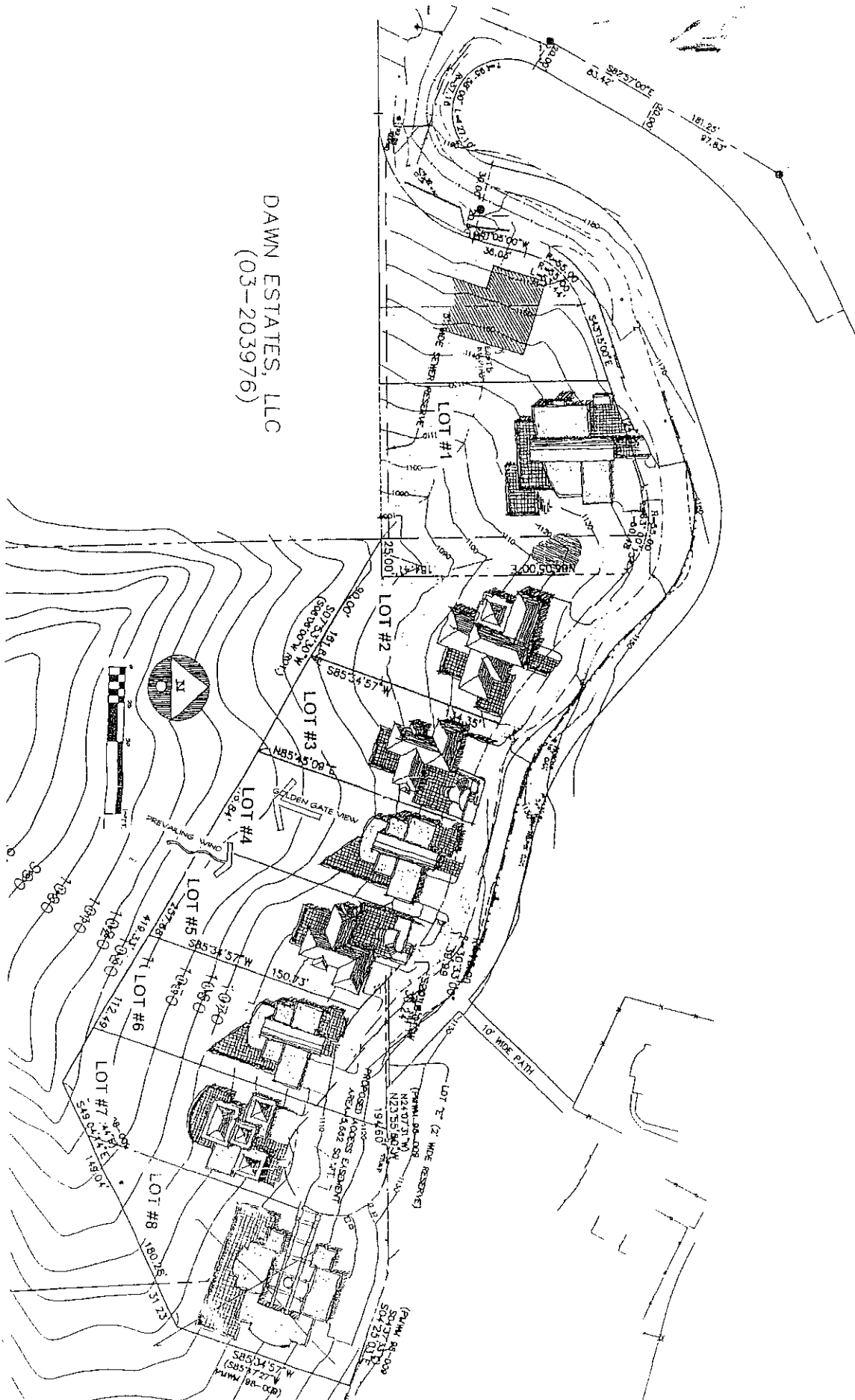


CONCEPTUAL  
LANDSCAPE  
PLAN

L-1



DAWN ESTATES, LLC  
(03-203976)



# KENILWORTH ROAD LOTS

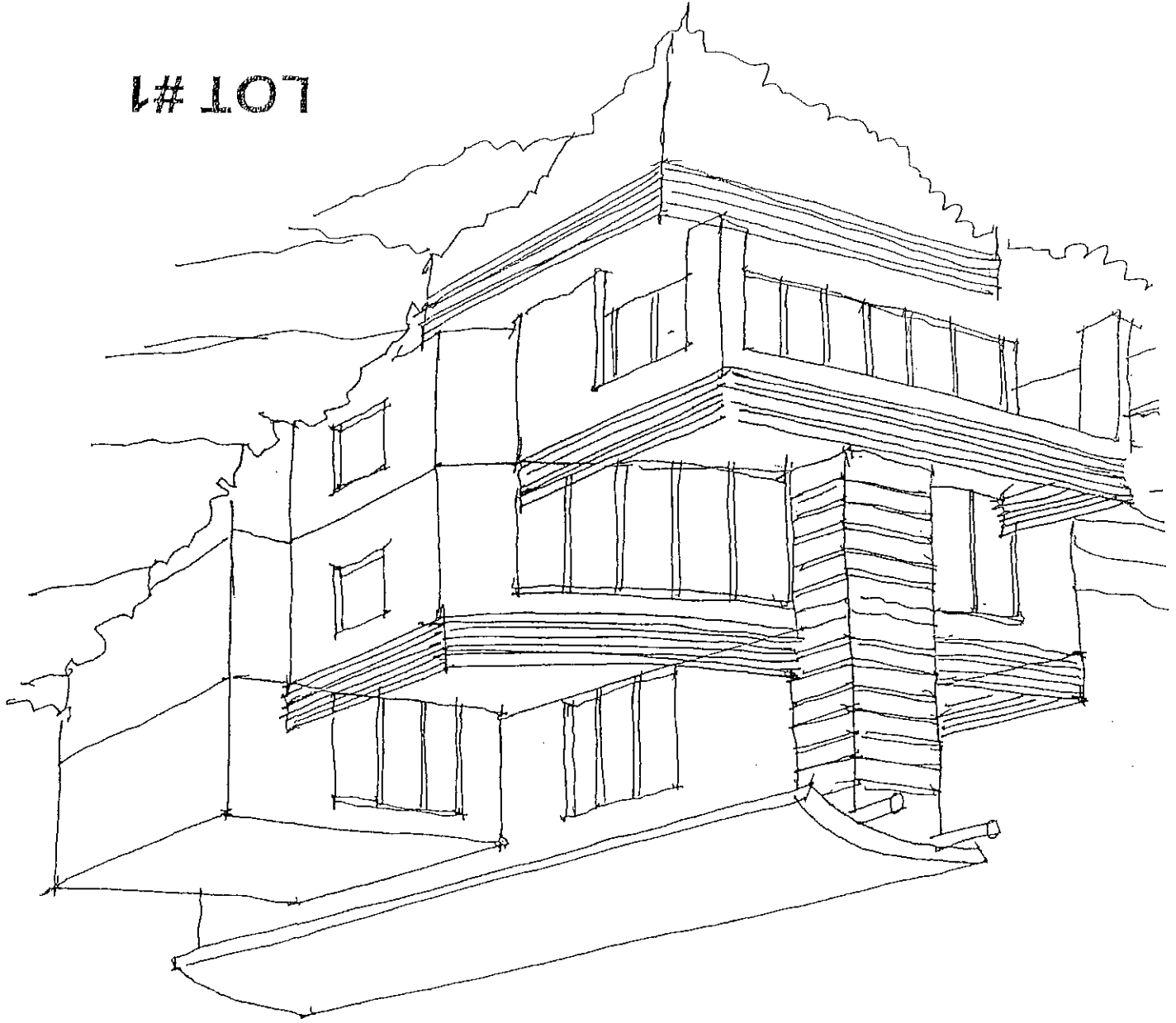
Conceptual Bulk Analysis

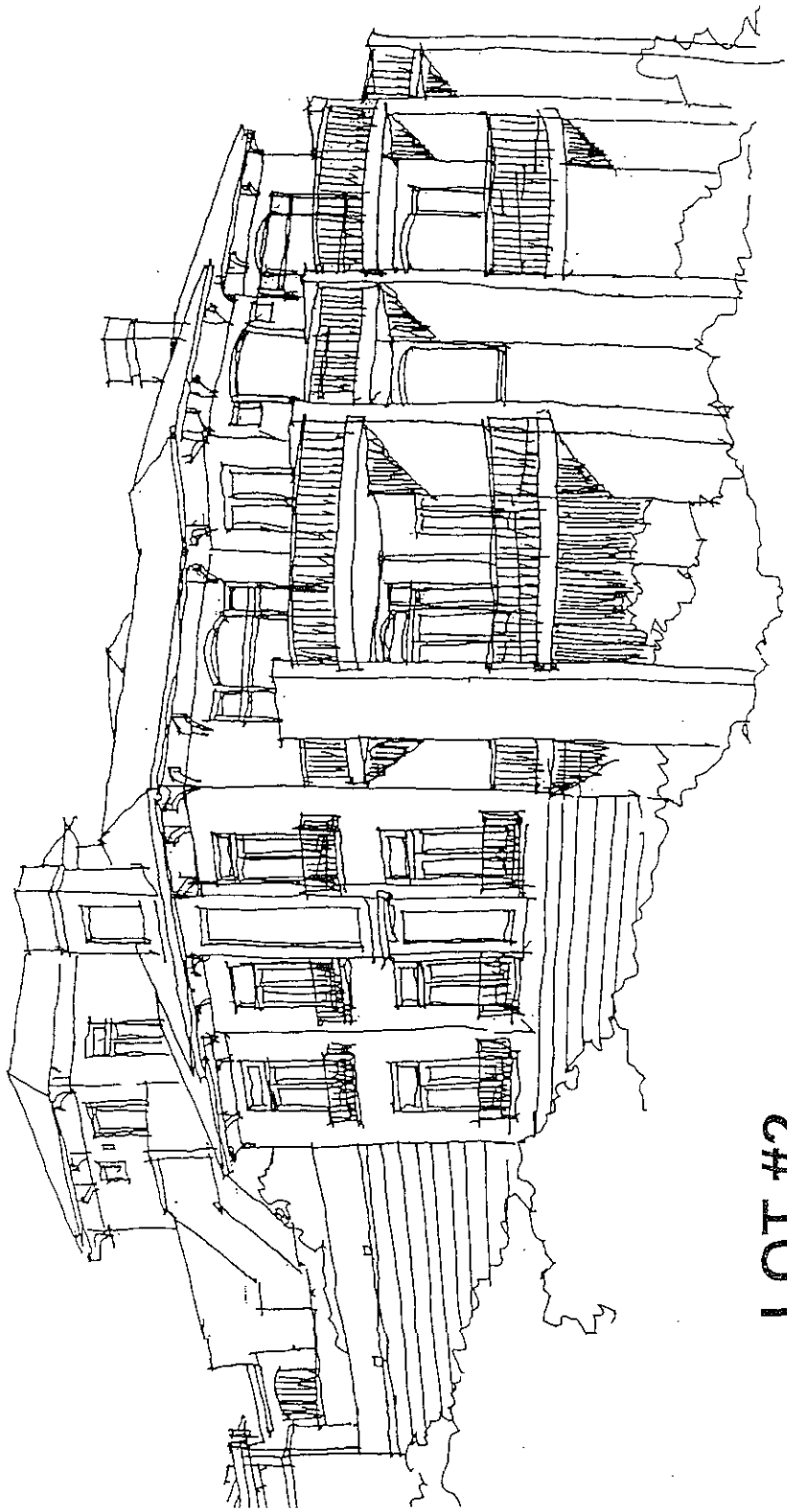
ATTACHMENT A

KENILWORTH ROAD LOT #1

Conceptual Bulk Analysis

LOT #1



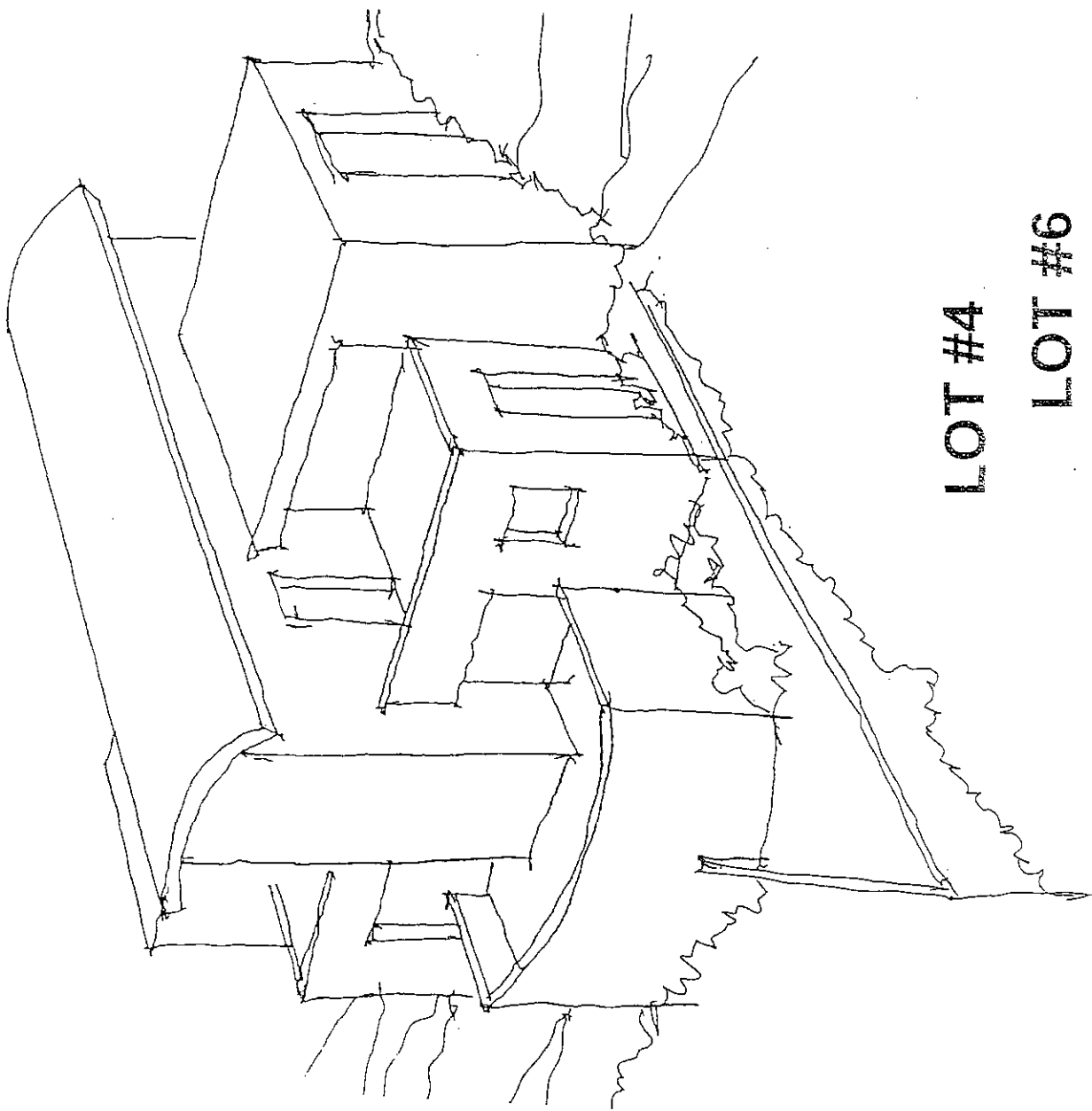


**LOT #2**

**LOT #3 / LOT #5 SIMILAR**

**KENILWORTH ROAD LOT #2, #3, #5**

Conceptual Bulk Analysis

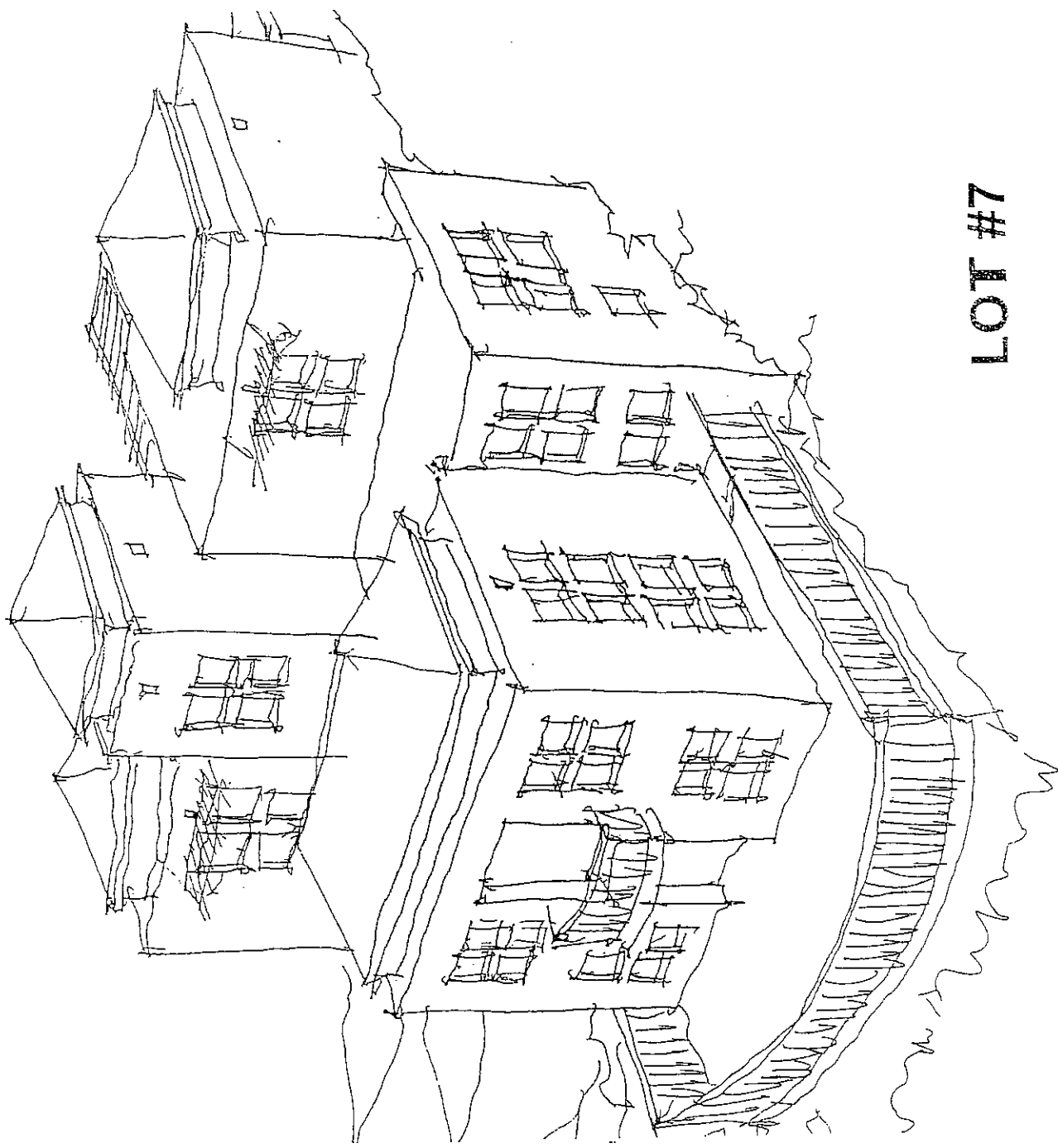


LOT #4

LOT #6

# KENILWORTH ROAD LOTS # 4, # 6

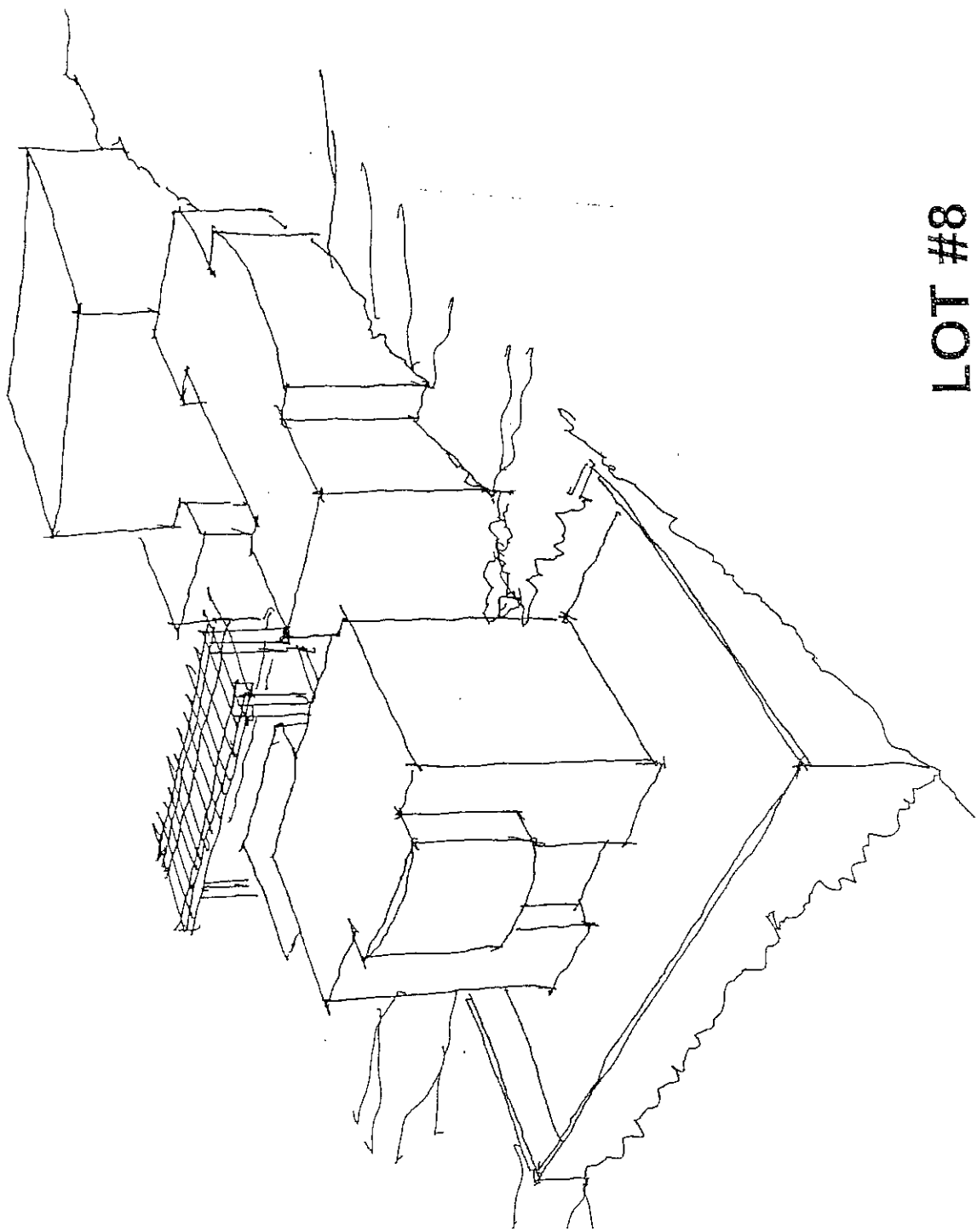
Conceptual Bulk Analysis



LOT #7

KENILWORTH ROAD LOT #7

Conceptual Bulk Analysis



LOT #8

# KENILWORTH ROAD LOT #8

Conceptual Bulk Analysis

## ATTACHEMENT B

The project includes the following improvements, addressing lighting, air quality, trees, archeological, seismic, erosion, hazardous materials, water quality, noise and solid waste, are incorporated as part of the project (See Attachment B).

**Improvement Measure 1:** Project design will incorporate downward directed lighting (“cut-off luminaires”) to direct security lighting downward and reduce off-site light scatter, while providing sufficient illumination for security and safety.

**Improvement Measure 2:** The contractor will implement all Basic BAAQMD PM<sub>10</sub> (fugitive dust) control measures. This measure will be enforced through contract specifications.

BAAQMD Fugitive Dust Control Measures			
Control Measure	BAAQMD Category	Emission Source Controlled	Measure
1	Basic	Land	Water all active construction areas at least twice daily
2	Basic	Trucks	Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.
3	Basic	Land	Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas and staging areas, at construction-sites.
4	Basic	Land	Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction-sites.
5	Basic	Streets	Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
Source: BAAQMD, 1996 as revised through 1999. Table 2.			

**Improvement Measure 3:** Exhaust control measures as recommended by the BAAQMD will be implemented to reduce the less-than-significant PM<sub>10</sub> emissions from diesel fuel.

Exhaust Control Measures	
Control Measure	Measure
1	Prohibit truck idling in excess of 2 minutes
2	Use electricity from power poles rather than generators
3	Limit the size of construction equipment engines to the minimum practical size
4	Configure construction equipment with 2 to 4 degree engine timing retard or pre-combustion chamber engines
5	Install high pressure injectors on diesel construction equipment
6	Install soot traps
7	Install catalytic oxidizers
8	Minimize concurrent operation of vehicles

## ATTACHEMENT B

**Improvement Measure 4:** Construction of the Wetland and Creek Conservation Easement will follow the Creek Protection Plan approved by the City as required by the requirements of the City's Creek Protection Ordinance. In particular, the following two improvement measures are noted:

- Use a larger size cobble for energy dissipation than the 6" – 8" in diameter specified in the draft Plan. Key larger rocks into the slope to prevent dislodgement and movement downstream.
- Deed language specifying the conditions of a deed-restricted conservation easement established by the City through compliance with the Creek Protection Ordinance will be written by the project sponsor and submitted to the City for review and approval.

The following 21 specific practices for protecting the wetland and drainage course areas during construction shall be implemented.

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



## ATTACHEMENT B

- Observe the site conditions for litter control.
- Plant enhancement vegetation outside the delineated limits of the wetland and drainage course. Such enhancement vegetation may be planted within the construction setback area.
- Construct the subsurface drain discharge area upslope and outside the delineated limits of the wetland. Such hydrologic enhancement should be located outside the construction setback to the extent practicable.

**Improvement Measure 5:** Trees will be removed between September 1 and January 31 to avoid the nesting season (February 1 to August 31). Alternatively, field surveys will be conducted no earlier than 45 days and no later than 20 days prior to the removal of any trees during nesting/breeding season to determine presence of nesting birds. Should the surveys find nesting birds, disruptive construction activity would be postponed through the end of the nesting season in consultation with a qualified biologist.

**Improvement Measure 6:** Construction will not occur within 150 feet of an active nest until the nest is vacated or juveniles have fledged.

**Improvement Measure 7:** The applicant will apply for a Tree Permit and will comply with the determination of a City arborist whether the suggested tree protection measures are adequate and after the City arborist conducts an on-site visit to verify tree location and assess protection measures.

*Some specific practices for protecting trees during construction include:*

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

**Improvement Measure 8:** Should currently unknown cultural resources be encountered during construction, the contractor will immediately stop work in the vicinity and notify the City, who will contact a qualified Archaeologist. The Archaeologist will evaluate the resource and consult, if appropriate, with local Native American organizations. Should human remains be discovered, the City will contact the Coroner. The contractor will redirect work away from the area until notified by the Archaeologist. If the resource is found to be significant under CEQA, an appropriate mitigation plan will be developed and implemented. This measure will be enforced via construction contract specifications.

**Improvement Measure 9:** Project elements will meet Uniform Building Code Seismic Zone 4 design standards or better to withstand expected earthquake ground shaking, liquefaction, or other ground failures. Design will be in accordance with the recommendations of the final Geotechnical Report, and will be verified for seismic loading by California-registered Professional Civil and Geotechnical Engineers; recommendations by the same regarding site preparation and design will be incorporated into project plans.

**Improvement Measure 10:** Site stabilization activities will be conducted under the supervision of a California-registered Professional Geotechnical Engineer.

## ATTACHEMENT B

**Improvement Measure 11:** The contractor will employ all or any combination of the following to avoid and minimize erosion, and to avoid sedimentation:

No grading during the rainy season

Tops of fill or cut slopes will be graded to prevent water from flowing freely down the slopes

Hydroseed or mulch cut slopes

Use silt fences, hay wattles, or bales to contain sedimentation

Street sweep to remove soil related to construction activities

Plant low-water landscaping shortly after site preparation

**Improvement Measure 12:** The contractor will prepare and implement a site-specific Health & Safety Plan submitted for approval to the City of Oakland. This plan will include plans, procedures, and controls to protect workers, the public and the environment, and will address the potential risk of exposure to hazardous materials associated with site preparation and with the transportation of hazardous materials from the project site during construction.

**Improvement Measure 13:** The following actions will be implemented to address safety needed and risks involved with the project:<sup>1</sup>

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

**Improvement Measure 14:** The contractor will use any construction-generated water meeting regulatory standards for on-site dust suppression, and will discharge excess construction water meeting regulatory standards to the sanitary sewer system.

**Improvement Measure 15:** A "small project" Storm Water Pollution Prevention Plan (SWPPP) will be developed and implemented, with appropriate BMPs for each stage of the project. The SWPPP will be submitted to the City and RWQCB for review and acceptance. During site preparation and construction, control measures could include silt fences, hay wattles, and filter fabric to prevent runoff of sediment into San Leandro Creek and the Bay. The SWPPP will include post-construction controls to address storm water runoff during the life of the project. To the extent applicable and feasible the SWPPP will utilize techniques found in *Erosion and Sediment Control Field Manual* (RWQCB 1999b) for construction BMPs, and *Start at the Source, Design Guidance Manual for Stormwater Quality Protection* (Bay Area Stormwater Management Agencies Association [BASMAA] 1999) for post-construction BMPs.

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<sup>1</sup> Ibid (Phillip C. Basada).

## ATTACHEMENT B

**Improvement Measure 16:** Construction contractors will be required to limit standard construction activities as required by the City Building Department. Such activities are generally limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 p.m. and 1:30 p.m. No construction activities will be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities will be allowed on weekends and holidays.

**Improvement Measure 17:** To reduce daytime noise impacts due to construction, construction contractors will be required to implement the following measures:

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

**Improvement Measure 18:** To further mitigate potential pile driving and/or other extreme noise generating construction impacts, a set of site-specific noise attenuation measures will be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures will be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures will include as many of the following control strategies as feasible:

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

**Improvement Measure 19:** Prior to the issuance of each building permit, along with the submission of construction documents, a list of measures to respond to and track complaints pertaining to construction noise will be submitted to the City Building Department. These measures will include:

- A procedure for notifying the City Building Division staff and Oakland Police Department;
- A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem;
- A listing of telephone numbers (during regular construction hours and off-hours);
- The designation of an on-site construction complaint manager for the project;

## ATTACHEMENT B

- Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving and/or other extreme noise-generating activities about the estimated duration of the activity; and
- A preconstruction meeting will be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

**Improvement Measure 20 -- Construction Waste Diversion.** Prior to issuance of the building permit, the Project Sponsor will submit and have approved a construction waste recycling plan to the Public Works Department to divert 50 percent or more of the project's construction waste from land fill disposal.

**Improvement Measure 21 – Residential Solid Waste Reduction Plan.** Prior to issuance of the building permit, the Project Sponsor will submit and have approved a residential waste recycling plan to the Public Works Department to minimize residential solid waste disposal to landfills over the operational life of the residences.



DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS  
333 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105-2197

APR 09 2003

Regulatory Branch

Subject: File Number 27592S

Mr. David McDonald  
9333 Redtail Hawk Lane  
Cotati, California 94931

Dear Mr. McDonald:

This letter is in reference to a submittal by Olberding Environmental, Inc. in your behalf, dated January 22, 2003, requesting confirmation of the extent of Corps of Engineers jurisdiction at the project study area. This study area, consisting of four narrow linear lots, is located on steeply sloped hillsides on the west side of Kenilworth Road in the City of Oakland, CA (APN: 48H-7615-4-1, 48H-7615-6-1, 48H-7615-7).

Enclosed is a map showing the extent and location of Corps of Engineers jurisdiction at the study area location. We have based this jurisdictional delineation on the current conditions of the site. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be done before that date.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

A portion of the property is within Corps jurisdiction; therefore a permit will be required to perform work that would impact this area. Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the file number at the top of this letter into Item No. 1. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your work, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a public notice for a period of 30 days.

If an individual permit is required, it will be necessary for you to demonstrate to the Corps that your proposed fill is necessary because there are no practicable alternatives, as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines. A copy is enclosed to aid you in preparation of this alternative analysis.

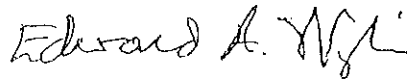
**ATTACHMENT C**


However, our nationwide or regional permits have already authorized certain activities provided specified conditions are met. Your completed application will enable us to determine whether your activity is already authorized. You are advised to refrain from commencement of your proposed activity until a determination has been made that it is covered by an existing permit. Commencement of work before you received our notification may be interpreted as a violation of our regulations.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 CFR Part 331 (65 FR 16,486; Mar. 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

If you have any questions, please call Bob Quebedeaux of our Regulatory Branch at telephone 415-977-8446. All correspondence should reference the file number at the head of this letter.

Sincerely,



 Calvin C. Fong  
Chief, Regulatory Branch

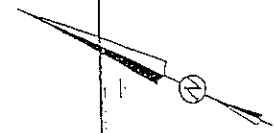
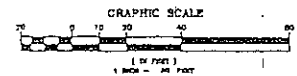
Enclosures

Copy Furnished: (With map enclosure):  
Olberding Environmental, Inc., San Jose, CA Attn: Jeff Olberding,

OLBERDING ENVIRONMENTAL  
 404 CORPS OF ENGINEERS  
 JURISDICTIONAL DELINEATION MAP

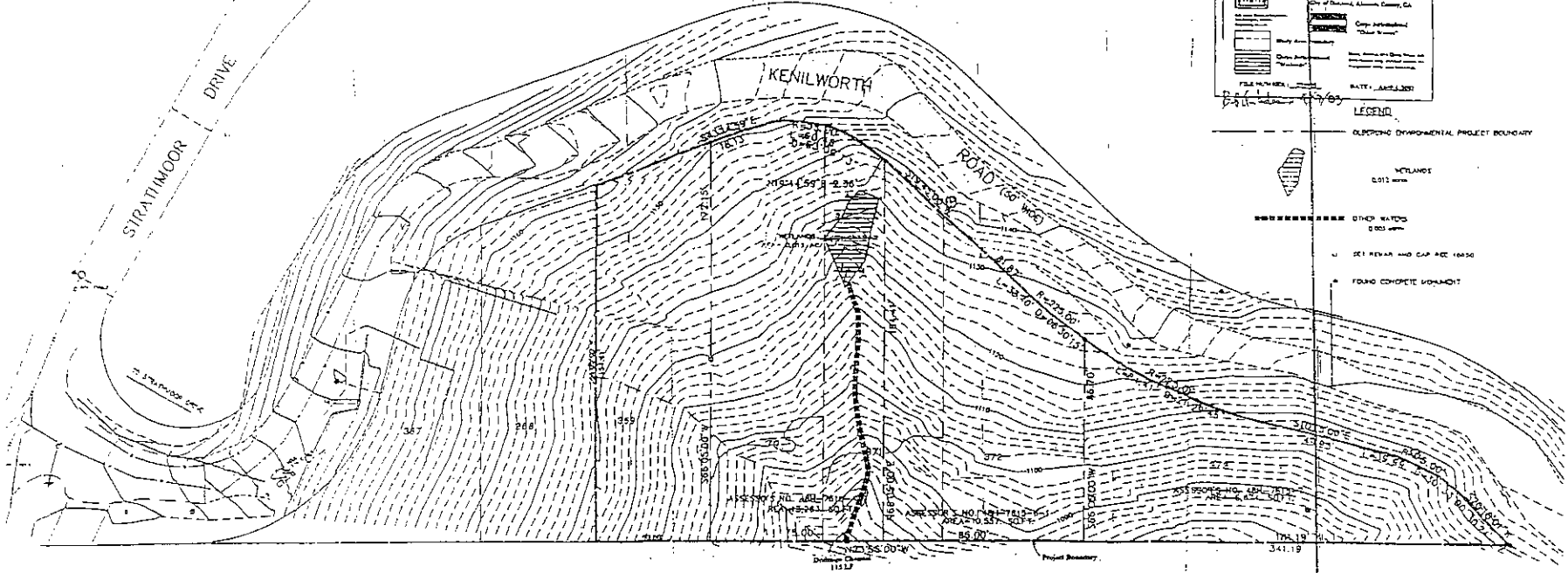
LOTS 369, 370, 371, 372, AND 373  
 MAP OF THE OWN UNIT OF THE HIGHLANDS OF OAKLAND (SM 29)  
 LOCATED ON KENILWORTH ROAD  
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA

JANUARY 15, 2003 SCALE: 1" = 20'



	City of Oakland Bureau of Jurisdiction Engineering Programs Division City of Oakland, Alameda County, CA
	Project: <b>Kenilworth</b> City Jurisdiction: <b>"Other Water"</b>
	Map Sheet: <b>Kenilworth</b> Date: <b>JAN 15, 2003</b>
	FILE NUMBER: <b>1996</b>

- LEGEND**
- OLBERDING ENVIRONMENTAL PROJECT BOUNDARY
  - WETLANDS  
0.012 acres
  - OTHER WATERS  
0.003 acres
  - SET 1 REVIEW AND CAP PER 16430
  - FOUND COMPLETE WATERSHED



**MORAN ENGINEERING, INC.**  
 CIVIL ENGINEERS & LAND SURVEYORS  
 1900 SHATTUCK AVENUE, SUITE A  
 FOLEY, CALIFORNIA 94704  
 (510) 648-1030  
 F.A. NO. 771/771.1      KENILWORTH 2003.0100      JOB NO. 99-4312

REVISED JANUARY 15, 2003 AND PERCEVAL REVISIONS

David McDonald  
1814 Franklin Street, Suite 104 • Oakland, California 94612-3439  
Phone (510) 477-2389 • Fax (510) 295-2547  
EMAIL•davidmcdonald50@hotmail.com

April 11, 2005

City of Oakland  
Community of Economic Development Agency  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
Contact: Leigh McCullen  
1-510-238-4977

RE: KENILWORTH ROAD

PROJECT PHASING

The following is the proposed project schedule:

**Phase 1**

June 1, 2005 - June 31, 2005

Erosion control  
Tree protection.  
Installation of upslope, underground retaining wall (prior to any excavation).  
Site grub and clearing

**Phase 2**

July 1, 2005 – August 31, 2005

Excavation  
Installation of sub-drains  
Re-compaction  
Installation of above ground retaining walls

**Phase 3**

August 15, 2005 – September 31, 2005

Installation of underground utilities  
Installation of road improvements  
Completion of all infrastructure improvements

If you have any questions please call.

David McDonald  
707-477-2389 cell

RECEIVED

APR 11 2005

ATTACHMENT D



**OLBERDING ENVIRONMENTAL, INC.**

Wetland Regulation and Permitting

June 28, 2005

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

Re: Biological Studies of the Kenilworth Road Project, Oakland California (PUD 04-195, TPM 8228, and ER 040006)

Dear Ms. McCullen:

This letter is intended to clarify the conclusions in the biological surveys<sup>1</sup> conducted for the 2.9-acre Kenilworth Project, located on the eastern border of the City of Oakland on Kenilworth Road, just off Strathmoor Drive generally between Drury Road and Norfolk Road.

As shown on the attached maps, generated by using Google's maps/satellite feature, the project site is located just east of the heavily urbanized area of Oakland. The project site is contiguous to a private, currently undeveloped area to the south and west that is also zoned for residential development. As shown on the attached maps, the combined area is completely surrounded by roads and existing residential urban development. (This entire area was also severely burned in the Oakland/Berkeley firestorms of 1970 and 1991.) Because this area is surrounded on all sides by urban development, there is no connectivity to the larger public open spaces to the east that run north and south along the hills (i.e., Claremont Canyon Regional Preserve). In our surveys of the site and our conclusions, we considered not only the specific 2.9 acre area, but also the site's location adjacent to private, currently undeveloped area to the south and west.

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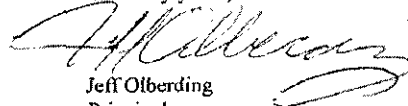
<sup>1</sup>LSA Associates, Inc. 2001. Results of a Preliminary Biological Survey, Kenilworth Road Property, Oakland, California; Olberding Environmental, Inc. 2003, Rare Plant Survey No. 2; and Olberding Environmental, Inc. 2003, Wetland/Waters Delineation for the Kenilworth Property. For clarity of the record, the 2.9-acre site was surveyed for botanicals three times in 2003: in January for the delineation report (a 1.4 acre portion) and both February and May (the entire 2.9 acre area) for special status plant species surveys. The results on both February and May 2003 rare plant surveys were reported in a single letter report dated May 15, 2003.

June 28, 2005  
Page 2

The Army Corps of Engineers and California Department of Fish and Game (DFG) were also consulted in 2003 for the 1.4 acre portion of the property that contains the creek and wetland features. The Corps verified a small wetland and drainage swale, and DFG issued Lake and Streambed Alteration Agreement (No. 1600-2003-5143-3) that authorized the proposed removal and pruning of riparian vegetation. There are no proposed impacts to the wetland or creek features proposed or authorized. In its authorization of this vegetation removal and pruning activity, DFG did not express any concerns with any rare, threatened or endangered species, nor require any future mitigations or conditions related to species. To clarify also, the remaining 3 lots that were subsequently added to the project do not contain any wetland or creek features that are subject to DFG or Corps jurisdiction.

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

Sincerely yours,



Jeff Olberding  
Principal  
Olberding Environmental, Inc.

Enclosures  
cc: David McDonald



Strathmoor Dr

Westmoorland Dr

Northmoor Rd

Norfolk Rd

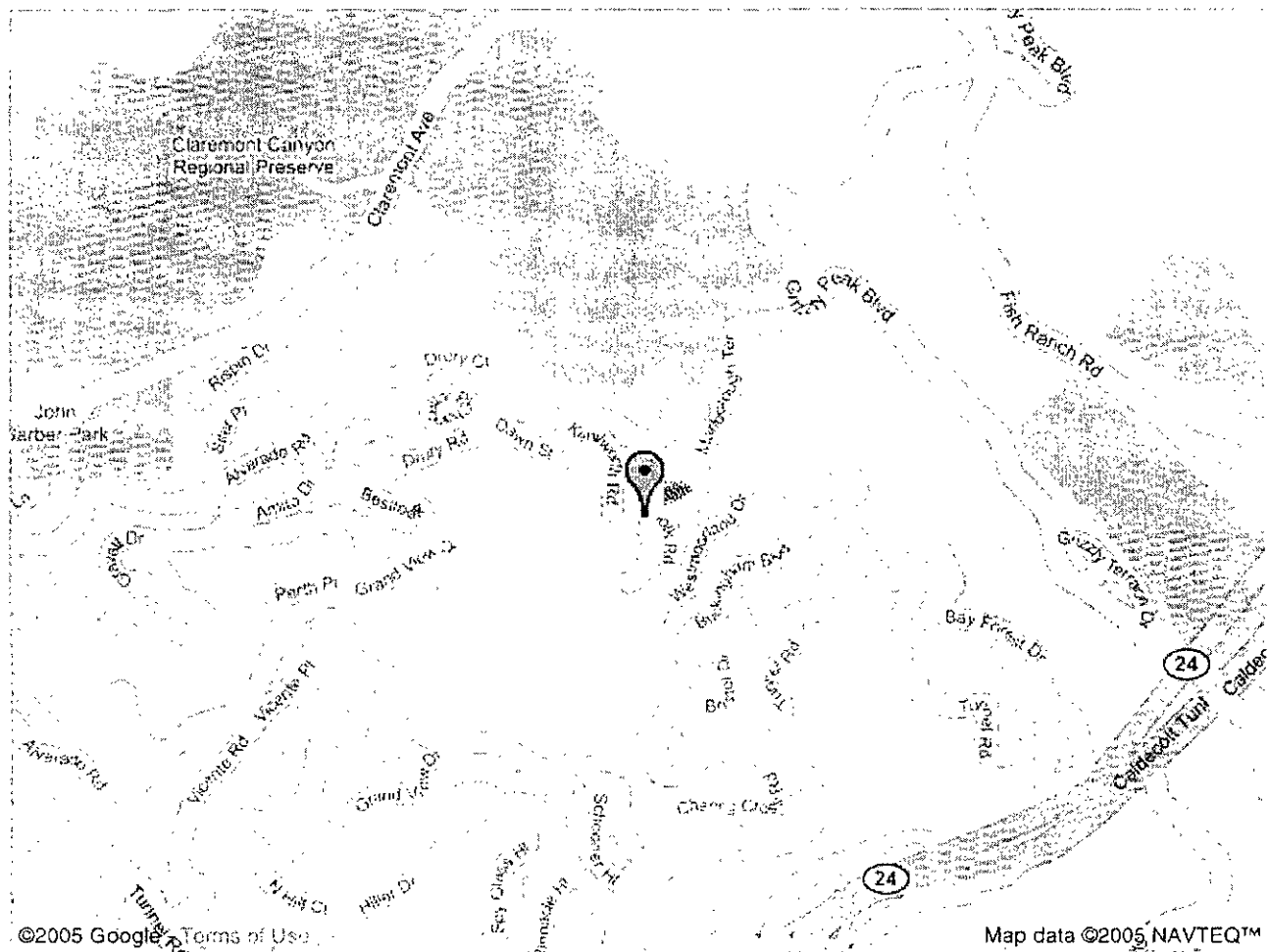
Marlborough Ter

Westmoorland Dr

© 2004 keyhole.com

Brattle Dr

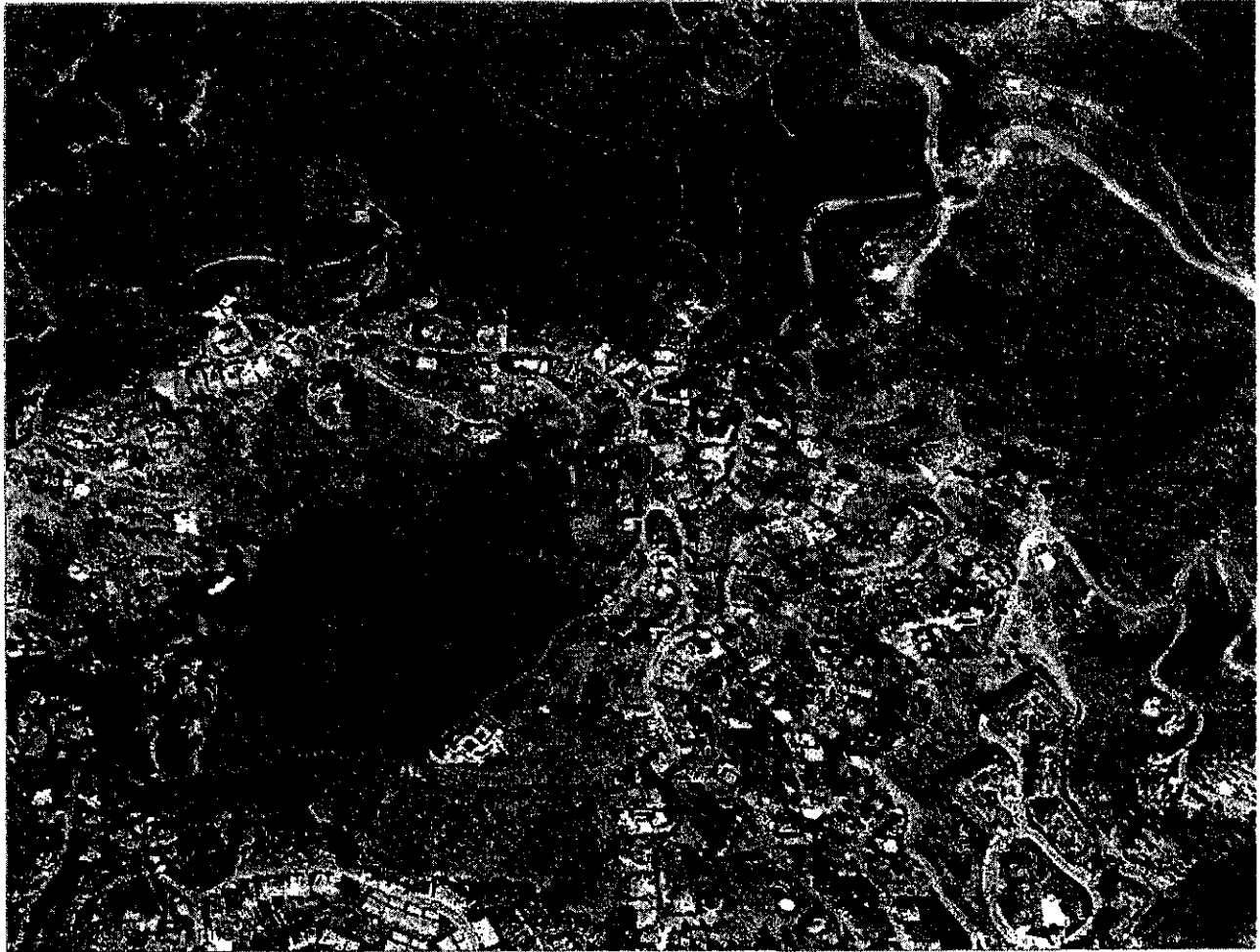
Google Maps  
7067 Devon Way, Berkeley, CA 94705



7067 Devon Way  
Berkeley, CA 94705

**Google**  
MAPS BETA

Google Maps  
7067 Devon Way, Berkeley, CA 94705



7067 Devon Way  
Berkeley, CA 94705



Google Maps  
7067 Devon Way, Berkeley, CA 94705



7067 Devon Way  
Berkeley, CA 94705

*M.2*  
ORA/COUNCIL  
JUL 19 2005