CITY OF OAKLAND

AGENDA REPORT

2007 JAN -4 PM 7:22

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 16, 2007

RE: **Public Hearing and Consideration of a Resolution Denying the Appeal and Sustaining the Decision of the Planning Commission Certifying the EIR and Approving the Subdivision of Two Parcels into Four Lots For the Development of Four Single Family Residences Located at the Intersection of Crestmont Drive and Westfield Way (Case File Number(s) A06-532; ER05-007; & TPM7940)**

SUMMARY

On October 18, 2006, the City Planning Commission approved (by a 4-0-1 vote) a proposal to allow a subdivision of two parcels into four lots at a site located on the eastern side of Crestmont Drive at the intersection of Westfield. The total lot area is approximately 1.28 acres in size and the proposal would allow for the creation of four single family detached dwellings each approximately 3800 square feet in size and also create a conservation easement that covers about 2/3 of the site to protect special status plant species.

On October 27, 2006, Markus Alexis, representing the Crestmont Neighbors, filed an appeal of the Planning Commission's decision. The appellant argues primarily that the City's Planning Commission failed to provide adequate notice and that the Commission's findings that the project's impacts on biological resources, erosion, traffic, and exposure of the public to hazardous materials can be successfully mitigated was in error and not supported by the record. The arguments raised by the appellant are summarized below along with staff's response to each argument.

Staff believes that the findings made for approval of the project as outlined in the October 18, 2006 Planning Commission staff report (Attachment A) clearly state the reasons why the project complies with the applicable regulations. Staff believes that the stated information in the appeal document does not depict any instance of "error" or "abuse of discretion" by the Planning Commission and therefore staff recommends that the Council deny the appeal, thereby upholding the Planning Commission's decision to approve the project.

Item: _____
City Council
January 16, 2007

FISCAL IMPACT

The project is a private development on private property. No public funds are required for the project so there would be no direct fiscal impact to the City. The project does have the potential to result in indirect fiscal impacts to the City. The new development would increase the property tax valuation of the property thereby providing a positive fiscal impact to the City through increased property tax revenue.

BACKGROUND

Project Description

The proposed project is to subdivide two parcels into four lots to ultimately construct four new single family detached dwellings. The project site is approximately 1.28 acres in size. The currently proposed designs of the buildings are contemporary, with each dwelling being no larger than 3800 square feet in size. Each building would be required to obtain a Design Review Permit as well as all applicable building permits. The subject site is located on the east side of Crestmont Drive at the intersection with Westfield Way. The project site is steeply sloped up from the road and all four homes are proposed to be constructed at the bottom of the slope. The lots would range in size from 12,000 to 16,000 square feet each.

This project had previously been submitted as a Tentative Tract Map to create five lots with the houses in substantially the same configuration as this proposal. This project was reviewed and approved by the City of Oakland Planning Commission on March 3, 2004. This project was appealed to the City Council and had been scheduled to be heard in May of that year when an endangered species of plant (Presidio Clarkia) was discovered to be growing on the property. A biologic study also confirmed the existence of this species as well as two other species (Tiburon Buckwheat and Most Beautiful Jewelflower) that are considered Federal Species of concern on the property. Given this new information the applicant decided to withdraw the subdivision request and the matter did not come before the City Council.

The proposed project was reviewed to assess its potential environmental impacts. Based on the results of an Initial Study, the applicant requested that the environmental review proceed in the form of a Focused EIR. Topics included for detailed review as part of the EIR include: Biological Resources, Geologic/Seismic, and Traffic/Circulation; all other topics were deemed to have a less than significant impact with the adoption of standard conditions of approval and were not analyzed further except to respond to comments and clarifications. To mitigate impacts the applicant reduced the scale of the project, eliminating one lot and proposing a conservation easement to be placed over approximately 2/3 of the property to project the endangered species.

A Notice of Preparation (henceforth NOP) was issued on December 9, 2005 and several comments were received on the scope of the EIR, which guided preparation of the Draft EIR. The Draft EIR was released on May 2, 2006 and the 45-day comment period ended on June 16, 2006. A public hearing on the DEIR was held on June 7, 2006. The Draft EIR analysis

identified potentially significant impacts that could be mitigated to less-than-significant levels on biological resources, geology and soils, traffic and transportation. These impacts and proposed mitigation measures or standard conditions of approval are briefly summarized below:

Biological Resources: Biological surveys have established that the project site is home to three special studies species. One, Presidio Clarkia, is on both the Federal and State Endangered Species list. Presidio Clarkia has a range limited to Alameda and San Francisco counties. The number of plants in the known locations has varied over the past few decades due to variable amounts of rainfall and temperature fluctuations; however, the site contains approximately 7-10% of the known world population. The other two species, Tiburon Buckwheat and Most Beautiful Jewelflower are both Federal Species of Concern. These two species both occur in the Bay Area with Tiburon Buckwheat being found in eight Bay Area counties.

The original project would have had a much deeper impact on the three species listed above and necessitated the removal of a much larger number of plants. The current project would remove the following:

	# removed	% of site population	% of Alameda County population	% of Bay Area (world) population)
Presidio Clarkia	67	7-10%	1.5%	<.8%
Most Beautiful Jewelflower	3	30%	.15%	<.003%
Tiburon Buckwheat	500	25%	<.05%	<.001%

To reduce impacts to less than significant levels, approximately 2/3 of the project site will be covered by a conservation easement designed to protect those plants not removed as part of necessary construction for the homes and to encourage increase in the populations of the species. The conservation easement area will be managed by an Easement Holder, with experience in such matters, who will be subject to approval by both the City and the California Department of Fish and Game (CDFG). Conditions of approval will require that no grading is to occur within the easement and development within that easement will be prohibited in perpetuity. The easement will restrict access to the conservation area except for purposes of regular weed control. The project further proposes to salvage seed from the removed plants which will be stored in climate controlled conditions for no more than one year until optimal planting conditions exist. Following construction, a biologist approved by CDFG, the City of Oakland, and the easement holder(s) will conduct annual inspection and monitoring of the site. Remedial action will be taken if at any time during the inspections there is a drop in the number of special status species. The current property owner will contribute a sum sufficient to directly pay all costs of 10 years of monitoring the easement, and will establish an endowment fund in an amount that is calculated to provide in ten years, at an annual yield of 4.2%, sufficient funds for ongoing over-site and management of the conservation easement, in perpetuity. Any shortfalls at that time will be made up by assessments to the Homeowner's Association for the four lots.

Geology, Soils, and Seismicity: The project site would likely be subject to strong seismic ground shaking in a significant earthquake, as would all other properties in Oakland and the Bay area. The project sponsor will be required to design the buildings and infrastructure in compliance with current building codes. Geotechnical surveys identify the project site to be uniformly composed of rock with a thin mantle of soil in certain areas. Due to this, the soils are not considered to be expansive and the site is not likely to be susceptible to liquefaction. Standard conditions of approval on the project would mandate that the project elements meet or exceed Uniform Building Code design standards to withstand expected ground shaking or other ground failures. The design of the structures and associated retaining walls will be in accordance with recommendations contained in a Final Geotechnical Report. Also, a standard condition of approval would require a state registered Professional Geotechnical Engineer to supervise all site stabilization activities.

Traffic and Transportation: The proposal will add four new single family dwellings with access on Crestmont Drive. This will add eight required parking spaces to the project site (two per dwelling) and a Traffic Study concluded that the project would generate approximately 40 vehicular trips per day which the report did not consider to be substantial. While the additional traffic will not be a problem in terms of volume, the City of Oakland had no data, at the time of project approval, on the actual speed of travel which could potentially cause additional traffic hazards from vehicles backing into the roadway. Therefore, a mitigation measure, imposed as a condition of approval, will require the applicant to conduct a critical speed survey prior to the filing of the Final Map. If it is found that the critical speed exceeds 30mph in the northbound direction or 40mph in the southbound direction, the applicant will be required to implement additional safety measures including signage, pavement markings, or other measures as determined by the Transportation Services Division of the City's Public Works Agency. As detailed below (in Appeal Issue No. 11), a recent speed survey was conducted and it was found that speeds averaged 32 mph in the northbound direction (slightly exceeding the 30 mph threshold) and 31 mph in the southbound direction (well under the 40 mph threshold). Public Works is currently reviewing the speed survey and recommended mitigation measures.

Other impacts that were reduced to less than significant levels with imposition of standard conditions of approval included: impacts on aesthetics (measures to reduce glare), air quality (BAAQMD recommended measures to reduce construction-related PM10 and asbestos), archaeological resources, hydrology (storm water and grading plans), hazardous materials (worker health and safety plan), and construction noise (best management practices).

Comments received from both the hearing and the letters were compiled and responded to within the FEIR which, along with the Tentative Parcel Map, was brought before the Planning Commission on October 18, 2006. At the hearing the Planning Commission took public testimony on the project, certified the EIR and approved the project.

General Plan Conformity

The General Plan designation for these parcels is Hillside Residential. The intent of this designation is to create, maintain, and enhance neighborhoods of detached single family dwellings on large lots. The proposal meets the intent of the General Plan as it proposes to subdivide two parcels totally approximately 1.28 acres in size into four lots ranging between 12,000 and 16,000 square feet each. Each lot would contain one detached single family dwelling. The maximum General Plan density in Hillside Residential is five units per gross acre. The project area could conceivably support six dwelling units under that General Plan density and a proposal for four is well within the allowed parameters. This is also in conformance with General Plan Policy N7.3 which stipulates that under most circumstances new subdivisions in the hillside areas should create lots at least 8,000 square feet in size.

The Land Use and Transportation Element (LUTE) of the General Plan identifies policies for utilizing Oakland's land as change takes place and sets forth an action program to implement the land use policy through development controls and other strategies. As identified in the LUTE and the City's General Plan this site is located in the Hillside Residential area of the City of Oakland and is consistent with the goals and policies of that designation by creating single family detached residential structures on large lots. The General Plan density of 5 units per gross acre would conceivably allow a maximum of 6 units and the project conforms to this density.

The three key policies of the LUTE that are important in this regard have been discussed and the project has been shown to be compatible with these policies in the DEIR (Appendix B at pp. 75-76), as well as in the responses to comments in the FEIR (Response to comment F-5 at pages 49-51), and were adopted by the Planning Commission (pages 3-4 of the October 18, 2006 Planning Commission Report).

In summary, the project is consistent with the LUTE because it creates new residential units in the Oakland hills at low densities and successfully works to mitigate impacts on the surrounding neighborhood.

Open Space Conservation and Recreation Element (OSCAR)

Conformity with OSCAR was discussed in the DEIR (Appendix B at pp. 76-77), as well as in the responses to comments in the FEIR (Response to comment F-5 at pages 49-51) and were adopted by the Planning Commission (pages 4-5 of the October 18, 2006 Planning Commission Report).

The project would be generally consistent with the City's open space policies because it would provide accessible and useable open space within the 4 unit development, and also provide a conservation easement which will protect special status plant species.

For the reasons stated above and in the Planning Commission Staff Report and in the EIR, staff believes the project is consistent with the general plan.

Zoning Conformity

Both parcels are zoned R-30 One Family Residential and are approximately 55,698 square feet (1.28 acres) in combined size. The R-30 zone is designed to create lots of single family detached dwellings on lots of 5,000 square feet or more. In this case the proposed lots are substantially larger than that (as the General Plan seeks larger lots than typical of the R-30) and therefore conform to the density of this zone. The four lots proposed would range in size from 12,354 to 16,103 square feet. Each lot would exceed the minimum lot area and width for the neighborhood which is mostly composed of single family residences on lots ranging between 7,000 to 9,000 square feet. When this item was previously before the Planning Commission in March 2004 as a five lot Tract Map, the applicant also received approval for a Minor Variance to allow two of the lots to be smaller than the Median Lot Size for the area. Both of those lots were substantially smaller than the four proposed today and the current project is in conformance with all City of Oakland standards with regards to lot size.

Planning Commission's Approval

At the October 18, 2006 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellants, who generally objected to the development of the project and its impact on special status species as well as raising concerns about the impact of slope stability and air quality.

The Planning Commission found that the project complies with all the necessary requirements for approval and is consistent with the relevant policies of the General Plan and voted unanimously (with one member absent) to approve the project. The staff report for the Planning Commission, which contains a more thorough discussion of the project and the findings made by the Planning Commission to approve the project, is attached as Attachment A. The Commission made two minor clarifications to the staff report at the request of staff (as detailed in Appeal Issue No. 1).

KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

Appellant's Arguments

On October 27, 2006, Markus Alexis, representing the Crestmont Neighbors, filed an appeal of the Planning Commission's decision. The appellant's letter is attached to this report (Attachment C). Essentially, the appellant challenges the approval of the project on the following grounds: (1) that the City Planning Commission abused its discretion and failed to give adequate notice as required by law; (2) that the mitigation measures regarding biology will be inadequate to protect the special species plants and the impact cannot be mitigated to a less than significant level; (3) that the impacts of construction related erosion and run-off cannot be mitigated to less than significant levels; (4) that the proposed mitigation measures to control the release of asbestos from the soil cannot be mitigated to less than significant levels; and (5) that the evidence that traffic-related impacts can be mitigated to less than significant levels is not supported by the

record. Listed below in **bold** text is a summary of the arguments raised by the appellant. Staff's response to each argument follows each item in *italicized* text.

Issues of Improper Notice Given

1. **Material amendments to the Staff Report and the Mitigation and Monitoring Program ("MMRP") were circulated for the first time to attendees of the Commission hearing on October 18, 2006 when the Commission took action that is the subject of this appeal. No other notice was given to the public or interested parties. This "notice" was not sufficient to comply with the law.**

   Staff Response: The Planning Division, at the Planning Commission hearing, distributed a writing that contained two minor recommended changes – one to the CEQA findings and one to a condition of approval -- that constituted non-substantive edits to the staff report which were not material changes. Appellants have not articulated the specific, procedural basis of their objections, nor did they object to the substance of the changes at the Planning Commission meeting, nor do they object now to the substance in their appeal. Appellants have also not articulated how they have been prejudiced by such actions. Accordingly, this contention should be rejected.

   It should be noted that a complaint has been filed with the Public Ethics Commission by Mr. Ralph Kanz (Complaint No. 06-20), who is not an appellant. A copy of the Planning staff's response to that complaint is attached as Exhibit E. In sum, Planning staff believes that this document was not an "Agenda Related Material" because it was not submitted in lieu of, nor substituted for, the published staff report. Therefore, its distribution at the Planning Commission meeting was proper. Here, the published staff report was about 38 pages in length. The "disputed" materials were about 2 ½ sentences, totaling about 53 words, which responded to public comments and added some clarifying text. The hand-out of the written text was provided to facilitate a better understanding of the changes by the public and the Commission during Planning staff's oral presentation to the Commission.

   Specifically, the writing in question had two minor, clarifying changes. The first change was to add condition of approval no. 8b, which essentially reminded the applicant that he had to consult with and obtain approval from the Department of Fish and Game (a fact already well known to the applicant but placed in the conditions anyhow). This condition was added in response to comments received from the public prior to the hearing as well as the California Department of Fish and Game. The second change was to add an introductory clause omitted from CEQA finding no. 22, at the request of the City Attorney. These changes were non-substantive and did not alter the intent or meaning of the project or require additional notification.

   In any event, even if the allegations in the Complaint were found to be true and the Ethics Commission found a Sunshine Ordinance violation, there is no basis to overturn the Planning Commission's decision on that ground.

2. **The Division customarily releases the specifics (details) of the MMRP when it releases the Final Environmental Impact Report ("FEIR"). It did not do so on October 6, 2006. Instead, it posted the MMRP (and the staff comments) on its website sometime late on October 13, 2006 and did so in a poorly noticed manner and in a format that did not comply with the law. The MMRP (and the staff comments) did not become available to the public at least 10 days before the scheduled hearing and was inadequately distributed within 72 hours of the hearing; the format of the MMRP was defective; and the notice did not comply with the law.**

   Staff Response: There is no legal requirement to include the MMRP in the Final EIR, nor is this standard City policy or practice. Generally the practice is to release the MMRP with the Planning Commission staff report and not the Final EIR. Moreover, Planning Commission staff reports are not legally required to be available ten days prior to hearing, but rather must be available at least 72 hours before the hearing. The staff reports were available, as admitted by the Appellant, on the Friday before the Wednesday meeting, which is five days before the hearing, in full compliance with the Brown Act and Sunshine Ordinance. In addition, the MMRP is a collection of the mitigation measures that were already in the Draft and Final EIR and hence already known to the public. There were no substantial changes to the mitigation measures from those published in the EIR to those contained in the MMRP.

3. **Both the FEIR and the MMRP are inadequate because neither document sets forth the "standard conditions of approval" the Sponsor purports to include in its Plan (exhibit L to the FEIR). Such vague references to unspecified "standard conditions of approval" do not satisfy the notice requirements of the law.**

   Staff Response: This is incorrect. The Initial Study (contained in Appendix A of the Draft EIR) clearly identifies the standard conditions of approval. Attachment L of the FEIR also clearly states that the project Sponsor agrees to incorporate the standard conditions of approval into the MMRP. The MMRP (see Exhibit A, Planning Commission Report), in turn, also identifies the Standard Conditions of Approval (SCA).

Issues of Improper Analysis of Impact on Biological Respources

4. **There is inadequate evidence to demonstrate that the proposed conservation easement will be of sufficient size to provide a viable habitat for the endangered and concerned plants affected by the project.**

   Staff Response: The Draft (Section IV, pp 26-44) and Final EIR (Chapter IV, responses F13, F14, F15, & F16) had a full and complete discussion of the impacts to, and mitigations for, protected plant species. Staff believes there is substantial evidence in the record to support the conclusion that the conservation easement will sufficiently mitigate impacts to less than significant levels. The proposed conservation easement was suggested by the CDFG as a solution to protect the plants. The details of the easement were developed by WRA, a firm specializing in endangered species issues, and included in the Draft EIR. CDFG has not objected to the size of the easement or the efficacy of other mitigation measures, but rather

has expressed some concerns with the California Native Plant Society not being the easement holder. However, the eventual easement holder must be approved by both the City and CDFG. Although originally the East Bay Regional Park District expressed some concerns with the project, those concerns were adequately addressed and the Park District now is satisfied with the project and the plans to protect the endangered species.

Specifically, the size of the easement is not necessarily the main governing factor in determining the viability of the population. Surveys conducted over the years have found that the number of Presidio Clarkia plants has grown from 30 to 700 on the project site over the past 15 years. This change has been due in part to climatic variations and in part due to the conscious efforts to remove non-native species on the site that were crowding out the endangered species. This conservation easement shall be held by a responsible party experienced with maintaining habitats for endangered species and this party will need to be approved by the CDFG. The easement will require yearly monitoring by a qualified biologist (with approval of said biologist being required by the City of Oakland, CDFG, and the easement holder) in perpetuity and corrective action will be taken if the species show damage or a decline in numbers.

5. **There is inadequate evidence to support a finding that the funding of the Conservation Easement will be adequate and the finding that a 4.2% yield on an endowment fund is an unreasonable assumption.**

Staff Response: The Draft (Section IV, pp 26-44) and Final EIR (Chapter IV, responses F13, F14, F15, & F16) had a full and complete discussion of the funding issues. As stated in those documents, the exact amount of the fund, while predicted to range from $20,000-$25,000, will be subject to approval of the easement holder and the requirement is explicit that the property owner or successor shall contribute an amount sufficient to cover the costs of 10 years of overseeing the conservation easement. Further, the appellant's argument that a 4.2% yield on an endowment fund is moot as the MMRP specifically requires that if the fund does not produce an adequate yield to cover the costs for the services required then this cost will be assessed to the Homeowner's Association. This will ensure continued funding of a qualified biologist to review site conditions and monitor the endangered species regardless of other factors. Again, CDFG has not objected to the amount or method of financing of the conservation easement. Although originally the East Bay Regional Park District expressed some concerns with the funding mechanism, those concerns were adequately addressed and the Park District is now satisfied with the proposal.

Issues of Improper Analysis of Impact on Soils and Geology

6. **The soils investigations relied upon by the FEIR are inadequate to determine whether the mitigation measures will be sufficient.**

Staff Response: The Draft (Section V, pp 45-52) EIR contained geologic reviews of the site that found it to be a large mass of serpentinite rock with little or no topsoil. Initially, the soil borings were limited to only one of the four lots and the applicants' geotechnical consultant, a second geotechnical consultant, and CEDA engineering staff did not believe further soil borings were necessary. Nevertheless, additional geological borings were performed by a Professional Engineer in July of 2006, which found the soil to be dense and impenetrable to the boring methods used after a depth of 1-5 feet. This coincides with previous geologic borings done on the site in the year 2000. City of Oakland CEDA engineering staff accepts this analysis as showing the site is stable and sturdy. Due to the general lack of topsoil at the project site the EIR concluded that "there will be soil erosion or loss of top soil as a result of this development" (see Attachment D, DEIR, pg 51).

Moreover, the project site would likely be subject to strong seismic ground shaking in a strong earthquake, as would all other properties in Oakland and the Bay area. The project sponsor will be required to design the buildings and infrastructure in compliance with current building codes. Standard conditions of approval on the project would mandate that the project elements meet or exceed Uniform Building Code design standards to withstand expected ground shaking or other ground failures. The design of the structures and associated retaining walls will be in accordance with recommendations contained in a Final Geotechnical Report. Also, a standard condition of approval would require a state registered Professional Geotechnical Engineer to supervise all site stabilization activities.

7. **The likely presence of an aquifer underlying the project has not been adequately investigated and the mitigation measures do not take the aquifer's likely presence into account.**

Staff Response: Both the Draft (Section V, pp 45-52 & Appendix E) and Final EIR (Chapter III response 2a & Chapter IV comment b3 & Appendix J) contained geologic reviews of the site that found the appellant's claim that there is an underground aquifer at or below the site is unsubstantiated. All of the geotechnical reports that have been prepared for this project by qualified and licensed engineers consistently found that this site is underlain by serpentine bedrock. While neighbors have expressed concerns about water emanating from the hillside and pointed to this as evidence of an aquifer, site-specific geotechnical studies found that this is normal leaching of water through natural fractures in the bedrock formation and not an aquifer which is characterized by a highly porous soil or rock layer.

The appellants did submit a document by an engineer (Peters & Ross) they retained that was written in 2004 (see EXHIBIT II of Attachment C) and was in response to the previous 5-lot plan. This report reviews the project location but also fails to mention the presence of an underground aquifer at the site. Since it is based on an older proposal that is no longer being considered the City of Oakland questions its relevance. It references a great deal more cutting and grading than this plan has proposed, in large part because of the four unit plans' conservation easement which will now remove any grading or other work from approximately 2/3 of the total project area. For instance in the conclusions section it is concerned about significant cutting on lots 1-3 which is also no longer an issue. What was

lot 1 will no longer be built on and will be part of the conservation easement which will also extend up the hill where previous grading was proposed. It does not appear the engineer reviewed the current proposal as it is standard they would likely issue a revised report, even if their conclusions did not change. Therefore, the City of Oakland sees nothing revealing or illuminating in this 2 ½ year old report submitted by the appellants for a project different than the one currently before the City Council.

8. **The mitigations measures ignore previous recognitions by the City of Oakland and other evidence that the project site is susceptible to landslides.**

Staff Response: Both the Draft (Section V pp 47-48 & Appendix B pp 69-70) and Final EIR (Chapter III, responses 1d & 2c) fully and completely address the issue of land stability. The site-specific geotechnical reports, and City staff, concludes that this site is not susceptible to landslides and has not been the subject of land failure in the past; even though it is steeply sloped (58% grade at steepest) the site has not failed, and this without any engineering measures to hold it up. The site is composed of mostly exposed bedrock and not the loose soils and fills typically prone to slippage. The appellant's may be alluding to the fact that there have been several slides in the surrounding properties over the past 45 years. A review by City of Oakland engineering staff has concluded that these failures were the result of either building structures on deep, un-engineered fill or due to inadequate homeowner maintenance of drains causing blockages which then resulted in slides. These factors, while tragic, do not exist on this site. In any event, the project must comply with UBC and generally accepted engineering practices in designing homes and infrastructure improvements, including that the project elements meet or exceed Uniform Building Code design standards to withstand expected ground shaking or other ground failures; the design of the structures and associated retaining walls will be in accordance with recommendations contained in a Final Geotechnical Report; and a state registered Professional Geotechnical Engineer will supervise all site stabilization activities.

Issues of Improper Analysis of Impact of Asbestos in the soils

9. **The evaluations of the type and extent of asbestos in the soil relied upon by the FEIR are inadequate and not supported by substantial evidence.**

Staff Response: Both the Draft (Section IX, Appendix A, pp18-19) and Final EIR (pg 25 & Appendix I) fully and completely address the issue of the impacts of asbestos in the serpentine rock, potential health impacts and proposed standard *conditions of approval to reduce those impacts to less than significant levels. Specifically, the Initial Study determined that there existed asbestos fibers in the serpentine rock and identified the possible release of air borne fibers during excavation as an impact. The Initial Study then proposed standard conditions of approval recommend by the State Air Resources Board (ARB) and the local Bay Area Air Quality Management District (BAAQMD) to reduce these impacts to less than significant levels. (IS p 18, DEIR App. A.). In response to further comments on the Notice of Preparation, the DEIR, (at p. 70-7.) further elaborated on these issues. The Final EIR (at*

page 25) also addressed these concerns and further clarified the standard conditions of approval, which were imposed as part of the MMRP.

While there are measurements of the percentage of asbestos containing fibers in the serpentinite (See Micro-Analytical Labs Report App. E. 5) there are no measurements of the amount of airborne asbestos as this is not feasible or necessary according to the California Air Resources Board (See DEIR, "Hazardous Material P. 70-71). The "chrysotile" form of asbestos found in the serpentinite rock on this site is common and widely distributed- found in nearly two thirds of the Earth's crust. Chrysotile is far less toxic that the other form called "amphiboles". It is this latter form that is banned from all products whereas the chrysotile form is used in many industrial products (See FEIR App. I. as well as see further response to written comment F-8, Chapter IV).

Additional supplemental materials by Elizabeth Bashnick (one of the appellants) contains requests that additional conditions to control air quality and limit the potential effects of asbestos release due to construction be incorporated into the project. The City has imposed all ARB and BAAQMD recommended measures for project sites with disturbed areas of less than 1 acre. Here, about .43 acres would be impacted by construction activities. Nevertheless, because the total site is approximately 1.28 acres in size and due to lingering concerns about the hazards of the release of asbestos of any type in an area of homes and schools staff recommends that additional measures that apply to disturbed sites of more than 1 acre be included. Therefore, MMRP No. II (Air Quality-Asbestos) is revised as follows (new additions in underscore):

Construction Grading Operation Requirements	
Administrative	1. Asbestos Dust Mitigation Plan submitted to the District and approved prior to engaging in the any construction or grading operation. 2. Notify APCO next business day upon discovery of naturally asbestos, serpentine, or ultramafic rock. 3. Submit Asbestos Dust Mitigation Plan within 14 days upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock. 4. Report bulk sampling results conducted by the owner/operator to document applicability done at the request of APCO.
Dust Control	1. Vehicle speed ≤15 mph 2. Sufficient water applied to the area prior to disturbance to prevent visible emissions from crossing project boundaries. 3. Areas to be graded or excavated kept adequately wetted to prevent visible emissions from crossing project boundaries. 4. Storage piles kept adequately wetted, treated with chemical dust suppressant, or covered when the material is not being added or removed. 5.Storage piles must be stabilized when inactive for more than 7 days by adequately wetting , establishing surface crusting, chemical dust suppressant, covering with tarps or vegetative cover, installation of wind barriers around three sides or open areas, or any measure as effective. 6. Equipment must be washed down before moving from the property onto paved roadway. 7. Track-out prevention device installed (gravel pad, tire shaker, wheel wash system, 50 feet of pavement extending from intersection with paved public road, or other measure as effective. 8. Visible track-out on paved public road must be cleaned using wet sweeping or HEPA filter equipped vacuum device within 24 hours. 9. Post project stabilization of disturbed surfaces using vegetative cover, 3" of non- asbestos-containing material, paving, or other measure deemed sufficient to prevent 10 mph winds from causing visible emissions. 10. Implement the preceding dust control measures within 24 hours upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock. 11. Implement provisions of District approved Asbestos Dust Mitigation Plan within 14 days of approval after discovery of naturally occurring asbestos, serpentine, or ultramafic rock.

10. The FEIR's evaluation of the hazards by the acknowledged presence of chrysotile asbestos in the soil is inadequate and not supported by substantial evidence.

Staff Response: See response to number 9 above.

Issues of Improper Analysis of Impact on Traffic

11. No actual traffic study has been conducted and the studies that were submitted are based on unreasonable assumptions.

Staff Response: Traffic studies are generally based on the predicted volume of traffic a project will generate and how that will affect levels of service (LOS) at nearby intersections. They also work to factor in specific location based factors such as unusual road width, issues hindering visibility, and slope of the road. It is uncommon for the City of Oakland to require

a traffic study for a project of this size. Nevertheless, a traffic study was prepared for this project and included in the Draft EIR. The study found that the project would be expected to generate 40 vehicle trips per day including 4 peak hour trips, levels that will not have a significant impact on the surrounding neighborhoods.

There is no official record of speeding or speed related accidents on Crestmont (DEIR App. B. Pp 72-73). The stopping sight distances to the proposed driveways in the North bound direction (up hill) is 190 feet, which correlates to an adequate stopping distance for cars traveling 30 mph. The stopping sight distance for cars going South bound (downhill) is 300 feet, which provides sufficient stopping distance for cars traveling 40 mph (See Response to Comments in DEIR at App B. paragraph 8, p. 72, and Letter Report from traffic engineer at DEIR App. F. 1). Because the City did not have a detailed speed survey to determine if these threshold speeds were being exceeded, it required, as a mitigation measure, the project sponsor conduct a speed survey and to implement additional safety measures if speeds exceed sight distance limits stated above. Since the Planning Commission approval, a critical speed study was conducted in November 2006 (see Attachment F). This speed study shows that the critical speed for vehicles traveling northbound is 32mph (the threshold for further review and appropriate mitigation was set at 30mph). The critical speed traveling southbound was found to be 31 mph -well below the threshold of 40 mph established in the EIR due to longer sight distance to first driveway in that direction. The project Sponsor has submitted this study to the Transportation Services Division of the Public Works Agency for review and additional mitigation as necessary.

SUSTAINABLE OPPORTUNITIES

The project would provide the following economic, environmental, and social equity benefits to the city:

Economic: The project would contribute to the economic vitality of the South Hills area by bringing additional residents and businesses to the area. The project would also increase the property tax valuation of the property thereby providing a positive fiscal impact to the City through increased property tax revenue. Since the project would involve detached residential houses, sales and resale of the residential units in the project would also generate transfer taxes for the City.

Environmental: The project is located on the site of several special status species and an EIR was prepared with mitigation measures that indicate the project would have a less than significant effect on the environment.

Social Equity: The project involves a four unit housing development and increases housing opportunities for the City of Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

The project would be subject to the requirements of the Americans with Disabilities Act (ADA), as provided for in the California Building Code. Compliance with ADA regulations would be confirmed when building permits are issued for the project.

STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the appeal thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and the approval of the project comply in all significant respects with applicable general plan policies and zoning regulations and review procedures; 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record; and 4) an EIR was prepared for the project and certified by the Planning Commission that the project's impacts on the environment could be successfully mitigated to a less than significant level.

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.

2. Continue the item to a future hearing for further information or clarification.

3. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

4. Uphold the appeal and reverse the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council have an opportunity to review the proposed findings and resolution for denial.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's adoption of the CEQA findings for the Crestmont Drive Tentative Parcel Map which includes certification of the EIR.

2. Adopt the attached Resolution denying the appeal thereby upholding the Planning Commission's approval of the project, with a revised standard condition of approval relating to asbestos.

Respectfully submitted,

CLAUDIA CAPPIO
Director of Development
Community and Economic Development Agency

Reviewed by:
Scott Miller
Zoning Manager
Planning & Zoning Division

Prepared by:
Robert D. Merkamp
Planner IV
Planning & Zoning Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:

DEBORAH EDGERLY
OFFICE OF THE CITY ADMINISTRATOR

Item: _____
City Council
January 16, 2007

ATTACHMENTS:

A. Planning Commission Staff Report including Project Drawings (dated October 18, 2006)
B. This letter is not used
C. Appeal Letter (dated October 27, 2006)
D. *Environmental Impact Report (Draft and Final) for the Crestmont Subdivision* [Submitted under separate cover to Councilmembers and also available online at http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/environmentaldocuments.html. or at Planning Department Offices at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612]
E. Response to Ethics Complaint 06-020.
F. November 30, 2006 Critical Speed Survey

Location: **Assessors Parcel Numbers:**	**Two parcels on the easterly side of Crestmont Dr located just to the north of 538 Crestmont Drive (See map on reverse)** **037A-3148-040-00 & 037A-3148-041-00**
Proposal:	A Tentative Parcel Map to subdivide 2 parcels into 4 lots for the ultimate construction of 4 single family residences.
Applicant:	Dennis Woodruff
Owner:	Andalucia Properties LLC
Planning Permits Required:	A Tentative Parcel Map to create 4 lots and Environmental Review
Estuary Plan:	Hillside Residential
Zoning:	R-30 One-Family Residential Zone
***Environmental* Determination:**	A Draft Environmental Impact Report was published for a 45-day review period (starting on May 2, 2006 and ending at 4:00pm on June 16, 2006). The Final EIR was released on October 6, 2006.
Historic Status:	No historic rating, vacant land
Service Delivery District:	4
City Council District:	4
Staff recommendation:	That the Planning Commission certify the EIR and approve the project based upon the findings in the staff report.
Finality of Decision:	Appealable to City Council
For further information:	Contact case planner Robert D. Merkamp at (510) 238-6283 or by email at Rmerkamp@oaklandnet.com .

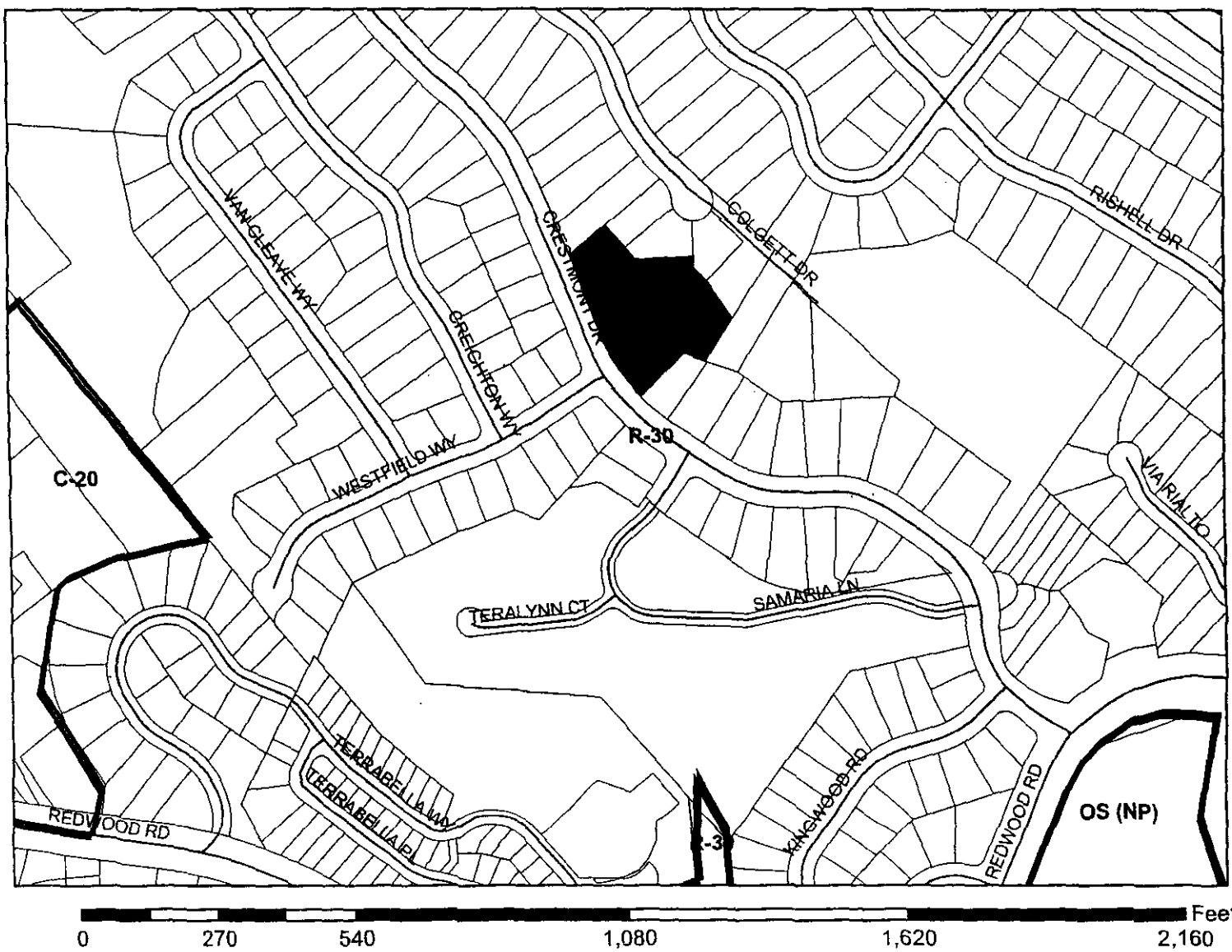
SUMMARY

The applicant is proposing to subdivide two parcels into four lots for the purpose of ultimately constructing 4 single family residential units on the property. This was originally submitted in 2003 as a four lot project under a different configuration with a shared access facility. This was subsequently withdrawn and replaced by a five lot Tract Map (TTM 7485) that had all lots fronting onto Crestmont Drive. This item was heard and approved by the Planning Commission on March 3, 2004. That item was then appealed and prior to the hearing it was discovered that several species of rare flowers were discovered. One of them, Presidio Clarkia, is listed on both the Federal and State Endangered Species List and two others, Most Beautiful Jewelflower and Tiburon Buckwheat are listed as Federal Species of Concern. Subsequent to this discovery, the applicant withdrew his request for a five lot subdivision and on March 31, 2005, resubmitted a Tentative Parcel Map for a four lot division of the property in a nearly identical configuration to the earlier five lot proposal.

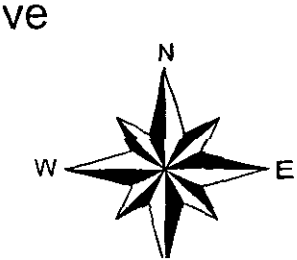
An Initial Study was prepared and the applicant requested that a Focused Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15183 and Public Resources Code section 21083.3 be prepared. A Notice of Preparation of a Draft EIR (NOP) was issued on December 9, 2005. Several comments were received on the scope of the EIR which guided the preparation of the Draft EIR. The topics analyzed in detail in the DEIR include biological resources, geologic/seismic, and traffic/circulation. All of the potentially significant impacts caused by the project would be reduced to less than significant levels if all of the mitigation measures and uniformly applied development policies (imposed as standard conditions of approval) recommended in the DEIR are implemented. The project would not result in any significant unavoidable impacts. On May 2, 2006 the

ATTACHMENT A

CITY OF OAKLAND PLANNING COMMISSION



Case File: TPM-7940/ER05-007
Applicant: Dennis Woodruff
Address: Two parcels on the easterly side of Crestmont Dr located just to the north of 538 Crestmont Drive
Zone: *R-30*



DEIR was released for a 45-day public review and comment period. A public hearing was held on June 7, 2006 before the City Planning Commission for the project as well as to receive comments on the adequacy of the Draft EIR from both the public and the Planning Commission. The public review and comment period ended at 4:00 pm on June 16, 2006.

In total the City received nine comment letters regarding the project dealing with soils, views, traffic, biology, and other technical matters. The City has responded to the issues raised in both the verbal comments at the June 7th, 2006 Planning Commission hearing and the written comments received in the FEIR which was published on October 6, 2006.

Staff recommends the Planning Commission certify the EIR and approve the project subject to the conditions, requirements, and findings found in this report.

PROPERTY DESCRIPTION

The parcels in question are two steeply sloped lots located in the South Hills region of the City. Combined, both parcels are approximately 1.28 acres in size. The lots are steeply sloped in many places with grades reaching 1.5:1 (horizontal: vertical). The surrounding area consists of single family homes, many of them also located on steeply sloped lots.

GENERAL PLAN ANALYSIS

The General Plan designation for these parcels is Hillside Residential. The intent of this designation is to create, maintain, and enhance neighborhoods of detached single family dwellings on large lots. The proposal meets the intent of the General Plan as it proposes to subdivide two parcels totally approximately 1.28 acres in size into four lots ranging between 12,000 and 16,000 square feet each. Each lot would contain one detached single family dwelling. The maximum General Plan density in Hillside Residential is five units per gross acre. The project area could conceivably support six dwelling units under that General Plan density and a proposal for four is well within the allowed parameters. This is also in conformance with General Plan Policy N7.3 which stipulates that under most circumstances new subdivisions in the hill side areas should create lots at least 8,000 square feet in size.

The Land Use and Transportation Element of the General Plan identifies policies for utilizing Oakland's land as change takes place and sets forth an action program to implement the land use policy through development controls and other strategies. As identified in the Land Use and Transportation Element and above this site is located in the Hillside Residential area of the City of Oakland and is consistent with the goals and policies of that designation by creating single family detached residential structures on large lots. The General Plan density of 5 units per gross acre would conceivably allow a maximum of 6 units and the project conforms to this density.

The three key policies listed below of the Land Use and Transportation Element that are important in this regard have been discussed and the project shown to be compatible with these policies in the DEIR (Appendix B at pp. 75-76), as well as in the responses to comments in the FEIR (Response to comment F-5 at pages 49-51).

"Policy N7.1. Ensuring Compatible Development. New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing character of surrounding development;"

"Policy N7.2. Defining Compatibility. Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot 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;*" *and*

"Policy N7/6 Developing Subdivided Parcels. Development on subdivided parcels should be allowed where site and building design minimize the environmental impacts, building intensity and activity can be accommodated by available and planned infrastructure, and site and building designs are compatible with neighborhood character."

The area surrounding the project site is characterized by single family detached homes on lots larger than the standard for the R-30 zone (the neighborhood is generally composed on lots in the 7,000-9,000 square foot range). The lots in this area will be larger and create four single family detached residences which is compatible with the character of the surrounding area. The project has been designed to minimize the impacts on several special status plant species on the property (both through a reduction in density and locating the houses away from the majority of plantings) as well as sited the location of the homes at the base of the hill by Crestmont Drive which will minimize the grading needed.

In summary, the project is consistent with the LUTE because it creates new residential units in the Oakland hills at low densities and successfully works to mitigate impacts on the surrounding neighborhood.

Open Space Conservation and Recreation Elements (OSCAR)

Conformity with OSCAR was discussed in the DEIR (Appendix B at pp. 76-77), as well as in the responses to comments in the FEIR (Response to comment F-5 at pages 49-51).

The project would be generally consistent with the City's open space policies because it would provide accessible and useable open space within the 4 unit development except where the proposed conservation easement limits human activity. There is one key policy of the OSCAR that is important in this regard and the project's consistency with this policy is stated below:

"Policy OS-1.3: Development of Hillside Sites. On large sites with subdivision potential, generally conserve ridges, knolls, and other 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 minimizes grading and protects the natural character of the hills."

The project site's ridges and other prominent features are protected by the conservation easement on the upper slope and ridge of the site as well as the location of the proposed 4 units along Crestmont on the lower portion of the site. These two features of the proposed development also serve to protect plant and animal resources, and protect against earthquake and fire hazards and visual impact. Because of the location of the proposed 4 units on the lower portion of the site and their proposed split level design grading is minimized and the natural character of the hillside is preserved. Furthermore, this policy only applies to large properties five acres or more in size and this project is on two lots that total 1.28 acres.

"Policy CO-7.1: Protection of Native Plant Communities. Protect native plant communities, particularly oak woodlands, redwood forests, native perennial grasslands, and riparian woodlands, from the potential adverse impacts of development. Manage development in a way which prevents or mitigates adverse impacts to these communities."

The project will protect native plants through the development of a conservation easement over 2/3 of the

property to preserve three special status species (see Biological Resource section below). This easement will limit access in perpetuity to the site of the native plants to trained biologists employed by the easement holder and CDFG to inspect the site, monitor the size of the populations of special species plants and remove non-native vegetation growing inside the easement.

"Policy CO-7.2 Native Plant Restoration. Encourage efforts to restore native plant communities where they have been compromised by development or invasive species, provided that such efforts do not increase an area's susceptibility to wildfire."

As a part of the easement mentioned above, qualified biologists will monitor the health of the native plants in the easement and remove non-native invaders. Special species plants that are removed due to the construction of the four homes will have seeds gathered and stored until they are ripe and then they will be planted across the site to add to the population in the easement.

Moreover, conflicts with the General Plan or other relevant plans do not inherently result in a significant effect on the environment with the context of CEQA. Section 15358(b) of the CEQA Guidelines states that "... effects analyzed under CEQA must be related to a physical change." Appendix G of the CEQA Guidelines makes explicit the focus on *physical* environmental policies and plans, asking if the project would "conflict with any applicable land use plan, policy, or regulation *...adopted for the purpose of avoiding or mitigating an environmental effect"* (emphasis added). As such, the project's conflict or inconsistency with a policy could indicate that an environmental threshold has been exceeded. To the extent that the project exceeds an environmental threshold and physical impacts may result from a policy conflict or inconsistency, such physical impacts have been identified and fully analyzed in the relevant topical sections of the DEIR and FEIR.

The Oakland General Plan contains many policies that in some cases address different or competing goals. The Planning Commission and the City Council, in deciding whether to approve the project applications, must assess whether the project is consistent with the overall policies of the General Plan and must balance competing General Plan goals and objectives as part of its consideration. Additionally, the General Plan states that a specific project that does not meet all General Plan goals, policies, and objectives does not inherently result in a significant effect on the environment in the CEQA context.

For the reasons stated above, and in the EIR, staff believes the project is consistent with the general plan.

ZONING ANALYSIS

Both parcels are zoned R-30 One Family Residential and are approximately 55,698 square feet (1.28 acres) in combined size. The R-30 zone is designed to create lots of single family detached dwellings on lots of 5,000 square feet or more. In this case the proposed lots are substantially larger than that (as the General Plan seeks larger lots than typical of the R-30) and therefore conform to the density of this zone. The four lots proposed would range in size from 12,354 to 16,103 square feet. Each lot would exceed the minimum lot area and width for the neighborhood which is mostly composed of single family residences on lots ranging between 7,000 to 9,000 square feet. When this item was previously before the Planning Commission in March 2004 as a five lot Tract Map, the applicant also received approval for a Minor Variance to allow two of the lots to be smaller than the Median Lot Size for the area. Both of those lots were substantially smaller than the four proposed today and the current project is in conformance with all City of Oakland standards with regards to lot size.

In addition to the adoption of the EIR and the approval of the Tentative Parcel Map, the applicant will also need to secure, at a later date, approval of Design Review for each parcel prior to development.

ENVIRONMENTAL REVIEW

The proposed project was reviewed to assess its potential environmental impacts. Based on the results of an Initial Study, the applicant requested that the environmental review proceed in the form of a Focused EIR, pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183. Topics included for detailed review as part of the EIR include: Biological Resources, Geologic/Seismic, and Traffic/Circulation; all other topics were deemed to have a less than significant impact with the adoption of standard conditions of approval and were not analyzed further except to respond to comments and clarifications.

An NOP was issued on December 9, 2005 and several comments were received on the scope of the EIR, which guided preparation of the Draft EIR. The Draft EIR was released on May 2, 2006 and a 45-day comment period ended on June 16, 2006. A public hearing on the DEIR was held on June 7th, 2006. Comments received from both the hearing and the letters were compiled and responded to within the FEIR which was provided under separate cover for review and consideration by the Planning Commission, and is available to the public at the Planning Department office at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612 or online at http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/environmentaldocuments.html.

No Significant and Unavoidable Impacts

The project would **not** result in any significant and unavoidable impacts.

Potentially Significant Impacts that Can Be Mitigated to Less-Than-Significant-Levels

The Draft EIR analysis identified potentially significant impacts that could be mitigated to less-than-significant levels on biological resources, geology and soils, traffic and transportation. These impacts and proposed mitigation measures or standard conditions of approval are briefly summarized below:

Biological Resources: Biological surveys have established that the project site is home to three special studies species. One, Presidio Clarkia is on both the Federal and State Endangered Species list. Presidio Clarkia has a range limited to Alameda and San Francisco counties. The number of plants in the known locations has varied over the past few decades due to variable amounts of rainfall and temperature fluctuations however the site contains approximately 8-9% of the known world population. The other two species, Tiburon Buckwheat and Most Beautiful Jewelflower are both Federal Species of Concern. These two species both occur in the Bay Area with Tiburon Buckwheat being found in eight Bay Area counties.

The original project would have had a much deeper impact on the three species listed above and necessitated the removal of a much larger number of plants. The current project would remove the following:

	# removed	% of site population	% of Alameda County population	% of Bay Area (world) population)
Presidio Clarkia	67	7-10%	1.5%	<.8%
Most Beautiful Jewelflower	3	30%	.15%	<.003%
Tiburon Buckwheat	500	25%	<.05%	<.001%

To reduce impacts to less than significant levels, approximately 2/3 of the project site will be covered by a conservation easement designed to protect those plants not removed and to encourage increase in the populations of the species. Conditions of approval will require that no grading is to occur within the easement and development will be prohibited within that easement in perpetuity. The easement shall restrict access to the conservation area except for purposes of regular weed control. The project further proposes to salvage seed from the removed plants which will be stored in climate controlled conditions for no more than one year until optimal planting conditions exist. Following construction a biologist approved by CDFG (California Department of Fish and Game), the City of Oakland, and the easement holder(s) will conduct annual inspection and monitoring of the site. Remedial action will be taken if at any time during the inspections there is a drop in the number of special status species. The current property owner will contribute a sum sufficient to directly pay all costs of 10 years of monitoring the easement, and will establish an endowment fund in an amount that is calculated to provide in ten years, at an annual yield of 4.2% sufficient funds for ongoing over-site and management of the Conservation easement, in perpetuity. Any shortfalls at that time will be made up by assessments to the Homeowner's Association.

Geology, Soils, and Seismicity: The project site would likely be subject to strong seismic ground shaking in a strong earthquake, as would all other properties in Oakland and the Bay area. The project sponsor will be required to design the buildings and infrastructure in compliance with current building codes. Geotechnical surveys identify the project site to be uniformly composed of rock with a thin mantle of soil in certain areas. Due to this, the soils are not considered to be expansive and the site is not likely to be susceptible to liquefaction. Standard conditions of approval on the project would mandate that the project elements meet or exceed Uniform Building Code design standards to withstand expected ground shaking or other ground failures. The design of the structures and associated retaining walls will be in accordance with recommendations contained in a Final Geotechnical Report. Also, a standard condition of approval would require a state registered Professional Geotechnical Engineer to supervise all site stabilization activities.

Traffic and Transportation: The proposal will add four new single family dwellings with access on Crestmont Drive. This will add eight required parking spaces to the project site (two per dwelling) and a Traffic Study concluded that the project would generate approximately 40 vehicular trips per day which the report did not consider to be substantial. While the additional traffic will not be a problem in terms of volume, the City of Oakland has no data on the actual speed of travel which could potentially cause additional traffic hazards from vehicles backing into the roadway. Therefore, a mitigation measure, imposed as a condition of approval, will require the applicant to conduct a critical speed survey prior to the filing of his final map. If it is found that the critical speed exceeds 30mph in the northbound direction or 40mph in the southbound direction, the applicant will be required to implement additional safety measures including signage, pavement markings, or other measures as determined by the Transportation Services Division of the City's Public Works Agency.

Other Impacts that were reduced to less than significant levels with imposition of Standard conditions of approval included: impacts on aesthetics (measures to reduce glare), air quality (BAAQMD recommended measures to reduce construction-related PM10 and asbestos), archaeological resources, hydrology (storm water and grading plans), hazardous materials (worker health and safety plan), and construction noise (best management practices)..

Project Alternatives

As required by CEQA, several alternatives that would avoid or substantially lessen the significant impacts of the project were analyzed in the Draft EIR. These included a No Project Alternative and a 3-lot Alternative. Because there are no significant and unavoidable impacts, there is no legal requirement that express findings be made rejecting the alternatives as infeasible.

For informational purposes only, the following is provided. Under the No Project Alternative, the project would not be undertaken and none of the impacts of the project would occur. This alternative would neither meet the project sponsor's objectives nor the City's objective in facilitating the need for new housing units on infill sites that is compatible with the density, scale and desired character of surrounding development. It would also not impose a conservation easement across the rear 2/3 of the properties thus providing greater protection for the rare and endangered species.

Under the 3-lot Alternative, 3 "detached" single family units would be constructed using the same site configuration as the 4-unit proposal. The lot area would increase approximately 25%. This alternative would include Lots 1, 2, and 3 of the proposed project because these lots have the least habitat or plant population of special status species. The height, bulk, and massing of the proposed houses would remain the same, the main difference being that there would be three houses built instead of four. This reduction in density would have marginally fewer impacts on special species plants as it would avoid the removal of several special species plants. The size of the conservation easement would grow by approximately 3500 square feet. The 3-lot proposal would have less impact on geology and seismic hazards, construction related noise, and reduce the potential for traffic hazards. The 3-lot Project alternative is considered the environmentally superior alternative, aside from the No-Project alternative.

Detailed CEQA Findings
Findings to certify that the Final EIR has been prepared in compliance with CEQA as found in Attachment D to this staff report. As there are no significant and unavoidable impacts in this project no rejection of alternatives or statement of overriding considerations are necessary.

AREAS OF CONTROVERSY

Special Status Plant Species: Concerns have been raised relating to the amount of area set aside for the three endangered plant species, the amount of money needed for monitoring, the cumulative impacts of development, and the efficacy of the mitigation measures. Staff believes the proposed mitigation measures (summarized above and detailed in MMRP) are adequate to reduce impacts to less than significant levels. On October 10, 2006 City planning staff spoke with Janice Gand of the California Department of Fish and Game (CDFG) and discussed the EIR. She expressed no concerns on the part of CDFG as to the adequacy of both the EIR and the MMRP in protecting the plant species. We discussed the Conservation easement and MMRP and she expressed no concerns about them. She also requested staff to remind the applicant that the CDFG holds ultimate approval over the easement holder.

Obstruction of Private Views: Concerns have been raised about the impact on private views from neighboring properties. Private view impacts are not covered under CEQA and it is premature to do a complete view study of the project as the building footprints are conceptual in terms of location (aside from the fact that no building would be allowed in the easement), exterior dimensions, and size. The City of Oakland's Interim Design Review Manual covers view impacts on adjacent properties and sets criteria for the City of Oakland to objectively analyze view impacts and effect remedy when required. This will be part of the Design Review process which will follow the Tentative Map should it be approved.

Landslides in the Area: Concerns have been raised about past landslides in the area and the overall stability of the site. Staff believes the proposed conditions of approval (summarized above and detailed in MMRP) are adequate to reduce impacts to less than significant levels.

Construction Caused Release of Airborne Asbestos Fibers: Concerns have been raised about potential health risks involved with naturally occurring asbestos fibers in the serpentine soil being released into the air during construction. The type of asbestos in the soil is the Chrysotile form of asbestos which is common in nature and is far less toxic than the amphiboles variety (and which is the type of asbestos that has been banned). Further, staff believes the proposed conditions of approval (summarized above and detailed in MMRP) are adequate to reduce impacts to less than significant levels.

Motorist Speeding: Concerns have been raised about the impact of speeding motorists coupled with new driveways on Crestmont Drive. The City of Oakland has no records indicating a problem with excessive speed but has incorporated a condition of approval (detailed in MMRP) requiring the project sponsor to do a speed study and if necessary implement additional safety features including signage, pavement marking, or other methods of speed reduction as per the Traffic Division of the Public Works Agency. Staff believes this condition will sufficiently reduce potential impacts related to traffic to less than significant levels.

Garage Floor Levels: Concerns have been raised about the shown levels of the garage floors requiring a driveway that would be too steep and thus require more grading. Staff notes that the plan is conceptual and adjustments to the floor plate of the garage or to the profile of the driveway needed to meet the City of Oakland's construction standards will be addressed at the building permit stage.

Biased EIR: Concerns have been raised about the EIR being a biased document. The EIR was prepared by the applicant's CEQA consultant, Mr. John Torrey, with oversight provided by the City of Oakland. No element of the EIR was prepared without review, scrutiny, and approval by officers of the City of Oakland.

General Plan Conformity: Concerns have been raised about the project's conformity to the General Plan. This is discussed more thoroughly in the General Plan section of this report but staff is comfortable with the project being in conformance with the General Plan as it furthers a majority of the goals of both the Land Use and Transportation Element (through the development on in-fill lots at appropriate densities) and the Open Space, Conservation, and Recreation Element as the project has conditions of approval designed to protect the special status species on the property including the creation of a conservation easement . The Oakland General Plan contains many policies that in some cases address different or competing goals. The Planning Commission and the City Council, in deciding whether to approve the project applications, must assess whether the project is consistent with the overall policies of the General Plan and must balance competing General Plan goals and objectives as part of its consideration. Additionally, the General Plan states that a specific project that does not meet all General Plan goals, policies, and objectives does not inherently result in a significant effect on the environment in the CEQA context. For the reasons stated above, and in the EIR, staff believes the project is consistent with the general plan.

CONCLUSION

Staff believes that the four unit proposal mitigates all significant environmental issues to a less than significant degree and recommends approval of it because it meets the City's objective in facilitating the need for new housing units on infill sites that is compatible with the density, scale and desired character of surrounding development. It would also impose a conservation easement across the rear 2/3 of the properties thus providing greater protection for the rare and endangered species.

Staff recommends that the Planning Commission:

1) Adopt the CEQA findings for the Crestmont Drive Tentative Parcel Map which includes certification of the EIR, and

2) Approve Tentative Parcel Map 7940, subject to the findings and conditions contained herein.

Prepared by:

ROBERT D. MERKAMP
Planner III

Approved for forwarding to the
City Planning Commission:

SCOTT MILLER
Zoning Manager

ATTACHMENTS:

A. TPM 7940
B. Crestmont EIR (delivered under separate cover)
C. Conditions of Approval/Mitigation Monitoring and Reporting Program
D. CEQA Findings
E. TPM Findings

TENTATIVE ~~TRACT~~ PARCEL 7940

A RESUBDIVISION OF PARCELS 1 & 2, PM 7168
BEING A REMAINDER PARCEL OF TRACT 6822, (BK.222, PG. 47)

1. OWNER: DENNIS WOODRUFF / ANDALUCIA PROPERTIES
180 COLGETT DRIVE
OAKLAND, CA. 94619

2. ENGINEERS: VENTURA ENGINEERING SERVICES
2676 NORTH MAIN STREET, SUITE 25
WALNUT CREEK, CALIFORNIA 94597
TEL. NO. 925-932-7531

ENGINEERS: RODOLFO DIMALANTA RCE # 54702 (EXP. 09/31/05)
HENDRICK VAN DE POL RCE # 19473 (EXP. 30/31/05)

3. TOTAL AREA: PROPER: 1.38 ACRES (60,094 sq.ft.)
3a. NUMBER OF LOTS: 4 LOTS. (MIN. LOT AREA = 10000 SF.)

4. GAS & ELECTRIC: TO BE DESIGNED AND INSTALLED BY PG & E

5. TELEPHONE SERVICE: TO BE DESIGNED AND INSTALLED BY PACIFIC BELL

6. CABLE SERVICE: TCI

7. SEWERAGE: CITY OF OAKLAND

8. DOMESTIC WATER: EAST BAY MUD

9. ZONING: RESIDENTIAL

10. EXISTING USE OF PROPERTY: VACANT

11. EXISTING USE OF ADJACENT PROPERTIES: RESIDENTIAL

12. THERE ARE NO AREAS THAT ARE SUBJECT TO INUNDATION

13. SURVEY DATA IS PROVIDED BY PREVIOUS PROPERTY OWNERS FROM A SURVEY BY SAMUEL KUSHNER, LS 4852, JAUNARY 1999

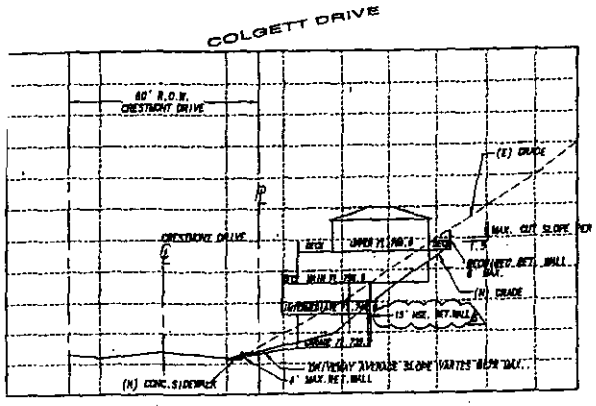
LEGEND

	PROJECT BENCHMARK
	PROPERTY LINE
	EXISTING CONTOUR LINES @ 2 FT. INTERVALS
	FINISH CONTOUR LINES @ 10 FT. INTERVALS (ROUGH GRADING
GND	GROUND
TC	TOP OF CURB
(E)	EXISTING
(N)	NEW
CONC	CONCRETE
EL.	ELEVATION
SW	SIDEWALK
DW	DRIVE WAY
SSMH	SANITARY SEWER MANHOLE
	EXISTING TREES TO BE SAVED
	EXISTING TREES TO BE REMOVED
	CONSERVATION AREA

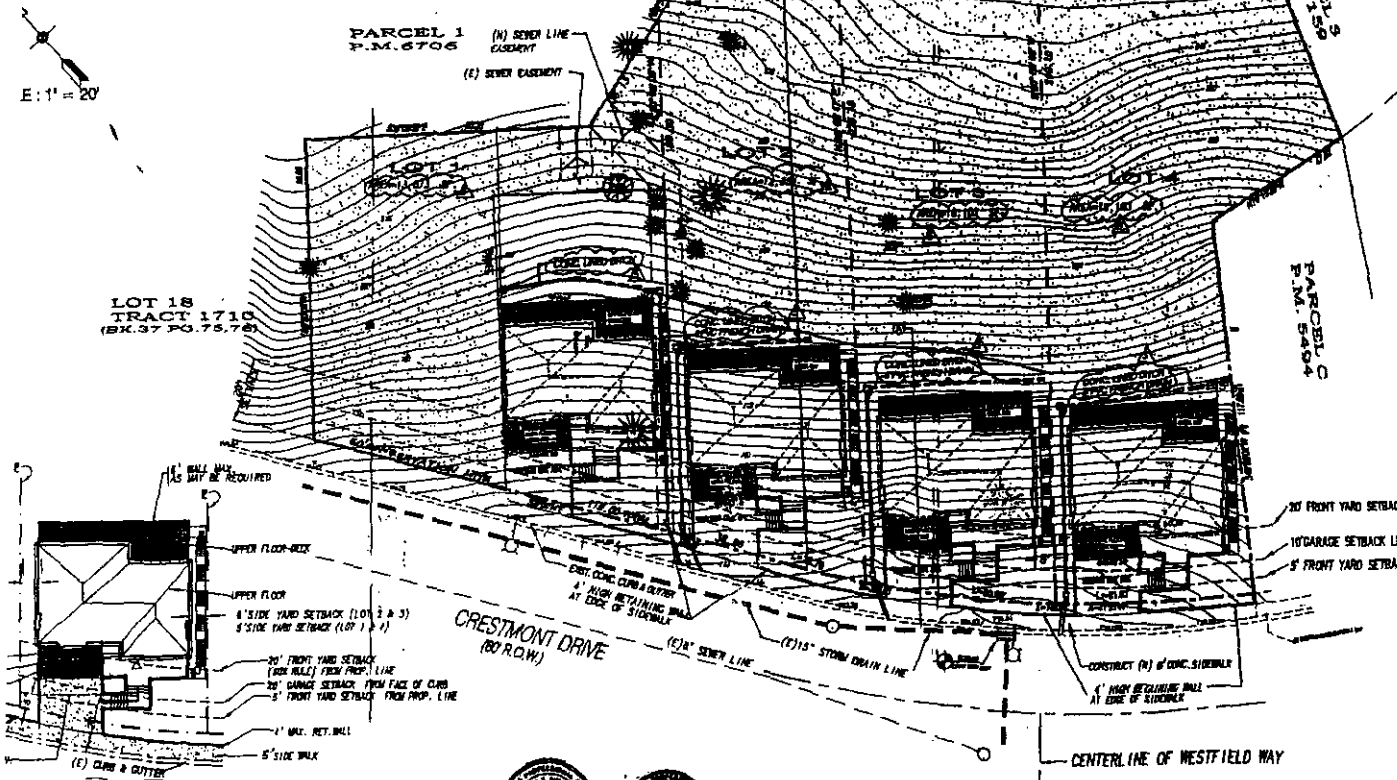
BENCH MARK:
CITY OF OAKLAND DATUM: TBM AT EBBRING DRAIN INLET: ELEVATION= XX.XX

ATTACHMENT B

VICINITY MAP

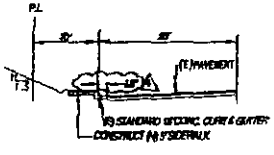


TYPICAL SECTION-SECTION "A-A"
SCALE : 1"=20'



E : 1" = 20'

TYPICAL SITE PLAN
SCALE : 1"=20'



TYPICAL SECTION-CRESTMONT DRIVE
NOT TO SCALE

RECEIVED
MAR 3 1 2005
CITY PLANNING COMMISSION
ZONING DIVISION

REVISIONS	BY	DATE
REVISIONS FOR PARCEL MAP 7940	RD	2/16/05
REVISIONS FOR PARCEL MAP 7940	RD	11/25/03
TURAL AND PLANNING (city) COMMENTS	RD	11/25/03
TING TREES TO BE REMOVED AND TO BE SAVED	RD	9/23/03
REVISIONS PER BRYAN'S LAYOUT	RD	9/23/03
REVISIONS PER BRYAN'S LAYOUT	RD	9/15/03

DATE : SEPT.2003
DESIGNED : RD/RD
PROJECT NO.:
SCALE : 1" = 20'

PREPARED BY
R.V. DIMALANTA H.VAN DE POL

VENTURA ENGINEERING SERVICES
CIVIL ENGINEERS
TEL. 925-932-8884 FAX. 925-932-7531
2676 N.MAIN STREET, STE. 25 WALNUT CREEK,CA.94597

APN 37A-3148-40/41

TENTATIVE ~~TRACT~~ PARCEL 7940
SITE PLAN

SHEET 1 OF 1 SHEETS

Attachment C

Crestmont Project
TPM7940/ER05-007

CONDITIONS OF APPROVAL/MITIGATION MONITORING AND REPORTING PROGRAM

General Conditions:

1. Conditions of Approval/Mitigation Monitoring and Reporting Program

Ongoing

All mitigation measures and standard conditions of approval identified in the Crestmont Project EIR are included in the Mitigation Monitoring and Reporting Program (MMRP) which is included in these conditions of approval and are incorporated herein by reference, as Exhibit A, as conditions of approval of the project. The MMRP, in certain instances, has been further refined and/or clarified by the conditions of approval of the project. To the extent that there is an inconsistency between the MMRP and the conditions, the more restrictive conditions shall govern. The project sponsor (also referred to as the applicant or Andalucia Properties) shall be responsible for compliance with all applicable mitigation measures adopted and with all the conditions of approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland. The MMRP identifies the time frame and responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division.

2. Severability

Ongoing

Approval of the Crestmont subdivision would not have been granted but for the applicability and validity of each and every one of the specified mitigations and conditions, and if any one or more of such conditions and mitigations is found to be invalid by a court of competent jurisdiction, these Approvals would not have been granted without requiring other valid conditions and/or mitigations consistent with achieving the purpose and intent of such approval.

3. Modifications of Conditions or Revocation

Ongoing

Violation of any term, condition, mitigation measure or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right, after notice and public hearing, to revoke the Approvals or alter these Conditions/Mitigation Measures or to initiate civil and/or criminal enforcement and/or abatement proceedings if it is found that the approved facility is violating any of the Conditions/Mitigation Measures or the provisions of the Planning Code or Municipal Code, or operates as or causes a public nuisance.

4. Approved Use

a. Ongoing

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

- 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 March 31, 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 Crestmont Project.

5. Recording of Conditions of Approval and Mitigation Monitoring Plan

Prior to issuance of grading or 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 and the MMRP on a form approved by the Zoning Manager. Proof of recordation shall be provided to the Zoning Manager.

6. Reproduction of Conditions and Mitigations on Grading and Building Plans

Prior to issuance of grading or building permit or commencement of activity:

These Conditions and the MMRP shall be reproduced on page one of all plans submitted for a grading or building permit for this project.

7. Effective Date, Expiration, and Extensions

Ongoing

This permit shall expire on October 18, 2008, unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Expiration of any valid building permit for this project may invalidate this approval. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this permit, and up to two subsequent extensions upon receipt of a subsequent written request and payment of appropriate fees received no later than the expiration date of the previous extension.

8. 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.

b. *Prior to the issuance of the Final Map*

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

9. Indemnification

Ongoing

The project sponsor shall defend (with counsel reasonably acceptable to the City of Oakland), indemnify, and hold harmless the City of Oakland, its agents, officers, and employees (collectively called "City") from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul, the Approvals by the City of Oakland, the Office of Planning and Building, or Planning Commission. 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. The project sponsor shall enter into an agreement acceptable to the Office of the City Attorney which memorializes this condition within ten (10) business days of a claim, action or proceeding being filed challenging the Approvals. This condition shall survive any termination/extinguishment of the Approvals by a court of competent jurisdiction.

Other Conditions

10. Covenants, Conditions and Restrictions & Homeowner's Association.

Prior to finalization of Final Map

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 to 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 until all units are sold.

Construction Conditions

11. Waste Reduction and Recycling

Prior to issuance of a building or demolition permit

The applicant shall submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the construction and operation of the project, to the Public Works Agency for review and approval.

12. Approved Plans on Site.

During all construction activities.

At least one (1) copy of the approved above referenced plans that include the Approval Letter and these Conditions of Approval for this project, shall be available for review at the job site at all times.

13. Street Trees

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.

14. Special Inspector

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 first construction-related 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.

15. Final Building Locations

Prior to issuance of any building permits.

The footprints of the proposed structures shown on the 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.

16. Construction Staging and Phasing Plan (General).

Prior to issuance of demolition, grading or building permit.

The applicant shall submit a Construction Staging and Phasing Plan for review and approval by the Building Services Division. The following information as well as any additional detailed information or conditions required by the Building Services Division shall be

included in the plan and be consistent with all related conditions attached to this project, with special emphasis placed on avoiding the conservation area boundaries:

1. Identification of construction staging areas.
2. Designation of main access routes to the site for construction equipment and materials, including truck routes that will be used for delivery or hauling away of materials.
3. Designation of construction worker parking areas and designation of specific on-street parking areas, if required.
4. Description of how construction equipment and materials will be protected against vandalism and theft.
5. Designation that no construction vehicles, materials, and other related equipment shall block the road or pedestrian access-ways to ensure vehicular and pedestrian access to neighboring homes or businesses.

EXHIBIT A

MITIGATION MONITORING & REPORTING PROGRAM (MMRP)

I. Aesthetics

Impact : **Glare.** Potential for glare affecting views.

Standard Condition of Approval (SCA) :

The project shall incorporate downward directed lighting ("cut off luminaries") to direct security lighting downward and reduce off-site light scatter, while providing sufficient illumination for security and safety.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Lighting will be verified prior to issuance of Building Permit.

II. Air Quality

Impact : **Odor and Pollutants.** Construction of the project could expose nearby residents to substantial pollutant concentrations and objectionable odors.

SCA The contractor shall implement all Basic BAAQMD PM_{10} (fugitive dust) control and exhaust control measures. This measure shall 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.

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

With respect to controlling the release of airborne naturally-occurring asbestos fibers from serpentine bedrock , the following measures recommended by the California Air Resources Board shall be employed:

1. Construction vehicle speed at the work site must be limited to fifteen (15) miles per hour less.
2. Prior to any ground disturbance, sufficient water must be applied to the area to be disturbed to prevent visible emissions from crossing the property line.
3. Areas to be graded or excavated must be kept adequately wetted to prevent emissions from crossing the property line.
4. Storage piles must be kept adequately wetted, treated with a chemical dust suppressant, or covered when material is not being added to or removed from the pile.
5. Equipment must be washed down before moving from the property onto a paved public road.
6. Visible track-out on the paved public road must be cleared using wet sweeping or a high efficiency particle arresting (HEPA) filter equipped vacuum device within twenty-four (24) hours.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Ongoing throughout construction.

III. Biological Resources

Impact 1: ***Loss of Habitat.*** *The development of the 4 lots under the proposed plan will* impact approximately .3 acres of suitable serpentine habitat.

Mitigation

Measure 1 **Construction-Related Avoidance and Minimization.** The following measures shall be employed before and during grading and construction activities associated with the development of the residences to preserve the habitat for special status plant species:

1. Installation and maintenance of an orange construction fence and signs that will prevent entry into the preserved adjacent habitat (before any *construction-related activities begin). The boundaries of the construction* fence shall be subject to review and approval by the City and a qualified biologist.
2. Installation and maintenance of erosion control measures such as fabric and a temporary retaining wall to prevent slope failure and erosion of the preserved habitat upslope of the construction area (before any construction-related activities begin).
3. Construction monitoring by a qualified biologist approved by California Department of Fish and Game (CDFG), the easement holder, and the City of Oakland to ensure that no encroachment into the preserved area occurs and that protection measures are in place and functioning. Monitoring should be conducted daily during grading activities and periodically following grading until a permanent fence is installed between the residences and preserved area. The biological monitor shall have the authority to suspend any and all construction activities if protective measures are not properly followed and/or if activities pose an *immediate threat to preserved sensitive resources.* The biological monitor shall also have the authority to contact CDFG and/or the City of Oakland to report any unanticipated impact to special status species.
4. Prior to any construction-related activities, educational training for the construction crew, including all contractors and subcontractors, regarding identification of the three special status plant species, conservation and protection of their habitat, and endangered species regulations. The training will be conducted by a biologist approved by CDFG and the City of Oakland. The biologist will deliever a brief presentation to the construction crew, including all contractors and each sub-contractor doing any work on the exterior of the building or site development, distribute informational pamphlets to each crew member, and post signs around the construction site with photographs and relevant information on each species. This training will be documented and

evidence submitted to the City of Oakland. The education shall include explanation of the reasons for and extent of the Conservation Easement, the importance to the owner/developer and to the holder of the Easement. Any violations of these conditions observed by the biologist will be reported directly to the owner/developer and to the holder of the easement. The consequences of violation of those conditions- which shall include but not be limited to a fine of a minimum of $100.00 per incident- shall also be explained. Said fines, if any, shall be deposited into the Trust account of the Easement Holder established under the terms of the Easement.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Prior to and throughout construction

Mitigation

Measure 2 **Conservation of Special Status Plants and Habitat**. Prior to recordation of the final map, a conservation easement shall be placed over the .85 acre portion of the property as shown in Figure 3 of the DEIR. The terms of the easement shall be approved by the City of Oakland and CDFG prior to project construction. The easement shall:

1. Prohibit construction acitivity within the easement boundaries.
2. Prohibit entry into the preserved areas except for weed and species management and monitoring activities.
3. Require installation of protective measures such as signage and/or fencing.
4. Prohibit development of any kind within the preserved area in perpetuity and the easement shall transfer to all future property owners.
5. Shall specify allowable uses of property owners both within their home envelope and the Conservation area, specifically regarding herbicide use, yard waste disposal, and types of landscaping.
6. Shall specify appropriate timing regarding fire control activities required by the City of Oakland to avoid impacts to special status plants.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Prior to recordation of Final Map.

Mitigation

Measure 3 **Re-seeding.** Seeds from the plants that will be removed during project residential construction shall be salvaged prior to grading or construction when the seed is ripe but not yet dispersed. The seed shall be stored in

breathable bags in a dark, temperature and humidity controlled environment for no more than one year. The seed, or seed pods, shall be stored such that no more than 1/3 of the storage bag is filled by seed, and the bags must be gently shaken periodically (at minimum once per month) to promote drying and prevent growth of fungus or mold. The area will then be seeded using a broadcast seeding technique in the first October or November following seed salvage. All such activities stated above shall be done under the direct supervision of a qualified biologist approved by CDFG and the City of Oakland.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and Easement Holder.

Monitoring Timeframe: To be completed prior to commencement of grading or construction.

Mitigation

Measure 4 **Weed Removal and Control.** A Weed Removal and Control plan shall be developed under the direction of the Easement Holder and approved by both CDFG and the City of Oakland. This plan shall target the removal and prevent re-introduction of invasive weed species including (but not limited to) Pampas Grass (*Cortaderia juba*), French Broom (*Genista monspessulana*), Blue Gum Eucalyptus (*Eucalyptus globules*), and Acacia (*Acacia sp.*). The plan shall develop species removal priorities, timing, techniques, and regular eradication and monitoring intervals (at minimum biannually). The plan shall also address fire prevention standards and the timing of such removal so as not to adversely impact the protected species. Annual weed control efforts shall be submitted to the City of Oakland and CDFG.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and Easement Holder.

Monitoring Timeframe: Annually

Mitigation

Measure 5 **Monitoring.** Following construction and restoration activities, a qualified biologist approved by CDFG, Holder of the Conservation Easement, and the City of Oakland shall conduct annual monitoring of the site, including the Conservation area. Monitoring shall occur to coincide with the peak blooming of Presidio Clarkia, Most Beautiful Jewelflower, and Tiburon Buckwheat. The number of each species shall be counted within each area and the locations of the plants (or patches) shall be mapped over a ten-year monitoring period. Monitoring shall take place annually for the first five years from the creation of the Conservation Easement. If it appears that the population of any of the aforementioned special status species is declining

during this ten-year monitoring period, remedial activities as specified, including weed control, will be undertaken and monitoring resumed on an annual basis for another three years. Annual Monitoring Reports will be submitted to CDFG by September 30th of each year and shall include:

A. An evaluation of the current monitoring data in relation to restoration efforts and previous population observations (pre-construction and during previous monitoring years);

B. Weed management controls;

C. Observation of trespass or vandalism of protective infrastructure; and

D. And recommended remediation measures (see Condition 13) as necessary.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency, CDFG, and Easement Holder.

Monitoring Timeframe: Monitoring will take place over a ten year period with monitoring being annual for the first five years.

Mitigation

Measure 6 **Funding.** The owner/developer Andalucia Properties, LLC, or successor, will contribute a sum to the Easement holder sufficient to pay all costs for ten years of overseeing the Conservation Easement, including but not limited to staff time, biologist time monitoring and reporting, weed removal, and all other activities required under the terms of the easement. The amount will be subject to approval of Easement holder.

The owner/developer Andalucia Properties, LLC, or successor, will establish an endowment fund in an amount that is calculated to provide in ten years, at an annual yield of 4.2% sufficient funds for ongoing over-site and management of the Conservation easement, in perpetuity. Any shortfalls at that time will be made up by assessments to the Homeowner's Association.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and Easement Holder.

Monitoring Timeframe: Prior to recordation of Final Map

Mitigation

Measure 7 **Remediation Measures.** Any and all recommendations for remediation measures in the periodic monitoring reports will be complied with by the owner(s) of the property and be subject to the enforcement provisions of this approval and the provision of the Homeowner's Association agreement. Weed control shall take place according to procedures set forth in the Weed

Removal and Control Plan (see condition 10) as approved by the City of Oakland and CDFG. Specifically, if a decline in Presidio Clarkia population in the conservation area is shown to be caused by human activity such as littering, debris dumping, erosion from properties above, etc. the parties responsible will be held accountable and prosecuted to the fullest extent of the law. These measures will be taken by the Homeowner's Association or the trustee of the conservation easement at the expense of the Homeowner's Association.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and Easement Holder.

Monitoring Timeframe: In perpetuity

Impact 2: **Potential Impact on Other Special Status Species Habitat.** The site also represents potential habitat for Fragrant Fritillary, another specis of concern. Biological surveys have not shown the plant to be existing on the site.

Mitigation

Measure 1 **Pre-Construction Biological Survey.** Botanical surveys shall be conducted according to CNPS and CDFG protocols during the appropriate blooming periods for Fragrant Fritillary (generally late February through March) to determine the presence or absence of this species within the proposed project impact area.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and Easement Holder.

Monitoring Timeframe: Prior to construction or grading.

IV. Cultural Resources

Impact : **Archaeology.** Potential for the project to encounter human remains or archaeological features during construction.

SCA Should currently unknown cultural resources be encountered during construction, the contractor shall immediately stop work in the vicinity and notify the City, who shall 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 shall 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 shall be developed and implemented. This measure shall be enforced via construction contract specifications.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: During Construction.

V. Geology and soils

Impact 1: ***Erosion and sedimentation.*** *Potential construction related erosion, run-off,* and sedimentation to occur.

SCA 1 The contractor shall employ all or any combination of the following to avoid and minimize erosion and to avoid sedimentation:

No grading during the rainy season unless approved by the Director of CEDA and subject to appropriate Best Management Practices (BMP's) to minimize erosion (a wet weather grading permit may be issued as discussed in Mitigation Measure 2):

A. Tops of fill or cut slopes shall be graded to prevent water from flowing freely down the slopes;
B. The use of hydro see or mulch cut slopes;
C. The use of silt fences, hay wattles, or bales to contain sedimentation;
D. Regular street sweeping to remove soil related to construction activities; and
E. The planting of low water landscaping shortly after site preparation.

Monitoring Responsibility: *City of Oakland Community and Economic Development Agency* and project sponsor.

Monitoring Timeframe: During Construction

SCA 2 **Wet Weather Grading Permit.** If CEDA issues a wet weather grading permit it shall employ, at a minimum, the following BMP's:

A. On sloped properties the downhill end of the construction area must be protected with silt curtains and hay bales oriented parallel to the contour of the slope (at a constant elevation) to prevent erosion to creeks and/or storm drains.

B. Minimize removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible. All bare slopes in the area covered by the wet weather grading permit must be covered with staked tarps when rain is occurring or is expected and all such staked tarps and the like must be available at the job site.

C. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: start of the rainy season (October 1st); site dewatering activities; and saw cutting asphalt or concrete, in order to retain any debris or dirt flowing into the City of Oakland storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.

D. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into street gutters, drains, or creeks.

E. Direct and local tool and equipment cleaning so that wash water does not discharge into street gutters, drains, or creeks.

F. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that the potential for being discharged to the storm drain system by wind or in the event of a material spill. No hazardous waste material shall be stored on site.

G. Cover stockpiles of debris, soil or other material subject to being blown by the wind with approved materials and methods.

H. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution.

I. Remove all dirt, gravel, rubbish, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.

J. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked-on dirt or mud shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to creeks or storm drains.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and project sponsor.

Monitoring Timeframe: During Construction

SCA 3 Project elements shall meet the Uniform Building Code Seismic Zone 4 design standards or better to withstand expected earthquake ground shaking, liquefaction, or other ground failures. Design shall be in accordance with the recommendations of the final Geotechnical Report, and shall be verified for seismic loading by California-registered Professional Civil and Geotechnical Engineers, recommendations by the same regarding site preparation and design shall be incorporated into project plans.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and project sponsor.

Monitoring Timeframe: Prior to issuance of building permit and during Construction.

SCA 4 Site stabilization activities shall be conducted under the supervision of a California-registered Professional Geotechnical Engineer.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and project sponsor.

Monitoring Timeframe: During Construction

VI. Hazards and Hazardous Materials

Impact : The potential for the project to expose workers, the public, and the environment to hazardous materials during construction.

SCA The contractor shall prepare and implement a site-specific Health and Safety Plan submitted for approval to the City of Oakland. This plan shall include plans, procedures, and controls to protect workers, the public and the environment, and shall 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.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: *During Construction.*

VII. Hydrology and Water Quality

Impact : The potential of the project to violate any water quality standards or waste discharge requirements.

SCA The contractor would use any construction-generated water meeting regulatory standards for on-site dust suppression, and to discharge excess construction water meeting regulatory standards to the sanitary sewer system. With implementation of these required BMPs, the short-term impact would be less than significant.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: During Construction.

Impact 2: The potential of the project to create or contribute to substantial sources of runoff.

SCA The project sponsors shall develop and implement a "small project" Storm Water Pollution Prevention Plan (SWPPP), with appropriate BMPs for each stage of the project. The SWPPP shall 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 shall

include post-construction controls to address storm water runoff during the life of the project. To the extent applicable and feasible the SWPPP shall 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.

The applicant shall submit a detailed grading and drainage plan for the subdivision as a part of the improvement drawings for review and approval by City staff prior to the approval of the Final Parcel Map. The drainage plans shall include supporting calculations of storm drain and culvert size, using acceptable engineering methods where lots are designed to drain to the street. No lot-to-lot drainage shall be permitted. Surface runoff shall be addressed within each individual lot, then conveyed to an appropriate storm drain system. All public improvements shall be subject to inspections by City staff for compliance with the approved Public Improvement Plans, construction permits, and project mitigation measures/conditions of approval, prior to City acceptance.

All site drainage improvements shall be designed and constructed in conformance with the minimum requirements of Alameda County Flood Control Design Criteria and shall be subject to review and approval of the Alameda County Flood Control & Water Conservation District and the City Engineer prior to Final Map approval. All public improvements shall be subject to inspections by City staff for compliance with the approved Public Improvement Plans, construction permits, and project mitigation measures/conditions of approval, prior to City acceptance.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: During Construction.

VIII. Noise

Impact 1: The potential of the project to expose people to both temporary construction related noise in excess of standards of the local ordinance

SCA 1 The project sponsor shall require construction contractors 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 shall be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities shall be allowed on weekends and holidays.

To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures:

- Equipment and trucks used for project construction shall 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 shall 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 shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.

- Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.

SCA 2

Pile Driving- Unrelated to Geotechnical Concerns.

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

SCA 3

Tracking Complaints

Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall 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;
- 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 shall 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.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and building contractor.

Monitoring Timeframe: During Construction.

IX. Transportation and Traffic

Impact : The potential of the project to add additional traffic hazards through placing four new driveways on Crestmont Drive.

SCA The applicant shall conduct a critical speed survey in accordance with standard industry practice and the requirements of the City of Oakland. If it is found that the critical speed exceeds 30mph in the northbound direction or 40mph in the southbound direction, the applicant will be required to implement additional safety measures including signage, pavement markings, or other measures as determined by the Transportation Services Division of the City's Public Works Agency.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Prior to filing of Final Map.

ATTACHMENT D

CEQA Findings for the Approval of the Crestmont Project

I. INTRODUCTION

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland Planning Commission in connection with the EIR prepared for the Crestmont Subdivision Project (TPM 7940) ("the Project"), EIR SCH # 20050112005.

2. These findings are attached and incorporated by reference into the October 18, 2006 staff report prepared for the approval of the Project. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

II. PROJECT DESCRIPTION

3. The Project, which is the subject of the EIR, is located on two parcels on the Eastern side of Crestmont Drive at the intersection of Westfield Way, located just to the north of 538 Crestmont Drive, Oakland Ca. (APN's # 037A-3148-040-00 & 037A-3148-041-00).

4. The project would consist of subdividing the two existing parcels into four lots ranging in size from 12,000 to 16,000 square feet.

5. At final build-out the project would develop four single family dwellings (one per lot) of approximately 3800 square feet in size.

III. ENVIRONMENTAL REVIEW OF THE PROJECT

6. Pursuant to CEQA section 21083.3and CEQA Guidelines section 15183, the City prepared a Focused EIR. On December 9, 2005, the City issued a Notice of Preparation for the EIR and an Initial Study, which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of this Notice and the comments thereon are included in Appendix A of the Draft EIR.

7. A Draft EIR was prepared for the Project to analyze its environmental impacts. The Draft EIR was properly circulated for a 45-day public review period from May 1, 2006 to June 16, 2006. The Planning Commission held hearings on the Draft EIR on June 7, 2006.

8. The City received written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues and made changes to the Draft EIR. The responses to comments, changes to the Draft EIR and additional information were published in a Final EIR on October 6, 2006. The Draft EIR, the Final EIR and all appendices thereto constitute the "EIR" referenced in these findings.

IV. THE ADMINISTRATIVE RECORD

9. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

a. The EIR and all documents referenced in or relied upon by the EIR.

b. All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the approvals, and the Project.

c. All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the EIR or incorporated into reports presented to the Planning Commission.

d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Crestmont project or the EIR.

e. All final applications, letters, testimony and presentations presented by the project sponsor and its consultants to the City in connection with the Project.

f. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the EIR.

g. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.

h. The Mitigation Monitoring and Reporting Program for the Project.

i. All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

10. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is Claudia Cappio, Development Director, Community and Economic Development Agency, or her designee. Such documents and other materials are located at Frank H. Ogawa Plaza, Suite 2114, Oakland, California, 94612.

V. CERTIFICATION OF THE EIR

11. In accordance with CEQA, the Planning Commission certifies that the EIR has been completed in compliance with CEQA. The Planning Commission has independently reviewed and considered the record and the EIR prior to certifying the EIR and approving the Project. By these findings, the Planning Commission confirms, ratifies, and adopts the findings and conclusions of the EIR as supplemented and modified by these findings. The EIR and these findings represent the independent judgment and analysis of the City and the Planning Commission.

12. The Planning Commission recognizes that the EIR may contain clerical errors. The Planning Commission reviewed the entirety of the EIR and bases its determination on the substance of the information it contains.

13. The Planning Commission certifies that the EIR is adequate to support the approval of the Tentative Parcel Map and taking all other actions and recommendations that is the subject of the staff report to which these CEQA findings are attached. The Planning Commission certifies that the EIR is adequate to support approval of the project described in the EIR, each component and phase of the Project described in the EIR, any variant of the Project described in the EIR, any minor modifications to the Project or variants described in the EIR and the components of the Project.

VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

14. The Planning Commission recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications, and modifications. The Planning Commission has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. Thus, recirculation of the EIR is not required.

15. The Planning Commission finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

VII. MITIGATION MEASURES, CONDITIONS OF APPROVAL, AND MITIGATION MONITORING AND REPORTING PROGRAM

16. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the EIR are implemented. The Mitigation

Monitoring and Reporting Program ("MMRP") is attached and incorporated by reference into the October 18, 2006 staff report prepared for the approval of the Project, is included in the conditions of approval for the Project, and is adopted by the Planning Commission. The MMRP satisfies the requirements of CEQA.

17. The mitigation measures set forth in the MMRP are specific and enforceable and are capable of being fully implemented by the efforts of the City of Oakland, the applicant, and/or other identified public agencies of responsibility. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The MMRP adequately describes implementation procedures, monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted mitigation measures.

18. The Planning Commission will adopt and impose the feasible mitigation measures as set forth in the MMRP as enforceable conditions of approval. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

19. The mitigation measures incorporated into and imposed upon the Project approval will not have new significant environmental impacts that were not analyzed in the EIR. In the event a mitigation measure recommended in the EIR has been inadvertently omitted from the conditions of approval or the MMRP, that mitigation measure is adopted and incorporated from the EIR into the MMRP by reference and adopted as a condition of approval.

VIII. FINDINGS REGARDING IMPACTS

20. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the Planning Commission adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR and summarized in the MMRP. These findings do not repeat the full discussions of environmental impacts contained in the EIR. The Planning Commission ratifies, adopts, and incorporates the analysis, explanation, findings, responses to comments and conclusions of the EIR. The Planning Commission adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the project sponsor as may be modified by these findings.

21. The Planning Commission recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The Planning Commission acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The Planning Commission has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the Planning Commission to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

22. As a separate and independent basis from the other CEQA findings, pPursuant to CEQA section 21083.3 and Guidelines section 15183 the Planning Commission finds: (a) the project is consistent with Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, that when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Planning Commission hereby finds and determines that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project impacts.

SIGNIFICANT BUT MITIGATABLE IMPACTS

23. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR and the MMRP, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. Thus, there are no significant unavoidable project or cumulative impacts. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated through the implementation of standard conditions of approval (which are treated as mitigation measures and an integral part of the MMRP):

a. Biological Resources: Impact ivD.1 finds that development of the four lots under the proposed plan will impact approximately .3 acres of suitable serpentine habitat. This impact will be mitigated through the implementation of Mitigation Measure 1.1, which requires placing the 2/3 of the project site under a permanent conservation easement, and limiting grading and construction of roads and retaining walls to areas outside of the easement. Additionally during construction fencing, erosion control measures, and construction monitoring by a certified biologist to preserve the habitat. This impact will further be mitigated through the implementation of Mitigation Measure 1.2 contains provisions for replacing the special status plants lost to construction. Under this mitigation measure those plants not in the easement will have their seeds harvested when it is ripe and then carefully stored in environmentally friendly conditions to maintain the health of the seed until it is appropriate to plant the seeds on the easement property. Also, this mitigation measure will require the development a weed control and removal plan as well as monitoring for a minimum 10 year period by a qualified biologist who will submit annual reports to both the City of Oakland and the California Department of Fish and Game (CDFG) monitoring the size of the populations of the special species plants. This will be funded by the project sponsor who will contribute sufficient funds to pay all costs for ten years of monitoring and shall establish an endowment that will be held by the easement holder to cover the costs for the period after ten years, in perpetuity. Finally, the mitigation measure incorporates remediation measures that will require the Homeowner's Association to hold responsible any individual(s) involved if the decline in *Presidio Clarkia* is caused by human activity.

Impact ivD.2 finds that the development of this property is on potential habitat of another special status species, Fragrant Fritillary. Serpentine habitat is a common home for this species although a survey was conducted by WRA botanists on March 9, 2005 that failed to find any members of this species. This impact will be mitigated through implementation of Mitigation Measure 2.1 which will require new biotic surveys prior to construction to determine the presence or absence of this species within the project impact area.

b. Aesthetics: Section I of the Initial Study finds that development of the four lots under the proposed plan could cause glare affecting views. This impact will be mitigated by a standard condition of approval that shall incorporate downward directed lighting ("cut off luminaries") to direct security lighting downward and reduce off-site light scatter, while providing sufficient illumination for security and safety.

c. Air Quality: Section III of the Initial Study finds that development of the four lots under the proposed plan could expose nearby residents to pollutants caused by construction activities (dust and airborne asbestos).. This impact will be mitigated by a standard condition of approval that shall implement all Basic BAAQMD PM_{10} (fugitive dust) control measures, as well as asbestos measures. This measure shall be enforced through contract specifications, including without limitation. (1.) Construction vehicle speed at the work site must be limited to fifteen (15) miles per hour less. (2.) Prior to any ground disturbance, sufficient water must be applied to the area to be disturbed to prevent visible emissions from crossing the property line. (3.) Areas to be graded or excavated must be kept adequately wetted to prevent emissions from crossing the property line. (4.) Storage piles must be kept adequately wetted, treated with a chemical dust suppressant, or covered when material is not being added to or removed from the pile. (5.) Equipment must be washed down before moving from the property onto a paved public road. (6.) Visible track-out on the paved public road must be cleared using wet sweeping or a high efficiency particle arresting (HEPA) filter equipped vacuum device within twenty-four (24) hours and (7) exhaust control measures.

d. Cultural Resources: Section V of the Initial Study finds that development of the four lots under the proposed plan could impact unknown cultural or archaeological resources on the site. This impact will be mitigated by a standard condition of approval that should currently unknown cultural resources be encountered during construction, the contractor shall immediately stop work in the vicinity and notify the City, who shall 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 shall 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 shall be developed and implemented. This measure shall be enforced via construction contract specifications.

e. Geology and Soils: Section VI of the Initial Study finds that development of the four lots under the proposed plan could impact the geology and soils on the site. This impact will be mitigated by a standard condition of approval that shall require the contractor shall employ all or any combination of the following to avoid and minimize erosion and to avoid sedimentation: (1) No grading during the rainy season unless approved by the

Director of CEDA and subject to appropriate Best Management Practices (BMP's) to minimize erosion (a wet weather grading permit may be issued as discussed in Mitigation Measure 2): (2) Tops of fill or cut slopes shall be graded to prevent water from flowing freely down the slopes; (3) The use of hydro see or mulch cut slopes; (4) The use of silt fences, hay wattles, or bales to contain sedimentation; (5) Regular street sweeping to remove soil related to construction activities; and (6) The planting of low water landscaping shortly after site preparation.

The Initial Study also finds that if the City of Oakland issues a Wet Weather Grading Permit the impacts to Geology and Soils can be mitigated by a standard condition of approval that employs BMP's. The project sponsor will be required to design the buildings and infrastructure in compliance with current building codes. Standard conditions of approval on the project would mandate that the project elements meet or exceed Uniform Building Code design standards to withstand expected ground shaking or other ground failures. The design of the structures and associated retaining walls will be in accordance with recommendations contained in a Final Geotechnical Report. Also, a standard condition of approval would require a state registered Professional Geotechnical Engineer to supervise all site stabilization activities.

f. Hazards and Hazardous Materials: Section VII of the Initial Study finds that development of the four lots under the proposed plan could cause exposure of both the workers and general public to hazardous materials. This impact will be mitigated by a standard condition of approval that shall require the contractor to prepare and implement a site-specific Health and Safety Plan submitted for approval to the City of Oakland. This plan shall include plans, procedures, and controls to protect workers, the public and the environment, and shall 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.

g. Hydrology and Water Quality: Section VIII of the Initial Study finds that development of the four lots under the proposed plan could cause the project to violate water quality standards or waste discharge requirements. This impact will be mitigated by a standard condition of approval that shall require that the contractor will use any construction-generated water meeting regulatory standards for on-site dust suppression, and to discharge excess construction water meeting regulatory standards to the sanitary sewer system. With implementation of these required BMPs, the short-term impact would be less than significant.

The Initial Study also finds the development of the four lot plan could create additional stormwater runoff. This impact will be mitigated by a standard condition of approval that will require the project sponsors shall develop and implement a "small project" Storm Water Pollution Prevention Plan (SWPPP), *with appropriate BMPs for each stage of the project.*

The applicant shall submit a detailed grading and drainage plan for the subdivision as a part of the improvement drawings for review and approval by City staff prior to the approval of the Final Parcel Map.

h. Noise: Section XI of the Initial Study finds that development of the four lots under the proposed plan could cause the project to violate City of Oakland noise standards during construction. This impact will be mitigated by a standard condition of approval that shall require the project sponsor to direct construction contractors to limit standard construction activities as required by the City Building Department, including (1) limiting construction days and hours as well as hours for pile driving, (2) using best available sound muffling on equipment, (3) use of hydraulic or electrically powered tools whenever possible, and (4) ensuring that noise sources are located as far from adjacent properties as possible. All pile driving shall be completed under the supervision of a qualified acoustical consultant and plans will be submitted to the City of Oakland to ensure that the maximum feasible noise attenuation standards are met. Finally the applicant will submit to the City of Oakland a list of measures to respond to and track complaints related to construction noise.

i. Transportation and Traffic: Section XI of the Initial Study finds that development of the four lots under the proposed plan could cause the project to impact traffic on Crestmont Drive because of the potential for more car accidents due to having more driveways open up on the street and conflicting with speeding motorists. This impact will be mitigated by a mitigation measure that shall require the project sponsor to conduct a critical speed survey and to implement additional safety measures including signage, pavement markings, or other measures as determined necessary by the Transportation Services Division of the City's Public Works Agency.

24. Because there are no significant unavoidable impacts, there is no legal requirement to adopt a Statement of Overriding Considerations or to reject alternatives as being infeasible.

ATTACHMENT E

FINDINGS FOR APPROVAL

The findings required for granting approval of the application are found in Sections 16.24.040 and 16.08.030 of the Oakland Lot Design Standards and Subdivision Regulations are in regular type, and the reasons the proposal satisfy these findings are in **bold** type, as well as contained within the staff report, EIR and the administrative record as a whole.:

SECTION 16.24.040- LOT DESIGN STANDARDS

A. No lot shall be created without frontage on a public street, as defined by Section 16.04.030, except:
   1. Lots created in conjunction with approved private easements.
   2. A single lot with frontage on a public street by means of a vehicular access corridor provided that in all cases the corridor shall have a minimum width of twenty (20) feet and shall not exceed three hundred (300) feet in length. Provided further, the corridor shall be a portion of the lot it serves, except that its area (square footage) shall not be included in computing the minimum lot area requirements of the zoning district.

   All four lots will have public frontage on Crestmont Drive.

B. The side lines of lots shall run at right angles or radially to the street upon which the lot fronts, except where impractical by reason of unusual topography.

   All four lots run at right angles to the street, only altering this pattern upslope away from Crestmont Drive.

C. All applicable requirements of the zoning regulations shall be met.

   The lots conform to the R-30 Zoning District with respect to size and width. The minimum lot size for a lot in the R-30 zone is 5,000 square feet and the minimum width is 45 feet. The smallest of these four lots will be approximately 12,354 square feet in size and the narrowest lot will be 55 feet in width. See also discussion in staff report.

D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area except:
   1. Where the area is still considered acreage.
   2. Where a deliberate change in the character of the area has been initiated by the adoption of a specific plan, a change in zone, a development control map, or a planned unit development.

   Each lot will range from 12,000 to 16,000 square feet which is much larger than the prevalent size of the lots in the neighborhood which are in the 7,000 to 9,000 square foot range. This will create lots larger than those of the surrounding neighborhoods and maintain consistency with the General Plan.

E. Lots shall be designed in a manner to preserve and enhance natural out-croppings of rock, specimen trees or group of trees, creeks or other amenities.

The lots have been designed to build the houses at the base on the hill away from the steeper parts of the property as well as away from the majority of three special status species (as discussed fully in the staff report and EIR). The conservation easement and other mitigation measures will protect the special status species.

SECTION 16.08.030 – TENTATIVE MAP FINDINGS (Pursuant to California Government Code Section 66474, Chapter 4 of the Subdivision Map Act).

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

A. That the proposed map is not consistent with the applicable general and specific plans as specified in the State Government Code Section 65451.

The map is consistent with the Hillside Residential General Plan which seeks to create low density residential neighborhoods on lots of at least 8,000 square feet. This is the general pattern of the existing lots in this area and if created, these four will continue that development pattern. The project is consistent with other LUTE and OSCAR policies, as detailed in the staff report and EIR.

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

The subdivision requires minimal improvements aside from retaining walls and short individual driveways for each lot which is consistent with the Hillside Residential General Plan.

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

The project has been designed in such a way as to place the houses at the bottom of the hill which will require less grading, less retaining walls and greater protection of the special status species. A previous plan had five houses on it including some further up the hill.

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

The proposed site could accommodate up to 6 units under the General Plan and is therefore within the density allowed. The project has been designed to reduce the impacts on this steeply sloping property in the following ways: (1) it reduced the number of units by one which reduced the amount of grading and paving necessary and (2) it places all the residences down at the bottom of the hill on the street, further reducing the impact of the units on the property, reducing grading, and driveways, and (3) protecting special status species.

F. 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.

As discussed in the EIR associated with this project (ER05-007) the project has mitigation measures and/or standard conditions of approval to reduce any impacts to less than significant levels, including impacts associated with special status species.

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

As discussed in the EIR associated with this project (ER05-007) the project has mitigation measures and/or standard conditions of approval to reduce any impacts to less than significant levels.

H. 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. (This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision).

The project will not conflict with any easements.

I. 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.

The buildings have all been constructed at the bottom of a southwest facing slope which should give them the maximum amount of natural heating and cooling opportunities.

APPROVED BY: City Planning Commission: **October 18, 2006** (date) **4 ayes, 0 noes, 1 abstain - to approve** (vote)
City Council:_____(date)_____(vote)

ATTACHMENT B

IS NOT USED

Attn: Robert Merkamp

Community and Economic Development Agency

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: TPM 7940/ER05-0007

Project Address of Appealed Project: E/S Crestmont Dr. at Westfield Wy, APN's 037A-3148-040, &-041.

APPELLANT INFORMATION:

Printed Name: Marcus Alexis and the Crestmont Neighbors Phone Number: 510-530-1080

Mailing Address: 158 Colgett Drive Alternate Contact Number: 510-531-1768

City/Zip Code Oakland, 94619 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) _____

A06-532

RECEIVED
OCT 27 2006
City of Oakland
Planning & Zoning Division

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

Certify the Final Environmental Impact Report ER 05-0007 and to Approve the Project TPM 7940.

(continued on reverse)

ATTACHMENT C

(Continued)

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

YOU MUST INDICATE ALL THAT APPLY:

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)
- x☒ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- x☒ 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) _____

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.)*

See Attachment A. + supplements by other members of Crestmont Neighbors to be submitted

x☒ **Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form.)* x See Documents in the Case File.

Marcus Loftis

Signature of Appellant or Representative of Appealing Organization

10-27-2006

Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

8/14/02

ATTACHMENT A

I. The City's Planning Commission Abused its Discretion and Failed to Give Adequate Notice as Required by Law.

A. Material amendments to the Staff Report and the Mitigation and Monitoring Program ("MMRP") were circulated for the first time to attendees of the Commission hearing on October 18, 2006 when the Commission took the action that is the subject of this appeal. (See Exhibit I) No other notice was given to the public or interested parties. This "notice" was not sufficient to comply with the law.

B. The Division customarily releases the specifics (details) of the MMRP when it releases the Final Environmental Impact Report ("FEIR"). It did not do so on October 6, 2006. Instead, it posted the MMRP (and the staff comments) on its website sometime late on October 13, 2006 and did so in a poorly noticed manner and in a format that did not comply with the law. The MMRP (and the staff comments) did not become available to the public at least 10 days before the scheduled hearing and was inadequately distributed within 72 hours of the hearing; the format of the MMRP was defective; and the notice did not comply with the law.

C. Both the FEIR and the MMRP are inadequate because neither document sets forth the "standard conditions of approval" the Sponsor purports to include in its Plan (Exhibit L to the FEIR). Such vague references to unspecified "standard conditions of approval" do not satisfy the notice requirements of the law.

II. The Commission's Findings That the Impact of the Project On Biological Resources Can Be Reduced to Less Than Significant Measures and Can Be Mitigated Are Not Supported by Substantial Evidence in the Record.

A. There is inadequate evidence to demonstrate that the proposed Conservation Easement will be of sufficient size to provide a viable habitat for the endangered and concerned plants affected by the Project (Presidio Clarkia, Most Beautiful Jewelflower, Tiburon Buckwheat and Fragrant Fritillary).

B. There is inadequate evidence to support a finding that the funding of the Conservation Easement will be adequate and the finding that a 4.2% yield on an endowment fund is an unreasonable assumption.

See Exhibit II for more detail.

III. The Commission's Finding that Potential Construction Related Erosion, Run-Off and Sedimentation Can Be Reduced to Less than Significant Levels and Can Be Mitigated by the Measures Set Forth in the MMRP Is Not Supported by Substantial Evidence in the Record.

A. The soils investigations relied upon by the FEIR are inadequate to determine whether the mitigation measures will be sufficient.

B. The likely presence of an aquifer underlying the Project has not been adequately investigated and the mitigation measures do not take the aquifer's likely presence into account.

C. The mitigation measures ignore previous recognitions by the City and other evidence that the Project Site is susceptible to landslides.

See Exhibit II for more detail.

IV. The Commission's Findings that the Potential for the Project to Expose Workers, the Public and the Environment to Hazardous Materials During Construction Can Be Reduced to Less-than-Significant Levels and Can be Mitigated with an Unspecified and Undisclosed Site-Specific Plan Are Not Supported by Substantial Evidence in the Record.

A. The evaluations of the type and extent of asbestos in the soil relied upon by the FEIR are inadequate and not supported by substantial evidence.

B. The FEIR's evaluation of the hazards created by the acknowledged presence of chrysotile asbestos in the soil is inadequate and not supported by substantial evidence. (See Exhibit III -- US Department of Health and Human Services Report concludes that "[b] really any type of asbestos increases the risk of the following health effects: Malignant Mesothelioma . . . , Lung Cancer . . . and [other] Non-Cancer Health Effects . . . ." page 34.)

See Exhibit II for more detail.

V. The Commission's Findings that the Potential of the Project to Add Additional Traffic Hazards Can Be Reduced to Less-Than-Significant Levels and Can Be Mitigated After-the-Fact With Measures such as Signage and Pavement Markings Are Not Supported By Substantial Evidence in the Record.

A. No actual traffic study has been conducted and the studies that were submitted are based on unreasonable assumptions.

See Exhibit II for more detail.

October 30, 2006

City of Oakland
Planning and Zoning Commission
250 Frank H. Ogawa Plaza
Suite 2114
Oakland CA 94612

Attn: Robert Merkamp

RE: City Council Appeal Addendum to Case File No. TPM7940/ER05-007

To Whom It May Concern:

I am enclosing a letter to dispute the amount of information that was made available to the public regarding the asbestos issue of this case file. As I am sure you realize at this point, there is asbestos within the rocky serpentine hillside in which Dennis Woodruff plans to excavate a large portion of land and soil. Although there has been one test to determine the amount of asbestos within the soil, there has been little follow up on additional questions asked by concerned citizens such as to the extent in which, when aerosolized into the ambient air, how much is considered a health hazard. All state and Federal agencies consider all types of asbestos to be hazardous and carcinogenic. According to the Mitigation Monitoring and Records Program (MMRP), "Construction of the project could expose nearby residents to substantial pollutant concentrations..." Upon researching this issue within public agencies, I found that the Bay Area Air Quality District defines "any aggregate material that contains 10% or more" of asbestos to be "restricted material" and the one test done on the aforementioned hillside is listed to have up to 16% asbestos present in the soil.

One document I found while searching the Bay Area Air Quality District (BAAQD) website is the "Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying and Surface Mining Operations" Final Regulation Order. According to this document this order applies to the specified site because:

B(2) "Any portion of the area to be disturbed has naturally-occurring asbestos, serpentine, or ultramafic rock...." and

B(3) "Naturally-occurring asbestos, serpentine, or ultramafic rock is discovered by the owner/operator, a registered geologist,..."

Within this document there are minimum requirements for monitoring and mitigating the use of land with naturally-occurring asbestos by site size. The developer has determined that the most minimum of mandated procedures be followed. And still there are several topics that have not been addressed within the MMRP in accordance to the BAAQD regulations as it pertains to the management of "disturbed area". There has been no mention of listed proper procedures necessary when dealing with undisturbed storage pile maintenance for more than 7 days, which is specified within the aforementioned Air Resources Board Order and not mentioned within the MMRP or the EIR. There is also no mention of the "post-construction stabilization" procedures, which are also specified within the Order. Another section of proper grading techniques was obviously overlooked as it states "Control for Earthmoving Activities", there should be "wetting to the depth of anticipated cuts" and "Suspending grading operations when wind speeds are high enough to result in dust emissions crossing the property line". As previously mentioned at former Planning and Zoning Commission meetings, the direct Westerly winds from the San Francisco Bay predominate on this hillside. Which brings me to my final problem with the information produced and made available by the Planning and Zoning Commission.

The minimum requirements listed in the MMRP are for grading and construction operations on less than one acre of land and the site itself is 1.28 acres. Upon verifying the TPM lot and housing

specifications the MMRP misrepresents the hillside disturbance. Under the Biological Resources Section of the MMRP, the "Loss of Habitat" is equal to 0.3 acre however it actually calculates to 0.4622 acres. Considering the close proximity the lot has to numerous residential homes and that there are 2 schools within 200 yards of the project, it is reasonable to request that the mitigation and monitoring program be more stringent about the "Air Monitoring Testing" specified in the Air Resources Board (ARB) Order. Because there is a nationally accepted threshold limitation of 2 fibers/mL* aerosolized into ambient air, air monitoring should be included for all those affected by this project. I would like to request that the actual lot size of 1.28 acre be the minimum requirement included and followed when making a determination about this project plan in order to ensure public health is protected to its full extent.

Due to the insufficient information collected about the concentrations of aerosolized asbestos within the air and the lack of incorporation of ARB mitigation procedures when disturbing serpentine soils, this project proposal should be rejected.

Sincerely,

Elizabeth E. Bashnick
538 Crestmont Dr.
Oakland CA 94619

*Threshold limit values recommended by American Conference of Governmental Industrial Hygienists, 1982: Chrysotile 2.0 f/mL

Amendments to Conditions of the Staff Reports. Rec'd 10/18/06

MEMO

TO: Planning Commissioners

FROM: Robert D. Merkamp, CEDA, Staff planner

We recommend the revision of the following two conditions of Item #6:

From Attachment C, Page 3

8. 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.

b. *Prior to the issuance of the Final Map*

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

From Attachment D, Page 5

22. As a separate and independent basis from the other CEQA findings, ~~P~~pursuant to CEQA section 21083.3 and Guidelines section 15183 the Planning Commission finds: (a) the project is consistent with Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, that when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Planning Commission hereby finds and determines that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project impacts.

EXHIBIT II

CRESTMONT NEIGHBORS
158 Colgett Drive
Oakland, CA 94619

October 17, 2006

Planning Commission
City of Oakland
City Hall
One Frank H. Ogawa Plaza
Hearing Room #1
Oakland, CA 94612

Re: ER 050007/TPM-7940

Dear Commissioners:

We submit this letter to object to the Final Environmental Impact Report ("FEIR") issued by the Planning Division of the Community and Economic Development Agency ("Division"), the Staff Report published October 13, 2006, and to the Division's recommendation that the Commission approve the above-captioned project.

PRELIMINARY ISSUE

As a preliminary issue, the Commission should note that the Division's inclusion of a comment letter dated May 17, 2006 from the Homeowners of Crestmont Association ("HCA") referring to an agreement dated September 1, 2003 purporting to approve this project is irrelevant and inappropriate. The HCA, through its attorney, has already acknowledged that the HCA has no jurisdiction over the subject property. (See Ex. I—Letter to HCA from Miller Starr & Regalia dated January 4, 2006). Exhibit I also reveals that the Applicant has sued the HCA. Neither the court papers related to that suit, including the settlement agreement, nor the agreement referenced in the May 17, 2006 comment letter from the HCA are in the file. Without these documents in the record, the Division, and the people of Oakland, have no idea as to what

was the *quid pro quo* for the Applicant's withdrawal of his lawsuit against the HCA. Finally, as we have pointed out in our earlier submissions, the HCA, even if it had jurisdiction over the property at issue, had no authority to enter into an agreement with the applicant that amends the CC&Rs; that power resides only in the homeowners and only by a super-majority vote. This approval was never obtained from the homeowners. Thus the HCA's "view" should be totally disregarded.

DEFECTS IN DIVISION'S FEIR PROCESS

The Division customarily releases the specifics (details) of the Mitigation and Monitoring Program ("MMRP") when it releases the FEIR. It did not do so on October 6, 2006. Instead, it posted the MMRP (and the staff comments) on its website sometime late on October 13, 2006 and did so in a poorly noticed manner and in non-standard format. Because, the MMRP (and the staff comments) did not become available to the public at least 10 days before the scheduled hearing, the hearing must be postponed until the public has had an adequate amount of time to analyze the MMRP (and the staff comments) as required by law. In addition, both the FEIR and the MMRP are inadequate because neither document sets forth the "standard conditions of approval" the Sponsor purports to include in its Plan (Exhibit L to the FEIR). Such vague references to unspecified "standard conditions of approval" do not satisfy the requirements for project approval.

GROUNDS FOR OBJECTION

We object to the FEIR and the underlying proposed project on the grounds that there has been inadequate examination of the soils to ensure that construction of the project does not disturb the stability of the hillside and to concerns regarding the health and safety of residents

neighboring the project site. The FEIR also fails to address adequately the financing and mechanics of the maintenance of the proposed conservation easement and the sufficiency of the size of the area (undisturbed by any aspect of the proposed construction) to which the endangered plants will be relegated. Finally, the traffic study is inadequate because it is not based on an actual study of the speed of vehicles on Crestmont Drive but rather on speed assumptions that are totally wrong.

I. ***Soils***

A. Shallow And Inadequate Borings

Borings should have been made to the depth of the maximum anticipated excavation—approximately 30 feet vertically based on the Division's estimate of the grade of the slope. Instead, most of the borings are to a depth of less than three feet, with one extending only to 4.5 feet. (See Exhibit J to FEIR) The Division apparently believes that these borings are adequate because when excavation occurs, the construction crew will then observe the condition of the soil at those depths. This is backwards! If excavation reveals that the soil is unstable, it may very well be too late to avoid the collapse of the hill and the ensuing slide. And not only will the land likely slide, as has occurred on numerous occasions already in the vicinity of the proposed project, the endangered plants "protected" by the proposed conservation easement will also tumble and their habitat will be destroyed. Adequate borings, to the depth of the maximum anticipated excavation, should be performed ***now*** to demonstrate that sliding will not occur.

The need to perform such a soils examination now, before the FEIR is approved, is even more acute with respect to the property at issue because the City itself has previously recognized the risks of a landslide on this property and took landslide remedial measures in front of the lots at issue. See Exhibit II—Letter from Peters & Ross dated May 24, 2004 at page 2.

Indeed, there is currently an active slide on Crestmont Drive (across from 150 Crestmont Drive, less than 700 yards from the site at issue) that appears to have been caused by construction on an upward slope, and it has been worsening over the last few months. See photos in Exhibit III.

B. **Hazardous Asbestos Exposure**

There are numerous young children and elderly persons living in the immediate vicinity of the site. Yet the FEIR displays no real concern for the hazard the airborne asbestos, disturbed by the construction, will present to those children and elderly. Instead the FEIR avoids the issue and chooses to rely on a document promoted by the industry group with the greatest incentive to minimize the hazards of chrysotile, the Chrysotile Institute. The chosen exhibit (FEIR Ex. I) is of dubious scientific quality by an unknown and uncertified source. Nonetheless, it points out that chrysotile asbestos poses risks. Perhaps more significantly, the exhibit does not deal with chrysotile in its natural form as found at the project site. At some exposure level chrysotile asbestos is harmful to humans. Is the level on this site in excess of the safety level? The report is silent on this point. The Commission should require that an expert be retained to evaluate whether levels of chrysotile asbestos ranging, according to the applicant's own test, as high as 12 % chrysotile (see Exhibit 5 to the DEIR) are dangerous to the residents in the area and whether the proposed mitigation measures will be adequate to protect those residents during construction. The Division should not be permitted to assert without evidence, as it has, that the levels of asbestos contained in the soil do not present a serious health risk to the residents of the area and that the California Air Resources Board's "best practices" during construction apply to this site given the levels of asbestos already acknowledged to be present in the soil.

The levels of amphiboles asbestos on the proposed lots is omitted from the report? What are these levels? What is the safety standard for amphiboles asbestos?

II. Endangered and Other Concerned Plant Species

The FEIR is inadequate because it fails to assess whether the proposed conservation easement is large enough to provide an adequate minimum viable habitat size for the endangered and other concerned plant species.

Moreover, financing a permanent easement plan is another obstacle that has not been resolved. Brad Olson, Environmental Program Manager, East Bay Regional Park District, points out in Comment letter I (p.64 FEIR) the DEIR assumed an earning rate of 4.2% on the easement endowment; the return currently earned by the Department of Fish and Game is closer to 2.3%. At the rate reported for Fish and Games $43,478 is required to support every $1,000 of easement cost, compared to $23,800 at the assumed DEIR rate of 4.2%, an annual cost difference of 83% over the DEIR projection. To assure protection of rare and endangered species and habitat on the site any easement must be adequately funded from the beginning.

III. Inadequate Traffic Study

The FEIR does not address the inadequacy of the traffic studies. The studies in the Draft Environmental Impact Report ("DEIR") ***assume*** traffic will move on Crestmont Drive at no more than 30 miles per hour on the northward slope of Crestmont and no more than 40 miles per hour on the southward slope of Crestmont. See Exhibit F.1 and 2 to DEIR...No study was made of the ***actual speeds*** of vehicles on Crestmont Drive. The assumptions of the two studies in the DEIR fly in the face of the testimony that residents of Crestmont have already given to the Division and the Commission that traffic on this portion of Crestmont Drive (in front of the site), especially on the steep southward slope, often moves at speeds in excess of 50 miles

per hour. The City has not conducted an actual traffic study on Cresttmont Drive in the vicinity of the proposed project in several years. This is a propitious time to conduct such a study since reliable official data is lacking.

CONCLUSION

The FEIR should be rejected as inadequate and the proposed project should not be approved. The residents of the Crestmont area deserve more from the City than an inadequate examination of the issues that substantively affect their health and safety as well as the stability of their land. [And so do the potential buyers of the land.]

Sincerely,

John R. Shively
2 Van Cleave Way

Terri Hansford
150 Colgett Drive

Marcus Alexis
158 Colgett Drive

Geraldine M. Alexis
158 Colgett Drive

KELLY Q TIEN
153 Colgett DR.

KIMBERLY HICKS
145 Colgett Dr.
487 Crestmont Dr

Bernard B. Sideman

Carol Sideman

Bernie and Carol Sideman
590 Westfield Wy

cc:

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Jerry Brown	
Ron Dellums	

EXHIBIT I

MILLER STARR & REGALIA
A PROFESSIONAL LAW CORPORATION

1331 North California Blvd.
Fifth Floor
P.O. Box 8177
Walnut Creek, California 94596
Facsimile (925) 933-4126
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Christian M. Carrigan
CMC@MSandR.com

January 4, 2006

PERSONAL AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Homeowners of Crestmont Association, Inc.
93 Van Cleave Way
Oakland, CA 94619
Attn: Joe DeCredico, President

Re: Analysis of Development on Lot A

Dear Mr. DeCredico:

This will provide you with a status update, our analysis of Mr. Woodruff's claims against the Homeowners' of Crestmont Association, Inc. ("Crestmont") with respect to its authority to review the design of residential structures on Lot A, and with a recommendation on how best to proceed from this point.

I. CURRENT STATUS.

As you know, Mr. Woodruff has threatened to bring an action against Crestmont for declaratory relief in Superior Court, seeking to establish that it lacks authority to review the design of residential development on Lot A under its amended CC&Rs. As we discussed on the telephone on December 27 and 28, Mr. Woodruff subsequently threatened to file a complaint on December 30, 2005. Enclosed herewith for your records is a copy of a December 22, 2005, letter addressed to Mr. Woodruff and authored by Wilson Wendt of our office addressing that threat. (Exhibit A.)

After our December 28 discussion in which you advised me about the status of Mr. Woodruff's subdivision application and the City of Oakland's determination that he is required to prepare an EIR, I placed a call to Mr. Woodruff and left a message on his voicemail advising him that we believed it to be premature to engage in litigation over the possible applicability of the CC&Rs in light of the City's requirement that he prepare an EIR. Mr. Woodruff responded to my partner Wilson Wendt, and indicated that the reason he is pushing for some determination of Crestmont's role in design approval is because the City is requiring him to get "informal" design review approval (from it) for the houses he plans to build before it will approve his tentative parcel map(s). Our experience is that design review would

ordinarily be undertaken by the City only after a map is approved, and we are not quite sure what to make of Mr. Woodruff's statement. In any event, if he needs informal design review approval from the City, it would seem as if he will need to prepare more detailed plans for the City than those you advised me he previously presented to the architectural review committee.

II. THE AMENDED CC&RS.

We have obtained copies of the relevant tract maps, which are also enclosed with this letter for your use and reference. (Exhibit B.) In light of the enclosed maps, we conclude that Lot A is not subject to the Amended CC&Rs. We obtained a *recorded* copy of the Amended CC&Rs, a copy of which is enclosed herewith for your use and reference. (Exhibit C.) Lot A is not described with particularity in Clause I of the CC&Rs entitled " Property Subject to this Declaration."

An argument could be made that a recorders search on Lot A would not turn up the Amended CC&Rs because that property was excluded from the definition of the property to which they applied. It could be argued on this ground that the effect of the Amended CC&Rs was not to remove the lien of the prior CC&Rs as to Lot A. At first blush, it does not appear to us that this argument is a strong one. In light of our recommendation below, we do not recommend researching this issue further at this time, but, with your authorization, we will do so.

III. THE 2003 SETTLEMENT AGREEMENT.

As you know, in September, 2003, Crestmont entered into a settlement agreement with Mr. Woodruff with respect to a number of issues (the "Agreement"). In the Agreement, Mr. Woodruff agrees to allow Crestmont to review a number of design issues with respect to residential development on Lot A. While the meaning of the Agreement is not entirely clear, it appears to us that, in the event only 4, and not 5, lots are approved in TPM 7940, the scope of Crestmont's architectural review committee's authority to review the design of residential structures on Lot A extends to the ability to limit home size to 3,800 square feet of living area and to review for compliance with City of Oakland zoning regulations and standards. Various meanings of the clauses in the Agreement could also be explored in further detail but, as with the CC&Rs, in light of our recommendation below, we do not recommend undertaking that task at this time. However, with your authorization, we will do so.

IV. RECOMMENDATION.

We recommend that you authorize us to send a letter to Mr. Woodruff stating that we do not believe the CC&Rs encumber his property, but that he is contractually obligated to allow review and approval of the design of any homes built on Lot A under the express terms of the Agreement. We should also let Mr. Woodruff know that we believe he is likely to generate the analysis, plans and drawings the architectural review committee has advised him are lacking, and that are needed for meaningful review, during the EIR and entitlement process with the City. Accordingly, we should state, many of Crestmont's concerns about inadequate information are

likely to be allayed as the entitlement process progresses with the City. In any event, design review by Crestmont is premature at this stage of the game since it will not even matter if Crestmont approves a design of four residences on Parcel A if the City denies the subdivision application.

Please contact me at your earliest convenience to let us know how you want to proceed.

Very truly yours,

MILLER, STARR & REGALIA

Christian M. Carrigan

CMC:jv
Enclosures

cc: Wilson F. Wendt, Esq.

EXHIBIT II

Peters & Ross

Geotechnical & Geoenvironmental

Consultants

May 24, 2004
Project No. 04278.001

Dr. Kimberly Hicks
3317 Elm Street, #102
Oakland, CA 94609

RE: Document Review & Site Reconnaissance
Tentative Tract 7485

Dear Dr. Hicks:

Pursuant to your authorization, Peters & Ross has performed a geotechnical review of the proposed grading plan for 5 new homes to be located on the north side of Crestmont Drive near the intersection Westfield Way in Oakland, California. Mr. Peter Mundy (Peters & Ross) performed a site reconnaissance and reviewed the following documents:

1) *Geotechnical Investigation*, by Henry Justiniano & Associates, dated September 27, 2000.

2) *Response to Comments, Conceptual Plan for Four Single Family Residences*, by Henry Justiniano & Associates, dated July 14, 2003.

3) *Tentative Tract 7485 Site Plan,* by Ventura Engineering Services, dated September 2003, (1 Sheet).

4) *Tract 1710 Grading and Development Plan, Crestmont No. 2,* by Herbert Frahm, dated December 1955. (Sheets 3 and 4).

5) City of Oakland *Underground Sewer Map,* dated 8/8/97, (Sheet No. 193).

SUMMARY

Tentative Tract 7485 (3) includes 5 proposed new homes to be constructed along the north upslope side of Crestmont Drive. The 1955 grading plan for Tract 1710 (4), which includes Crestmont Drive, shows that Lots 1, 2, and a portion of 3 straddle a natural drainage ravine. The remaining portion of Lot 3 and Lots 4 and 5 are located at the toe of a 100-foot high,

114 Hopeco Road, Pleasant Hill, CA 94523 Phone: (925) 942-3629 Fax: (603) 308-6649 Email: PetersRoss@aol.com

1.5:1 (horizontal to vertical) bedrock cut slope that was completed in 1956. The Tentative Tract Site Plan (3) shows that a proposed 80-foot high cut of 1.5:1 (horizontal to vertical) will be made on Lots 1, 2, and 3 and that on Lots 1 and 2 this cut will extend to the back (northern) property lines. Justiniano (1) states on Page 4 that the swale area will be susceptible to "erosion and minor sloughing, if cutting into the hillside reduces their lateral support." The Tract 1710 grading plan (4) shows that the centerline of the swale passes through the back corner between Lots 1 and 2.

Tentative Tract Plan (3) indicated that the proposed homes will be multi-story wood frame structures with a retained back cut. In some cases the back cut will require stacked retaining walls. Justiniano (1) states on Page 7 "if stepped retaining walls are desired, the designer should treat them as a single retaining wall structure." Using this criterion, the Tentative Tract Site Plan (3) shows that the retaining wall heights vary from 12 feet to 38 feet high. Lots 3 and 4 both have wall heights of 38 feet. Lot 3 is most impacted by the proposed grading as it includes an 80-foot high cut and a 38-foot high back cut.

The undersigned performed a site reconnaissance on March 2, 2004. We observed seepage on Lot 2 corresponding approximately to the centerline of the old drainage ravine. The trees had been removed from all the lots, and serpentinite bedrock was exposed on Lots 3, 4, and 5. During a March 2004 City meeting, the undersigned listened to testimony from one of the original homeowners who said that in the late 50's/early 60's between Lots 2 and 4, where a 100-foot high cut was made and "fresh" bedrock exposed, "fresh" bedrock sloughed off the slope onto and across Crestmont Drive up to his garage door. It should also be noted that at some point a subsurface drain was installed in front of Lots 4 and 5 to mitigate subsurface seepage (most likely a landslide remedial measure) as shown on the City's Underground Sewer Map, Sheet 193.

Using the Tract 1710 Grading Plan (4) and the Tentative Tract 7485 Site Plan (3), Peters & Ross prepared a composite cross-section (attached as Figure 1) through the proposed Lot 3. Figure 1 shows that at the inboard side of Crestmont Drive about 35 feet of Serpentinite bedrock had been removed from the original grade and that the height of the cut was about 100 feet. The proposed grading will have an over height of about 80 feet and the accumulative height of the proposed back cuts is about 38 feet.

Justiniano's July 14, 2003 (2), letter is in response to the City's request for an addendum report addressing slope stability issues. Justiniano argues that an addendum is not necessary because of the following reasons:

1. A registered engineering geologist reviewed the 9/00 report.
2. The proposed excavation will expose stronger bedrock.
3. The excavation will reduce the driving forces and result in a more stable slope.

CONCLUSIONS AND RECOMMENDATIONS

It is our opinion that the proposed 80-foot high cut, within the old drainage swale located on Lots 1, 2, and 3, will remove lateral support of the materials within the swale of the upslope properties on Colgett Drive, especially cutting to the back property lines (north) on Lots 1 and 2. Regarding Justiniano's argument (2) that the excavation will expose stronger bedrock: the primary geologic map for the area Radbruch (1969) indicates that serpentinite bedrock is intensely sheared making the depth of weathering indiscernible. Unlike other formations, the strength properties of serpentinite remain about the same with depth.

Finally, while Justiniano's argument (2) that the excavation for the proposed homes will reduce the driving forces may have been true for TPM 7940; it does not apply to Tentative Tract 7485. The proposed excavations will remove the toe support of an already oversteepened slope made in serpentinite rock, resulting in an increase of the driving forces and a reduction in the factor of safety. This could also adversely affect the properties on Colgett Drive with such a large excavation; bedrock failure could occur resulting in damaged foundations. We strongly recommend that the City require a peer reviewed slope stability addendum report as a condition to approval for Tentative Tract 7485.

The opinions and conclusions presented in this letter are made in accordance with generally accepted geotechnical principles and practices.

If you have any questions or need clarification, please call the undersigned.

Very truly yours,

Peter K. Mundy, P.E., G.E.
G.E. No. 2217

EXHIBIT III

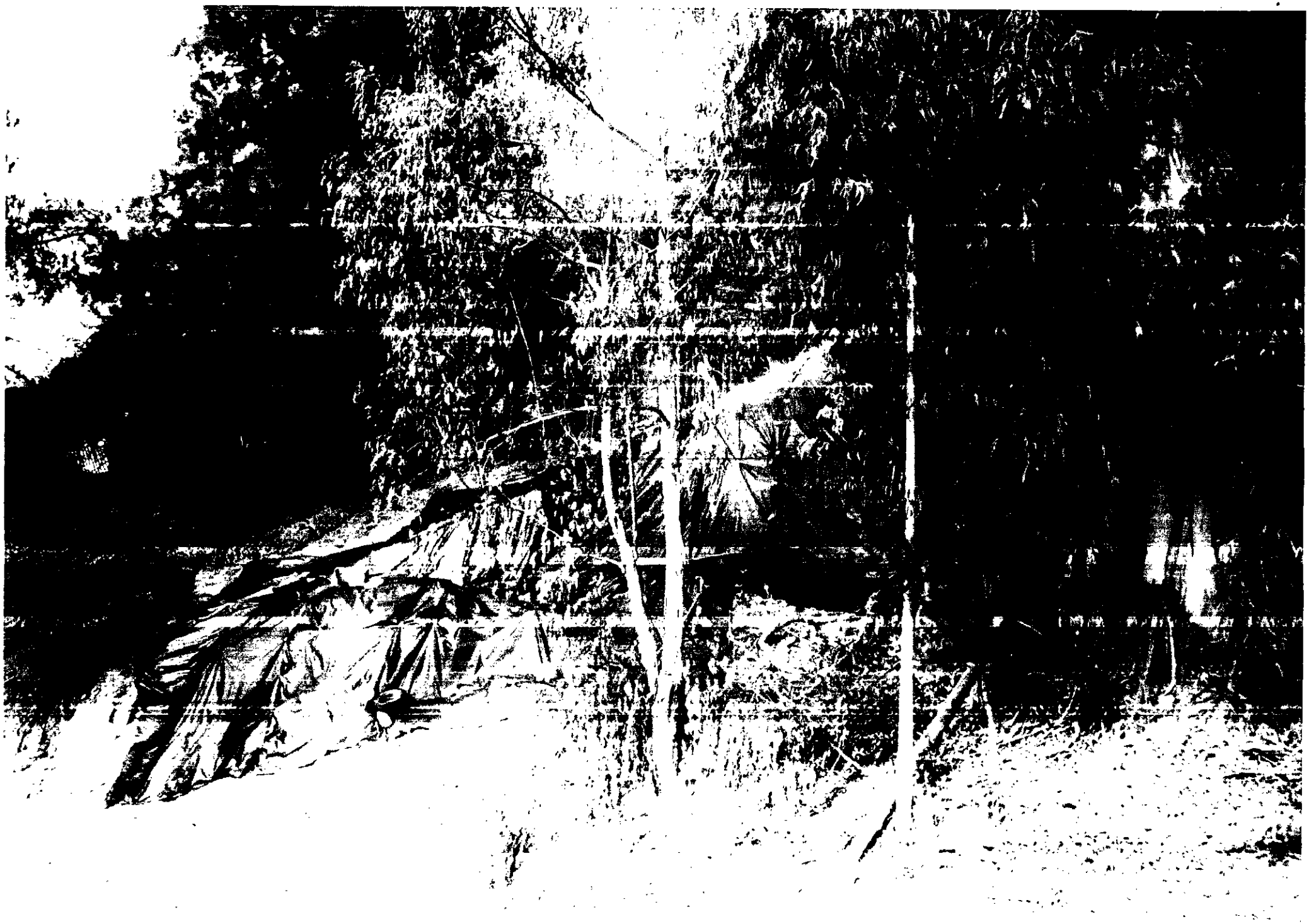

EXHIBIT III (EXCERPT)

-- Full Document Can Be Found At

http://www.atsdr.cdc.gov/asbestos/sites/health_consultations/pdf/NewarkHC092205.pdf

Health Consultation

W.R. GRACE NEWARK PLANT
NEWARK, CALIFORNIA

EPA FACILITY ID: CAD981389653

SEPTEMBER 22, 2005

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Agency for Toxic Substances and Disease Registry
Division of Health Assessment and Consultation
Atlanta, Georgia 30333

Health Consultation: A Note of Explanation

An ATSDR health consultation is a verbal or written response from ATSDR to a specific request for information about health risks related to a specific site, a chemical release, or the presence of hazardous material. In order to prevent or mitigate exposures, a consultation may lead to specific actions, such as restricting use of or replacing water supplies; intensifying environmental sampling; restricting site access; or removing the contaminated material.

In addition, consultations may recommend additional public health actions, such as conducting health surveillance activities to evaluate exposure or trends in adverse health outcomes; conducting biological indicators of exposure studies to assess exposure; and providing health education for health care providers and community members. This concludes the health consultation process for this site, unless additional information is obtained by ATSDR which, in the Agency's opinion, indicates a need to revise or append the conclusions previously issued.

You May Contact ATSDR TOLL FREE at
1-888-42ATSDR
or
Visit our Home Page at: http://www.atsdr.cdc.gov

HEALTH CONSULTATION

W.R. GRACE NEWARK PLANT
NEWARK, CALIFORNIA

EPA FACILITY ID: CAD981389653

Prepared by:

Agency for Toxic Substances and Disease Registry
U.S. Department of Health and Human Services

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Foreword

ATSDR National Asbestos Exposure Review

Vermiculite was mined and processed in Libby, Montana, from the early 1920s until 1990. We now know that this vermiculite, which was shipped to many locations around the United States for processing, contained asbestos.

The National Asbestos Exposure Review (NAER) is a project of the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is working with other federal, state, and local environmental and public health agencies to evaluate public health impacts at sites that processed Libby vermiculite.

The evaluations focus on the processing sites and on human health effects that might be associated with possible past or current exposures. They do not consider commercial or consumer use of the products of these facilities.

The sites that processed Libby vermiculite will be evaluated by (1) identifying ways people could have been exposed to asbestos in the past and ways that people could be exposed now and (2) determining whether the exposures represent a public health hazard. ATSDR will use the information gained from the site-specific investigations to recommend further public health actions as needed. Site evaluations are progressing in two phases:

Phase 1: ATSDR has selected 28 sites for the first phase of reviews on the basis of the following criteria:

- The U.S. Environmental Protection Agency (EPA) mandated further action at the site based upon contamination in place

- or -

- The site was an exfoliation facility that processed more than 100,000 tons of vermiculite ore from the Libby mine according to EPA's database of W.R. Grace Libby invoices. ATSDR expects that exfoliation, a processing method in which ore is heated and "popped," releases more asbestos than other processing methods.

The following document is one of the site-specific health consultations ATSDR and its state health partners are developing for each of the 28 Phase 1 sites. A future report will summarize findings at the Phase 1 sites and include recommendations for evaluating the more than 200 remaining sites nationwide that received Libby vermiculite.

Phase 2: ATSDR will continue to evaluate former Libby vermiculite processing sites in accordance with the findings and recommendations contained in the summary report. ATSDR will also identify further actions as necessary to protect public health.

Site Background

From 1966 until 1993, the W. R. Grace & Company plant in Newark, California, located at 6851 Smith Avenue, processed approximately 300,000 tons of vermiculite from the Zonolite mine in Libby, Montana [1]. At one time the plant employed about 18 to 24 persons, including 10 local residents (unpublished information from EPA's database of W.R. Grace documents)[a]. Over time, it became known that the vermiculite from the Libby mine was contaminated with naturally occurring asbestos fibers. Vermiculite from Libby was found to contain several types of asbestos fibers including the amphibole asbestos varieties tremolite and actinolite and the related fibrous asbestiform minerals winchite, richterite, and ferro-edenite [1]. In this report we will use the term **Libby asbestos** to refer to the characteristic composition of asbestos contaminating the Libby vermiculite. The Newark plant produced typical vermiculite-based products such as vermiculite concentrate, gypsum, perlite, and peat moss (unpublished information from EPA's database of W.R. Grace documents)[b].

The plant is now owned by a building supply company, and vermiculite is no longer processed at the site. The facility is on the southeast edge of San Francisco Bay, approximately 30 miles south of San Francisco. The site is in an area of mixed commercial, industrial, and residential use. Residential housing is on the west side of Smith Avenue. Industrial properties are across Smith Avenue, east of the site. A railroad spur on the west of the site connects to the Union Pacific Railroad, which is approximately ⅛-mile south of the site [1]. Exfoliation operations at the plant ceased in 1993, and the plant was sold to the present owners in 1997 [1].

Site Demographic Information

1990 US census data indicate that approximately 10,000 people lived within one mile of the site. Demographic information is included in a map of the site (see Appendix A, Figure 1). 1990 US census data also indicate that the majority of homes in the surrounding census tracts were built either before or during the time that the plant was processing vermiculite (see Appendix A, Figure 2).

Site Environmental Data

On February 21, 2001, EPA representatives conducted a facility tour, interviewed current employees, and collected samples of soil, dust, and air at the site [1]. They observed vermiculite in the soil along the rail spur, particularly near the place where the conveyor system was located and along the west wall of the production building. They also noted a sprayed-on fireproofing material which was suspected to contain asbestos in the attic above the sales office and in the ceilings of the building used as a sales office.

EPA representatives selected 13 soil sample locations on the site, and 10 composite and 4 grab samples were collected from these locations. Soil samples were processed in accordance with

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a Unpublished data from an EPA database of W.R. Grace invoices for shipments of vermiculite from the Libby mine from 1964 to 1990.

b Unpublished data from a database of W.R. Grace documents that EPA Region 8 obtained through legal means during the Libby mine investigation. This document database contains confidential business information as well as private information that is not available to the public.

soil sample procedure ISSI-Libby-01 [1]. Samples were analyzed by polarized light microscopy (PLM) according to method 9002 of the National Institute for Occupational Safety and Health (NIOSH). Sample results reported as tremolite-actinolite indicate the presence of Libby asbestos. Results of the analysis of the samples are shown in Table 1, Appendix B. Eight of the soil samples contained detectible levels of tremolite-actinolite and/or chrysotile asbestos. Samples of vermiculite products found on the site were also sampled and analyzed using NIOSH method 9002. Results of this analysis are shown in Table 2 of Appendix B. Three soil samples and three vermiculite product samples contained between 2% to 4% tremolite-actinolite. Material from the attic of the sales office contained 15% chrysotile.

EPA contractors sampled dust from four horizontal areas inside buildings that had formerly been used for processing or storing vermiculite. Approximately 100 square centimeters per area were sampled by microvacuum dust sampling, a technique that samples settled dust and fibers by drawing air through a 0.45-micrometer pore-size, mixed cellulose esterase filter at a flow rate of 2.0 liter per minute. Sampling was performed for 2 minutes at each location. Air was pulled through the cassettes by battery-powered sampling pumps. Locations sampled included dusty areas such as window sills and the tops of equipment cabinets. Samples were analyzed using method 10312 of the International Standards Organization (ISO). This method uses transmission electron microscopy (TEM) to determine the type of asbestos fibers present, as well as the lengths, widths, and aspect ratios of asbestos structures. Results of the analysis of the dust samples are shown in Table 3, Appendix B. Tremolite-actinolite indicates the presence of Libby asbestos. All four of the microvacuum samples were found to contain asbestos structures. The largest amount of asbestos in dust found at the site came from the machine shop. Sixty-nine tremolite-actinolite structures (1,761,143 asbestos structures per square centimeter (s/cm^2) and 2 chrysotile structures (51,408 s/cm^2) were detected in the machine shop dust sample.[c]

Indoor air samples were collected by drawing air through a mixed cellulose esterase filter (0.45 micrometer pore size) over a 7- to 8-hour period. Samples were collected at a height of 5 feet above the floor. Air was pulled through the cassettes by electric sampling pumps. Five air samples were collected in the building in which vermiculite had been processed. Samples were analyzed by ISO method 10312. Results of air sampling are shown in Appendix B, Table 4. Sample results reported as tremolite-actinolite indicate the presence of Libby asbestos. Tremolite-actinolite asbestos fibers were detected in air samples from the warehouse and from the office area in the warehouse at concentration of 0.0019 asbestos structures per cubic centimeter (s/cc), and 0.0046 s/cc, respectively. Airborne chrysotile fibers were detected in the sales office building and in the office area of the warehouse at concentrations of 0.0018 s/cc and 0.0104 s/cc, respectively.

EPA representatives had noted materials that appeared to contain vermiculite in the ceilings of the sales office building and inside the west wall of the production building. This material could also be a source of the chrysotile fibers detected in the air samples. The operations manager at the site told EPA that when the property was purchased by the present owner (Steeler, Incorporated, Drywall Construction Supply), the only W.R. Grace equipment that was left on the site were two air compressors, a couple of air conditioning units, a couple of fork lifts, a sweeper machine, and some hand scales. The manager also said that the company fabricates and

[c] See Appendix B for conversions of TEM results to s/cm.^{2}

distributes steel products for the construction industry and does not use vermiculite. Other employees reported that a brick dumpster with asbestos warning signs was on the site and said that when the yard dust got really bad in the summer, many of them complained often about sore throats, coughing, and difficulty breathing.

ATSDR Site Visit

On August 12, 2003, staff members from ATSDR and the California Department of Health Services Environmental Health Investigations Branch (EHIB) visited the Newark site. ATSDR and EHIB staff reported observations similar to those noted by EPA's contractors. There are two permanent structures are on the site, a sales office building at the southeast corner and a large production building on the southwestern edge of the site. Both buildings are steel-framed structures with roofs and siding of corrugated sheet metal. The entrance and the southeastern portion of the site (up to the production building) are paved. Unpaved areas are located along the northern portion of the site and along a railroad spur that runs north-to-south along the western portion of the site. Although the spur is not used now, employees mentioned that it might be used in the future. The railroad spur originates from the Union Pacific railroad tracks approximately ⅛ mile south of the site.

Remnants of a former conveyor system are located on the rail spur near the production building. The current owner's representatives stated that the conveyor system was removed after acquisition of the site. Footprints of 4 silos were evident on a concrete pad near the main building. Near the concrete pad was a sign reading "Vermiculite Concentrate." There was no evidence of any other vermiculite processing equipment at the site.

No evidence of vermiculite, exfoliated vermiculite, or vermiculite waste materials in bulk quantities was observed at the site. Vermiculite flakes were observed in the soil along the railroad spur. According to the site owner's representative, Union Pacific sprayed an encapsulant over the soil in this area to temporarily control the potential release of asbestos fibers until the ownership of the spur could be determined and the required soil removal completed.

An inspection of the area surrounding the facility confirmed the census data that indicated that residential housing existed in an area northeast of the site during the time vermiculite was processed on the site. The houses appeared to have been built in the 1950s or 1960s.

Discussion

The vermiculite processed at this site originated from the mine in Libby, Montana, now known to be contaminated with asbestos. Studies conducted in the Libby community indicate health impacts that are associated with exposure to asbestos [2,3]. The findings at Libby provided the impetus for investigating this site, as well as other sites across the nation that received asbestos-contaminated vermiculite from the Libby mine. It is important to recognize, however, that the asbestos exposures documented in the Libby community are in many ways unique and will not collectively be present at other sites that processed or handled Libby vermiculite. The site investigation at the Newark plant is part of a national effort to identify and evaluate potential exposure to asbestos at these other sites.

Exposure Assessment and Toxicologic Evaluation

Evaluating the health effects of exposure to Libby asbestos requires extensive knowledge of both exposure pathways and toxicity data. The toxicologic information about asbestos that is currently available is limited, and the exact level of health concern for exposure to different sizes and types of asbestos remains controversial. In addition, information is limited or unavailable on some specific exposure pathways at this site for the following reasons.

- Information is limited concerning past concentrations of Libby asbestos in air in and around the plant. In addition, significant uncertainties and conflicts exist concerning the methods used to analyze asbestos. This makes it hard to estimate the levels of Libby asbestos to which people may have been exposed.
- Most exposure occurred long ago. Little information is available about how people who did not work at the plant came into contact with Libby asbestos and how long they were exposed. This information is necessary to estimate quantitative exposure doses.
- We do not know how some vermiculite materials, such as waste rock, were handled or disposed of. Not knowing whether this material was made available for people in the community to use makes it difficult to identify and assess both past and present potential exposures.

Given these difficulties, the public health implications of past operations at this site are evaluated qualitatively. Current health implications are likewise evaluated qualitatively. The following sections describe the various types of evidence we used to evaluate exposure pathways and reach conclusions about the site. Definitions for the hazard category terminology used to characterize the pathways is presented in Appendix C. Appendix D provides a review of tremolite asbestos toxicity and standards.

Exposure Pathway Analysis

An exposure pathway describes how a person comes into contact with chemicals originating from a source of contamination. Every exposure pathway consists of the following five elements: (1) a *source* of contamination; (2) an environmental *medium* (such as air or soil) through which the contaminant is transported; (3) a *point of exposure*, the place where a person can come into contact with the contaminant; (4) a *route of exposure*, the way the contaminant enters or comes into contact with the body; and (5) a *receptor population*. A pathway is considered **complete** if all five elements are present and connected. **Potential** exposure pathways indicate that exposure to a contaminant *could* have occurred in the past, *could* be occurring currently, or *could* occur in the future. A potential exposure exists when information about one or more of the five elements of an exposure pathway is missing or uncertain. An **incomplete** pathway is missing one or more of the pathway elements; it is likely that the elements were never present, and that they are not likely to be present at a later point in time. An **eliminated** pathway was a potential or completed pathway in the past, but to prevent present and future exposures has had one or more of the pathway elements removed.

After reviewing information from Libby, Montana, and from facilities that processed vermiculite from Libby, the National Asbestos Exposure Review team identified likely exposure pathways

for vermiculite processing facilities. All pathways have a common source—vermiculite from Libby contaminated with Libby asbestos—and a common route of exposure—inhalation. Although asbestos ingestion and dermal exposure pathways could exist, health risks from these pathways are minor in comparison to those resulting from inhalation exposure to asbestos, and therefore will not be evaluated.

The exposure pathways considered for each site are listed in the following table. Not every pathway identified will be a significant source of exposure for a particular site. An evaluation of the pathways for this site is presented in the following text.

Table 1. Summary of Pathways Considered for the Newark Plant

Pathway Name	Exposure Scenario	Past Pathway Status	Present Pathway Status	Future Pathway Status
Occupational	Workers exposed to airborne Libby asbestos during handling and processing of contaminated vermiculite	Complete	Not applicable	Not applicable
	Workers exposed to airborne Libby asbestos from residual contamination inside former processing buildings	Complete	Potential (confirmation sampling needed)	Potential (confirmation sampling needed)
Household Contact	Household contacts exposed to airborne Libby asbestos brought home on workers' clothing	Complete	Potential (confirmation sampling needed)	Potential (confirmation sampling needed)
Waste Piles	People disturbing piles of contaminated vermiculite or waste rock on the site (for example, children playing on contaminated rock piles)	Potential	Eliminated	Eliminated
On-Site Soil	Current on-site workers or contractors disturbing contaminated on-site soil (residual contamination, buried waste)	Potential	Eliminated	Eliminated
Ambient Air	Community members or nearby workers exposed to airborne fibers from plant emissions during handling and processing of contaminated vermiculite	Potential	Eliminated	Eliminated
Residential Outdoor	Community members using contaminated vermiculite or waste material at home (for example, for gardening, paving, fill material)	Potential	Potential	Potential
Residential Indoor	Community members disturbing household dust containing Libby asbestos from plant emissions or waste rock brought home for personal use	Potential	Potential	Potential
Consumer Products	Community members, contractors, and repairmen disturbing consumer products containing contaminated vermiculite	Potential	Potential	Potential

Occupational (former W.R. Grace employees) — The occupational exposure pathway for people who worked at the Newark plant prior to 1994 is considered complete. Former W.R. Grace workers were exposed to airborne levels of asbestos that posed a public health hazard. W.R. Grace records indicate that workers were exposed to high indoor levels of Libby asbestos in the air. Employee air sample results for the years 1975 to 1987 (unpublished information from EPA's database of W.R. Grace documents) are shown in Appendix A, Figure 3. For the personal air monitor samples for which sampling times were provided, the duration of the sampling period ranged from 12 to 120 minutes. Three 8-hour time-weighted-averages were reported in a 1987 industrial hygiene audit of the plant. However, these results were below the analytic limit of detection.

Asbestos Overview

Asbestos is a general name applied to a group of silicate minerals consisting of thin, separable fibers in a parallel arrangement. Asbestos minerals fall into two classes, serpentine and amphibole. Serpentine asbestos has relatively long and flexible crystalline fibers; this class includes chrysotile, the predominant type of asbestos used commercially. Amphibole asbestos minerals are brittle and have a rod- or needle-like shape. Amphibole minerals regulated as asbestos by OSHA include five classes: crocidolite, amosite, and the fibrous forms of tremolite, actinolite, and anthophyllite. Other unregulated amphibole minerals, including winchite, richterite, and others, can also exhibit fibrous asbestiform properties [1].

Asbestos fibers do not have any detectable odor or taste. They do not dissolve in water or evaporate into the air, although individual asbestos fibers can easily be suspended in the air. Asbestos fibers do not move through soil. They are resistant to heat, fire, and chemical and biological degradation. As such, they can remain virtually unchanged in the environment over long periods of time.

Vermiculite that was mined in Libby, Montana, contains amphibole asbestos, with a characteristic composition including tremolite, actinolite, richterite, and winchite; this material will be referred to as Libby asbestos. The raw vermiculite ore was estimated to contain up to 26% Libby asbestos as it was mined [2]. For most of the mine's operation, Libby asbestos was considered a by-product of little value and was not used commercially. The mined vermiculite ore was processed to remove unwanted materials and then sorted into various grades or sizes of vermiculite that were then shipped to sites across the nation for expansion (exfoliation) or use as a raw material in manufactured products. Samples of the various grades of unexpanded vermiculite shipped from the Libby mine contained 0.3%–7% fibrous tremolite-actinolite (by mass) [2].

The following sections provide an overview of several concepts relevant to the evaluation of asbestos exposure, including analytical techniques, toxicity and health effects, and the current regulations concerning asbestos in the environment.

Methods for Measuring Asbestos Content

A number of different analytical methods are used to evaluate asbestos content in air, soil, and other bulk materials. Each method varies in its ability to measure fiber characteristics such as length, width, and mineral type. For air samples, fiber quantification is traditionally done through phase contrast microscopy (PCM) by counting fibers with lengths greater than 5 micrometers (>5 μm) and with an aspect ratio (length to width) greater than 3:1. This is the standard method by which regulatory limits were developed. Disadvantages of this method include the inability to detect fibers less than 0.25 (<0.25) μm in diameter and the inability to distinguish between asbestos and nonasbestos fibers [1].

Asbestos content in soil and bulk material samples is commonly determined using polarized light microscopy (PLM), a method which uses polarized light to compare refractive indices of minerals and can distinguish between asbestos and nonasbestos fibers and between different types of asbestos. The PLM method can detect fibers with lengths greater than approximately

1 μm (~1 μm), widths greater than ~0.25 μm, and aspect ratios (length-to-width ratios) greater than 3. Detection limits for PLM methods are typically 0.25%–1% asbestos.

Scanning electron microscopy (SEM) and, more commonly, transmission electron microscopy (TEM) are more sensitive methods that can detect smaller fibers than light microscopic techniques. TEM allows the use of electron diffraction and energy-dispersive x-ray methods, which give information on crystal structure and elemental composition, respectively. This information can be used to determine the elemental composition of the visualized fibers. SEM does not allow measurement of electron diffraction patterns. One disadvantage of electron microscopic methods is that determining asbestos concentration in soil and other bulk material is difficult [1].

For risk assessment purposes, TEM measurements are sometimes multiplied by conversion factors to give PCM equivalent fiber concentrations. The correlation between PCM fiber counts and TEM mass measurements is very poor. A conversion between TEM mass and PCM fiber count of 30 micrograms per cubic meter per fiber per cubic centimeter ($\mu g/m^3$)/(f/cc) was adopted as a conversion factor, but this value is highly uncertain because it represents an average of conversions ranging from 5 to 150 ($\mu g/m^3$)/(f/cc) [3]. The correlation between PCM fiber counts and TEM fiber counts is also very uncertain, and no generally applicable conversion factor exists for these two measurements [3]. Generally, a combination of PCM and TEM is used to describe the fiber population in a particular air sample.

Asbestos Health Effects and Toxicity

Breathing any type of asbestos increases the risk of the following health effects:

Malignant mesothelioma—cancer of the membrane (pleura) that encases the lungs and lines the chest cavity. This cancer can spread to tissues surrounding the lungs or other organs. The great majority of mesothelioma cases are attributable to asbestos exposure [1].

Lung cancer—cancer of the lung tissue, also known as bronchogenic carcinoma. The exact mechanism relating asbestos exposure with lung cancer is not completely understood. The combination of tobacco smoking and asbestos exposure greatly increases the risk of developing lung cancer [1].

Noncancer health effects—these include asbestosis, scarring, and reduced lung function caused by asbestos fibers lodged in the lung; pleural plaques, localized or diffuse areas of thickening of the pleura; pleural thickening, extensive thickening of the pleura which may restrict breathing; pleural calcification, calcium deposition on pleural areas thickened from chronic inflammation and scarring; and pleural effusions, fluid buildup in the pleural space between the lungs and the chest cavity [1].

Not enough evidence is available to determine whether inhalation of asbestos increases the risk of cancer at sites other than the lungs, pleura, and abdominal cavity [1].

Ingestion of asbestos causes little or no risk of noncancer effects. However, some evidence indicates that acute oral exposure might induce precursor lesions of colon cancer and that chronic oral exposure might lead to an increased risk of gastrointestinal tumors [1].

ATSDR considers the inhalation route of exposure to be the most significant in the current evaluation of sites that received vermiculite from Libby. Exposure scenarios that are protective of the inhalation route of exposure should be protective of dermal and oral exposures.

The scientific community generally accepts the correlations of asbestos toxicity with fiber length as well as fiber mineralogy. Fiber length may play an important role in clearing the materials from the body, and mineralogy may affect both biopersistence and surface chemistry.

ATSDR, responding to concerns about asbestos fiber toxicity from the World Trade Center disaster, held an expert panel meeting to review fiber size and its role in fiber toxicity in December 2002 [4]. The panel concluded that fiber length plays an important role in toxicity. Fibers with lengths <5 μm are essentially nontoxic in terms of association with mesothelioma or lung cancer promotion. However, fibers with lengths <5 μm may play a role in asbestosis when exposure duration is long and fiber concentrations are high. More information is needed to definitively reach this conclusion.

In accordance with these concepts, it has been suggested that amphibole asbestos is more toxic than chrysotile asbestos, mainly because physical differences allow chrysotile to break down and to be cleared from the lung, whereas amphibole is not removed and builds up to high levels in lung tissue [5]. Some researchers believe the resulting increased duration of exposure to amphibole asbestos significantly increases the risk of mesothelioma and, to a lesser extent, asbestosis and lung cancer [5]. However, OSHA continues to regulate chrysotile and amphibole asbestos as one substance, as both types increase the risk of disease [6]. EPA's Integrated Risk Information System (IRIS) assessment of asbestos also currently treats mineralogy (and fiber length) as equipotent.

Evidence suggesting that the different types of asbestos fibers vary in carcinogenic potency and site specificity is limited by the lack of information on fiber exposure by mineral type. Other data indicate that differences in fiber size distribution and other process differences can contribute at least as much as fiber type to the observed variation in risk [7].

Counting fibers using the regulatory definitions (see below) does not adequately describe risk of health effects. Fiber size, shape, and composition contribute collectively to risk in ways that are still being elucidated. For example, shorter fibers appear to deposit preferentially in the deep lung, but longer fibers may disproportionately increase the risk of mesothelioma [1,7]. Some of the unregulated amphibole minerals, such as the winchite present in Libby asbestos, can exhibit asbestiform characteristics and contribute to risk. Fiber diameters greater than 2 μm–5 μm are considered above the upper limit of respirability (that is, too large to inhale), and thus do not contribute significantly to risk. Methods to assess the risk posed by varying types of asbestos are being developed and are currently awaiting peer review [7].

Current Standards, Regulations, and Recommendations for Asbestos

In industrial applications, asbestos-containing materials are defined as any material with >1% bulk concentration of asbestos [8]. It is important to note that 1% is not a health-based level, but instead represents the practical detection limit in the 1970s when OSHA regulations were created. Studies have shown that disturbing soil containing <1% amphibole asbestos, however, can suspend fibers at levels of health concern [9].

Friable asbestos (asbestos which is crumbly and can be broken down to suspendible fibers) is listed as a hazardous air pollutant on EPA's Toxic Release Inventory [10]. This classification requires companies that release friable asbestos at concentrations >0.1% to report the release under Section 313 of the Emergency Planning and Community Right-to-Know Act.

OSHA's permissible exposure limit (PEL) is 0.1 f/cc for asbestos fibers with lengths >5 μm and with an aspect ratio (length:width) >3:1, as determined by PCM [6]. This value represents a time-weighted average (TWA) exposure level based on 8 hours per day for a 40-hour work week. In addition, OSHA has defined an "excursion limit," which stipulates that no worker should be exposed in excess of 1 f/cc as averaged over a sampling period of 30 minutes [6]. Historically, the OSHA PEL has steadily decreased from an initial standard of 12 f/cc established in 1971. The PEL levels prior to 1983 were determined on the basis of empirical worker health observations, while the levels set from 1983 forward employed some form of quantitative risk assessment. ATSDR has used the current OSHA PEL of 0.1 f/cc as a reference point for evaluating asbestos inhalation exposure for past workers. ATSDR does not, however, support using the PEL for evaluating exposure for community members, because the PEL was developed as an occupational exposure for adult workers.

In response to the World Trade Center disaster in 2001 and an immediate concern about asbestos levels in buildings in the area, the Department of Health and Human Services, EPA, and the Department of Labor formed the Environmental Assessment Working Group. This work group was made up of ATSDR, EPA, CDC's National Center for Environmental Health, the National Institute for Occupational Safety and Health (NIOSH), the New York City Department of Health and Mental Hygiene, the New York State Department of Health, OSHA, and other state, local, and private entities. The work group set a re-occupation level of 0.01 f/cc after cleanup. Continued monitoring was also recommended to limit long-term exposure at this level [11]. In 2002, a multiagency task force headed by EPA was formed specifically to evaluate indoor environments for the presence of contaminants that might pose long-term health risks to residents in Lower Manhattan. The task force, which included staff from ATSDR, developed a health-based benchmark of 0.0009 f/cc for indoor air. This benchmark was developed to be protective under long-term exposure scenarios, and it is based on risk-based criteria that include conservative exposure assumptions and the current EPA cancer slope factor. The 0.0009 f/cc benchmark for indoor air was formulated on the basis of chrysotile fibers and is therefore most appropriately applied to airborne chrysotile fibers [12].

NIOSH set a recommended exposure limit of 0.1 f/cc for asbestos fibers longer than 5 μm. This limit is a TWA for up to a 10-hour workday in a 40-hour work week [13]. The American Conference of Government Industrial Hygienists has also adopted a TWA of 0.1 f/cc as its threshold limit value [14].

EPA has set a maximum contaminant level (MCL) for asbestos fibers in water of 7,000,000 fibers longer than 10 μm per liter, on the basis of an increased risk of developing benign intestinal polyps [15]. Many states use the same value as a human health water quality standard for surface water and groundwater.

Asbestos is a known human carcinogen. Historically, EPA's IRIS model calculated an inhalation unit risk for cancer (cancer slope factor) of 0.23 per f/cc of asbestos [3]. This value estimates additive risk of lung cancer and mesothelioma using a relative risk model for lung cancer and an absolute risk model for mesothelioma.

This quantitative risk model has significant limitations. First, the unit risks were based on measurements with phase contrast microscopy and therefore cannot be applied directly to measurements made with other analytical techniques. Second, the unit risk should not be used if the air concentration exceeds 0.04 f/cc because the slope factor above this concentration might differ from that stated [3]. Perhaps the most significant limitation is that the model does not consider mineralogy, fiber-size distribution, or other physical aspects of asbestos toxicity. EPA is in the process of updating their asbestos quantitative risk methodology given the limitations of the IRIS model currently used and the knowledge gained since this model was implemented in 1986.

References

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2. Midwest Research Institute. Collection, analysis, and characterization of vermiculite samples for fiber content and asbestos contamination. Kansas City: report prepared for the U.S. Environmental Protection Agency Office of Pesticides and Toxic Substances; September 1982.
3. U.S. Environmental Protection Agency. Integrated risk information system (for asbestos). Accessed on July 31, 2002, at: http://www.epa.gov/iris/subst/0371.htm.
4. Agency for Toxic Substances and Disease Registry. Report on the expert panel on health effects of asbestos and synthetic vitreous fibers: the influence of fiber length. Atlanta: U.S. Department of Health and Human Services; 2003. Available at: (http://www.atsdr.cdc.gov/HAC/asbestospanel/index.html).
5. Churg A. Asbestos-related disease in the workplace and the environment: controversial issues. In: Churg A, Katzenstein AA. The lung: current concepts (Monographs in pathology, no. 36). Philadelphia: Lippincott, Williams, and Wilkins; 1993. p. 54-77.
6. Occupational Safety and Health Administration. Federal Register 59:40964-41162, Aug 10, 1994; Federal Register 60:33973-34002, June 29, 1995.
7. Berman DW, Crump K. Methodology for conducting risk assessments at asbestos Superfund sites. Part 2: Technical background document (interim version). Prepared for the U.S. Environmental Protection Agency Region 9. San Francisco: February 15, 1999.
8. U.S. Environmental Protection Agency. Guidelines for conducting the AHERA TEM clearance test to determine completion of an asbestos abatement project. Washington: U.S. Environmental Protection Agency, Office of Toxic Substances, NTIS No. PB90-171778. 1989.
9. Weis CP (EPA). Memorandum to P. Peronard of U.S. Environmental Protection Agency, Amphibole mineral fibers in source materials in residential and commercial areas of Libby pose an imminent and substantial endangerment to public health. Denver: U.S. Environmental Protection Agency; December 20, 2001.
10. U.S. Environmental Protection Agency. Toxic air pollutants Web site. Accessed on October 29, 2002, at: http://www.epa.gov/air/toxicair/newtoxics.html.
11. Agency for Toxic Substances and Disease Registry. World Trade Center response activities. Close-out report. September 11, 2001–April 30, 2003. Atlanta: U.S. Dept. of Health and Human Services; May 16, 2003.
12. U.S. Environmental Protection Agency. World Trade Center indoor environment assessment: selecting contaminants of potential concern and setting health-based benchmarks. New York: EPA Region 2; May 2003.
13. National Institute of Occupational Safety and Health (NIOSH). Online NIOSH pocket guide to chemical hazards. Accessed on July 16, 2002, at: http://www.cdc.gov/niosh/npg/npgd0000.html.
14. American Conference of Government Industrial Hygienists. 2000 Threshold limit values for chemical substances and physical agents and biological exposure indices. Cincinnati; 2000.
15. U.S. Environmental Protection Agency. National primary drinking water regulations. Accessed on July 16, 2002, at: http://www.epa.gov/safewater/mcl.html.

ATTACHMENT D HAS BEEN PROVIDED SEPARATELY TO THE COUNCILMEMBERS AND IS ALSO AVAILABLE ONLINE AT:

www.oaklandnet.com/government/ceda/revised/planningzoning/majorprojectssection/environmentaldocument

OR AT THE PLANNING DEPARTMENT OFFICES AT 250 FRANK H. OGAWA PLAZA, SUITE 2114, OAKALND, CA 94612

Community and
Economic
Development Agency

CITY OF OAKLAND
PLANNING & ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

December 27, 2006

Mr. Daniel D. Purnell
Public Ethics Commission, Executive Director

Re: Complaint No. 060-20 (Ralph Kanz)

Dear Mr. Purnell,

Complaint No. 060-20 asserts that a writing distributed by staff at the October 18, 2006 Planning Commission meeting violated the Sunshine Ordinance. According to the complaint, the document was not included in the previously published staff report (Agenda Related Materials) and, therefore, could not be distributed at the meeting itself by Planning Staff. For the reasons stated below, Planning Staff believe there was no violation of the Sunshine Ordinance.

The subject document contained two minor, clarifying changes to the previously published staff report. The complaint appears to acknowledge that it would have been permissible for staff to read these minor changes into the record or to have a Planning Commission member authorize staff to distribute these written materials.

Planning Staff believes that this document was properly distributed at the meeting, because it was not an "Agenda Related Material" within the meaning of the Sunshine Ordinance, as it was not submitted in lieu of, nor substituted for, the published staff report. Rather, the document comprised "written text and visual aids for [a] presentation . . . [which] are not substituted for, or submitted in lieu of, a written report that would otherwise be required..." (Sunshine Ordinance section 2.20.030B). Because the Sunshine Ordinance expressly excludes these types of materials from the definition of Agenda Related Materials, there can be no violation for distributing them at the Planning Commission meeting.

Here, the published staff report was about 38 pages in length and made available the Friday before the Wednesday Planning Commission meeting. The document which is the subject of the complaint consisted of approximately 3 sentences, totaling about 53 words, which responded to public comments and added some clarifying text. The hand-out of the written text was provided to facilitate a better understanding of the changes by the public and the Commission during Planning Staff's oral presentation to the Commission.

ATTACHMENT E

Specifically, the writing in question had two minor, clarifying changes. The first change was to add condition of approval no. 8b, which essentially reminded the applicant that he had to consult with and obtain approval from the Department of Fish and Game. This condition was added at the request of the California Department of Fish and Game. The second change was to add an introductory clause omitted from CEQA finding no. 22, at the request of the City Attorney.

For the reasons stated above, Planning Staff believes the distribution of the brief, clarifying writing was authorized under the City's Sunshine Ordinance. Accordingly, the complaint should be dismissed.

Respectfully,

Claudia Cappio
Development Director

Cc:
Robert Merkamp, CEDA

DENNIS JOHN WOODRUFF
ANDALUCIA PROPERTIES LLC
886 Longridge Road, Oakland, CA 94610

Tel: 510 625-9544
FAX: 510 891-2317 **Email: djwoodruff@SBCGlobal.net**

FROM: DENNIS WOODRUFF DATE: December 8, 2006

RE: Crestmont 4 lot TPM 7940

TO:

NAME	FAX NO.	TIME SENT
Robert Merkamp	238 4730	

TOTAL NUMBER OF PAGES INCLUDING THIS COVER PAGE: 7

Robert:

Here is the cover letter and report from Multitrans on the Crestmont Speed Study.

Dennis
Encl.

ATTACHMENT F

MULTITRANS
Transportation Consultants, Inc.

November 30, 2006
PR061102

Mr. Dennis Woodruff
886 Longridge Road
Oakland, California 94610

Subject: **Spot Speed Study – Crestmont Drive, Oakland**

Dear Mr. Woodruff:

In accordance with your request, MULTITRANS has conducted the attached Spot Speed Study for Crestmont Drive, in the vicinity of Westfield Way, in Oakland. The Spot Speed readings, for both Northbound and Southbound directions, were taken at the beginning of the vertical curve on Crestmont Drive, and at the start of the vehicles descend, when the vehicles had a clear view of the proposed driveways on Crestmont Drive.

The Spot Speed Study was conducted in accordance with the California Vehicle Code (CVC) Section 627, and Section 8-03 of the Caltrans Traffic Manual. The roadway segment speeds were observed and recorded using a radar device to fully satisfy the methodology described in Section 8-03 of the Caltrans Traffic Manual. MULTITRANS staff measured free-flow speeds during off-peak hours on Tuesday, November 21, 2006.

As part of the Spot Speed Study the following speed data were determined:

1. 50th (median) percentile speed
2. 85th percentile speed
3. 10 mile per hour pace speed, with number and percentage of vehicles within the pace
4. Tabular summation frequency of the speeds observed
5. Cumulative speed distribution curve
6. Date and time started, direction.

Should you have any questions please do not hesitate to call.

Sincerely,

MULTITRANS
Transportation Consultants, Inc.

David H. Yazhari
Principal

DHY/bp
Attachments

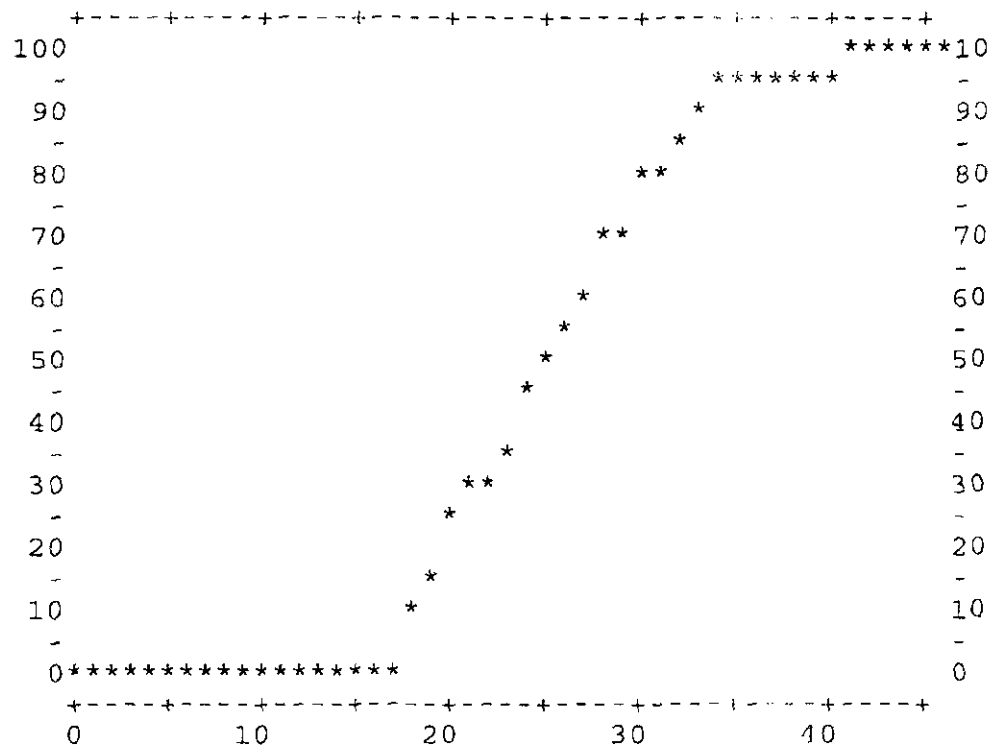
MULTITRANS SPOT SPEED STUDY
CRESTMONT DRIVE.: S/O WESTFIELD WY.

DIRECTION(S).....NB
DATA COLLECTED ON..11/21/2006
BEGINNING AT.....11:00
POSTED SPEED LIMIT.25 MPH
REPORT DATE.....11/21/2006

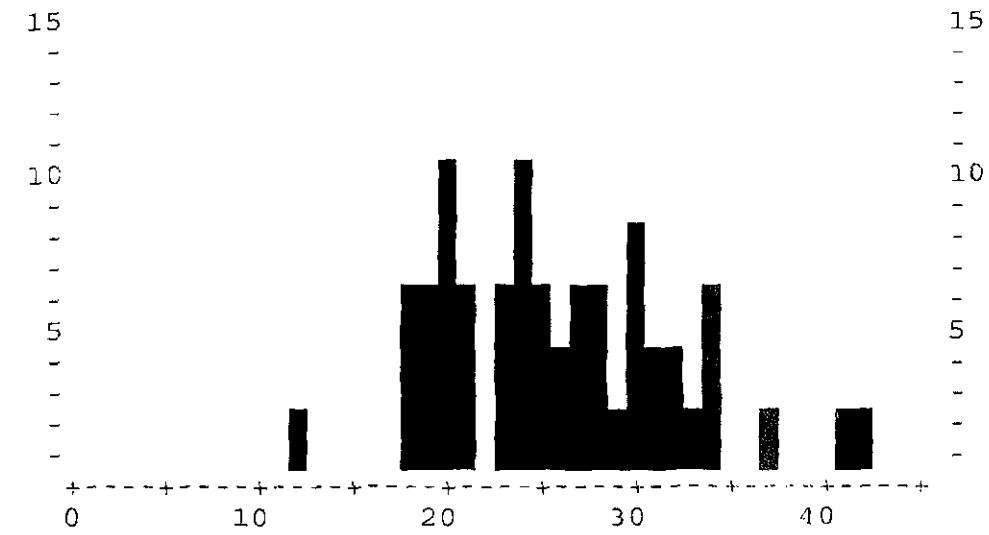
50TH PERCENTILE SPEED.....25
85TH PERCENTILE SPEED.....32
10-MPH PACE SPEED.....18 through 27
PERCENT IN PACE SPEED..... 60.0
PERCENT OVER PACE SPEED..... 38.0
PERCENT UNDER PACE SPEED..... 2.0
RANGE OF SPEEDS.....12 to 42
SPEEDS OBSERVED.....50
AVERAGE SPEED.....25.9

MPH	NO.	PCT.	CUM PCT.
0	0	0.0	0.0
1	0	0.0	0.0
2	0	0.0	0.0
3	0	0.0	0.0
4	0	0.0	0.0
5	0	0.0	0.0
6	0	0.0	0.0
7	0	0.0	0.0
8	0	0.0	0.0
9	0	0.0	0.0
10	0	0.0	0.0
11	0	0.0	0.0
12	1	2.0	2.0
13	0	0.0	2.0
14	0	0.0	2.0
15	0	0.0	2.0
16	0	0.0	2.0
17	0	0.0	2.0
18	3	6.0	8.0
19	3	6.0	14.0
20	5	10.0	24.0
21	3	6.0	30.0
22	0	0.0	30.0
23	3	6.0	36.0
24	5	10.0	46.0
25	3	6.0	52.0
26	2	4.0	56.0
27	3	6.0	62.0
28	3	6.0	68.0
29	1	2.0	70.0
30	4	8.0	78.0
31	2	4.0	82.0
32	2	4.0	86.0
33	1	2.0	88.0
34	3	6.0	94.0
35	0	0.0	94.0
36	0	0.0	94.0
37	1	2.0	96.0
38	0	0.0	96.0
39	0	0.0	96.0
40	0	0.0	96.0
41	1	2.0	98.0
42	1	2.0	100
43	0	0.0	100
44	0	0.0	100
45	0	0.0	100
46	0	0.0	100
>46	0	0.0	100

CUMULATIVE PERCENT VS. SPEED (MPH)



PERCENT VS. SPEED (MPH)



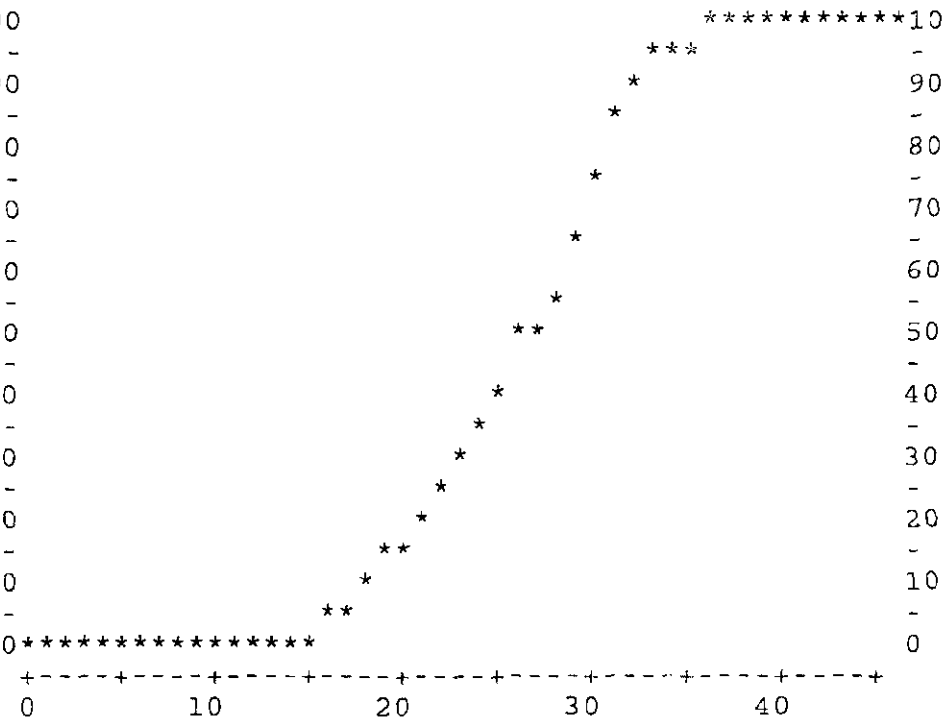
MULTITRANS SPOT SPEED STUDY
CRESTMONT DRIVE.: N/O WESTFIELD WY.

DIRECTION(S).....SB
DATA COLLECTED ON..11/21/2006
BEGINNING AT.....10:00
POSTED SPEED LIMIT.25 MPH
REPORT DATE.....11/21/2006

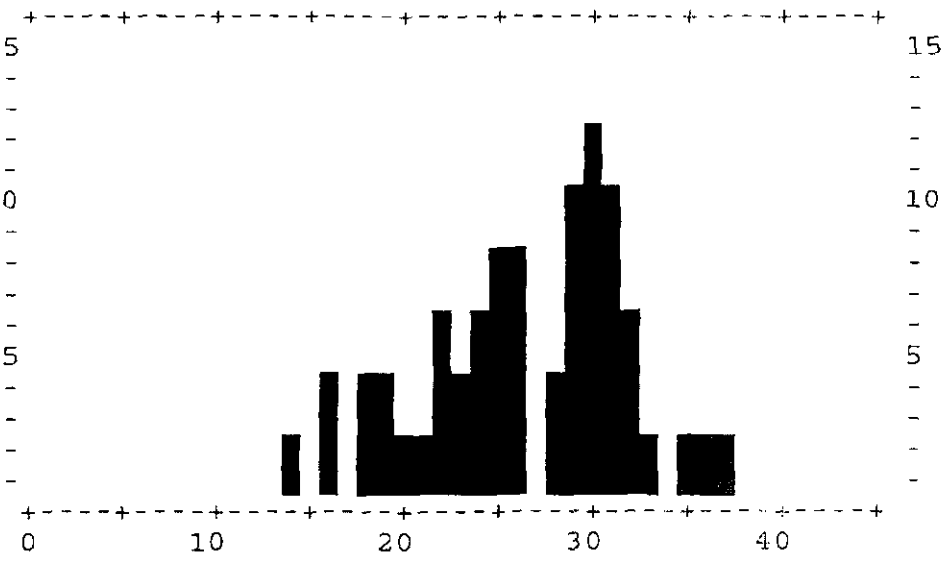
50TH PERCENTILE SPEED.....28
85TH PERCENTILE SPEED.....31
10-MPH PACE SPEED.....22 through 31
PERCENT IN PACE SPEED..... 68.0
PERCENT OVER PACE SPEED..... 14.0
PERCENT UNDER PACE SPEED..... 18.0
RANGE OF SPEEDS.....14 to 37
SPEEDS OBSERVED.....50
AVERAGE SPEED.....26.4

MPH	NO.	PCT.	CUM PCT.
0	0	0.0	0.0
1	0	0.0	0.0
2	0	0.0	0.0
3	0	0.0	0.0
4	0	0.0	0.0
5	0	0.0	0.0
6	0	0.0	0.0
7	0	0.0	0.0
8	0	0.0	0.0
9	0	0.0	0.0
10	0	0.0	0.0
11	0	0.0	0.0
12	0	0.0	0.0
13	0	0.0	0.0
14	1	2.0	2.0
15	0	0.0	2.0
16	2	4.0	6.0
17	0	0.0	6.0
18	2	4.0	10.0
19	2	4.0	14.0
20	1	2.0	16.0
21	1	2.0	18.0
22	3	6.0	24.0
23	2	4.0	28.0
24	3	6.0	34.0
25	4	8.0	42.0
26	4	8.0	50.0
27	0	0.0	50.0
28	2	4.0	54.0
29	5	10.0	64.0
30	6	12.0	76.0
31	5	10.0	86.0
32	3	6.0	92.0
33	1	2.0	94.0
34	0	0.0	94.0
35	1	2.0	96.0
36	1	2.0	98.0
37	1	2.0	100
38	0	0.0	100
39	0	0.0	100
40	0	0.0	100
41	0	0.0	100
42	0	0.0	100
43	0	0.0	100
44	0	0.0	100
45	0	0.0	100
46	0	0.0	100
>46	0	0.0	100

CUMULATIVE PERCENT VS. SPEED (MPH)



PERCENT VS. SPEED (MPH)



MULTITRANS

Traffic Speed Study

JURISDICTION: Oakland
STREET NAME: Crestmont Dr.
LIMITS: N/O Westfield Way
EXISTING SPEED LIMITS: 25 MPH

DATE: 11/21/2006
DAY: Tuesday
TIME: 10:00AM

NUMBER	NB	NB		SB	SB
1				36	
2				29	
3				24	
4				26	
5				32	
6				28	
7				25	
8				29	
9				33	
10				30	
11				30	
12				26	
13				20	
14				23	
15				37	
16				18	
17				31	
18				30	
19				32	
20				31	
21				29	
22				29	
23				22	
24				18	
25				29	
26				16	
27				25	
28				21	
29				16	
30				30	
31				26	
32				35	
33				19	
34				25	
35				25	
36				23	
37				24	
38				31	
39				28	
40				31	
41				22	
42				19	
43				24	
44				14	
45				22	
46				30	
47				31	
48				30	
49				22	
50				26	

MULTITRANS

Traffic Speed Study

JURISDICTION: Oakland
STREET NAME: Crestmont Dr.
LIMITS: S/O Westfield Way
EXISTING SPEED LIMITS: 25 MPH

DATE: 11/21/2006
DAY: Tuesday
TIME: 11:00AM

NUMBER		NB	NB		SB	SB	
1		21					
2		24					
3		24					
4		27					
5		30					
6		28					
7		20					
8		33					
9		30					
10		24					
11		25					
12		12					
13		27					
14		21					
15		28					
16		34					
17		31					
18		29					
19		30					
20		19					
21		18					
22		34					
23		24					
24		42					
25		21					
26		41					
27		20					
28		28					
29		26					
30		20					
31		21					
32		37					
33		23					
34		19					
35		30					
36		18					
37		32					
38		34					
39		26					
40		23					
41		25					
42		32					
43		19					
44		27					
45		25					
46		20					
47		23					
48		20					
49		18					
50		24					

SCA:

Tracking Complaints

Prior to the issuance of each building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall 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;
- 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 shall 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.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency and building contractor.

Monitoring Timeframe: During Construction.

IX. **Transportation and Traffic**

Impact: The potential of the project to add additional traffic hazards through placing four new driveways on Crestmont Drive.

SCA: The applicant shall conduct a critical speed survey in accordance with standard industry practice and the requirements of the City of Oakland. If it is found that the critical speed exceeds 30mph in the northbound direction or 40mph in the southbound direction, the applicant will be required to implement additional safety measures including signage, pavement markings, or other measures as determined by the Transportation Services Division of the City's Public Works Agency.

Monitoring Responsibility: City of Oakland Community and Economic Development Agency.

Monitoring Timeframe: Prior to filing of Final Map.

OFFICE OF THE CITY CLERK
OAKLAND

2007 JAN -4 PM 7:22

APPROVED AS TO FORM AND LEGALITY
Mark P. Wald
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Construction Grading Operation Requirements	
Administrative	1. Asbestos Dust Mitigation Plan submitted to the District and approved prior to engaging in the any construction or grading operation. 2. Notify APCO next business day upon discovery of naturally asbestos, serpentine, or ultramafic rock. 3. Submit Asbestos Dust Mitigation Plan within 14 days upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock. 4. Report bulk sampling results conducted by the owner/operator to document applicability done at the request of APCO.
Dust Control	1. Vehicle speed ≤15 mph 2. Sufficient water applied to the area prior to disturbance to prevent visible emissions from crossing project boundaries. 3. Areas to be graded or excavated kept adequately wetted to prevent visible emissions from crossing project boundaries. 4. Storage piles kept adequately wetted, treated with chemical dust suppressant, or covered when the material is not being added or removed. 5.Storage piles must be stabilized when inactive for more than 7 days by adequately wetting , establishing surface crusting, chemical dust suppressant, covering with tarps or vegetative cover, installation of wind barriers around three sides or open areas, or any measure as effective. 6. Equipment must be washed down before moving from the property onto paved roadway. 7. Track-out prevention device installed (gravel pad, tire shaker, wheel wash system, 50 feet of pavement extending from intersection with paved public road, or other measure as effective. 8. Visible track-out on paved public road must be cleaned using wet sweeping or HEPA filter equipped vacuum device within 24 hours. 9. Post project stabilization of disturbed surfaces using vegetative cover, 3" of non- asbestos-containing material, paving, or other measure deemed sufficient to prevent 10 mph winds from causing visible emissions. 10. Implement the preceding dust control measures within 24 hours upon discovery of naturally occurring asbestos, serpentine, or ultramafic rock. 11. Implement provisions of District approved Asbestos Dust Mitigation Plan within 14 days of approval after discovery of naturally occurring asbestos, serpentine, or ultramafic rock.

; and be it

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

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

1. the Project application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his representatives;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Draft and Final EIR,

underlying technical studies and all related/supporting materials, and all notices relating to the Project application and attendant hearings;

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

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

LEGAL NOTICE:

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