

CITY OF OAKLAND  
AGENDA REPORT

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 DEC -2 PM 1:59

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Work Agency  
DATE: December 14, 2004

RE: INFORMATIONAL REPORT ON THE STATUS OF LEONA QUARRY SUBDIVISION PROJECT RELATED TO COMPLIANCE WITH CONDITIONS OF APPROVAL AND RESPONSE TO LETTERS FROM NATURAL HERITAGE INSTITUTE

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**SUMMARY**

This informational report is prepared to address questions raised by Public Works Committee at its October 26, 2004 meeting regarding the Leona Quarry Subdivision project. The Committee directed staff to report on the following items:

1. Overall status of the project.
2. The implementation of the Geologic Hazard Abatement District (GHAD).
3. The basis for estimating the cost of improvements and the amount of the security bonds.
4. The response to issues mentioned in a letter dated October 25, 2004 from the Natural Heritage Institute submitted to the Committee at the October 26, 2004 meeting.

Each of the above listed items is explained in detail below. Please note that a supplemental report was presented to City Council on November 16, 2004 addressing the status of the Storm Water Pollution Prevention Plan (SWPPP), clarifying that the final map will not be approved until other project conditions are met, and requiring the Contractor to continue working on the sanitary sewer and storm drainage systems to augment the implementation of the erosion and sediment control measures. A copy of the supplemental report is enclosed as **Attachment A**.

1. Overall Status of Project:

**Attachment B** to this report lists Conditions of Approval (COA) and Mitigation Monitoring Reporting Program (MMRP) that govern the construction of this project. The status of each item under the COA and MMRP, as of November 2004 is indicated in italic font. Where not applicable, it is noted as "not applicable". **Attachment C** summarizes the status of all of the project's COA and (MMRP). Some of the key elements of the project are described in more detail below.

**a. Grading**

Grading of approximately 1.4 million cubic yards of materials of the project's 2.7 million cubic yards has been completed to date. The graded slopes are stable and the relevant erosion and sediment control measures have been implemented. In compliance with the City's grading ordinance, grading activities ceased on October 15, 2004. However, the contractor continued to work on improving the erosion and sediment control measures and the installation of the sewer and storm drain systems.

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**b. Construction Monitoring:**

City engineers and our consultants as well as State Regional Water Quality Control Board (Regional Board) staff have been monitoring the grading activities, stormwater quality, implementation of SWPPP measures and other mitigation measures required by the conditions of approval. Due to the large magnitude of the construction operations and the complexity of this project, the initially approved SWPPP was enhanced to ensure that the impact of this project on the downstream watercourse is minimized. Apart from issues related to the quality of water leaving the site and the performance of some of the originally implemented erosion and sediment control measures, all other monitoring efforts have been successful. Improved erosion and sediment control measures and a more efficient filtration system have been installed onsite. Weekly meetings between City staff, consultants, and the contractor are continuously held at the site to verify and ensure compliance with all conditions of approval.

Also, the project's conditions of approval require the subdivider to provide an Annual Status Report by October 15 of each year. The first report for this project and some of the status reports from the consultants are posted on Leona Quarry website. The address of the website is [www.Oaklandnet.com/Leonaquarry](http://www.Oaklandnet.com/Leonaquarry). Staff and consultants will continue to closely monitor the project and update the project information as needed.

**c. Wet Weather Grading:**

The subdivider applied for a wet weather-grading permit to continue grading of the upper bowl area during the rainy season. This area is located on the North East side of the site, where the previous quarry operations resulted in a depressed area with steep surrounding slopes. City engineers and consultants reviewed the application and determined that it is prudent to issue the wet-weather grading permit during this season to ensure completion of the grading activities before the 2005 wet season. Accordingly, the City issued a Wet Weather Grading Permit subject to a list of conditions. The general conditions of the permit require the contractor to maintain sufficient measures to minimize erosion and sediment from the site during rain events and cease grading within 24 hours of any forecast rain. However, the most critical requirement allows the City to revoke the permit at any time it finds the contractor in noncompliance with the terms of the permit. In addition, this permit will be evaluated every two weeks and either renewed or cancelled according to site and project conditions and circumstances. City staff, the City's consultant, and the subdivider's engineer-in-charge will continue to closely monitor the project to ensure compliance with project conditions of approval.

**d. Erosion and Sediment Control:**

All the erosion and sediment control measures required by the approved SWPPP have been implemented at the project site. Please note that the SWPPP is a flexible document requiring implementation of most practicable Best Management Practices (BMP) to mitigate erosion. Additional measures proposed by the revised SWPPP were also implemented in early

November 2004. These additional measures are considered a major improvement to those initially envisioned in the originally approved SWPPP. One of these measures includes a filtration system to remove the turbidity from the water at the detention basin before it is discharged into the City's storm drainage system. This system is not required by the SWPPP, but the subdivider has elected to use it to provide a higher level of protection. This system is currently functioning effectively. Staff and consultants will continue to monitor the site to ensure continued compliance.

**e. Completion of Improvements:**

On November 16, 2004, the City Council authorized the City Engineer to enter into a Subdivision Improvement Agreement with the subdivider related to the construction of public improvements within Tracts 7351 and 7493. Staff is working with the City Attorney to finalize the Subdivision Improvement Agreement. The agreement will require the subdivider to post the security, pay the permit fees, and to complete the public improvements within 18 months. If the improvements are not completed within the specified period, the subdivider will be required to apply for a time extension, which will require a City Council action. Before presenting such a request to City Council, City staff and consultants will reevaluate the cost of completing the improvements at that time, and may require the subdivider to provide additional bonding.

**f. Project Peer Review and Monitoring:**

The conditions of approval require the subdivider to pay the City for the cost of consultants who are under contract with the City as deemed necessary to ensure compliance with the project's conditions of approval. For this purpose, the City interviewed several consultants and selected four highly regarded consultants based on their relevant experience, staffing, and other considerations. These consultants and their scope of work are listed below:

1. Harris and Associates was hired to assist the City in reviewing the civil and final map drawings. To date they have completed review of the rough grading plans for the subdivision. Also, they have completed review of the public improvements for Tracts 7351 and 7493. They are currently reviewing the plans for Tract Maps 7351 and 7493, and 7492.
2. Lowney Associates was hired to review and monitor the geotechnical and biological related work. To date they have reviewed the soils report for the project and the grading plans. They have also submitted to the City the appropriate geotechnical and biological related reports required per the conditions of approval. They continue to provide *Geotechnical peer review, and monitor the grading activities as well as the erosion and sediment control measures.*
3. Phillip Williams and Associates was hired to provide hydrology and hydraulics related recommendations and reports. To date they have reviewed all the hydrological models and hydraulic calculations submitted by the subdivider's engineers, and provided the necessary reports and recommendations. City staff continues to consult them on hydrology related issues.

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4. PGA Design was hired to review the landscape plans. To date they have completed review of the master landscape plans. They are currently reviewing detailed phase I landscape plans associated with building permits.

City staff has been working closely with the consultants and the subdivider's engineers to ensure that the conditions of approval are met. Staff has recently augmented this consultant team with an erosion control specialist.

2. Status of Geologic Hazard Abatement District (GHAD):

Condition of Approval No. 24 requires that a GHAD should be fully operational and all assessments, reserve funds and/or long term financing, and other requirements necessary to fully fund the GHAD shall be established and authorized prior to the recordation of the first final map. The subdivider submitted the GHAD documents in September 2004 to the City for review. Included in the documents are the GHAD's Budget and funds calculations, the Plan of Control and engineer's report. Staff is working with the City consultant to review and provide comments on the GHAD document. It is anticipated that a resolution and staff report will be presented to the GHAD Board for action in January 2005 before the recordation of the final map.

3. Security Amounts and Engineer's Estimate:

Securities for infrastructure improvements are determined using an approved engineer's estimate provided by the subdivider's engineer. These estimates are usually based on unit prices for different types of work. The engineer's estimate for the Leona Quarry Subdivision project public improvements was reviewed by City Staff and the City's Consultant, Harris Associates, and was determined to be adequate for the proposed phases of the Leona Quarry improvements. Inflation costs and a 20% contingency were added to the estimate to account for inflation during the deferment period and any contingencies that may result from the construction of the improvements. The cost for inflation and contingency are part of the bond amounts. The subdivider has posted performance bonds for \$8,167,584 to ensure completion of the improvements and \$4,083,792 for labor and material to guarantee payment to labor and material suppliers related to Tract numbers 7351 and 7493. Copies of the engineer's estimate and bonds are attached as **Attachments D and E**.

4. Response Letter to Natural Heritage Institute

Staff has acknowledged receipt of the Natural Heritage Institute letters, dated October 25, 2004 and November 11, 2004 (**attachment F**). The copy of the acknowledgement letter is enclosed as **Attachment F**. City staff is working on preparing a detailed response to address allegations by the Natural Heritage Institute letters by December 14, 2004. Staff will incorporate in its response a letter from the subdivider's counsel, Marie A. Cooper of Bingham McCutchen, dated November 19, 2004 (**Attachment G**).

## KEY ISSUES

The implementation of this project is complex and it is projected to take three to 7 years to complete construction. The City is responsible for monitoring compliance with conditions of approval (COA)

and the Mitigation Monitoring and Reporting Program (MMRP). A detailed status of this compliance is contained in the attachments to this report.

At this point, the project sponsor will continue to grade and repair the site in anticipation of commencing construction at some point during 2005. Construction of a few model homes, as permitted by the Subdivision Map Act, will proceed early next year. After the site has been stabilized, the first final map approved, and the GHAD implemented, construction of the first phase of up to 150 units and construction on the Campus Drive lots may commence.

Staff will address any other specific issues that the Council may identify during the meeting.

### RECOMMENDATION AND RATIONALE


The subdivider is complying with the conditions of approval, and staff and consultants will continue to monitor the project. Staff recommends that the City Council accept the informational report.


### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept the informational report.

Respectfully submitted,

Respectfully submitted,

  
for **RAUL GODINEZ II, P.E.**  
Director, Public Works Agency

  
**CLAUDIA CAPPIO**  
Director of Development  
Community & Economic Development Agency

Reviewed by:  
Fuad Sweiss, P.E.  
Engineering and Design & Right-of-Way Manager

Prepared by:  
Marcel Uzegbu, P.E.  
CIP Coordinator, PWA

APPROVED AND FORWARDED TO THE  
PUBLIC WORKS COMMITTEE:

  
**OFFICE OF THE CITY ADMINISTRATOR**

ATTACHMENT A

CITY OF OAKLAND  
Agenda Report

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Works Agency and Community and Economic Development Agency  
DATE: November 16, 2004

2004 NOV 10 PM 5:24

RE: SUPPLEMENTAL REPORT ON THE RESOLUTION AUTHORIZING THE CITY ENGINEER TO ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT WITH DESILVA GROUP, INC. FOR CONSTRUCTION OF CERTAIN IMPROVEMENTS IN CONNECTION WITH "TRACTS 7351 AND 7493", LEONA QUARRY PROJECT; FIXING THE AMOUNT OF THE SECURITY TO GUARANTEE THE FAITHFUL PERFORMANCE OF SUCH AGREEMENT AND ADOPTING PLANS AND SPECIFICATIONS

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SUMMARY

On October 26, 2004, the Public Works Committee heard a resolution to authorize the Director of Public Works to enter into a Subdivision agreement with DeSilva Group, Inc. (Subdivider) for construction of certain improvements in connections with Tract Maps 7351 and 7493, fixing the amount of the security to guarantee the faithful performance of such agreement and adopting the plans and specifications relating to the Final Map for Tracts 7351 and 7493.

At that meeting, the Committee took action to forward the Resolution to the full Council on November 16, 2004, with the stipulation that certain elements of the existing approved Storm Water Pollution Prevention Plan (SWPPP) and any recommendations required by the City or the State Regional Water Quality Control Board (Regional Board) be fully implemented on or before November 16, 2004. The Committee indicated that if such conditions were not satisfied by November 16, 2004, the resolution should be returned to the Committee at its December 14, 2004 for further action. The Committee further requested staff to provide a supplemental report to City Council's Public Works Committee at its December 14, 2004 meeting to respond to several issues, including the following:

- Overall status of the project;
- Explanation of how the engineer's estimate was utilized in determining the amount of security for the onsite public improvements;
- Status of Geologic Hazard Abatement District (GHAD) and implementation schedule;
- Stipulate that storm drainage and sanitary sewer construction will not be halted;
- Response to project issues raised in a letter from the National Heritage Institute dated October 25, 2004.

The Committee also directed staff to revise the resolution to clarify that approval of the Final Map will require a separate Council Action. Staff has implemented the Committee requests. On November 2, 2004, the Regional Board issued a letter finding Desilva Group, Inc. to be out of compliance with their NPDES Permit and directing the subdivider to meet compliance by November 15, 2004. The status of compliance with the SWPPP and requirements of the Regional Board as of November 16, 2004 were not known at the time this Supplemental Report was written, and staff will report on that compliance at the November 16, 2004 Council Meeting.

Staff asks that the City Council accept the supplemental report and status update and take appropriate action on the resolution.

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## KEY ISSUES

Completion of the provisions of the approved SWPPP is required under the Conditions of Approval, the Contractor's National Pollution Discharge Elimination System (NPDES) Permit and City of Oakland NPDES Permit to minimize erosion and sediments in Chimes Creek and the City's storm drainage system.

### Action Taken by Staff:

Prior to the October 26, 2004 Committee meeting, the City issued a series of field orders and letters directing the contractor to comply with various elements of the approved SWPPP and conditions of approval. Staff also facilitated a series of field meetings with the Regional Board, DeSilva Gates, Inc., (Contractor) and consultants prior to October at which the proposed SWPPP was reviewed and discussed. After the October rains, staff requested from the Contractor, a revised SWPPP to include additional onsite measures to be implemented. Staff and the City's consultants have reviewed the plans to ensure compliance with the project conditions of approval.

Staff has also sent a letter to the Contractor requiring him to complete the existing approved SWPPP related work before November 16, 2004. A copy of the letter to DeSilva Gates Construction is attached (Attachment "A"). Staff has continued to work with the Subdivider, Contractor, Regional Board and the consultants to mitigate issues arising from the revised SWPPP related work.

In addition, staff has modified the resolution to indicate that the construction of the drainage and sanitary sewer improvements will not be postponed, and revised the resolution language to reflect authorizing the City Engineer or his designee to enter into agreement with DeSilva Group, Inc instead of the Director of Public Works. This change is required to maintain consistency with the Oakland Municipal Code Subdivision requirements.

### Status of the SWPPP Work:

As of November 9, 2004, the Contractor had implemented the following measures toward compliance with the SWPPP and other applicable conditions of approval on or before the November 16, 2004 deadline:

- Installed the straw mix and tackifier on most of the disturbed building pad areas.
- Completed installation of gravel blanket on most of the exposed roadways as called for in the SWPPP.
- Continued work on the storm drainage and sanitary sewer systems and any major conditions identified by the Regional Board.

Staff recommends approval of the resolution contingent upon the Subdivider completing the provisions of the existing approved SWPPP and any recommendations from Regional Board.

### Monitoring Effort:

City staff, City consultants, and the Subdivider's consultants are monitoring compliance with the SWPPP requirements. Staff anticipates updated status reports by November 15, 2004 from both the Subdivider's and City's consultants on the implementation of the adopted conditions of approval and the approved SWPPP.

Staff will determine whether the Contractor has met the requirements and report its findings and recommendations orally at the November 16 Council meeting.

## SUSTAINABLE OPPORTUNITIES

Economic: The project will offer employment opportunities to Oakland residents.

Environmental: The Subdivider will be required to adhere to best management practices during project construction. Measures to control erosion, contamination of storm water runoff, dust, noise, and heavy equipment emissions will be required. In addition, alternate pipe materials in lieu of PVC pipe will be required for construction of storm drain mains and sanitary sewer mains. Completion of the SWPPP elements will improve the water quality.

Social Equity: The project will improve the aesthetics of the area, protect and stabilize the slopes.


#### RECOMMENDATION AND RATIONALE

The Subdivider has agreed to complete all of the provisions in the existing approved SWPPP and any other recommendations provided by the Regional Board before November 16, 2004. Staff recommends that the City Council accept this report and authorize staff to negotiate and enter into a subdivision improvement agreement in compliance with the Subdivision Map Act and City Ordinances. After staff presents the oral status report on compliance with the approved SWPPP and adopted conditions of approval and the Council finds that the contractor has complied with the stipulations of the Public Works Committee in forwarding this item to the full Council, staff recommends that the Council accept this report and adopt the attached resolution. However, if it is found that the contractor has not complied with the requirements, staff will recommend that the resolution be returned to the Public Works Committee for further consideration.

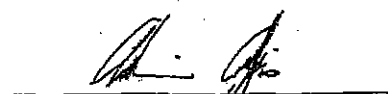
#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report.

Respectfully submitted,

  
RAUL GODINEZ II, P.E.  
Director, Public Works Agency


Respectfully submitted,

  
CLAUDIA CAPPIO  
Director of Development  
Community & Economic Development Agency

Reviewed by:  
Fuad Sweiss, P.E.  
Engineering Design & Right-of-Way Manager

Prepared by:  
Marcel Uzegbu, P.E.  
CIP Coordinator, PWA

APPROVED AND FORWARDED TO  
THE CITY COUNCIL

  
OFFICE OF THE CITY ADMINISTRATOR



ATTACHMENT A

CITY OF OAKLAND



PUBLIC WORKS AGENCY • 250 FRANK H. OGAWA PLAZA • SUITE 4344 • OAKLAND, CALIFORNIA 94612-2033  
Project Delivery Division

(510) 238-3051  
FAX (510) 238-6633  
TDD (510) 238-3254

DeSilva Gates Construction  
P.O. Box 2909  
Dublin, Ca 94568

November 9, 2004

Attention: Kent Peyton, Project Manager

RE: Leona Quarry Development Project

Mr. Kent Peyton:

On October 19, 2004, at the regular weekly progress meeting for the Leona Quarry Development project, you were directed to install the temporary gravel blanket over the roadways of the project, and complete the erosion and sediment control measures for the upper bowl area as required under your approved SWPPP.

At the October 26, 2004 Public Works Committee meeting, the committee also required completion of the SWPPP provisions and any items recommended by the State Regional Water Quality Control Board by November 15, 2004.

Those measures include, but are not limited to:

- Installation of the straw mix and tackifier on the upper bowl area.
- Installation of the gravel blanket on all roadways as called for in the SWPPP.
- Continue work on the storm drainage and sanitary sewer system and any major conditions identified by the State Water Quality Control Board.

You are also directed to submit to the City a revised SWPPP for review and approval before November 15, 2004.

You are hereby directed to implement no later than November 15, 2004 all the erosion and sediment control measures contained in the SWPPP, or including any approved revisions to the SWPPP, and the items contained in State Water Resources Control Board non-compliance letter dated November 2, 2004. Failure to comply with this request will result in a fine of \$5,000 per day for each day that you are out of compliance with the SWPPP beyond November 15, 2004.

Please contact me at (510) 238-6606 if you have any questions about this letter.

Sincerely,

A handwritten signature in cursive script that reads "Ronald Ward".

RONALD WARD, P.E.  
Project Delivery Supervisor  
Public Works Agency

Cc: Michael Neary, PWA

Marcel Uzegbu, PWA

Fuad Sweiss, PWA

**ATTACHMENT B  
CONDITIONS OF APPROVAL (COA) AND MITIGATION MONITORING  
REPORTING PROGRAM (MMRP)  
FOR  
LEONA QUARRY PROJECT  
VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL  
AND DESIGN REVIEW  
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**General Conditions and Compliance with Approved Plans**

1. The project shall comply with the following plans and exhibits entitled “Leona Quarry,” as prepared by the following consultants (“the Project Plans”):

*Architect*  
KTGY Group Inc.  
17992 Mitchell South  
Irvine  
CA 92614  
(949) 851-2133  
(949) 851-5156 (Fax)

*Civil Engineer*  
Carlson, Barbee & Gibson, Inc.

**ATTACHMENT B**  
**CONDITIONS OF APPROVAL (COA) AND MITIGATION MONITORING**  
**REPORTING PROGRAM (MMRP)**  
**FOR**  
**LEONA QUARRY PROJECT**  
**VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL**  
**AND DESIGN REVIEW**  
**City Council Resolution**

2603 Camino Ramon, Suite 100  
San Ramon  
CA 94583  
(925) 866-0322  
(925) 866-8575 (Fax)

*Landscape Architect*  
Bradani & Associates  
Landscape Architecture  
90 Throckmorton Avenue  
Mill Valley, CA  
(415) 383-9780

**I. Site Plan and Landscape Plans**

- S-1 Site Plan
- K-1 Key Plan
- L-1 Landscape Site Plan
- L-2 Street/Landscape Uphill Townhome Product 2  
Downhill Condo Product 1
- L-3 Street/Landscape Village Green Product 4  
Downhill Condo Product 2
- L-4 Street/Landscape Village Green Product 4
- L-5 Street/Landscape Downhill Townhome Product 5
- L-6 Street/Landscape Uphill Townhome Product 7  
Downhill Townhome Product 6
- L-7 Street/Landscape Terrace Product 8
- L-8 Phase 1 Landscape Site Sections Uphill Townhome Product 2  
Downhill Townhome Product 5  
Downhill Condo Product 1
- L-9 Phase 1 Landscape Site Sections Village Green Product 4  
Downhill Condo Product 2
- L-10 Phase 2 Landscape Site Sections Uphill Townhome Product 7  
Downhill Townhome Product 6  
Terrace Product 8
- L-11 Landscape Village Green Product 4
- L-12 Landscape Plan at Park
- L-13 Landscape Entry Feature

**ATTACHMENT B**  
**CONDITIONS OF APPROVAL (COA) AND MITIGATION MONITORING**  
**REPORTING PROGRAM (MMRP)**  
**FOR**  
**LEONA QUARRY PROJECT**  
**VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL**  
**AND DESIGN REVIEW**  
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**II. Architecture: Plans and Elevations**

- 1-1 Perspective Phase 1 Product 1&2
- 1-2 Phase 1 Product 1: 6-Plex Downhill Condo Floor Plans
- 1-3 Phase 1 Product 1: 7-Plex Downhill Condo Floor Plans
- 1-4 Phase 1 Product 1: 6 & 7-Plex Downhill Condo Floor Plans
- 1-5 Phase 1 Sections
- 1-6 Phase 1 Product 1: Roof Plans
  
- 2-1 Phase 1 Product 2: 5-Plex Uphill Townhome Floor Plans
- 2-2 Phase 1 Product 2: 5-Plex Uphill Townhome Elevations
  
- 3-1 Phase 1 Product 3: Duet Downhill Townhome Floor Plans and Elevations
  
- 4-1 Perspective Village Green
- 4-2 Phase 1 Product 4: Village Green 8-Plex Floor Plans
- 4-3 Phase 1 Product 4: Village Green 8-Plex Elevations
- 4-4 Phase 1 Product 4: Village Green 10-Plex Floor Plans
- 4-5 Phase 1 Product 4: Village Green 10-Plex Floor Plans
- 4-6 Phase 1 Product 4: Village Green 10-Plex Elevations
- 4-7 Phase 1 Product 4: Village Green 8 & 10-Plex Roof Plans
- 4-8 Phase 1 Product 4: Village Green 8 & 10-Plex Sections
  
- 5-1 Phase 1 Product 5: 4-Plex Downhill Townhome Floor Plans
- 5-2 Phase 1 Product 5: 4-Plex Downhill Townhome Elevations
- 5-3 Phase 1 Product 5: 4-Plex Downhill Townhome Elevations
  
- 6-1 Perspective Phase 2 Product 6 & 7
- 6-2 Perspective Phase 2 Product 6 & 7
- 6-3 Phase 2 Product 6: 4-Plex 6A Downhill Townhome Roof Plans
- 6-4 Phase 2 Product 6: 4-Plex 6B Downhill Townhome Roof Plans
- 6-5 Phase 2 Product 6: 4-Plex 6B-1 Downhill Townhome Elevations
- 6-6 Phase 2 Product 6: 4-Plex Downhill Townhome Elevations
- 6-7 Phase 2 Product 6: Uphill/Downhill Townhome Sections
  
- 7-1 Phase 2 Product 7: 4-Plex 2A Uphill Townhome Floor Plans
- 7-2 Phase 2 Product 7: 4-Plex 2B Uphill Townhome Floor Plans
- 7-3 Phase 2 Product 7: 4-Plex 2C Uphill Townhome Floor Plans

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REPORTING PROGRAM (MMRP)  
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LEONA QUARRY PROJECT  
VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL  
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7-4 Phase 2 Product 7: 4-Plex 2D Uphill Townhome Floor Plans  
7-5 Phase 2 Product 7: 4-Plex 2C Uphill Townhome Elevations  
7-6 Phase 2 Roof Plans

8-1 Perspective Terrace Building Product 8  
8-2 Phase 2 Product 8: 6-Plex Terrace Building Floor Plans  
8-3 Phase 2 Product 8: 6-Plex Terrace Building Elevations  
8-4 Phase 2 Product 8: 6-Plex Terrace Building Sections  
8-5 Phase 2 Product 8: 12-Plex Terrace Building Floor Plans  
8-6 Phase 2 Product 8: 12-Plex Terrace Building Floor Plans  
8-7 Phase 2 Product 8: 12-Plex Terrace Building Floor Plans  
8-8 Phase 2 Product 8: 12-Plex Terrace Building Floor Plans  
8-9 Phase 2 Product 8: Roof Plans  
8-10 Phase 2 Product 8: 12-Plex Terrace Building Elevations  
8-11 Phase 2 Product 8: 12-Plex Terrace Building Elevations

9-1 Gateway Senior Apartments  
9-2 Gateway Senior Apartments  
9-3 Perspective Senior Apartments & Gateway

10-1 Phase 1 Site Sections  
10-2 Phase 2 Site Sections  
10-3 Perspective from MacArthur Freeway  
10-4 Perspective from MacArthur Freeway

CC Community Center

**III. Vesting Tentative Tract Map**

Vesting Tentative Tract Map -Tract 7351 Sheets 1 through 5 (September 25, 2002)

*\*The project applicant is The DeSilva Group, (DSG). Current plans are in substantial compliance with all the above Project Plans.*

2. The Project Applicant and its agents, heirs, successors and assigns (collectively, the "Project Applicant") shall be bound by these Conditions of Approval and by

**ATTACHMENT B**  
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**AND DESIGN REVIEW**  
**City Council Resolution**

any other terms and condition of “this Approval” (as defined in Condition No. 3, below). The Project Applicant shall be responsible for assuring that any such successive owner or any of the Project Applicant’s agents, heirs, successors and assigns is fully informed of the terms and conditions of this Approval.

*\*DSG will assure that any such successive owner or any of the Project Applicant’s agents, heirs, successors and assigns is fully informed of the terms and conditions of this Approval.*

3. This action by the City Council (“this Approval”) includes the approvals set forth in this Condition of Approval No. 3. Each of these individual approvals shall become effective when the court in the *Dorsey v. Oakland* proceeding lifts the stay of the force and effect of Ordinance 12457 (the “Effective Date”). This Approval includes:
  - a. Approval of a Planned Unit Development (“PUD”) including a preliminary development plan and final development plan under Oakland Municipal Code Section 17.140, for phased construction of 477 residential units, including 54 affordable senior units, as set forth in the Project Plans, as modified by these Conditions of Approval.
  - b. Approval of Residential Design Review under 17.136 of the Oakland Municipal Code in accordance with Condition of Approval No. 14.
  - c. Approval of a Vesting Tentative Map (“VTM”) under Oakland Municipal Code 16.08.040 and the State Subdivision Map Act (Government Code Sections 66410 - 66499.37). The VTM approval shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and the applicable provisions of the Oakland Municipal Code. The VTM may employ multiple (phased) final maps, subject to the phasing program illustrated on the VTM and in these Conditions of Approval. The VTM is approved as a vesting tentative map for the entire site (approximately 128 acres) within the City. Therefore, the City shall have final map approval authority and shall have the authority, within its sole discretion, to amend the VTM.

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- d. Three variances to residential design review standards pursuant to special design requirements and residential design review standards (Oakland Municipal Code 17.108) as follows: retaining wall height; maximum garage width and percentage of front yard paving.

*\*The stay of the force and effect of Ordinance 12457 has been lifted in accordance with the above.*

4. The plans approved as part of the PUD shall be amended to be consistent with the Conditions of Approval and shall be submitted to the City Planning Department in the form of a "PUD Design and Specification Document for the Leona Quarry Project" within ninety (90) days of this Approval. This Design and Specification Document shall include but not be limited to all detailed plans and specifications pertaining to Condition of Approval No. 14 and all other information and details deemed necessary by the Development Director or the Development Director's designee.

*\*The PUD Design and Specification Document for the Leona Quarry Project was amended in compliance with the above then reviewed and approved by the City of Oakland Planning Commission Design Review Committee, (PCDRC) March 24<sup>th</sup> 2004.*

5. The work described in "Construction Phase B (Site Preparation)" in Condition of Approval No. 13 below, shall commence within two (2) years following the Effective Date. Thereafter, such construction shall be governed by Condition of Approval No. 13, and this Approval. The above referenced time period shall exclude any and all time involved with administrative appeals, third-party lawsuits, and other similar delays challenging the Project Approvals not caused by the Project Applicant. Once construction is commenced, the Project Applicant shall use its good faith and diligence to continue until construction is completed.

*\*Construction Phase B (Site Preparation) began in April of 2004.*

6. Notice of Exactions:

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- a. This Approval includes certain dedication requirements, reservation requirements and non-monetary exactions as set forth in these Conditions of Approval. Pursuant to Government Code 66020(d)(1), this Approval constitutes written notice of a description of the dedications, reservations and other exactions. The Project Applicant is hereby further notified that the ninety (90) day period in which these dedications, reservations and other exactions may be protested, pursuant to Government Code 66020(a), shall commence on the Effective Date. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the requirements of Section 66020, Project Applicant will be legally barred from challenging such exactions.

*\*DSG did not protest as provided above and pursuant to Govt. Code 66020(a)*

- b. This Approval includes certain fees, which shall be set forth in a Leona Quarry Fee Schedule to be provided by the Development Director to the Project Applicant. Delivery of the Leona Quarry Fee Schedule by the Development Director to the Project Applicant shall constitute written notice, pursuant to Government Code 66020(d)(1), of a statement of the amount of such fees. The Project Applicant is hereby further notified that the ninety (90) day period in which these fees may be protested, pursuant to Government Code 66020(a), shall commence on delivery by the Development Director of the Leona Quarry Fee Schedule to the Project Applicant. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the requirements of Section 66020, the Project Applicant will be legally barred from challenging such fees.

*\*A Letter of Agreement dated 9/30/04 was reached between DSG and the City establishing concurrence with the above.*

7. Final inspection and a certificate of occupancy for any unit or other structure within a phase, as set forth in Condition of Approval No. 13, shall not be issued until (a) all landscaping and on and off-site improvements for that phase are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form



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of security (collectively “security”), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a subdivision improvement agreement approved by the City., except that such security shall not be a substitute for completion of the Reclamation Work in accordance with Condition No. 12. For purposes of these Conditions of Approval, a certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.

*\*Acknowledged. Not yet applicable.*

8. Except as otherwise provided below in this Condition of Approval No. 8 with respect to City’s issuance of a certificate of occupancy for a unit, each of the Conditions of Approval shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the property that is subject to this Approval (the “Property”), as appropriate, runs with the Property and is binding upon the owner of all or a portion of the Property and each successive owner. Within ninety (90) days of the Effective Date, the Project Applicant shall cause these Conditions of Approval to be recorded in the Official Records of the County of Alameda, California against all of the Property. These Conditions of Approval also shall be attached to each grading permit and each building permit for infrastructure work issued for each phase of construction. Upon City’s issuance of a certificate of occupancy for a unit, these Conditions of Approval shall be released from the exceptions to title of the parcel upon which the unit is located. Upon completion of the Project, as determined by the City, these Conditions of Approval shall be released from the all of the Property.

*\* Acknowledged. Portions related to occupancy permits and releases from exceptions to title not yet applicable.*

*In accordance with the above the COAs were recorded 5/12/04 in the Official Records of the County of Alameda, California against all of the Property. The grading permit was issued 4/23/04 and each subsequent grading permit and each*

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*building permit for infrastructure work issued for each phase of construction has and/or will as applicable be bound by these COAs.*

**Indemnification Requirements**

9. To the maximum extent permitted by law, the Project Applicant shall defend, hold harmless, and indemnify the City, the GHAD and their respective officers, agents and employees (the "Indemnified Parties) against any and all liability, damages, claims, demands, judgments or other losses (including, without limitation, attorneys fees, expert witness and consultant fees and other litigation expenses), or an initiative relating to, resulting from or caused by, or alleged to have resulted from or caused by any action or approval associated with the Project.

This indemnity includes, without limitation, any legal or administrative challenge, or initiative filed or prosecuted to overturn, set-aside, stay or otherwise rescind any or all approvals granted in connection with the Project, certification of the Environmental Impact Report ("EIR") for the Project, and granting any permit issued in accordance with the Project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs as used herein shall include, without limitation, any attorneys' fees, expert witness and consultant fee, court costs and other litigation fees, City Attorney time and overhead costs, and other City Staff overhead costs and normal day-to-day business expenses incurred by the City ("Litigation Expenses"). The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this Condition of Approval No. 9. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

*\*A "Defense and Indemnity Agreement" was executed between the City and DSG 4/8/04 memorializing the terms and satisfying the requirements of COA # 9.*

10. Not in limitation of the foregoing Condition of Approval No. 9, Project Applicant shall defend, hold harmless and indemnify the Indemnified Parties and their insurers against any and all liability, damages, claims, demands, judgments, losses ("Indemnified Claims") or other forms of legal or equitable relief related to implementation of the Project, including, without limitation, the formation and operation of the GHAD and in the case of the City Council members, actions

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taken by said members while acting as the GHAD Board of Directors, design, construction or maintenance of the Project and any private or public improvements. Notwithstanding the last sentence of Condition of Approval No. 8, the foregoing indemnity shall not be released upon completion of the Project. A Project Applicant may be released from this indemnity obligation, including the Indemnification Agreement referred to in Condition of Approval 11, only in the event (a) it is assigned to and assumed by and binding upon a subsequent owner of the Property, and (b) such Project Applicant gives 30 days' written notice of such proposed assignment to the City Manager, and the City Manager approves such assignment in writing, which approval may be withheld if the City Council determines, in its discretion, that the proposed assignee's net worth or other financial resources are not sufficient to fulfill the foregoing indemnity obligation. Provided, however, that with respect to public improvements, this indemnity shall apply only to Indemnified Claims that arise prior to the City's acceptance of the public improvement and the expiration of any maintenance obligations of the Project Applicant, unless the Indemnified Claim (i) arose as a result of a hidden defect in the public improvement; or (ii) arose as a result of direct or indirect action or inaction by Project Applicant, including, without limitation, construction, maintenance or operational activities, prior to the City's acceptance of the public improvement. In the case of the foregoing (i) or (ii), this indemnification shall apply regardless of whether the public improvement has been accepted by the City. "Public improvements" include all infrastructure improvements and property customarily accepted and maintained by the City that are offered for dedication to the City and actually accepted by the City, such as streets, sanitary sewer lines and the like. This indemnity shall include, without limitation, payment of all Litigation Expenses associated with any action herein. The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this Condition of Approval No. 10. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

*\*A "Defense and Indemnity Agreement" was executed 4/8/04 memorializing the terms and satisfying the requirements of COA #10.*

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11. Within 90 (*this time period also being required for the submittal of the PUD doc. in COA 4*) days following the Effective Date, the Project Applicant shall enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail terms and conditions of the Project Applicant's indemnification obligations set forth in Conditions of Approval Nos. 9 and 10. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval, including, without limitation, Conditions of Approval Nos. 9 and 10, except that it shall not limit Development Director authority as set forth in Condition of Approval No. 37.

*\*A "Defense and Indemnity Agreement" was executed 4/8/04 memorializing the terms and satisfying the requirements of COA #11.*

**Compliance with SMARA - Implementation, Security, and Phasing of Project**

12. Prior to issuance of a grading permit, the Project Applicant shall obtain an amendment to the current Reclamation Plan that is consistent with the PUD, VTM, these Conditions of Approval and all requirements of the State Mining and Reclamation Act ("SMARA"). This amendment may be obtained from the City.

*\* In accordance with above the Amended Reclamation plan was approved by the City 4/20/04.*

Also prior to issuance of a grading permit, the Project Applicant shall provide the City with an acceptably rated bond or bonds, or other form of security acceptable to the City Attorney that will cover all costs of implementing and completing all of the work necessary to fulfill the requirements of the Reclamation Plan, as amended and otherwise to safely provide for residential development. ("the Reclamation Work"). The Reclamation Work includes without limitation the work described in Conditions of Approval Nos. 17, 18, 21, 22, 23, 37, 41 in accordance with all of these Conditions of Approval and the Mitigation Measures described in the Mitigation Monitoring and Reporting Program ("MMRP") which is attached as Exhibit B to the Resolution to which these conditions are attached.

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The MMRP is hereby incorporated into and made a part of these Conditions of Approval.

*\*Acceptably rated bonds covering all the costs noted above have been provided to the City.*

Prior to the issuance of a certificate of occupancy for any unit within the Project (except for model homes) all of the Reclamation Work must be completed; provided, however, that the revegetation work (described in Condition of Approval No. 18) must be commenced at the earliest feasible time in accordance with season planting requirements and may be completed after the first certificate of occupancy is issued, so long as the Project Applicant continues to diligently complete such work in accordance with seasonal planting requirements.

*\* While not yet applicable DSG has provided to the city all of the Documents and plans described in Conditions of Approval Nos. 17, 18, 21, 22, 23, 37, 41 in accordance with all of these Conditions of Approval and the Mitigation Measures.*

**Project Phasing**

13. Project Phasing Plan. As used in this Condition of Approval, the term phase or phases refers to phases associated with grading and construction activities, not to the phases identified on the VTM, which are referred to as "VTM Phase." This Approval is contingent upon the grading, construction and other improvements being completed in accordance with the specific phasing plan established in this Condition of Approval and the City shall retain the full and sole authority to withhold further approvals at any juncture if all the requirements for each phase have not been completed as specified in this Condition of Approval. Further, any modifications in the phasing plan shall require prior written approval by the City Development Director and the City Engineer.

*\*Acknowledged*

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Pre-Construction Phase A (Review and Approval of Detailed Plans) – The first phase of the project shall require the applicant to submit all required plans, information, analysis, and other specifications as required for the Reclamation Work, the grading plan, and other related work in accordance with the Conditions of Approval and the MMRP. This work includes:

- a. The geotechnical work as set forth in Condition of Approval No. 22.
- b. The hydrology plans, information and analysis as set forth in Condition of Approval No. 23.
- c. The master public improvement plan as set forth in Condition of Approval No. 35.
- d. The Revegetation Plan and specifications as set forth in Condition of Approval No. 18.
- e. Implementation of the Construction Management and Phasing Plan as set forth in Condition of Approval No. 41, including payment of fees, hiring of independent technical consultants and coordination of project management and monitoring activities as set forth in Condition of Approval No. 40.
- f. Submittal of the Traffic Improvement Program as set forth in Condition of Approval No. 25.
- g. Establishment of the special deposit fund as set forth in Condition of Approval No. 40.
- h. Funding of the GHAD as specified in Condition of Approval No. 24.

Upon successful completion of this phase and approval by the Development Director, the City Engineer and the Building Official (or their designees), the grading permit shall be issued for Construction Phase B (Site Preparation).

*\*All of the above plans, requirements, and conditions have been submitted, reviewed, approved, and or satisfied. The Grading Permit was issued 4/23/04.*

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Construction Phase B (Site Preparation) – The first physical phase of the Project shall be the grading, earthwork and implementation of the Reclamation Plan Amendment or Site Closure to prepare the site for residential development. Work under this phase includes completion of:

- i. Commencement of Reclamation Work, as defined in Condition No. 12, including, without limitation, grading, slope drainage, and other requirements to ensure the quarry is in a safe and stable condition for residential construction activities.

*\*This work is underway. The mass grading within Tract 7351 is complete as well as much of the drainage facilities. Concurrent with submission of this annual compliance report, Berlogar Geotechnical Consultants has submitted a letter/report dated 10/14/04 itemizing the progress of the grading and compliance with all applicable COA's and the MMRP. A similar report will again be provided prior to approval of residential construction.*

- j. Completion of slope stability measures for Parcels C-C and the initiation of reconstruction of the slopes in D-D in accordance with subsection g, below.

*\*The work in parcel C-C is nearly complete and the initiation of reconstruction of the slopes in D-D in concurrence with the above has occurred. See Berlogar 10/14/04 report.*

- k. Site preparation for residential construction on Lots 1-19 on Campus Drive in compliance with the approved grading and improvement plans set forth in Pre-construction Phase A

*\* Site preparation for residential construction on Lots 1-19 on Campus Drive has not yet begun.*

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- l. Rough roadway improvements and utilities for A Street (entirety) and all of the streets where residential construction is proposed during the first phase of residential construction (Construction Phase C).

*\*This work is well underway. Completion is scheduled for later this year.*

- m. Construction of the Gateway Emergency Vehicle Access ("EVA") (Parcel F-F).

*\*This work is well underway. Completion is scheduled for later this year.*

- n. Construction of the detention basin (Parcel A-A).

*\*This work is complete*

Prior to the issuance of building permits for any unit within the VTM Phase I Area and Lots 1-19, the Project Applicant shall submit a geotechnical and engineering report that confirms that all slope stability measures for the western slope (Parcel C-C) and the restored slope (Parcel D-D) have been implemented to the degree necessary to assure site and construction worker safety. This report shall be reviewed by an independent geotechnical engineer hired by the City at the Project Applicant's expense and approved by the City. Further, implementation of a construction management and site security plan for the VTM Phase I Area shall also be required, as set forth in Condition of Approval No. 41.

*\*Acknowledged. This is not yet applicable and is scheduled for late 2004.*

Upon successful completion of this phase and approval by the Development Director and the Building Official (or their designees), building permits for up to 150 units within the VTM Phase I Area and additional building permits for Lots 1-19 may be issued. Because completion of the specific improvements identified for this phase is critical for public health and safety considerations, provision of



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security, such as bonds or letters of credit shall not be acceptable as a substitute for completion of such improvements.

*\*Acknowledged*

Construction Phase C (Initial Residential Construction). Work in Construction Phase C shall include construction of up to 150 housing units within the VTM Phase I Area, construction on Lots 1-19 and completion of grading and implementation of Reclamation Plan Amendment (excluding completion of the revegetation plan) as described in Condition of Approval No. 12, as well as:

- o. Completion of the Revegetation/restoration work according to Condition of Approval No. 18 for Parcel C-C, completion of grading and slope stabilization for Parcel D-D, and, to the greatest extent feasible, the initiation and continuation of revegetation of Parcel D-D in accordance with seasonal planting requirements and Condition of Approval No. 18.
- p. Completion of final street improvements, excluding landscaping, for the entirety of any street adjacent to or providing access to the first 150 units that will be occupied within the VTM Phase I Area. Landscaping associated with such street improvements, including common area, will be completed concurrently with completion of the adjacent residential units; the security for such work is further set forth in Condition of Approval No. 7, with the exception that all landscaping shall be complete for any phase prior to the issuance of the certificate of occupancy for the last two units of that phase.
- q. Landscaping of front entrance (Parcels G-G and H-H) and detention basin (Parcel A), as further set forth in Conditions of Approval Nos. 19 and 23.c, respectively.
- r. Northwestern supplemental EVA improvements.
- s. Village Green landscaping and improvements (Parcel E).
- t. EVA connection from H to C Streets.
- u. Landscaping of Parcels B, C, D, and J.

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- v. When VTM Phase ID is completed, the landscaping and improvements for Parcels G, H and I shall be completed prior to the issuance of certificates of occupancy for the last two units in Phase 1D.
- w. Prior to the issuance of any occupancy permits for the first 150 units in the VTM Phase I Area, as well as any of the units on Lots 1-19, the City shall confirm that the Project Applicant has successfully completed all required work under Construction Phase C, including confirmation by the independent geotechnical engineer hired by the City at the Project Applicant's expense that all Reclamation Plan Amendment measures (exclusive of completing the revegetation plan) have been completed as required.

*\*Acknowledged. Not yet applicable.*

Construction Phase D (Continued Residential Construction). Work in this Construction Phase D includes continued residential construction in the VTM Phase I Area and Lots 1-19, construction in the VTM Phase II Area, construction of the Gateway Senior Housing Project (Parcel Z) and construction of Greenly Drive/Edwards Avenue Improvements.

Prior to the issuance of any building permits for VTM Phase II Area, the Project Applicant shall have complied with Condition of Approval 41.

*\*In accordance with COA 41 a Construction Phasing and Management Plan has been submitted and approved by the City for all work currently underway. Subsequent versions of the Plan will be submitted and approved prior to commencement of residential construction.*

Prior to the issuance of an occupancy permit for the 151<sup>st</sup> unit and prior to the issuance of a building permit for the 350<sup>th</sup> unit (excluding Lots 1-19 on Campus Drive and the Gateway Senior Housing Project), the Project Applicant shall have (i) completed to a standard acceptable to the City and (ii) offered to the City, and the City shall have accepted, the Greenly Drive/Edwards Avenue improvements described in Condition of Approval No. 25 and the MMRP.

*\*This work has been completed and approved by the City.*

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Prior to the issuance of a certificate of occupancy for any unit in the VTM Phase II Area, the following shall be completed:

- x. the Altura supplemental EVA connection and improvements.
- y. EVA connection from I to A Streets.

Because completion of the specific improvements identified in subparagraphs 25a and 25b above for this phase is critical for public health and safety considerations, provision of security, such as an acceptably rated bond, or letters of credit shall not be acceptable as a substitute for completing such improvements.

*\*Acknowledged. Not yet applicable.*

Construction Phase E (Completion of Residential Construction up and to the 351<sup>st</sup> Unit). Work in this Construction Phase E shall include completion of residential construction and site work in VTM Phase I Area and Phase II Area, the Gateway Senior Project and Lots 1-19, except that the Project Applicant shall complete and the City shall have accepted the following work prior to the issuance of a certificate of occupancy for the 351<sup>st</sup> unit (excluding Lots 1-19 and the Gateway Senior Project):

- z. Interior park improvements (Parcel Y).
- aa. All Project trail connections and improvements.
- bb. All remaining street landscaping, revegetation and other open space improvements associated with any of the first 350 units that have received occupancy permits; and specifically excluding improvements adjacent to the remaining 53 units (excluding Lots 1-19 and the Gateway Senior Project).

*\*Acknowledged. Not yet applicable.*

Construction Phase F (Completion of the Approved Project) – All remaining improvements shall be completed and compliance with Conditions of Approval Nos. 25 and 26 shall be demonstrated to the satisfaction of the City Development

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Director prior to the issuance of a certificate of occupancy permit for the remaining 53 units.

*\*Acknowledged. Not yet applicable.*

**Project Design Requirements**

14. The following design refinements, standards and requirements shall be incorporated into the final design plans for the project:
- a. The design of the Gateway Senior Housing Project shall be revised to be more of a signature gateway design, with high quality materials and detailing appropriate to its tall height and prominent location close to the freeway. The design shall incorporate a greater degree of articulation and detailing, including a combination of window recess and trim that creates at least three inches of shadow and articulation. The other major elements of the design to be revised include the roof forms, entry, and overall proportions. The revised design shall be reviewed and approved by the Design Review Committee of the Planning Commission as part of the design submittal required for compliance with Condition of Approval

*\*As provided in the final approvals of 2/17/04 and the 12/03 Settlement Agreement the Gateway Senior Housing Project has been removed from the overall project and replaced by a passive park and parking area.*

No. 4. b. Four of the retaining walls proposed shall be revised to be closer in compliance with zoning standards for height and distance separation. The following four areas of retaining walls shall be revised such that the maximum height of the walls is eight feet, with at least four feet of horizontal separation between walls

- Retaining wall at the uppermost portion of "A" Street, near the roundabout
- Retaining Wall near the south property line abutting Altura Place
- Retaining Wall along the EVA in Parcel Y, near the cul-de-sac end of "I" Street
- Retaining Wall behind the Gateway Senior Housing on Parcel Z

- b. The design of the Community Center shall be revised to be more consistent with the overall design theme and design elements used in other

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portions of the project. The size of the proposed facility shall not be required to be reduced. The final design shall be reviewed and approved by the Design Review Committee of the Planning Commission as part of the submittal required to comply with Condition of Approval No. 4.

- c. The design of the Terrace Buildings, 6-plex buildings, Product 8A, shall be revised. The roof forms and design of the west-facing, downhill side shall be revised to reduce the repetitiveness of the roof forms, and to introduce some degree of asymmetry. It will be acceptable to have the lower three stories of these buildings in one plane to create a more prominent central element that reduces the repetition of roof forms and is differentiated from the roof forms of the fourth and fifth floors above. A gable roof rather than a hip in this area of the façade could be incorporated. The revised design shall be approved by the Development Director; if there are issues that cannot be resolved between the applicant and the Director the matter shall be referred for decision to the Design Review Committee of the Planning Commission. The revised design shall be incorporated into the submittal required as part of Condition of Approval 4.
- d. The massing of the Product 6A buildings shall be revised such that at least one unit within these four unit buildings is pushed forward or back in plan so that the garages are not lined up in a row, as follows:
- For lots 231 and 136, push these corner units forward towards the street at least 6 feet.
  - For the buildings with lots 212-215, 160-163, and 148-151, push at least one unit in each of these three buildings downhill at least 4 feet.
  - This requirement shall not apply to the building on lots 204-207.
- e. Product 7 shall be revised and refined to add more design variety in the following manner, to a level of design variety comparable to that of Product 6:
- Vary the siding material for different units
  - Vary the roof lines for different units and/or different buildings
  - Vary the porch railing designs
  - Vary the design of the entry roof forms
  - Vary the design of the arched design elements at the garage entrances

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- f. The siding materials of Products 6 and 7 on “I” and “J” Streets shall be revised and refined to include more of a mix of stucco and siding within each building, rather than alternating buildings of stucco and siding.
- g. For Products 1, 2, 5, 6, and 7, the end units of the buildings at the ends of the blocks (both downhill and uphill units) shall be revised to include more windows, and a significantly greater degree of articulation through the use of elements such as bay windows, entry porches, etc.
- h. A special inspector shall be hired at the applicant’s expense to verify compliance with all building heights shown in the approved plans for all building types. The inspection shall occur at the completion of the framing stage of construction, prior to installation of building siding. The inspector shall be a surveyor or other licensed professional, and shall verify in writing to the City that the buildings constructed do not exceed the heights shown on the approved plans referenced in Condition of Approval 1. This special inspector shall be identified in the Construction Phasing and Management Plan required by Condition of Approval 41.
- i. The height of the Product 5 buildings shall not exceed 40 feet, as measured per the zoning code standard method from finished grade to top of roof.
- j. The height of Product 1, Phase I Downhill Condos, shall be revised and reduced to conform to the drawings submitted on October 14, 2002, entitled 6/7 – Plex Condos, Product, Section.
- k. The final site plan shall provide for a minimum of 10 feet from the back of the sidewalk to the face of the buildings of the Product 4 Village Green units, in all conditions where the buildings front on streets.
- l. Product 4B of the Village Green units shall be revised as follows:
  - On the left side of the buildings (as viewed in the elevations), a planter box shall be added in front of the garage wall to add articulation to the façade, such planter box to be a minimum of three feet tall and 2.5 feet deep.
  - On the right side of the buildings (as viewed in the elevations), a planter box shall be added in front of the garage wall to add articulation to the façade, such planter box to be a minimum of three

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feet tall and 2.5 feet deep; and a bay window shall be added in the first floor living room projecting forward of the main façade at least 2.5 feet.

- m. For Products 1 and 2, Phase I uphill and downhill units, the entry stoops and steps of the units shall be revised such that they project forward of the front plane of the garage structure two to four feet, and such that the entry arch or awning also extends forward of the main plane of the façade, covering the stoop.
- n. The following detailed requirements and specifications for all of the following features shall be incorporated into the “PUD Design and Specification Document for the Leona Quarry Project”. This document shall be reviewed and approved by the Design Review Committee of the Planning Commission, with the benefit of the recommendations of the Development Director:
- *Retaining Walls:* The design of all the retaining walls shall be constructed of attractive quality materials, and shall have landscaping planted at the base to minimize the visibility and height of the retaining walls when they are located in a location visible from public streets. Basic concrete block will not be an acceptable material. The retaining wall at the top of “A” Street shall be of the highest quality material because there is no landscaping immediately in front of the wall.
  - *Garage Doors and Entry Doors:* The design and color of the garage doors and entry doors shall be varied throughout the project, and there shall be a variety of designs and colors within each Product Type.
  - *Driveway Surfaces:* All driveways shall be colored to be in the darker tone range, to reduce the prominence of the paved surfaces within the streetscape area. The use of stamped concrete is strongly encouraged.
  - *Uphill Driveways:* For all driveways serving townhouses on uphill lots (specifically on “I”, “J” and “B” streets, where such driveways are on-grade driveways, twenty percent of the 16 foot by 20 foot driveway area shall be pervious surface.
  - *Exterior Material for all Product Types using Siding:* Hardiplank or equivalent siding, in 4, 6, and 8 inch sizes. Hardiplank or equivalent should have a maximum of 8 inches of exposure.

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- *Exterior Siding Finishes for Stucco:* Stucco finishes shall be specified for all product types.
- *Window Types:* Milgard vinyl windows or equivalent as a minimum standard of quality throughout the project. Wood windows or vinyl-clad wood windows may also be used.
- *Window Recess and Trim Details:* For all windows in Products 1,2, 3, 4, 5, 6, and 7, dimensions of window recess and trim shall be at least of the minimum dimensions specified in the drawing dated 10.14.02 and entitled "Alt. Window Head/Sill Trim Siding (Single Hung Typ.)" The general parameter established in this drawing which shall be a requirement is that there shall be a minimum of 3 inches of articulation created by a combination of window recess (face of window to face of siding), and trim projection (face of trim to face of siding). The same parameter shall apply to the stucco buildings of Product 8 (Terrace Units). However the details shall be developed specific to that Product Type, and may include recessed surrounds in lieu of trim.
- *Roof Materials:* Specified as composition shingle, of a quality and depth equivalent to Landmark TL by Certainteed. Concrete tiles may also be acceptable, to be reviewed and approved by the Design Review Committee of the Planning Commission.
- *Railings:* Minimum dimension of 2 inches by 4 inches (nominal dimensions) for the main members and 2 inches by 2 inches (nominal dimensions) for pickets. Specify wood railings for stucco buildings. Metal railings can be used in some of the shingled buildings or shingled parts of buildings.
- *Exterior Colors:* Windows shall be a sand or beige color, not white. Colors shall be as shown in the colored renderings shown in the Plans described in Condition #1, and as shown in the Primary and Secondary colors submitted in the color board. The tertiary colors shown on the color board are not approved for use.
- *Master Sign Program:* A master sign program for the site shall be submitted, including all project identification and directional signs, temporary real estate sales signs and/or banners and street signs, and other signs for the site.
- *Lighting Plan:* The Project Applicant shall implement Mitigation Measure 3a as set forth in the MMRP by submission of a lighting plan for each phase of development to the Department of Building Services



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for review and approval, prior to issuance of the first building permit for each phase of the project. (MM#M.3a)

*\*All of the above Project Design Requirements have been revised, resubmitted and approved as required by the City of Oakland Planning Commission Design Review Committee 3/24/04. Other requirements are/will be met on an ongoing basis.*

**Mitigation Measures Part of Conditions of Approval**

15. All Mitigation Measures in the EIR as deemed to be required in the Environmental Findings shall be considered conditions of approval for the project, as may be further refined and/or clarified by this Approval, including the refinements and clarifications set forth in these Conditions of Approval. Implementation of the Mitigation Measures shall be adhered to in accordance with the MMRP. The MMRP identifies the time frame and responsible party for implementation and monitoring of each measure, as modified by this Approval. Overall monitoring compliance with the mitigation measures will be the responsibility of the Development Director or his or her designee. Each of the improvements identified in the MMRP shall be implemented at the Project Applicant's sole cost and expense (except where only a fair share contribution is required as set forth in the MMRP or these Conditions of Approval) or secured with a subdivision improvement agreement, or similar financial assurance, acceptable to the City.

*\*Acknowledged and in compliance. See weekly reports of Berlogar, and WRA. See annual reports of Berlogar, WRA, and Balance Hydrologics. Also see submitted noise, dust and runoff monitoring data/reports regularly submitted. In addition the City has hired a number of independent consultants at DSG's expense. These consultants have submitted separate reports of their findings to the City on an ongoing basis.*

**Air Quality Measures**

16. The Project Applicant shall implement all of the mitigation measures described in "Section A. Air Quality" of the MMRP. The Project Applicant shall reduce NOx emissions to no more than 80 pounds per day by reducing motor vehicle emissions. Implementation of the Project pursuant to this Approval reduces the NOx emissions to less than 80 pounds per day and therefore satisfies Draft EIR Mitigation Measure A.2. No further reduction in units to reduce emissions is

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required. However, the Project Applicant will further reduce motor vehicle emissions by developing a plan that incorporates one or more of the BAAQMD mitigation measures for motor vehicle emissions set forth in Mitigation Measure A.2a as set forth in the MMRP in order to reduce cumulative air quality impacts identified in Draft EIR Impact A.4 (MM #A.2), which shall include funding the furnishing, installation, maintenance, repair and replacement of a new bus shelter to be located on a public sidewalk within the development in a location approved by AC Transit prior to the issuance of a certificate of occupancy for the first residential unit. This condition shall be coordinated with the City Public Works Agency.

*\*While DSG has reduced NOx emissions to less than 80 pounds per day by reducing the number of units, we will further reduce motor vehicle emissions in accordance with the above. A bus stop location and configuration has been approved by AC Transit, is shown on the Improvement Plans and will be provided and maintained as directed above.*

**Biological Resources Protection Measures**

17. The Project Applicant shall implement all of the mitigation measures described in “Section B. Biology” of the MMRP. The Project design includes the creation of 37 acres of suitable Alameda Whipsnake (“AWS”) habitat (MM #B.3a). Condition of Approval Nos. 18 and 19 pertain to the specific requirements of the required revegetation and landscaping plans and Condition of Approval No. 32 pertains to the required conservation easement for the open space areas, which includes the approximately 37 acres of newly created AWS habitat. The conservation easement shall be recorded prior to or concurrently with recordation of the last Final Map for the Project.

*\*All mitigation measures described in “Section B. Biology” of the MMRP are being implemented. See accompanying Wetlands Research Associates annual compliance report. The required conservation easement for the open space areas is shown on the submitted final maps scheduled for recordation 11/04.*

18. The Project Applicant shall prepare and implement a Revegetation Plan approved by the City, substantially consistent with the plan prepared by H.T. Harvey and Associates entitled “Conceptual Revegetation Plan for Reconstructed Slope”, dated August 23, 2001 and consistent with the City’s Tree Protection Ordinance. As required, the plan shall include the portions of the slopes along the western side of the Project that are presently denuded (Parcels C-C and D-D).

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Implementation of this plan must comply with the MMRP (MM #B.10a and E.3a). This plan shall be implemented within the time provided in Condition of Approval No. 13.

*\*In compliance with the above a final Revegetation Plan by H.T Harvey dated 4/16/04 was submitted, reviewed and approved by the City.*

**Landscape Plan Requirements**

19. The Project Applicant shall prepare and implement a Landscape Plan substantially consistent with the Landscape Plan prepared by Bradanini & Associates, plans dated October 8, 2002 sheets L-1 through L-13 and ensure the standards set forth in the MMRP (MM #B.10b and MM E.3a) are met. A schematic master landscape plan shall be prepared for VTM Phase I and II Areas and adjacent areas, as applicable (excluding the Senior Gateway Housing and Lots 1-19), and shall be submitted to the Development Director for review and approval prior to the issuance of the building permits for the models. This plan shall include:
  - a. Complete soils information, including soil preparation and amendment specifications, soil particle size for existing site soils and imported soils, representative soils and water table tests confirming the suitability of the site for the plant materials selected.
  - b. Detailed plans for the corner of Mountain Boulevard and "A" Street to assure adequate buffering and screening of the parking area or Gateway Senior Project.
  - c. Retaining wall design and details, based on the requirements in Condition of Approval 14.
  - d. Details for transitions between natural and more cultivated areas.
  - e. Details and specifications for other landscaping features such as street furniture, rocks, and, in accordance with subsection h, any water feature along A Street.
  - f. Design and specifications for the public pathways throughout the site.
  - g. Design of the park, tot lots and other recreational features, as follows;

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- Leona Park: approximately 2 acres including a 15,000 square foot open lawn area providing play space for volleyball, Frisbee and a small soccer field; a 1,600 square foot active play area for 6 to 10 year olds. The play equipment will include climbing structures, slides and tire swings. A tree shaded gathering place, including picnic tables will also be included near the tot lot.
- All play surfaces and play structures throughout the development will comply with ADA standards.
- Village Green: This feature in the center of the Phase One Condominiums will include low, 30 inch stone walls that will form two, 10 foot wide terraces stepping up to "C" Street, planted with shaded trees. The stone terraces, along with an approximately 28,000 square foot open lawn area will provide an informal gathering place. Adjacent to the lawn area is an approximately 2,500 square foot tot lot play area for children 1-5 years old, including interactive play equipment promoting gross motor skills. A pathway will encircle the play area with a 5 foot stone wall along one edge; this feature will also include a built in fort-like structure with sculptural elements for climbing and play.
- "J" Street Play Area: This approximately 2,800 square foot area is crescent shaped and will be cut into the uphill slope of the site. A rock climbing wall approximately 6 feet high will be included in the design, along with a bicycle or mini-skateboard ramp for active recreation for ages 10 – 18.
- "K" Street Greenway Park: This feature is an approximately 1,050 foot lineal greenway along upper "K" Street. It will include a lawn and tree shaded area for passive activities, along with a series of par-course exercise stations along a 5 foot wide meandering pathway, with periodic bench seating areas.
- "K" Street Open Space: This feature is an area of approximately 2,500 square feet within two level terrace spaces for passive recreation. An overhead shade trellis with bench stations will be included in the design.
- Water Detention Basin Area: A 10 foot wide crushed granite pathway around the basin will be constructed around the water detention basin at the base of the site, including par-course stations that are linked with other stations in the development.

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- Par-course: A series of par-course stations will be located throughout the lower development area.
  
- h. At the option of the Project Applicant the water features shown on sheets S-1, L-1 and L-12 shall be implemented. A feasibility study for the water feature shall be prepared before the Project Applicant proceeds with such water feature.
  
- i. Prior to the issuance of a building permit for any unit in a phase within the VTM Phase I and II Areas, a final landscape plan shall be submitted for that phase, based on the results, requirements, information and recommendations contained in the master schematic plan, and including but not limited to the following:
  - Detailed irrigation plans, consistent with Sustainability Measure Condition No. 38 b. Planting details such as location, number and sizes of the plant materials and the specifications for planting.
  - Street trees shown in all landscaped pockets between driveways as shown on the site plans dated October 8, 2002, sheets L-1 through L-7.
  - Specifications for driveway, motor court and other hard slope areas, paving and other surface treatments.
  - Detailed landscape and improvement plan for the Village Green area.
  - Landscape plan and other details for the sloped areas between the buildings that meet all City requirements for tree planting on downhill slopes below single family homes.
  - A detailed landscape maintenance plan for each phase, including short and long term plant and tree care, irrigation system maintenance and other information to assure that the landscape plan will be successfully established.

Both the master schematic plan and each successive final landscape plan shall be independently reviewed and approved by a qualified landscape architect and other professional consultant, as deemed required by the Development Director, at the Project Applicant's expense. These plans shall comply with Mitigation Measure B.10a as set forth in the MMRP.

*\* In substantial compliance with all the above, A Master Landscape Plan has been submitted and approved. The required more detailed Landscape Plans have been submitted for and with the first phase of building permit applications. These plans will be reviewed and approved by a qualified landscape architect and other*

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*professional consultant, as deemed required by the Development Director and approved prior to issuance of building permits.*

20. Prior to the issuance of an occupancy permit for the units in each phase of the Project, the Project Applicant shall enter into a two year landscape maintenance agreement with the City, subject to the review and approval of the City Attorney, running from the date the landscaping is deemed complete and in compliance with the approved landscape plan for each phase as set forth in Condition of Approval 13. The security posted shall be in the form of an acceptably rated bond, cash, an irrevocable letter of credit or a certificate of deposit, and the amount shall be determined based on the contract costs of plants and installation plus 25 percent.

*\*Acknowledged. Not yet applicable*

21. The Project Applicant shall prepare and implement a Tree Protection Plan consistent with the City's Tree Protection Ordinance that avoids construction-related impacts to protected trees outside of the construction in accordance with Mitigation Measure B.10c as set forth in the MMRP. **(MM #B10.c)** The Project Applicant may remove trees within the construction area provided that the Project Applicant has prepared a revegetation plan that is in compliance with the City's Tree Protection Ordinance and incorporates all of the mitigation measures that mitigate for the removal of protected trees as set forth in Mitigation Measure B.10a. **(MM #B.10a)** This plan shall be made a part of and implemented simultaneously with the Revegetation Plan required in Condition of Approval No. 18.

*\*A Tree Protection Plan and Tree Removal permit in accordance with above was approved 2/04.*

**Geology, Seismicity, and Mineral Resources**

22. The Project Applicant shall implement all of the mitigation measures described in "Section D. Geology, Seismicity, and Mineral Resources" of the MMRP. All geotechnical reports and recommendations submitted in accordance with final grading and construction specifications shall incorporate the information, standards, and requirements required in that section. **(MM # Measures D.1.a., D.2.a., D.3.a through d., D.4.a., D.5.a., D.6.a. and b.).**

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In addition, the final grading plans and specifications submitted for the site shall include the following information, analysis, requirements and standards:

- a. For the areas along the western slope (Parcels C-C and D-D) potentially subject to wedge failures and debris slides, an estimate of the size of the storage area required, if applicable; mechanisms for accessing the storage area and/or cleaning debris or removal of debris, including a discussion as to whether off-haul or on-site storage is more appropriate.
- b. Information, design and specifications of a permanent drainage system for the western slope area (Parcels C-C and D-D).
- c. A specified performance standard that there be no overspill of debris from the western slope area (Parcels C-C and D-D) onto H Street unless unusual events occur (i.e. seismic activity).
- d. The completion and results of a perched water table study, along with recommendations pertaining to the findings of the study, as deemed necessary.
- e. Specifications that subdrains within the project site be surveyed and mapped utilizing a standard civil engineering method and employing site elevation and x-y ground coordinates under the California coordinate system.
- f. The specifications for the piping material for the subdrains to be used along with an analysis that the specifications used are rated for the degree of overburden material anticipated.
- g. An evaluation of the chemical content within the water in the water table at the site to determine whether salt precipitation may be a long-term problem, along with the degree to which other substances may cause pipe corrosion such as carbonates, magnesium, silica, calcium or sulfates. This evaluation should include any recommendations for the specifications of the pipes used in the drainage system to avoid or mitigate potential corrosion.
- h. The design of the drainage system shall include redundancy so that each level of subdrains beneath the level of fill has multiple discharge points.

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- i. An analysis of the structural requirements and design specifications to mount the solar panel system required by Condition of Approval 38.
- j. Provisions for an inspection, monitoring, and maintenance process throughout the course of grading, construction and post construction to assure that the geotechnical requirements, standards and recommendations are being implemented properly.

Prior to the issuance of a grading permit for the site, the plans, information and analysis required by this Condition of Approval shall be independently reviewed by a qualified geotechnical engineer hired by the City at the Project Applicant's expense and approved by the City Engineer.

*\*In response to and in compliance with the above Berlogar Geotechnical submitted a three volume report dated 5/15/03 which was independently reviewed and approved prior to the issuance of the Grading Permit 4/23/04. This report was reviewed by three independent geotechnical engineers. In addition see attached annual compliance letter/report by Berlogar.*

**Hydrology and Drainage Requirements**

- 23. The Project Applicant shall implement all of the mitigation measures described in "Section F. Hydrology and Water Quality" of the MMRP. Final grading and improvement plans for the Project shall include the following information, analysis and requirements:

*\*DSG has or is in the process of implementing all of the mitigation measures described in "Section F. Hydrology and Water Quality" of the MMRP. Final grading and improvement plans for the Project along with supporting reports include all the requirements noted.*

- a. A master site drainage and grading plan that: (i) incorporates one of the following detention basin system, (ii) meets the published design criteria set forth in the Alameda County publication entitled "Hydrology and Hydraulics Criteria Summary for Western Alameda County" (1989), using the parameters recommended by PWA as set forth in the SEIR, including the parameter that existing ponds shall be considered empty at the onset of the design storm, and (iii) is consistent with the information, standards and



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requirements as set forth in the MMRP (MM #s D.6a, D.6b, F.1a and 1b, F2.a and F2b, F.3a, F.4a and 4b, F5.a).

*\*Improvement and grading plans incorporate the single basin alternate B below in conformance with the above and as reviewed and approved by PWA including the parameter that existing ponds shall be considered empty at the onset of the design storm.*

- Two-Basin Alternate A: The Project Applicant sponsor shall construct a stormwater management system, that includes a 15.6 acre-foot lower detention basin and outlet works, capable of maintaining peak flows from the 24-hour, 25-year design storm at or below pre-project levels, and not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contributions to local groundwater flow. The stormwater management system reviewed in the SEIR, with the 15.6 acre-foot lower detention basin, meets these performance standards. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate storm water outlets.

The Project sponsor shall also modify the existing Ridgemon Sub-watershed pond (Pond 4) by installing an emergency spillway. Improvements to the Ridgemon pond outflow structure shall include the following, or design elements that achieve an equivalent discharge rating curve using the parameters resulting from the consensus process discussed in this SEIR equivalent to that achieved by the following elements: replacing the existing 30-inch outlet pipe with a 42-inch outlet pipe, adding a single drop box with one rectangular orifice, and constructing an appropriate emergency spillway. The perimeter of the drop box would be comparable to a 36-inch riser and the rectangular orifice would be 2.75 feet by 2.0 feet in size. The replacement of the outlet pipe shall be consistent with standard engineering practice. A geotechnical evaluation of the existing detention basin levees and proposed modifications shall be completed to assess the overall

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integrity of the pond and recommendations from the evaluation shall become part of the Project design and be implemented as directed by a registered geotechnical engineer.

*\*Not Applicable. Single Basin Alternate B below applies.*

- Single-Basin Alternate B: The Project sponsor shall be required to construct a stormwater management system that will maintain peak flows from the 24-hour, 25-year design storm at or below pre-project levels, and not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contributions to local groundwater flow. The stormwater management system reviewed in the SEIR, with a single 20.3 acre-foot lower detention basin, meets these performance standards. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate stormwater outlets. The Project sponsor shall also modify the existing Ridgemont Sub-watershed pond (Pond 4) by installing adequately sized, flow-through pipe system to minimize the detention capabilities of that existing pond.

*\*The final design more than adequately meets the above criteria. Via the Settlement Agreement of 12/03 DSG committed to implement 25 acre-feet of detention capacity in the single lower basin. PWA approved the most effective use of the extra capacity, which is incorporated into the final design. The basin is lined with an impermeable material and the Ridgemont pond is not counted in the detention capacity. A drainage swale is designed along the outside of the lower basin.*

- b. The Project Applicant shall meet the revised Clean Water Act requirements as established by the Regional Water Quality Control Board (“RWQCB”) in the most recent version of such requirements or, if approved as of the date the grading permit application is filed, any final

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version of such requirements. The detention basin shall meet the new Alameda County NPDES permit provision C3 requirements.

*\*The final design of the storm system and detention basin incorporate the latest available versions of the above requirements at the time the Grading permit was issued.*

- c. The final plan for the detention basin (Parcel A) shall incorporate: detailed landscaping and other specifications so that a water treatment area can be established within the basin including a planting plan based on the recommendations of a qualified hydrologist and biologist regarding contours that can support the proposed planting and not interfere with the design and detention capacity.

*\*The landscape plans dated 10/4/04 include the above requirements in concurrence with the HT Harvey Recommended Planting Palette memo of 2/26/04.*

- d. Other specifications for the detention basin (Parcel A) shall also be provided, including measures for sediment storage, design of fencing, access, and clean out and maintenance specifications, liner monitoring specifications and repair procedures. The liner monitoring specifications and repair procedures shall be prepared by a registered geotechnical engineer with expertise in impermeable liner design, construction and maintenance.

*\*The design shown on the approved plans show the required access, fence, and sediment storage. As prescribed the liner materials were specified by Berlogar Assoc. and tested for conformation prior to installation. The "Water Quality/Detention Pond Monitoring and Maintenance" plan by Engeo 8/2/2004 addresses the long term monitoring and maintenance required.*

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- e. The site drainage plan shall include detailed measures to detain storm water run-off to the maximum feasible degree, given geotechnical and other constraints through infiltration opportunities, bio-swales or grassy swales, and creating a vegetated swale in the Village Green area.

*\*See response to 23a above. Additionally, there will be a vegetated swale at the Village Green.*

- f. A hydrologic review and confirmation of seasonal wet weather conditions for conveyance of the storm water.

*\*See 23a above*

- g. A review and recommendations pertaining to the creation of a perennial creek through the site that drains into the lower detention basin, consistent with condition of Approval No. 19.

*\* A "dry" creek landscape feature will be incorporated alongside A Street. As shown in Berlogar Geotechnical Consultant's letter of 10/2004 an actual perennial creek through the site is infeasible.*

- h. A geotechnical investigation, including soil borings as necessary, of the stability of the detention basin (Parcel C-C). The investigation shall be prepared by a geotechnical engineer and shall evaluate the existing berms and consider the planned permanent use as a detention basin, the modified outlet works required for that function, and protection measures against overflows. The geotechnical review shall also analyze the permeability of the basin and make recommendations for modifications needed to meet stability, permeability and functional needs.

*\*An investigation was prepared in conformance with the above. See Berlogar report of May 15<sup>th</sup> 2003. It was determined not utilize the Ridgemont basin for detention capacity purposes.*

- i. Applicant shall fund the cost to prepare detailed construction documents and all construction costs to redirect existing storm drainage in Ridgemont

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Drive away from the Leona Street basin and to connect it to the Project's drainage system.

*\*DSG has provided the full cost of the above to the City.*

- j. Provisions for an inspection, monitoring, certification and maintenance process throughout the course of grading, construction and post construction to assure that the approved drainage plan and other measures are functioning properly.

*\*The City has provided a nearly full time inspector as well as regular inspections by various staff from Public Works, Environmental and Planning Departments all at DSG expense. Berlogar has provided (sometimes multiple) full time inspectors. Balance Hydrologics, Engeo Inc. and PWA have also inspected the installation of improvements to assure that the approved drainage plan and other measures are functioning properly.*

Prior to the issuance of a grading permit for the site, the plans, information and analysis required by the preceding Condition of Approval shall be independently reviewed by a qualified hydrologist and/or engineer hired by the City at the Project Applicant's expense and approved by the City Engineer.

*\*PWA provided the independent review required above at DSG's expense prior the issuance of the grading permit 4/23/04.*

**Geologic Hazard Abatement District Requirements**

24. Prior to and at the time of recordation of the first final map for the project, a Geologic Hazard Abatement District (GHAD) shall be fully operational, and all assessments, reserve funding and/or other long-term financing and other requirements necessary to fully fund the GHAD shall be established and authorized. If at any time the GHAD is dissolved or is otherwise unable to adequately perform specified functions, the Development Director may exercise

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his or her authority under COA 37. The GHAD Plan of Control shall specify, without limitation, that:

*\*The GHAD was fully established 12/02. An amendment to the GHAD adding additional properties owned by the applicant and further detailing operational aspects of the GHAD is currently in process concurrent with the Final map approvals scheduled for November/December 2004.*

- a. The GHAD will assume responsibility for the long-term maintenance of the slopes, all drainage facilities (including the detention basin) and all other surface and sub-surface stormwater runoff and drainage system improvements and maintenance, including street cleaning, within the Property.

*\*Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- b. The GHAD shall also maintain the open space areas, which include newly created areas of potential AWS habitat; providing minimal disturbance to such areas. The GHAD's regular maintenance activities shall act as fire protection and control through vegetation management in the semi-natural, Restored Slope Area of the site, erosion control and trail maintenance.

*\*Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- c. A reserve fund shall be established in the GHAD budget to provide for restoration, maintenance, repair or other work associated with a catastrophic event, such as a landslide or detention basin bank failure.
- d. The applicant shall provide start-up funds for the GHAD in an amount to be determined by the City Engineer in accordance with the approved plan of control for the GHAD, which shall be no later than recordation of the first final map for the Project. The Project Applicant shall also assume

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financial responsibility for all geotechnical related work for a period of time determined by the City Engineer, such as the implementation of an initial set of site monitoring measures for moisture, lateral movement and vertical movement, including installation of piezometer(s), settlement pins and inclinometer casings. The City Engineer shall determine the specific monitoring measures that will be installed, and such measures shall be installed, to the satisfaction of the City Engineer, by the Project Applicant for a time certain.

*\*Start up and reserve funds are provided via DSG providing all operational costs for the GHAD for a period of 2 years. During this time all GHAD assessments collected will be kept within the GHAD. Through these assessments and provisions of start up funds the GHAD will be able provide for restoration, maintenance, repair or other work associated with a catastrophic event, such as a landslide or detention basin bank failure.*

- e. The GHAD shall include both on going maintenance activities as well as a plan for unexpected maintenance and event, including events or damages that could occur off-site as the result of site improvements associated with geotechnical, drainage or related matters within the GHAD jurisdiction. This work shall be based on the results of the minimum monitoring period, the final grading and specifications for slope restoration and repair on Parcels C-C and D-D and the results of the geotechnical information and analysis set forth in Condition of Approval No. 22.

*\*Acknowledged and as to be implemented. See Plan of Control and Engineers Report.*

- f. The GHAD budget shall separately identify the projected costs associated with (1) geotechnical/slope stability maintenance work; (2) drainage facilities (including detention basin) operation and maintenance; (3) storm water quality maintenance and monitoring; and (4) reserve fund

*\*Acknowledged and as to be implemented. See Plan of Control and Engineers Report.*

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- g. The Project Applicant shall fund an independent, qualified engineer to serve as the GHAD manager for the GHAD. The GHAD shall provide the name, phone number and mailing address of the GHAD manager to all residents within the property covered by the GHAD.

*\*Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- h. The GHAD shall submit an annual report to the City Public Works Director and the Executive Director of the Community and Economic Development Agency detailing (1) its efforts to satisfy the monitoring and reporting requirements specified in the Plan of Control; (2) budgetary and other financial information relevant to the GHAD's operations.

*\*Acknowledged and as to be implemented. See Plan of Control Amendment and Engineers Report dated August 13, 2004.*

- i. The GHAD shall defend, hold harmless and indemnify the Indemnified Parties (as that term is defined in Condition of Approval No. 9) and their insurers against any and all liability, damages, claims, demands, judgments, losses ("Indemnified GHAD Claims") or other forms of legal or equitable relief related to the formation and operation (including, without limitation, maintenance of GHAD-owned property) of a Geologic Hazard Abatement District ("GHAD") and in the case of the City Council members, actions taken by said members while acting as the GHAD Board of Directors. This indemnity shall include, without limitation, payment of all litigation expenses associated with any action herein. The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the GHAD's expense, in the defense of any action specified in this Condition of Approval No. 24(j). The Indemnified Parties shall take all reasonable steps to promptly notify the GHAD of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval. Within 90 days of formation of the GHAD, the



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GHAD shall be required to enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail the terms and conditions of the GHAD's indemnification obligations set forth herein. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval except that it shall not limit Development Director authority as set forth in Condition of Approval No. 37.

*\*So provided in letter of April 8<sup>th</sup> 2004. Also see response to COA #9, #10, and #11*

- j. The GHAD shall obtain general liability insurance and directors' insurance for the GHAD Board of Directors to the extent that the GHAD Board determines in its sole discretion that such insurance is available at commercially reasonable rates. In the event subsidence insurance becomes available, the GHAD also shall obtain such insurance provided that the GHAD Board of Directors determines that the premiums for such insurance are a prudent expenditure of the GHAD's financial resources.

*\*Acknowledged*

- k. The assessments authorized for the GHAD must be determined by the GHAD Board following a thorough financial analysis and must include adequate funding for the indemnity and insurance obligations set forth in this Condition of Approval No. 24. The GHAD's attorney and the City's attorney shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.

*\*Acknowledged*

- l. The GHAD will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other

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activities of the GHAD, and no City employees, including employees of the City Attorney's office, shall perform such services for GHAD facilities and improvements. Further, the City shall not fund or otherwise administer any of the GHAD's operations, property or facilities.

*\*Acknowledged and as to be implemented. See Plan of Control Amendment and Engineers Report dated August 13, 2004.*

**Transportation, Circulation, and Parking**

25. The Project Applicant shall implement all of the mitigation measures described in "Section K. Transportation, Circulation and Parking" of the MMRP. The Project Applicant shall prepare and submit to the City for its approval a Traffic Improvement Plan for all traffic improvements that are to be funded by the Project Applicant pursuant to Mitigation Measures K.2a, K.2b, K.2c, K.2f, K.6a as set forth in the MMRP. The plan shall be prepared in accordance with the MMRP and shall, among other items, include a schedule for obtaining Caltrans' approval, where needed, as well as a schedule for completing such improvements. For purposes of the schedule, the applicant shall comply with Condition of Approval 13 for the completion of these improvements.

*\*Acknowledged. A traffic improvement plan has been submitted and approved.*

As set forth in the MMRP and refined below, the plan shall include the following improvements:

- a. The Project Applicant shall install traffic signals at the unsignalized intersection of *Edwards Avenue / I-580 westbound on-ramp – Mountain Boulevard [1]*, to reconfigure traffic lanes on Edwards Avenue between the I-580 eastbound off-ramp and Mountain Boulevard, and to widen the freeway on-ramp to provide two lanes (**MM #K.2a**), including the installation of traffic signals at the unsignalized intersection of *Edwards Avenue / I-580 eastbound off-ramp [2]* (**MM #K.2b**). The Project Applicant shall be responsible for making necessary geometric changes on Edwards Avenue, improvements to the Burckhalter Park access driveway, (along with improvements to the parking lot and adjacent areas such as the existing pathway), Mountain Boulevard and the I-580 on and off-ramps to

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accommodate the projected traffic increases, along with incorporating an interconnection between the two new signals and the existing signal at the Edwards/Greenly intersection and providing lighting under the I-580 overpass. The Project Applicant shall work in good faith with both the City and Caltrans to maintain the existing sidewalk and on-street parking along the south side of Edwards by concurrently analyzing the feasibility of a three-lane rather than a four-lane configuration for this improvement, with a final confirmation through a traffic assessment performed by a traffic engineer hired by the City at the Project Applicant's expense that the three-lane configuration provides an equivalent level of mitigation pursuant to CEQA Guidelines Section 15126.4 (a)(1)(B).

*\*DSG is well underway processing the above traffic improvement plan approvals through both the City and Caltrans and including the analysis and concurrence of an independent traffic engineer funded by DSG. The implementation of these improvements is scheduled for 2005.*

- b. The Project Applicant shall restripe Edwards Avenue to provide a separate westbound left-turn lane at *Edwards Avenue / Greenly Drive [4]*. (MM #K.2c). The left turn lane shall be 50 feet in length with a 60-foot bay taper. All above ground utilities, guardrails, signs and other objects shall maintain a minimum 2-foot clear from the face-of-curb within the widened section of Edwards Avenue and Greenly, as well as maintaining the width of the existing sidewalks. The changes shall be designed such that passenger cars can make the right turn maneuver from Greenly Avenue (northbound) to Edwards Avenue (eastbound) efficiently without encroaching into the opposing lane of travel. The final design shall also be such that buses may make the right turn maneuver from Edwards (eastbound) to Greenly (southbound) efficiently.

*\*This work was completed in September of 2004.*

- c. The Project Applicant shall install traffic signals at the unsignalized intersection of *Mountain Boulevard / I-580 westbound off-ramp – Sanford Avenue [8]*, and convert the right lane of the two-lane freeway off-ramp

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from an exclusive right-turn lane to a shared left-turn/right-turn lane.  
**(MM #K.2f)**

*\* DSG is well underway processing the above traffic improvement plan approvals through both the City and Caltrans and including the analysis and concurrence of an independent traffic engineer funded by DSG. The implementation of these improvements is scheduled for 2005.*

- d. The Project Applicant shall construct the project site's main EVA via a 25-foot-wide, "Gateway EVA", connecting the Project site's new roadway network at "A" Street to Mountain Boulevard, and the supplemental emergency accesses to Altura Place and Leona Street pursuant to Mitigation Measure K.6a as set forth in the MMRP. **(MM #K.6a)**

*\*Acknowledged. Under construction and will be completed in conformance with the above.*

Prior to implementation of these improvements, the Project Applicant shall submit final design plans and other specifications to the City and any other responsible agency, for their review and approval, including a traffic management and detour plan to be implemented during construction of the improvements. At the City's discretion, an independent traffic engineer shall be hired at the Project Applicant's expense to assist the City in their review process.

*\* DSG is well underway processing the above traffic improvement plan approvals through both the City and Caltrans and including the analysis and concurrence of an independent traffic engineer funded by DSG. The implementation of these improvements is scheduled for 2005.*

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**Implementation of Funding Mechanism for Traffic Improvements Required to Mitigate Cumulative Traffic Impacts**

26. The City shall use its best, good faith efforts, to prepare and implement a Traffic Improvement Program (“TIP”) and a Traffic Improvement Fee (“TIF”) for the Edwards Avenue Corridor, which may include the improvements listed below. Prior to the issuance of a building permit for the 351<sup>st</sup> unit excluding the Gateway Senior Residential and Lots 1-19 (the “Trigger Date”), the Project Applicant shall pay a fair share of the cost for the following traffic improvements in the amounts set forth in the Leona Quarry Fee Schedule to be provided pursuant to Condition No. 6. If the TIP and TIF have not been implemented as of the Trigger Date and other future projects that cumulatively trigger the need for the traffic improvements listed below have been approved, then the Project Applicant shall provide an acceptably rated bond or other security satisfactory to the City Attorney to ensure funding of the entire cost of such traffic improvements. City shall use its best, good faith efforts to reimburse the Project Applicant with funds raised from these future projects for amounts in excess of the Project’s fair share. If as of the Trigger Date a TIP and TIF have not been adopted and the Project Applicant does not agree that the other approved projects have triggered cumulatively the need for such improvements, the Project Applicant may request that the City conduct a traffic study to determine whether the traffic improvements listed below are required. The Project Applicant shall pay for the cost of the traffic study, as established by the City with regard to scope of work and selection of a qualified traffic engineer. The City agrees to perform the traffic study and agrees to reasonably consider amending the list of improvements to implement the conclusions of the traffic study. If the study determines that certain of the improvements are not required, then upon this determination, the Project Applicant shall pay the City only the Project’s fair share of the cost for each such improvement, based upon the lower of the amounts set forth in Attachment A to these conditions of approval or a revised cost for such improvements approved by the City in its sole discretion. In the event the Project Applicant installs or otherwise pays for the entirety of any of the traffic improvements listed below, the Project Applicant shall receive a credit or reimbursement for such work or costs that exceed its fair share. This Condition of Approval applies to the following traffic improvements and studies:
- a. *Modification at the west leg of the signalized intersection of 73rd Avenue / MacArthur Boulevard [6] to add a second left-turn lane on eastbound 73rd Avenue. (MM #K.2d)*

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- b. Installation of traffic signals and restriping of the eastbound Keller Avenue approach to provide two through-lanes at the unsignalized intersection of Mountain Boulevard / *Keller Avenue* [7]. (MM #K.2e)
- c. Installation of traffic signals at the unsignalized intersection of *Keller Avenue / I-580 eastbound off-ramp* [9]. (MM #K.2g)
- d. Installation of traffic signals and the addition of a second eastbound left-turn lane at the unsignalized intersection of *I-580 westbound off-ramp / Mountain Boulevard – Kuhnle Avenue* [16]. (MM #K.2h)
- e. installation of traffic signals at the unsignalized intersection of *Seminary Avenue / I-580 eastbound off-ramp – Overdale Avenue* [18]. (MM #K.2i)
- f. The improvements described in Conditions of Approval Nos. 25.b and 25.c.
- g. If a TIF and TIP are approved, the City as part of the TIF and TIP shall include and fund a study of other long-term operational traffic improvements along the Edwards Avenue/82<sup>nd</sup> and Seminary Avenue routes, particularly the Foothill-82<sup>nd</sup> Avenue segment and the MacArthur-Seminary segment.
- h. If a TIF and TIP are approved, the City as part of the TIF and TIP shall include and fund a study of any further intersection improvements in the Edwards Avenue corridor area, beyond those identified in the EIR, that should be included as part of the TIP.

*\*Acknowledged. The City is in receipt of a proposal from a qualified independent engineer for implementation of the TIF and TIP in conformance with the above. The funding for implementation of the TIF and TIP is to be provided by DSG. The implementation is scheduled for 2005.*

**Vesting Tentative Map Requirements**

- 27. The maximum number of residential units for the approved project is 477. Any minor revision of the internal circulation plan or lot layout shall be subject to the

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review and approval of the Development Director at least 45 days prior to filing each final map.

*\*Per the Settlement Agreement of 12/03 the maximum number of residential units will be 423. No minor revisions have been proposed or are currently anticipated.*

28. As set forth in Condition of Approval No. 3.d., multiple final maps may be filed subject to the phasing plan set forth in Condition of Approval No. 13. Modifications to the phasing program are subject to the review and approval of the Development Director, and at his/her sole discretion, any modifications may be subject to review of the Planning Commission.

*\*Acknowledged*

29. For lots 1-19, the development standards and requirements used shall be the R-30, - One Family Residential Zone Regulations (Chapter 17.16 of the Oakland Municipal Code) and Special design requirements for such lots contained in OMC Chapter 17.102.380. Each residential unit proposed for these lots shall be individually subject to the design review requirements set forth in the Design Review Chapter 17.160. For Lot 19, a written evaluation and confirmation of the areas of potential habitat for the Alameda Whipsnake shall be submitted prior to or concurrent with the design review application, along with recommended measures, as required to avoid disturbance of this area during construction and post construction activities.

*\*Acknowledged. Not yet applicable.*

30. Prior to the approval of each Final Map, a site plan shall be submitted for the review and approval of the Development Director or his/her designee demonstrating substantial compliance with the approved VTM and the approved "PUD Design and Specification Document for the Leona Quarry Project."

*\*Tract 7351 and 7493 final maps are in substantial compliance with the approved VTM and approved PUD Design and Specification Document for the Leona Quarry Project.*

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31. Prior the submittal of the first Final Map for the project, the covenants, conditions and restrictions (“CC&Rs”) for the attached units within the VTM Phase I and II Areas shall be submitted for review by the City. The CC&R’s shall provide for the establishment of a homeowners association for the maintenance and operation of all sidewalks, common open space areas, the community center, all common area improvements and common structure improvements that are not within the purview of the GHAD. Similarly, prior to the issuance of the building permit for Parcel Z (Gateway Senior Housing), the Project Applicant shall provide assurances for maintenance and operation of the improvements within Parcel Z.

*\*Draft CC&R's have been submitted for review and approval 10/13/04.*

32. Concurrent with the submittal of the last Final Map for the approved project, an open space and conservation easement shall be submitted to the City for Parcels A-A, B-B, C-C, and D-D, providing that no grading or other development activity or removal of trees or other vegetation may occur in these areas except as necessary for maintenance and operation of the GHAD.

*\*A conservation easement over Parcels A-A, B-B, C-C, and D-D in compliance with the above as well as in compliance with the 12/03 Settlement Agreement will be established with recordation of the first final maps (7351, 7493) scheduled for later this year (2004).*

33. At least 45 days prior to recording each Final Map, plans shall be submitted for review by the City Building Services Department to obtain addresses and for street name approval. Alternate street names should be submitted in the event of duplication and to avoid similarity with existing street names. Final Maps shall not be certified as ready for approval without the approved street names.

*\*Street names and addresses for Tracts 7351 and 7493 have been submitted and approved by the City Building Services Department.*



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34. The Project Applicant shall revise the VTM prior to approval becoming effective, as follows:
- a. Note 9 : Proposed Zoning – R-50 Planned Unit Development
  - b. Note 14: Roadways – All roadways shown on this plan are proposed to be public and offered for dedication to the City of Oakland
  - c. Note 17: Dimensions - Dimensions shown are minimum and may change during final design.
  - d. Note 20: Erosion Control: Erosion control measures shall be prepared as set forth in the Conditions of Approval and Mitigation Monitoring and Reporting Program for the PUD approved by the Oakland City Council on February 3, 2004
  - e. Note 21: Maps: Multiple Final Maps may be filed on the lands shown on this map subject to all the Conditions of Approval and Mitigation Monitoring Program as set forth in the PUD approved by the Oakland City Council on February 3, 2004
  - f. Note 22: Phasing: This project is proposed to be constructed in Phases as set forth in the Conditions of Approval and Mitigation Monitoring and Reporting Program as approved by the Oakland City Council on February 3, 2004. Phasing boundaries may be approved only upon written permission from the Development Director.
  - g. Note 23: Street Names: Final street names shall be approved as set forth in the Conditions of Approval for the PUD as approved by the Oakland City Council on February 3, 2004.
  - h. Note 25: Dedications, Easements and Right of Entry: Additional and specified dedication of property rights and rights of entry as necessary to accommodate all drainage facilities, sewer facilities, public utility easements and other easements as may be necessary to properly serve the lots created shall be dedicated as part of the filing of future final maps.
  - i. Note 26: All utilities shall be installed underground according to the standards and requirements of the City of Oakland and the applicable utility.

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*\*A revised VTM dated 3/17/03 was submitted in conformance with COA 34a – 34i above.*

35. Prior to the issuance of a grading permit, as set forth in Condition of Approval 13, the applicant shall submit a detailed master improvement plan for the site prepared by a licensed Civil Engineer, with all conditions and requirements as set forth in these Conditions of Approval for the private property and the public rights of way, including but not limited to curbs, gutters, pedestrian ways, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design, specifications and locations of the water pumping facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements required to comply with all applicable City standards, including the approved landscape plans for the “I” and “J” Street landscaped pockets, the design of the pedestrian stairway paths and the street tree locations and planting specifications. This information shall include a capacity analysis in designated areas of the sub-basin from the point of discharge to MacArthur Blvd to confirm the improvements required to the downstream sewer system to meet Public Works Department requirements.

This plan shall be reviewed and approved by the City Engineer and used as the confirmation of compliance with subsequent phased final improvement plans submitted during the phased development requirements in Condition of Approval 13.

*\*A detailed master improvement plan, landscape plan, and sanitary sewer capacity analysis have been submitted reviewed and approved in concurrence with the above.*

36. The final maps that are filed for the approved project shall include all easements necessary to provide access for public utility connections, the Ridgemont sub-basin connection, if required, public access easements for the park and pathways through the site and the emergency access routes (Gateway EVA, and the Altura and the Northwestern supplemental routes).

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*\*The submitted final maps for the tracts 7351 and 7493 conform to the above.*

37. For the duration of the project, the City Development Director shall have the authority to determine whether the Project Applicant and the Project substantially comply with terms and conditions of this approval, including, without limitation, these Conditions of Approval, or any conditions or requirements of the GHAD. In determining compliance, the Director shall interpret and apply conditions and terms requiring conformance with engineering standards, conformance with the purpose and intent of the Municipal Code sections upon which conditions are based, conformance with the intent of mitigation measures as discussed in the EIR and the SEIR, or as reasonably necessary to promote architectural integrity and the purpose of integrated development as set forth in the PUD. Upon a determination of non-compliance, the Director shall have the authority to suspend further Project approvals, including without limitation final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the City Development Director make a determination of noncompliance, and shall provide the Project Applicant with written notice of any non-compliance determination by the City Development Director. The City shall provide the Project Applicant a copy of all documents used or relied upon in making such determination. On or before October 15 of each year, the Project Applicant shall submit to the City Development Director a report demonstrating the Project Applicant's and the Project's compliance with the terms and conditions of the Approval, including, without limitation, these Conditions of Approval. This report may be used by the City Development Director to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of this Approval. Project Applicant's obligation to submit this annual report shall terminate upon the City's written determination that the Project is complete.

*\*Acknowledged. This annual compliance report complies with the above.*

**Project Sustainability Requirements**

38. The applicant shall comply with all sustainability measures as proposed in the document submitted October 11, 2002, entitled "Leona Quarry Development

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Project; Sustainability Measures; Conditions for Approval”, produced for The DeSilva Group by Adam Berman, Tilden Consulting, Inc., Geof Syphers, Xenergy Inc. and shall also incorporate the following additional sustainability measures:

- a. Install Hardwired Compact Fluorescent Fixtures in Bathrooms, Kitchens, and for Outdoor Lighting.
- b. Specify Low-VOC (volatile organic compounds) paint for all interior applications.
- c. Use Formaldehyde Free Fiberglass insulation in the walls and ceilings.
- d. For all interior flooring materials, offer the buyer the choice of linoleum and tile in addition to other flooring materials, and prepare a brochure that highlights the environmental and maintenance issues of all the materials offered. The City of Oakland shall review and approve the brochure prior to publication.
- e. For all framing timber, obtain a valid price quote and availability schedule for lumber certified by the Forest Stewardship Council (FSC), which certifies that wood has been grown using sustainable forestry practices. Obtain a price quote and availability schedule for the same products and at the same time as a price quote for other framing timber. Use FSC certified framing timber for at least 50 percent of the framing timber if the price quote for the FSC certified timber is no greater than the price quote for the other comparable framing timber and the availability is the same for both.
- f. The Project Applicant shall install solar panels to be the primary source of energy for at least 15 percent of the living units within the total project. The solar panel arrays shall be installed on the hill area immediately behind the terrace units on “K” street. Stability and safety of the proposed installation shall be reviewed and confirmed as part of compliance with the geotechnical requirements as set forth in Condition of Approval 22. Other locations may be acceptable, but shall be reviewed and approved by the Development Director prior to installation. The landscape plan requirements as set forth in Condition of Approval shall incorporate trees and other planting such that the panels are screened from distant views to

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the maximum extent feasible while still allowing full sun access to the panels.

*\*Acknowledged. The current and future work is or will comply with the above COA 39a – 39f.*

**Fire and Life Safety Requirements**

39. As part of the public improvement plans for the site as required by Condition of Approval 35, the Project Applicant shall provide detailed specifications and design information including but not limited to:
- a. The road surface and pathway surface design for the Northwestern and Altura supplemental access routes as well as the routes from “I” Street to “J” Street and from “H” Street to “B” Street, demonstrating that these routes meet Fire Department standards with reference to NFPA standards, 1998 CFC Article 9.
  - b. The design specifications for the gates at the Northwestern and Altura supplemental access routes, including provisions for the Knox Box lock system.
  - c. Schematic plans for providing adequate emergency access routes into and around the residential buildings on the site and other fire protection and fire fighting measures.
  - d. All final designs for buildings shall include safety locks on doors and windows, lighted house numbers, project street and directory signs and outdoor lighting.

*\*Acknowledged. Some items not yet applicable.*

**Payment of Fees for Independent Technical Reviews and Project Coordination and Management**

40. Within 90 days following the Effective Date, the Project Applicant shall enter into an agreement to establish the terms and conditions of this Condition of Approval. The City and the Project Applicant acknowledge that the large scale, complexity

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and phased schedule for the approved project require a level of expertise and monitoring that are beyond the standard practices of the City for a development project. Further, the MMRP requires a number of independent experts monitoring grading and construction activities including but not limited to biologists, geotechnical engineers, hydrologists, air quality and noise monitors, etc. The Project Applicant shall fund the full costs of all independent technical and other consultants the City deems is required to comply with the Conditions of Approval and the mitigation monitoring requirements as set forth in the MMRP. All work performed pursuant to this Condition of Approval shall be under the direct supervision of the City. Accordingly, the applicant shall establish an "evergreen" deposit fund with the City in order to cover the full costs of independent technical and other types of review, monitoring and inspection, including, without limitation, third party plan check fees. The payment of standard plan check fees, building permit fees, special inspection deposits and other required fees shall, to an extent determined by the City, be credited as part of this evergreen fund. The City shall provide the Project Applicant with quarterly detailed statements, including staff names, time entries and description of work performed, as to the amount of funds used and the amount of deposit required to sustain the fund. City retains the right to halt work on the project if Project Applicant fails to make requested payments to the fund within the time period specified. The Project Applicant may conduct an annual audit of the funds used. Any failure of any party to timely execute such Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval, including, without limitation, Conditions of Approval Nos. 9 and 10, except that it shall not limit Development Director authority as set forth in Condition of Approval 37.

\*DSG and the City are in full agreement establishing the terms and conditions of this Condition of Approval in concurrence with above. In addition the Letter of Agreement dated 9/30/04 more specifically details the total amounts and payment terms owed for all fees and reimbursements covering all costs incurred by the City. **(Mike W)**

**Construction Management and Phasing**

41. As a requirement of Pre-construction Phase A as set forth in Condition of Approval 13, the Project Applicant shall submit a Construction Phasing and Management Plan, incorporating all applicable mitigation measures in the MMRP including Air Quality (**MM A.1a**); Biological Resources (**MM B.1a, B.5a, B.6a**,

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**B.8a,); Cultural Resources (MM C.1a, C.2a, 2b, 2C and 3.a); Erosion Control and Storm Water Management (MM F.2a, 2b); Solid Waste Reduction and Recycling (MM L.1a); Noise (MM H.1a and b); Traffic, Circulation and Parking (MM K.8)** The plan shall also include the following additional measures and standards:

- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.
- c. A plan to provide temporary access to the model units during active construction activities, including path of travel, securing the active construction areas and parking.

*\* In accordance with condition 41 a Construction Phasing and Management Plan has been submitted and approved by the City for all work currently underway. Subsequent versions of the Plan will be submitted and approved prior to commencement of residential construction.*

**Affordability Requirement for Gateway Senior Housing Project**

42. Prior to the issuance of an occupancy permit for the Gateway Senior Housing Project, written documentation shall be submitted to the Development Director, for review and approval confirming that a deed restriction or other legal commitments have been secured to ensure the continued availability and use of the residential units for low income persons, as defined in Section 50079.5 of the California Health and Safety Code.

*\*Per the Settlement Agreement of 12/04 the Gateway Senior Housing Project has been removed.*

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**CEQA MITIGATION MONITORING AND REPORTING PROGRAM**

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<b>A. Air Quality</b>			
<p><b>A.1:</b> Fugitive dust generated by construction activities, while temporary, would be substantial and would contribute to intermittent ambient respirable particulate concentrations that would violate state standards.</p>	<p><b>A.1a:</b> The project sponsor shall implement a construction dust abatement program.</p> <ul style="list-style-type: none"> <li>• Water all active construction areas at least twice daily. Active construction areas would be considered to be those under excavation at a given time, storage piles, and internal roadways. Watering methods may include water trucks for roadways and hoses or sprinklers for storage piles and active excavation.</li> <li>• Cover trucks hauling soil, sand, and other loose materials offsite.</li> <li>• Pave, apply water three times daily, or apply nontoxic soil stabilizers on all unpaved access roads, parking areas, and construction staging areas.</li> <li>• Sweep daily with water sweepers if visible soil material is carried onto adjacent public streets.</li> <li>• Hydroseed or apply nontoxic soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).</li> <li>• Enclose, cover, water twice daily, or apply nontoxic soil stabilizers to exposed stockpiles (direct, sand, etc.).</li> <li>• Limit traffic speeds on unpaved roads, including the EVA if unpaved, to 15 miles per hour.</li> <li>• Limit the area subject to excavation, grading, and other construction activity at any one time, where possible.</li> </ul>	<p>16</p>	<p><i>Construction monitoring and phasing plan was reviewed and approved prior to start of grading and dust monitoring and proper BMPs were part of the phasing plan.</i></p> <p><i>Dust Monitoring effort is implemented. Dust monitors are installed at four locations, and reading recorded daily. The reports are available upon request.</i></p> <p><i>Construction site is watered regularly and appropriate BMPs are being implemented.</i></p> <p><i>Site was hydroseeded to prepare for the rainy season. Contractor and City staff, Regional Board continue to work</i></p>

<sup>1</sup> This comments in italics represent the status of the project as of November 2004



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	<ul style="list-style-type: none"> <li>• Install sandbags or other erosion control measures to prevent silt runoff to public roadways.</li> <li>• Replant vegetation in disturbed areas as quickly as possible.</li> <li>• Install wheel washers for all existing trucks or wash off the tires or tracks of all trucks and equipment leaving the site.</li> <li>• Install wind breaks, or plant trees/vegetative wind breaks at the predominant windward side of construction areas.</li> <li>• Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.</li> <li>• Monitor particulate concentrations at site fencelines during peak earthmoving activities to assess the adequacy of the frequency of the on-site watering program. This could be performed by the City or an independent consultant using a handheld particulate monitor capable of real time and time-averaged concentrations. Monitoring should be performed at the nearest fenceline in the downwind direction. If time-weighted averages exceed the 24-hour PM-10 standard, then increased watering frequency or other mitigation measures should be implemented.</li> <li>• Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent offsite transport of dust. Duties will include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons will be provided to BAAQMD prior to the start of construction.</li> <li>• The person designated to monitor</li> </ul>		<p><i>together to minimize erosion and sediments.</i></p> <p><i>BMP are constantly being applied onsite including stabilized construction entrance, sand bags.</i></p> <p><i>Site is monitored daily for noise and wind levels and reported weekly. Reports are available upon request.</i></p> <p><i>The dust monitoring reports indicate compliance.</i></p> <p><i>Contractor has staff monitoring the dust program and submitting reports to the City. The name was given to BAAQMD prior to start of construction.</i></p>

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	<p>the dust control program shall be fully qualified and shall be acceptable to the City and paid for by the project sponsor. The monitor shall inspect the site as required based on field observation, during periods of construction activity, with particular emphasis on times when the combination of construction activities, wind, and other relevant factors are likely to cause impacts to be more severe.</p> <p>A special inspection deposit shall be required to ensure the project sponsor's compliance with the City approved construction dust abatement program. The amount of the deposit shall be determined by the Building Official and shall be submitted by the project sponsor concurrent with submittal of the construction dust abatement plan.</p>		<p><i>Contractor staff monitoring the dust control program is acceptable to the City's Consultant and City staff.</i></p> <p><i>Fund was deposited for construction monitoring including the dust.</i></p>
<p><b>A.2:</b> The project would result in increased emissions of criteria pollutants due to vehicular traffic to and from the project site as well as natural gas combustion, woodburning, consumer products, and lawn and garden equipment. The increase in emissions would exceed BAAQMD significance criteria for daily emissions of NO<sub>x</sub>.</p>	<p><b>A.2a:</b> The project applicant shall reduce NO<sub>x</sub> emissions to no more than 80 pounds per day by reducing motor vehicle emissions. The project applicant will further reduce motor vehicle emissions by implementing one or more of the following BAAQMD mitigation measures for motor vehicle emissions.</p> <ul style="list-style-type: none"> <li>• On-site transit facilities with amenities such as bus stops, benches, shelters, etc. (estimated trip reduction effectiveness of 0.2 to 2 percent of all trips);</li> <li>• Providing shuttle service to a regional transit system (such as BART) and to employment centers, schools or shopping areas (estimated trip reduction effectiveness of 0.1 to 0.3 percent of all trips);</li> <li>• Providing bicycle paths or lanes (estimated trip reduction effectiveness of 0.1 to 2 percent of all trips);</li> <li>• Providing neighborhood serving shops (estimated trip reduction effectiveness of 1 to 4 percent of all trips); and</li> </ul>	16	<p><i>Mitigated during construction.</i></p> <p><i>AC Transit has approved located of bus stop.</i></p> <p><i>N/a 11/23/04</i></p> <p>"</p> <p>"</p> <p>"</p>

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	<ul style="list-style-type: none"> <li>• Providing electrical power in garages/driveways or on-site for electric vehicle charging and providing preferential parking for electric vehicles (estimated trip reduction effectiveness of 0.5 to 1.5 percent of all trips).</li> <li>• The City shall work with AC Transit on ways to improve bus service to the project site and the surrounding developments.</li> <li>• The City shall encourage the project sponsor to link the site's proposed trail system with the regional bicycle and trail networks.</li> </ul>		<p><i>AC Transit approved the bus location.</i></p> <p><i>N/a</i></p>
<b>A.3:</b> Mobile emissions generated by project traffic would contribute to an increase in CO concentrations at intersections most affected by project traffic.	None required.	Not Applicable	
<b>A.4:</b> The proposed project, together with anticipated future development in the downtown area as well as the City of Oakland in general, could result in long-term traffic increases and would cumulatively increase regional air pollutant emissions.	Implementation of Mitigation Measure A.2a.		
<b>B. Biological Resources</b> <b>B.1:</b> Construction activities could result in the harm or direct mortality of Alameda whipsnakes .	<p><b>B.1a:</b> The project applicant shall ensure that construction-related impacts to individual Alameda whipsnakes are avoided through the development and implementation of a Special-Status Species Mitigation and Monitoring Plan.</p> <ul style="list-style-type: none"> <li>• A description of the species habitat requirements and movement patterns applicable to the project area;</li> <li>• A procedure for conducting preconstruction surveys before the onset of either initial ground-disturbing activity or restoration of the disturbed slopes each day that these activities will occur. The plan shall require a qualified wildlife biologist to conduct pre-construction surveys by carefully probing</li> </ul>	17	<p><i>Monitored by City Consultants and reports are available.</i></p> <p><i>Conducted before start of grading. Reports available upon request.</i></p>

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	<p>and hand-excavating all burrows and rock outcrops in the construction footprint/Restored Slope Area that are shown as potential "low quality habitat." In addition, the biologist will supervise the hand removal of all vegetation in the construction footprint. After the area has been searched for snakes, a barrier fence or "herp fence" will be installed between the areas of potential habitat and the construction zone, to ensure that any AWS do not stray into the area during the course of development. Specifically, the area along the northern portion of the Lower Development Area that will abut the Undeveloped Area will be fenced. The fence will be installed to prevent snake movement (if any are present) under or over the fencing;</p> <ul style="list-style-type: none"> <li>• A protocol for the selection of qualified wildlife biologist<sup>2</sup> staff the project for the duration of construction;</li> <li>• Up to 3 full-time construction "monitors" will be on-site to perform regular inspections of potential AWS habitat and ensure that the "herp" exclusion fence is maintained appropriately. These monitors will also expedite species identification should construction personnel observe snake species within the development area. Construction monitors will be on-site during</li> </ul>		<p><i>Ongoing. Reports available.</i></p> <p><i>Wildlife biologist was hired by City. Several consultants were interviewed the Essex Enviromental was selected to work with Lowney Associates</i></p> <p><i>Complied. And reports are available</i></p>

<sup>2</sup> The term "qualified wildlife biologist" as used in this document indicates a person with at least an undergraduate degree in wildlife biology or a related field, and either professionally certified as a wildlife biologist by The Wildlife Society, or working under the direct supervision of a certified wildlife biologist.

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	<p>all times that grading is occurring in low potential habitat areas. After the grading is completed, monitors will make regular inspections on a weekly basis and as needed for specific work near potential habitat;</p> <ul style="list-style-type: none"> <li>• Worker education materials and procedures for informing construction crews about the potential presence of Alameda whipsnake, responsibilities of project personnel, and authority of the monitoring staff; and</li> <li>• Clear direction and other procedures as required to (1) identify a potential threat to an individual Alameda whipsnake; and (2) eliminate threatening activities in the vicinity of the snake, including notification of the USFWS within 24 hours. Monitors shall have the authority to halt construction activities, but will not be allowed to relocate whipsnakes.</li> </ul>		<i>Mitigation measures are being implemented.</i>
<b>B.2:</b> Post-construction conditions at the project site could result in impacts to the Alameda whipsnake.	The project applicant shall develop and distribute educational materials for all new homeowners describing the sensitive natural resources of the site and urging control of domestic pets. The Covenants, Conditions & Restrictions (CC&R) will stipulate that there will be no feeding of feral cats. Signage will be installed along the perimeter of open space area at intervals of not more than 300 feet describing the open space as natural habitat to be protected and prohibiting destruction of vegetation, wheeled vehicles, and uncontrolled animals.	17	<i>CC&amp;R has been submitted and is being reviewed.  Will be part of CC&amp;R.</i>
<b>B.3:</b> The proposed project would remove 18.3 acres of potential low-quality habitat and create 37 acres of suitable habitat.	<p><b>B.3:</b> As part of the project, 37 acres of suitable habitat will be created.</p> <p>In addition, Restored Slope areas and any undeveloped areas mapped as "Alameda Whipsnake Potential Habitat" in Figure IV.B-4 of the EIR will not be used for recreational trails and will be fenced with split-rail, post-and-cable or other symbolic fencing. Permanent signs will be placed at 100-foot intervals along the fence specifically excluding wheeled vehicles and off-</p>	17	<i>70 acres is being reserved in the map which includes the 37 acres.</i>

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	leash dogs.		
<b>B.4:</b> The proposed project's revegetation plan would maintain potentially suitable habitat for the Alameda whipsnake.	None required.	Not Applicable	
<b>B.5:</b> Construction activities could adversely affect nonlisted special-status nesting raptors and other nesting birds during the breeding season. Removal of trees and shrubs that provide nesting habitat for special-status birds could result in direct mortality of birds. Construction noise and human disturbance could cause nest abandonment, death of young, or loss of reproductive potential at active nests located near the project site.	<b>B.5a:</b> The project applicant shall ensure that construction activities avoid disturbing nests of raptors or other special-status birds through implementation of the Special-Status Species Mitigation and Monitoring Plan.	17	<i>See B.1a</i>
<b>B.6:</b> Construction activities that accidentally or otherwise exceed the boundaries of the Lower Development Area, Campus Drive Area, Restored Slope Area, or revegetation areas within the Undeveloped Area have the potential to disturb or result in mortality of special-status plant species (if they are present).	<b>B.6a:</b> The project applicant shall confine construction activities to the Lower Development Area, Campus Drive Area, Restored Slope Area, and revegetation areas of the Undeveloped Area through fencing, markers, signs, or other means as approved prior to construction activity.	17	<i>Project is confined to the areas as shown in the grading plan which is consistent with MMRP B6.</i>
<b>B.7:</b> The project would result in disturbance to, or direct mortality of, common wildlife species.	None required.	Not Applicable	
<b>B.8:</b> Removal of trees and other proposed construction activities during the breeding season could result in direct mortality of special-status bats. In addition, construction noise and human disturbance could cause roost abandonment and death of young.	<b>B.8a:</b> The project applicant shall avoid disturbance to the roosts of special-status bats during the breeding season through the implementation of the Special-Status Species Mitigation and Monitoring Plan.	17	<i>Special Status Species plan was reviewed and approved. Site is being monitored during construction.</i>

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of young.			
<b>B.9:</b> The project applicant's proposed revegetation plan (prepared by H.T. Harvey & Associates, August 23, 2001), for the mostly barren, steep, and denuded slopes and disturbed, unvegetated slopes would create a wildlife movement corridor for species that inhabit chaparral and coastal scrub. This plan would reconnect the habitat areas north and south of the project site.	None required.	17, 18	<i>Revegetation plan reviewed and approved prior to grading.</i>
<b>B.10:</b> Project construction and grading activities, including those needed for the Altura EVA, would remove trees protected by Title 12, Chapter 12.36 of the City of Oakland's municipal code.	Implementation of Mitigation Measures B.10a, B.10b and B.10c, below.	17, 18, 21	<i>Revegetation plan by H.T. Harvey was approved.</i>
	<b>B.10a:</b> The project applicant shall implement a revegetation plan approved by the City and consistent with the City Tree Protection Ordinance. Implementation of this plan will mitigate for the removal of protected trees.		<i>Revegetation plan by H.T. Harvey was approved.</i>
	<ul style="list-style-type: none"> <li>• A diverse planting of coast live oak, valley oak, blue elderberry, California buckeye, and California bay;</li> <li>• Installation of trees from pot containers that are 4 inches wide by 14 inches long that are grown from propagules of local origin, collected from the project site and immediately adjacent areas;</li> <li>• Replacement of protected trees either on-site in a planting regime that allows for post-planting mortality and assures an eventual replacement at a ratio of at least</li> </ul>	18	

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	<p>1:1, or the substitution of an in lieu fee if replacement trees cannot be planted on-site due to site constraints, as indicated by the City Tree Protection Ordinance;</p> <ul style="list-style-type: none"> <li>• Installation of foliage protectors (cages and tree shelters) to protect the planted trees from wildlife browse;</li> <li>• Regular maintenance of the planted trees during a minimum five-year establishment period, after which time the native tree plantings are typically capable of survival and growth without supplemental irrigation, and weed control (maintenance during the plant establishment period will include irrigation, as needed, and weed control);</li> <li>• Annual monitoring one, two, three, and five years after installation by a qualified restoration ecologist/botanist.<sup>3</sup> Plant survival shall be evaluated with field surveys. Individual trees shall be tagged during the first year of implementation, catalogued in a data base, and surveyed for survival, growth, and vigor. Monitoring reports will be prepared annually and submitted to the City of Oakland. If at any point during the five-year monitoring period, the mitigation plan is judged to have not been successful, the mitigation action shall be re-initiated, after modification as necessary, and monitored for a succeeding five-year period; and</li> <li>• Additional revegetation measures consistent with the City Tree Protection Ordinance.</li> </ul> <p><b>B.10b:</b> The project applicant shall implement the landscape plan prepared by Bradanini &amp; Associates and ensure the following standards</p>	17, 19, 20, 21	<i>Master landscape plan was reviewed by</i>

<sup>3</sup> The term "qualified botanist" as used in this document indicates a person with at least an undergraduate degree in botany, plant ecology, or a related field, and with a minimum of three years of professional field experience within the region or working under the direct supervision of a professional botanist with at least six years of field experience in the region.



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	<p>are incorporated into the landscape plan.</p> <ul style="list-style-type: none"> <li>• The plantings must be comprised of a mix of oaks, cedars, poplars, and acacia.</li> <li>• The trees must be planted from various sized containers, from 15-gallon cans to 24-inch boxes. Trees planted from smaller containers should be massed to form dense plant groupings that will more easily adapt to the site and that will facilitate natural root development.</li> <li>• Plantings along major arterial roads should be large-scale trees, no smaller than 25 feet, and densely clustered with no fewer than one tree per 150 square feet of planting area.</li> <li>• The plantings should be monitored by a qualified botanist for two years to assess the rate of survival and vigor. If there is a less than 95 percent survival rate, dead trees will be replaced with vigorous species.</li> <li>• Native rocks and boulders from the quarry should be used to compliment the natural drainage features, landforms, and new plantings.</li> <li>• Native and naturalized trees and shrubs such as oaks, toyon, manzanita, coyote brush, and redbuds planted within native grass and wildflowers ground plans should be planted.</li> <li>• Planting must be installed in clusters between buildings, but no taller than 15 feet to preserve views from the buildings.</li> <li>• The fire department should be consulted about the proposed plantings to ensure they do not pose a fire hazard.</li> <li>• Plantings should be monitored by a qualified botanist for three years to assess the rate of survival and vigor. If there is a less than 85 percent survival rate, dead</li> </ul>		<p><i>city consultant and approved.</i></p> <p><i>Fire department reviewed the landscape plans and approved verified that the proposed trees are not fire hazard.</i></p> <p><i>Reflected in landscape plans.</i></p>

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	<p>plants will be replaced with vigorous species.</p> <ul style="list-style-type: none"> <li>• Trees will be from a medium-scale plant palette, such as a flowering pear, cherry, crabapple, loquat, and laurel.</li> <li>• Trees should be no larger than 25 feet and no smaller than 12 feet.</li> <li>• Trees should be planted from 24-inch boxes where space permits and from 15-gallon containers in smaller spaces.</li> <li>• Plantings should be monitored by a qualified botanist for two years to assess the rate of survival and vigor. If there is a less than 95 percent survival rate, dead trees will be replaced with vigorous species.</li> <li>• Plants along the edge of the project site will be fast-growing evergreens from a Mediterranean plant palette, such as olive, carob, oleander, and acacia.</li> <li>• Plants should be planted in tight groupings of one tree per 100 square feet of planting area.</li> <li>• To encourage optimum adaptation to this area and facilitate natural root development, smaller plantings from containers of no greater than 15-gallon cans should be used.</li> <li>• Plantings should be monitored by a qualified botanist for three years to assess the rate of survival and vigor. If there is a less than 85 percent survival rate, dead trees and shrubs will be replaced with vigorous species.</li> </ul> <p><b>B.10c:</b> The project applicant shall develop and implement a tree protection plan consistent with the City of Oakland Tree Protection Ordinance that will ensure construction-related impacts to protected trees outside of the construction area are avoided.</p> <ul style="list-style-type: none"> <li>• If proposed construction activities will</li> </ul>	17, 21	<i>Implemented prior to grading activity and on ongoing basis. City consultants and developer's consultants are monitoring the</i>

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	<p>encroach upon the dripline (approximately equal to the area covered by the tree's canopy) of a protected coast live oak tree, the following measures will be implemented for these trees: (1) a 4-foot-tall temporary fence will be placed around the dripline of the tree prior to beginning the work; (2) no grade changes will occur within the dripline of the tree, unless specifically indicated in the plans; (3) no trenching will be allowed within the dripline of the tree (if it is necessary to install underground utilities within the temporary fence, the utility trench will be hand-dug so as not to cut any roots over 2 inches in diameter, or a line may be bored or drilled); and (4) only dead, weakened, diseased, or dangerous branches will be removed, and only by a licensed arborist (any branches 2 inches in diameter or larger that must be cut will be cleanly cut with pruning rather than excavation equipment).</p> <ul style="list-style-type: none"> <li>• Silt fences will be installed around the dripline of trees to be retained within the development envelope prior to any construction-related activities in order to prevent accidental damage. These fences will remain in place until all construction-related activities have ceased.</li> <li>• Initial grading and other construction activities around protected trees will be monitored by a qualified arborist (selected by the City) on a monthly basis or as necessary to ensure that trees are not damaged or removed unnecessarily. The results of the monitoring will be documented in writing.</li> <li>• A certified arborist will survey coast live oak and California bay trees for evidence of Sudden Oak Death Syndrome (SOD) prior to removal. If trees suspected of infection by the SOD pathogen are found on the project site, the Alameda County</li> </ul>		<p><i>monitoring the site and reports are available upon request.</i></p> <p><i>Implemented and monitored.</i></p> <p><i>Implemented and monitored.</i></p> <p><i>Implemented on ongoing basis.</i></p>

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	<p>Agricultural Commissioner will be contacted for further action. Removal of oak trees will follow <i>Guidelines for Prevention of Spread of SOD</i> (<a href="http://www.suddenoakdeath.org/">http://www.suddenoakdeath.org/</a>). These guidelines recommend either chipping tree material and spreading the chips on-site or burning slash material on-site. Wood chips should not be transported off site. Material too large to chip should be left in place to the greatest extent possible. If wood is removed from the property for disposal, it should be disposed of locally and not transported to an area that is free of the disease.</p> <ul style="list-style-type: none"> <li>• Tree removal will not occur during March through June without a bird survey to determine that the tree is unused during the breeding season by avian species that are protected under Fish and Game Codes 3503, 3503.5, and 3511. Adherence to this mitigation measure would reduce the impacts to protected bird species to a less-than-significant level.</li> </ul>		<i>Monitored and reports are available.</i>
<b>C. Cultural Resources</b>			
<b>C.1:</b> Excavation at the proposed project site and Altura EVA could unearth and damage important paleontological resources.	<b>C.1a:</b> If a paleontological resource is unearthed at the project site or along Altura Place, either during excavation or construction activities, the project sponsor shall halt all excavation and/or construction activities within a 25-foot radius of the find. A qualified cultural resource consultant or archaeologist shall evaluate the potential resource, as well as assess the significance of the find if the resource is found to be significant under the criteria set forth in Section 15064.5 of the CEQA Guidelines. The project sponsor shall not alter any of the uncovered materials or their context. If the City determines that avoidance is not feasible, a qualified cultural resource consultant shall prepare an excavation plan for mitigating the effect of the project on the qualities that make	15, 41	<i>City consultants and staff are monitoring the project site during construction and if any of the resources are uncovered, the mitigation measures will be implemented.</i>

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	the resource important. The plan shall be prepared in accordance with provisions of Public Resources Code Section 21083.2 and shall be submitted to the City for review and approval.		
<b>C.2:</b> The proposed project could result in discovery of and/or inadvertent damage to Native American cultural resources.	Implementation of Mitigation Measures C.2a and C.2b, below.		<i>Site is being monitored. No resources is uncovered.</i>
	<b>C.2a:</b> If a potential Native American cultural resource is discovered at the project site or along Altura Place, either during excavation or construction activities, the project sponsor shall immediately halt all excavation and/or construction activities within 25 feet of the find. The City of Oakland shall also require that a qualified archaeologist evaluate the find, assess the significance of the find, and recommend appropriate actions. Potential Native American resources include, but are not limited to, obsidian and chert flakes and chipped stone tools, arrowheads, ornaments, pottery fragments, grinding and mashing implements (such as slabs and handstones, and mortars and pestles), and locally darkened midden soils containing some of the previously listed items plus fragments of bone or fire-affected stones. Potential actions include, but are not limited to, significance evaluation, collection, recordation, and analysis. The City of Oakland will assure implementation of appropriate mitigation measures recommended by the cultural resource consultant.	15, 41	
	<b>C.2b:</b> In the event that human skeletal remains are uncovered during construction activities for the proposed project, the project sponsor shall immediately halt work and contact the Alameda County Coroner to evaluate the remains. If the County Coroner determines that the remains are Native American, the City will contact the California Native Heritage Commission, pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities will cease until	15, 41	<i>Monitored and none found.</i>

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	appropriate arrangements are made.		
<b>C.3:</b> Development proposed as part of the project could unearth and damage an important archaeological resource.	<b>C.3a:</b> In the event an archaeological resource is unearthed, either during excavation or construction activities, the project sponsor shall immediately halt all excavation and/or construction activities within 25 feet of the find. A qualified archaeologist shall evaluate the find, assess the significance of the find, and recommend actions. Potential archaeological resources include, but are not limited to, structural remains or portions of foundations (bricks, cobbles/boulders, stacked field stone, postholes, etc.); trash pits, privies, wells, and associated artifacts; and isolated artifacts, including glass bottles, manufactured wood items, etc. The City of Oakland will assure implementation of recommendations made by the archaeologist.	15, 41	<i>Monitored and none found.</i>
<b>C.4:</b> The proposed project would be located adjacent to or near historic buildings, as defined by the Oakland General Plan Historic Preservation Element and/or by the CEQA Guidelines.	None required.	Not Applicable	
<b>D. Geology, Seismicity, and Mineral Resources</b>			
<b>D.1:</b> In the event of a major earthquake, especially on the Hayward fault, shear zones or other areas on or near the proposed project site could be susceptible to minor, sympathetic rupture due to excessive seismic ground motion. Such an event could expose people and property to the hazards associated with lateral and/or vertical ground offset.	<b>D.1a:</b> The site-specific, design-level geotechnical investigation, which is typical for any residential development and required as part of this project, shall include recommendations for structural design parameters for residential foundations that are sufficient to resist sympathetic movement within shear zones on the project site. For those planned structures underlain by thin, engineered fill or bedrock, the geotechnical engineer shall identify appropriate structural mitigation and incorporate the mitigation into the final design-level geotechnical recommendations. The final recommendations shall comply with UBC design standards and be approved by the City of	22	<i>N/a . building will be designed per standard and reviewed by City.</i>

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	Oakland Building Services Division. Once approved, these recommendations shall become part of the project and be incorporated into the final design.		
<b>D.2:</b> In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to existing and proposed structures. Ground shaking could potentially expose people and property to seismic-related hazards, including liquefaction and earthquake-induced settlement.	<b>D.2a:</b> The site-specific, design-level geotechnical investigation, which is typical for any residential development and required as part of this project, shall include an analysis of expected ground motions along the Hayward fault. This analysis shall be in accordance with the 1997 UBC, which requires structural design that incorporates ground accelerations expected from known active faults. Expected ground motions determined by a registered geotechnical engineer shall be incorporated into the final structural design as part of the project. The final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division.	22	<i>N/a. designs will be per standard and reviewed by City.</i>
<b>D.3:</b> Development at the project site could subject people and property to slope instability hazards, including landslides, debris flows, and rockfalls caused by seismic and nonseismic mechanisms.	See Measures D.3a, D.3b, D.3c and D.3d, below.		<i>Site being monitored by soil engineers and reports are available.</i>
	<b>D.3a:</b> During slope cut-and-fill operations, especially on the high slope in the Restored Slope Area where landslide materials have been identified, incompetent bedrock materials or landslide debris exposed in the design cut slope shall be completely removed and replaced with drained, engineered fill. Inspection of these materials shall be completed by a registered civil or geotechnical engineer or certified engineering geologist with knowledge of the Leona Quarry geology and past landslide conditions. Upon identification of incompetent materials, the engineer or geologist shall oversee the removal of the suspected material and placement of the drained, engineered fill.	22	<i>Site being monitored by soil engineers and reports are available.</i>

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	<b>D.3b:</b> In the Undeveloped Area, residential or commercial buildings shall not be sited between the street and the edge of the sloped area. To avoid potential debris flow or rockfall, or other unstable slope condition, residential and commercial building shall be placed on the opposite side of the street, away from slopes of the western portion of the Undeveloped Area.	22	
	<b>D.3c:</b> In order to reduce potential slope instability hazards, the applicant shall implement measures to improve slope stability and reduce the potential for rockfall hazards in areas of the proposed site with unstable slope conditions. These measures could include but are not limited to the construction of debris fences, diversion walls, drainage/debris catchment benches fence barriers at the base of slopes, installation of rock bolts (or equivalent technology) within the slope face, or mechanical removal of unstable or potentially unstable rock masses in the disturbed, Undeveloped Area on the slope above "B" Street (also referred to as "H" Street (see Chapter III of the DEIR)), as recommended in the Final Grading and Geotechnical Report.	22	
	<b>D.3d:</b> Geotechnical engineer recommendations regarding the investigation, mitigation, and reduction of earthquake-induced landslide hazards shall be prepared in accordance with <i>California Division of Mines and Geology Guidelines for Evaluating and Mitigating Seismic Hazards</i> (CDMG Special Publication 117, 1997).	22	<i>Done prior to grading permit.</i>
<b>D.4:</b> Development at the project site could be subjected to settlement, differential settlement, and related geologic hazards.	<b>D.4a:</b> The applicant shall incorporate into the project grading plan and construction specifications the recommendations provided by the project geotechnical engineer regarding settlement, presented in Berloger's February	22	<i>Part of approved grading plan. Done.</i>



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	<p>2002 report, as amended.</p> <ul style="list-style-type: none"> <li>• All fill materials on the project site, with the exception of the fill material in the lower portion of the Lower Development Area, shall be removed and replaced as engineered fill. Fill in the lower portion of the Lower Development Area can remain in its current condition because of its compacted state.</li> <li>• Given the configuration of the proposed grading, it is recommended that the lower portion of the Lower Development Area be filled to design grade and settlement plates installed to monitor the settlement of the existing fill from the increased loading of the proposed fill.</li> <li>• Settlement plates shall be surveyed on a bimonthly basis (every two weeks) for the first three months and then monthly thereafter for the following 18 months.</li> <li>• Construction of buildings shall proceed once settlement plate readings indicate that the rate of settlement has decreased to a level that structures can tolerate.</li> <li>• New fill shall be compacted to a minimum of 95 percent relative compaction where placed more than five feet below finished grade, and the upper 5 feet shall be compacted to not less than 90 percent relative compaction.</li> </ul>		<p><i>Monitored and reports are available.</i></p> <p><i>Installed and being monitored and reports are available.</i></p> <p><i>Compaction complies. Compaction results are available.</i></p>
<b>D.5:</b> Soil erosion of exposed cut or fill slopes, native slopes with removed vegetation, and soil stockpiles could result in damage to structures and temporary disruption to rough and final grading operations and construction as well as exacerbate the potential for landslide or debris flow.	<b>D.5a:</b> The project applicant shall incorporate into the grading and construction specifications provisions requiring that all phases of construction implement best management practices (BMPs) to reduce and eliminate soil erosion. The contractor shall implement these BMPs, and the contractor shall be responsible for the inspection and maintenance of the BMPs through all phases of construction.	22, 41	<i>Implemented during grading and wet season.</i>
<b>D.6:</b> Shallow groundwater levels on the project site and the proposed	Implementation of Mitigation Measures D.6a and D.6b below	23	<i>Implemented. Detention Basin</i>

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the project site and the proposed detention basin could alter groundwater flow patterns, cause groundwater mounding, increase groundwater flow gradients, and ultimately result in increased groundwater seepage rates downgradient of the project site.	D.6b, below.		<i>Detention Basin is constructed.</i>
	<b>D.6a:</b> The applicant shall incorporate the geotechnical recommendation for 10-foot-deep, trenched subdrains in areas where groundwater would be shallow and potentially seep to the surface after final grading (i.e., the southeast corner of the Lower Development Area). As recommended, the subdrains would be installed along the inboard edges of "I," "J," and "K" Streets.	23	<i>Done as part of grading operations.</i>
	<del><b>D.6b</b> Requirements as part of Mitigation Measure F.1 have superceded this measure. The applicant shall determine the infiltration rates of the detention basin as currently designed. If the detention basin would result in infiltration rates capable of causing mounding or other adverse impacts to the local water table system, the applicant shall incorporate mitigation to reduce infiltration from the detention pond and restore groundwater levels to pre-project conditions. If necessary, the project applicant shall require that an impervious liner be installed at the bottom of the detention basin to prevent infiltration of detained surface water and eventual saturation of the sides and bottom of the basin. The design for an appropriate liner shall be incorporated into the final design and become an element of the proposed project.</del>	23	
<b>D.7:</b> Development of a residential community at the Leona Quarry site would permanently restrict the ability to quarry the Leona Rhyolite aggregate source, which is considered of prime importance because it is a known economic	None required.	Not Applicable	

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mineral deposit.			
<b>D.8:</b> Development of a residential community at the Leona Quarry site could result in exposing sulfur-bearing mineral ores to oxygen and water, potentially causing stormwater runoff quality issues.	None required.	Not Applicable	
<b>E. Hazards and Hazardous Materials</b>			
<b>E.1:</b> Naturally occurring levels of metals such as arsenic in soil could expose construction workers or future residents to hazards.	None required.	Not Applicable	
<b>E.2:</b> Hazardous materials used on-site during construction activities (i.e., petroleum products) could be spilled through improper handling or storage.	None required.	Not Applicable	
<b>E.3:</b> Development at the project site would expose future residents to hazards associated with wildland fires.	<b>E.3a:</b> The project sponsor shall follow the policies and guidelines set forth in the Oakland Municipal Code and the Vegetation Management Almanac for the East Bay Hills (prepared by the Hills Emergency Forum, 2001) to minimize the use of highly flammable building materials and landscaping.	18, 19	<i>Landscape plan reviewed by fire dept. Specific landscape plans will be reviewed by City consultants.</i>
<b>F. Hydrology and Water Quality</b>			
<b>F.1:</b> Development of the project site could create localized flooding and contribute to a cumulative flooding downstream.	Implementation of Mitigation Measures F.1a and F.1b, or Alternate Mitigation Measure F.1a, and Alternate Mitigation Measure F.1b:  <b>Mitigation Measure F.1a:</b> The Project sponsor shall be required to construct a stormwater management system, that includes a detention basin and outlet works capable of maintaining peak flows from the 24-hour, 25-year design storm at or below pre-project levels, and that		<i>Detention basin for 25 acre-feet with 3 feet of water quality has been constructed. The as-built will be provided at the end of grading construction</i>

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	<p>will not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contribution to local groundwater flow. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate stormwater outlets. The stormwater management system reviewed in the SEIR, with the 15.6 acre-foot lower detention basin, meets these performance standards.</p> <p><b>Mitigation Measure F.1b:</b> The Project sponsor shall modify the existing Ridgemont Sub-watershed pond (Pond 4). Improvements to the pond outflow structure shall include the following elements (or design elements that achieve an equivalent discharge rating curve using the parameters resulting from the consensus process discussed in this SEIR equivalent to that achieved by the following elements): replacing the existing 30-inch outlet pipe with a 42-inch outlet pipe, adding a single drop box with one rectangular orifice, and construction an emergency spillway. The perimeter of the drop box would be comparable to a 36-inch rise and the rectangular orifice would be 2.75 feet by 2.0 feet in size. The replacement of the outlet pipe shall be consistent with standard engineering practice. A geotechnical evaluation of the existing detention basin levees and proposed modifications shall be completed to assess the overall integrity of the pond and recommendations from the evaluation shall become part of the Project design and be implemented as directed by a registered geotechnical engineer.</p> <p><b>Alternate Mitigation Measure F.1a:</b> The Project sponsor shall be required to construct a stormwater management system, that includes a detention basin and outlet works capable of maintaining peak flows from the 24-hour, 25-</p>		<p><i>construction.</i></p> <p><i>Detention Basin Design has been reviewed by City Hydrologist and certified that it met their recommendation.</i></p>

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	<p>year design storm at or below pre-project levels, and that will not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contribution to local groundwater flow. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate stormwater outlets. The stormwater management system reviewed in the SEIR, with a single basin with 20.5 acre-feet of detention capacity, meets these performance standards.</p> <p><b>Alternate Mitigation Measure F.1b:</b> The Project sponsor shall modify the existing Ridgemont Sub-watershed pond (Pond 4) by installing a 42" flow-through pipe system to minimize the detention capabilities of that existing pond.</p>		
F.2: Construction activities could result in soil erosion and increase levels of suspended sediments and contaminants in stormwater flows, resulting in adverse impacts to downstream water quality.	Implementation of Mitigation Measures F.2a and F.2b, below.	23	
	<p><b>F.2a:</b> The project applicant shall comply with all National Pollutant Discharge Elimination System (NPDES) requirements, including the preparation of a SWPPP prior to construction activities, as required by the State Water Resource Control Board's (SWRCB) General Permit for Construction Activities. Implementation of the plan starts with the commencement of construction and continues through the completion of the project. Upon completion of the project, the sponsor must submit a Notice of Termination to the SWRCB to indicate that construction is completed. The SWPPP shall include at a minimum:</p>	23, 41	<i>Developer, staff and consultants have been working with SWRCB to achieve compliance.</i>

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	<ul style="list-style-type: none"> <li>• Excavation and grading activities will be scheduled for the dry season only (April 15 to October 15), to the extent possible. This will reduce the chance of severe erosion from intense rainfall and surface runoff, as well as the potential for soil saturation in swale areas.</li> <li>• If excavation occurs during the rainy season, storm runoff from the construction area will be regulated through a stormwater management/erosion control plan that may include temporary on-site silt traps and/or basins with multiple discharge points to natural drainages and energy dissipaters. Stockpiles of loose material will be covered and runoff diverted away from exposed soil material. If work is stopped due to rain, a positive grading away from slopes will be provided to carry the surface runoff to areas where flow can be controlled, such as the temporary silt basins. Sediment basin/traps will be located and operated to minimize the amount of offsite sediment transport. Any trapped sediment will be removed from the basin or trap and placed at a suitable location on-site, away from concentrated flows, or removed to an approved disposal site.</li> <li>• Temporary erosion control measures will be provided until perennial revegetation or landscaping is established and can minimize discharge of sediment into nearby waterways. For construction within 500 feet of a water body, straw bales will be placed upstream adjacent to the water body.</li> <li>• After completion of grading, erosion protection will be provided on all cut-and-fill slopes. Revegetation will be facilitated by mulching, hydroseeding, or other methods and should be initiated as soon as possible after completion of grading and prior to the onset of the rainy season (by November 1).</li> <li>• Permanent revegetation/landscaping will</li> </ul>		<p><i>Site has been hydroseeded and covered with adequate erosion control measures. Wet weather grading has been issued on two week basis with additional conditions.</i></p> <p><i>The proposed storm drainage system has dissipaters to slow down the water velocity.</i></p> <p><i>An extensive SWPPP has been implemented and an enhanced filtration system installed to remove runoff turbidity.</i></p> <p><i>N/a</i></p> <p><i>Master landscape plan reviewed and approved.</i></p>

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	<p>emphasize drought-tolerant perennial ground coverings, shrubs, and trees to improve the probability of slope and soil stabilization without adverse impacts to slope stability due to irrigation infiltration and long-term root development.</p> <ul style="list-style-type: none"> <li>• BMPs selected and implemented for the project will be in place and operational prior to the onset of major earthwork on the site. The construction phase facilities will be maintained regularly and cleared of accumulated sediment as necessary.</li> <li>• Hazardous materials such as fuels and solvents used on the construction sites will be stored in covered containers and protected from rainfall, runoff, and vandalism. A stockpile of spill cleanup materials will be readily available at all construction sites. Employees will be trained in spill prevention and cleanup, and individuals will be designated as responsible for prevention and cleanup activities.</li> </ul>		<p><i>Part of implemented SWPPP.</i></p> <p><i>Monitored onsite.</i></p>
	<b>F.2b:</b> In addition to NPDES requirements, the project applicant shall also be required to comply with all City of Oakland rules and regulations.	23, 41	<i>Complies. SWPPP was approved by City.</i>
<b>F.3:</b> Construction dewatering could result in discharge of sediment-laden groundwater or impacts to local groundwater gradients and flow.	<b>F.3a:</b> The project sponsor shall comply with all applicable regulatory agency requirements set forth by the City of Oakland Public Works, San Francisco Bay RWQCB, or EBMUD regarding disposal of groundwater generated during site dewatering activities. Prior to discharge, the applicant will be required to obtain a discharge permit from ACFC or the RWQCB. In addition, these agency requirements will be incorporated into a construction dewatering plan that will provide contractors and future site operators with guidance on groundwater and surface water disposal during construction activities. The dewatering plan shall become part of the project.	23	<i>N/a. required if dewatering will occur.</i>

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<p><b>F.4:</b> Upon completion of construction activities, the proposed project could result in a long-term increase in stormwater runoff contaminant levels, degrading downstream receiving water quality.</p>	<p>Implementation of Mitigation Measures F.4a and F.4b, below.</p>	23	<p><i>Detention basin is constructed onsite to mitigate.</i></p>
	<p><b>F.4a:</b> To comply with provisions of the Clean Water Act, the project shall incorporate BMPs, including preparation of a stormwater discharge plan to minimize stormwater runoff and associated offsite migration of stormwater pollutants.</p> <ul style="list-style-type: none"> <li>• Grass strips, high-infiltration substrates, and grassy swales will be used where feasible throughout the development to reduce runoff and provide initial stormwater treatment.</li> <li>• Small detention basins may be installed beneath large parking areas to provide initial filtration prior to discharge into the flood control basins.</li> <li>• Roof drains will drain to natural surfaces or swales where feasible to avoid excessive concentration and channelization of stormwater.</li> <li>• Permanent energy dissipaters will be included for drainage outlets.</li> <li>• The water quality detention basins will be designed to provide effective water quality control measures, including the following: <ul style="list-style-type: none"> <li>- Maximize detention time for settling of fine particles, within basin draw down requirements as set by the ACFC or City of Oakland.</li> <li>- Establish maintenance schedules for periodic removal of sedimentation, excessive vegetation, and debris that may</li> </ul> </li> </ul>	23	<p><i>Part of approved SWPPP and revised to invoke compliance.</i></p> <p><i>Will apply where feasible.</i></p> <p><i>Dissipaters are part of the storm system.</i></p> <p><i>A 3 acre feet of water quality provision in part of the permanent detention basin.</i></p>



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	clog basin inlets and outlets.		
	<b>F.4b:</b> The project sponsor shall develop and implement a vegetation control and/or fertilizer management plan for the landscape areas, with the goal of reducing potential discharge of such chemicals to local waterways.	23	<i>Submitted for review by City consultants.</i>
<b>F.5:</b> Increased sediment and pollutant loads from site development in surface runoff and storm water could decrease habitat quality for central California coastal steelhead and winter-run Chinook salmon in drainage courses downstream from the project site and in the San Francisco Bay.	<p><b>F.5a:</b> The project sponsor shall prepare and implement a SWPPP for the project as required by the San Francisco Bay RWQCB under its NPDES General Permit. The SWPPP will be updated as needed to reflect changes in the project design and site conditions.</p> <ul style="list-style-type: none"> <li>• Berms will be constructed in the project area with sediment catchment basins in depressions and stormwater collection areas in the construction zone, using hay bales or other structures suitable to minimize sediment from being transported and deposited outside of the construction zone. Catchment basins and berms will be incorporated into the final project design.</li> <li>• The SWPPP will outline interim and permanent stabilization practices, including a schedule for implementation; to ensure that disturbed portions of the project site are stabilized as quickly as practicable.</li> <li>• The use of sediment control basins, sediment traps, silt fences, vegetative buffer strips, or equivalent control measures will be taken to rescue sediment and pollutant loads into sensitive riparian and wetland habitats.</li> </ul>	22, 23	<i>Has been prepared, approved, enhanced., and implemented</i>
<b>G. Land Use, Plans, and Policies</b>			
No impacts or mitigation measures.			
<b>H. Noise</b>			
<b>H.1:</b> Construction activities would intermittently and temporarily	Implementation of Mitigation Measures H.1a, H.1b and H.1c, below.		<i>Noise level are being monitored</i>

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generate noise levels above existing ambient levels in the project vicinity.	H.1b and H.1c, below.		<i>daily and reports submitted weekly.</i>
	<b>H.1a:</b> The project sponsor shall ensure that standard construction activities be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction activities shall be allowed on weekends, until the buildings are enclosed, without prior authorization of the Building Services and Planning Divisions of the Community and Economic Development Agency.	41	<i>Part of grading hours condition.</i>
	<b>H.1b:</b> To reduce daytime noise impacts due to construction, the City shall require construction contractors to implement the following measures:	41	<i>Reviewed and approved as part of construction management and phasing plan. Implemented prior to issuance of grading.</i>
	<ul style="list-style-type: none"> <li>• Signs will be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems.</li> </ul>		
	<ul style="list-style-type: none"> <li>• An on-site complaint and enforcement manager will be posted to respond to and track complaints.</li> </ul>		
	<ul style="list-style-type: none"> <li>• A preconstruction meeting will be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.).</li> </ul>		<i>Weekly site meeting is held regularly.</i>

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	<ul style="list-style-type: none"> <li>• Equipment and trucks used for project construction will utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible).</li> <li>• Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction will be hydraulically or electrically powered, wherever possible, to avoid noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust will be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves will be used, where feasible, which could achieve a reduction of 5 dBA. Quieter procedures will be used, such as drills rather than impact equipment, whenever feasible.</li> <li>• Stationary noise sources will be located as far from sensitive receptors as possible and will be muffled and enclosed within temporary sheds, or insulation barriers or other measures will be incorporated to the extent feasible.</li> <li>• For noise over 90 dBA, a third-party peer review, paid for by the applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of a noise reduction plan submitted by the applicant.</li> <li>• For noise over 90 dBA, a special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of deposit shall be determined by the Building Official and the deposit shall be submitted by the project sponsor concurrent with submittal</li> </ul>		<p style="text-align: right;"><i>Complying based on weekly reports submitted.</i></p> <p style="text-align: right;"><i>Noise is monitored daily and reported weekly.</i></p>

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	of the noise reduction plan.		
	<b>H.1c:</b> If subterranean blasting were to occur at the project site, the project applicant shall prepare an operational control and detonation plan. The plan shall be submitted to the City for review and approval prior to the issuance of grading permits. The plan shall include the following: (1) be prepared by a licensed geophysicist; (2) assure that ground acceleration will not effect neighboring structures; (3) monitor such ground acceleration with a minimum of three seismographs; and (4) designate hours of blasting and techniques to reduce noise levels to the extent feasible. Such techniques may include the use of non-electric caps and covering of shots with fill material or blankets. The blasting contractor shall notify building occupants within 500 feet of the project site of the blasting schedule at least one week in advance.	41	<i>N/a. will require if it is to occur.</i>
	The construction specifications for the project shall incorporate standards for vibration thresholds published by the U.S. Bureau of Mines or Caltrans to avoid significant impacts to humans and structures. The construction specifications will require monitoring of vibration during detonation events, which will then be compared to the adopted standards. Monitored exceedance of the standards would result in suspension of detonations and an adjustment in design of subsequent blasts.		<i>N/a</i>
<b>H.2:</b> Project-related traffic would generate noise that would affect nearby sensitive receptors.	None required.		Not Applicable
<b>H.3:</b> The project would expose persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.	None required.		Not Applicable

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<b>H.4:</b> The proposed project, together with anticipated future development in Oakland, could result in long-term traffic increases and could cumulatively increase noise levels.	None required.	Not Applicable	
<b>I. Population and Housing</b>			
<b>I.1:</b> The proposed project would result in an increase in the residential population of the South Hills Planning Area, the City of Oakland, and Alameda County.	None required.	Not Applicable	
<b>I.2:</b> When considered with other development in the area, including development proposed for the Oak Knoll Naval Medical Center site, the project would cumulatively increase the population in the vicinity of the project site.	None required.	Not Applicable	
<b>J. Public Services</b>			
<b>J.1:</b> The proposed project could result in an increase in calls for police protection services.	None required.	Not Applicable	
<b>J.2:</b> The proposed project would increase the number of calls for fire protection services and emergency medical assistance.	None required.	Not Applicable	
<b>J.3:</b> The proposed project would result in new students for local schools.	None required.	Not Applicable	
<b>J.4:</b> Development proposed as part of the project would increase the demand for library services.	None required.	Not Applicable	
<b>J.5:</b> Development proposed as part of the project could increase the demand for parks and recreational	None required.	Not Applicable	

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demand for parks and recreational facilities.			
<b>J.6:</b> Development proposed as part of the project, when combined with development proposed at the former Oak Knoll Naval Medical Hospital, would result in cumulative impacts to Oakland's public schools.	None required.	Not Applicable	
<b>K. Transportation, Circulation, and Parking</b>			
<b>K.1:</b> Traffic generated by Phase 1 of the project would affect traffic levels of service at local intersections in the project vicinity in 2005.	None required.	Not Applicable	
<b>K.2:</b> Traffic generated by the project (under full buildout) would affect traffic levels of service at local intersections in the project vicinity in 2020.	<p>Implementation of Mitigation Measures K.2a, K.2b, K.2c, K.2d, K.2e, K.2f, K.2g, K.2h, and K.2i.</p> <p>Note: Mitigation Measures K.2d, K.2e, K.2g, K.2h and K.2i include the following:</p> <p>The City shall use its best, good faith efforts, to prepare and implement a Traffic Improvement Program ("TIP") and a Traffic Improvement Fee ("TIF") for the Edwards Avenue Corridor, which may include the improvements listed below. If the City has adopted a TIP and TIF prior to the issuance of a building permit for the 351<sup>st</sup> unit excluding the Gateway Senior Residential and Lots 1-19 (the "Trigger Date"), the Project Applicant shall pay a fair share of the cost for the following traffic improvements in the amounts set forth in Attachment A to these Conditions of Approval. If the TIP and TIF have not been implemented as of the Trigger Date and other future projects that cumulatively trigger the need for the traffic improvements listed below have been approved, then the Project Applicant shall provide an acceptably rated bond or other security satisfactory to the</p>	25, 26	<i>Staff is working with developer and consultants to secure Cal Trans related encroachment permits. The construction of the improvement at Greenly and Edwards in complete.</i>

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	<p>City Attorney to ensure funding of the entire cost of such traffic improvements, subject to an agreement with the City to reimburse the Project Applicant with funds raised from these future projects for amounts in excess of the Project's fair share. If as of the Trigger Date a TIP and TIF have not been adopted and the Project Applicant does not agree that the other approved projects have triggered cumulatively the need for such improvements, the Project Applicant may request that the City conduct a traffic study to determine whether the traffic improvements listed below are required. The Project Applicant shall pay for the cost of the traffic study, as established by the City with regard to scope of work and selection of a qualified traffic engineer. The City agrees to perform the traffic study and agrees to reasonably consider amending the list of improvements to implement the conclusions of the traffic study. If the study determines that certain of the improvements are not required, then upon this determination, the Project Applicant shall pay the City only the Project's fair share of the cost for each such improvement, based upon the lower of the amounts set forth in Attachment A to the conditions of approval for the project or a revised cost for such improvements approved by the City in its sole discretion. In the event the Project Applicant installs or otherwise pays for the entirety of any of the traffic improvements listed in Mitigation Measures K.2c, K.2d, K.2e, K.2.f, K.2g, K.2h, K.2i, the Project Applicant shall receive a credit or reimbursement for such work or costs that exceed its fair share. This Condition of Approval applies to the following traffic improvements:</p>		
<p><b>K.2a:</b> Addition of project-generated traffic at the modified unsignalized intersection of <i>Edwards Avenue / I-580 westbound on-ramp – Mountain Boulevard [1]</i>, reconfigured to contain a fourth leg (project site access), would cause traffic signal</p>	<p><b>K.2a:</b> The project applicant shall work with the City of Oakland and Caltrans to install traffic signals at the unsignalized intersection of <i>Edwards Avenue / I-580 westbound on-ramp – Mountain Boulevard [1]</i>, to reconfigure traffic lanes on Edwards Avenue between the I-580 eastbound off-ramp and Mountain Boulevard,</p>	25, 26	<p><i>Traffic improvement plan submitted with schedule. Staff is working with developer and consultants</i></p>

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warrants, not satisfied without the project, to be satisfied during the a.m. and p.m. peak hours (a significant impact).	and to widen the freeway on-ramp to provide two lanes. The project applicant shall pay for this measure. Prior to commencing construction of the project, the project applicant shall prepare and submit to the City for its approval a traffic improvement plan for all traffic improvements that are to be funded solely by the project applicant and that require Caltrans' approval. The plan shall include a schedule for obtaining Caltrans' approval and constructing such improvements prior to the construction of project elements that create the need for such improvements.		<i>to secure Cal Trans related encroachment permits. The construction of the improvement at Greenly and Edwards in complete.</i>
<b>K.2b:</b> Volumes at the side-street stop-controlled unsignalized intersection of <i>Edwards Avenue / I-580 eastbound off-ramp [2]</i> would satisfy traffic signal warrants with or without the project, and addition of project traffic would degrade the overall level of service from LOS B to LOS F during the p.m. peak hour.	<b>K.2b:</b> The project applicant shall work with Caltrans and coordinate with the City of Oakland to install traffic signals at the unsignalized intersection of <i>Edwards Avenue / I-580 eastbound off-ramp [2]</i> , and to relocate the driveway of the Burckhalter Park to better align with the off-ramp, eliminating the current offset separation of these two approaches to Edwards Avenue and creating a four-leg intersection. The project applicant shall pay for this measure. Prior to commencing construction of the project, the project applicant shall prepare and submit to the City for its approval a traffic improvement plan for all traffic improvements that are to be funded solely by the project applicant and that require Caltrans' approval. The plan shall include a schedule for obtaining Caltrans' approval and constructing such improvements prior to the construction of project elements that create the need for such improvements.	25, 26	<i>Traffic improvement plan submitted with schedule. Staff is working with developer and consultants to secure Cal Trans related encroachment permits. The construction of the improvement at Greenly and Edwards in complete.</i>
<b>K.2c:</b> The LOS F conditions at the signalized intersection of <i>Edwards Avenue / Greenly Drive [4]</i> , which would prevail during the p.m. peak hour under 2020 Baseline conditions, would worsen with the addition of project traffic. The project-generated increases in vehicle delay would exceed the two-second threshold of	<b>K.2c:</b> The project applicant shall work with the City of Oakland to restripe Edwards Avenue to provide a separate westbound left-turn lane at <i>Edwards Avenue / Greenly Drive [4]</i> . The project applicant shall be responsible for this measure.	25, 26	<i>Traffic improvement plan submitted with schedule. Staff is working with developer and consultants to secure Cal Trans related encroachment</i>



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significance.			<i>permits. The construction of the improvement at Greenly and Edwards in complete.</i>
<b>K.2d:</b> The signalized intersection of <i>73rd Avenue / MacArthur Boulevard [6]</i> would degrade from LOS D to LOS E during the a.m. peak hour with the addition of project traffic. In addition, the project-generated increase in vehicle delay under LOS E conditions during the p.m. peak hour would exceed the six-second threshold of significance.	<b>K.2d:</b> The project applicant shall pay a fair share of the cost to modify the west leg of the signalized intersection of <i>73rd Avenue / MacArthur Boulevard [6]</i> to add a second left-turn lane on eastbound 73rd Avenue.	25, 26	<i>N/a.11/24/04</i>
<b>K.2e:</b> The LOS F conditions at the all-way stop-controlled unsignalized intersection of <i>Mountain Boulevard / Keller Avenue [7]</i> , which would prevail during the p.m. peak hour under 2020 Baseline conditions, would worsen with the addition of project traffic. The project-generated increase in vehicle delay would exceed the two-second threshold of significance.	<b>K.2e:</b> The project applicant shall work with the City of Oakland to install traffic signals and to restripe the eastbound Keller Avenue approach to provide two through-lanes at the unsignalized intersection of <i>Mountain Boulevard / Keller Avenue [7]</i> . The project applicant shall pay a fair share of the cost for this measure.		
<b>K.2f:</b> The side-street stop-controlled unsignalized intersection of <i>Mountain Boulevard / I-580 westbound off-ramp – Sanford Avenue [8]</i> would degrade from LOS C to LOS E during the p.m. peak hour with the addition of project traffic. Traffic volumes at the intersection would not satisfy traffic signal warrants, but the increase in vehicle delay on the off-ramp approach due to the addition of project traffic (from LOS D to F) would be high enough	<b>K.2f:</b> The project applicant shall work with Caltrans and coordinate with the City of Oakland to install traffic signals at the unsignalized intersection of <i>Mountain Boulevard / I-580 westbound off-ramp – Sanford Avenue [8]</i> , and convert the right lane of the two-lane freeway off-ramp from an exclusive right-turn lane to a shared left-turn/right-turn lane. The project applicant shall pay for this measure. Prior to commencing construction of the project, the project applicant shall prepare and submit to the City for its approval a traffic improvement plan for all traffic improvements that are to be funded solely by the project	25	

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to substantially increase the potential for traffic hazards.	applicant and that require Caltrans' approval. The plan shall include a schedule for obtaining Caltrans' approval and constructing such improvements prior to the construction of project elements that create the need for such improvements.		
<b>K.2g:</b> The LOS E conditions at the all-way stop-controlled unsignalized intersection of <i>Keller Avenue / I-580 eastbound off-ramp [9]</i> , which would prevail during the p.m. peak hour under 2020 Baseline conditions, would worsen with the addition of project traffic. The project-generated increase in vehicle delay would exceed the six-second threshold of significance.	<b>K.2g:</b> The project applicant shall work with Caltrans and coordinate with the City of Oakland to install traffic signals at the unsignalized intersection of <i>Keller Avenue / I-580 eastbound off-ramp [9]</i> . The project applicant shall pay a fair share of the cost for this measure.	25	
<b>K.2h:</b> The side-street stop-controlled unsignalized intersection of <i>I-580 westbound off-ramp / Mountain Boulevard – Kuhnle Avenue [16]</i> would degrade from LOS D to LOS E during the a.m. peak hour, and from LOS E to F during the p.m. peak hour, with the addition of project traffic.	<b>K.2h:</b> The project applicant shall work with Caltrans and coordinate with the City of Oakland to install traffic signals and to add a second eastbound left-turn lane at the unsignalized intersection of <i>I-580 westbound off-ramp / Mountain Boulevard – Kuhnle Avenue [16]</i> . The project applicant shall pay a fair share of the cost for this measure.	25	
<b>K.2i:</b> The unacceptable LOS F conditions at the side-street stop-controlled unsignalized intersection of <i>Seminary Avenue / I-580 eastbound off-ramp – Overdale Avenue [18]</i> , which would prevail during the p.m. peak hour under the 2020 Baseline scenario, would worsen with the addition of project traffic. The project-generated increase in vehicle delay would exceed the two-second threshold of significance.	<b>K.2i:</b> The project applicant shall work with the City of Oakland to install traffic signals at the unsignalized intersection of <i>Seminary Avenue / I-580 eastbound off-ramp – Overdale Avenue [18]</i> . The project applicant shall pay a fair share of the cost for this measure.	25	
<b>K.3:</b> The project would increase traffic on regional roadways in the	None required.	Not Applicable	

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**AND DESIGN REVIEW**  
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ENVIRONMENTAL IMPACT	MITIGATION MEASURES	CONDITION OF APPROVAL NOS.	STATUS <sup>1</sup>
project vicinity.		Applicable	
<b>K.4:</b> The project would generate demand for parking spaces.	None required.	Not Applicable	
<b>K.5:</b> The project would increase transit ridership.	None required.		
<b>K.6:</b> The proposed project access (for general and emergency vehicles) and internal circulation system would need to accommodate traffic flows generated by motor vehicles, pedestrians, and bicyclists.	<p><b>K.6a:</b> The project applicant shall coordinate with the City of Oakland Public Works Agency, and providers of emergency services (e.g., the Oakland Fire Department) to construct the "Gateway EVA", which would connect the project site's new roadway network at "A" Street to Mountain Boulevard. The Gateway EVA will be a 25-foot wide paved road that is capable of supporting 65,000 pounds. Access will be restricted to emergency vehicles and buses only; no public access or parking will be allowed. In addition, two supplemental emergency accesses will be provided to Altura Place (Altura access) and to Leona Street (Northwestern access).</p> <p>The Altura access will be a 12-foot wide paved road that is capable of supporting 65,000 pounds. It will connect "P" Street with Altura place within the City's existing right of way. No other improvements or widening is required on Altura Place. The Northwestern access will be a 12-foot wide road that is capable of supporting 65,000 pounds. The alignment will follow the existing fire access easement along the I-580 right of way (located on the project site), across the City's right of way on Edan Place, back on to the project site and connect with Leona Street via an existing easement over the Suchan property. The Altura and Northwestern accesses will be locked or gated at or near the property line of the project site. Pedestrian and/or bicycle access to and from Altura Place may be provided; no pedestrian or bicycle access will be permitted to Leona Street. No public vehicular access will be permitted on Altura Lane or Leona Street to or from the project site except in</p>	13, 25	<p><i>EVA is reviewed as part of the improvements onsite.</i></p> <p><i>Will be constructed as part of the improvement for phase II work</i></p>

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	an emergency.		
<b>K.7:</b> The project would increase traffic and pedestrian/bicycle activity in the project vicinity.	None required.		<i>Reviewed and approved as part of construction Monitoring and phasing Plan</i>
<b>K.8:</b> Project construction could result in temporary circulation and safety impacts in the project vicinity.	<b>K.8a:</b> Prior to construction activity, the project applicant shall submit a construction management plan for review and approval by the City's Traffic Engineering Division. This plan shall include, but is not limited to, the following items:	41	<i>Reviewed and approved prior to start of grading construction.</i>
	<ul style="list-style-type: none"> <li>• Identification of routes (in a Haul Route Plan) for the movements of construction vehicles that would minimize the impacts on vehicular traffic circulation and safety in the area.</li> </ul>		<i>Reviewed and approved as part of construction Monitoring and phasing Plan</i>
	<ul style="list-style-type: none"> <li>• Staging of the movements of construction materials and equipment so as not to hinder the general flow of traffic in the immediate vicinity of the project site.</li> </ul>		<i>Reviewed and approved as part of construction Monitoring and phasing Plan</i>
	<ul style="list-style-type: none"> <li>• Identification of areas required for encroachment within the public right-of-way.</li> </ul>		<i>Encroachment permit has been required for the locations.</i>
	<ul style="list-style-type: none"> <li>• Accommodation of on-site placement of construction equipment and construction vehicles.</li> </ul>		<i>Done and ongoing.</i>
	<ul style="list-style-type: none"> <li>• Posting of signs at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City of Oakland in the event of problems</li> </ul>		<i>Completed</i>
			<i>Shown on sign at the jobsite.</i>

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	of problems.		
	<ul style="list-style-type: none"> <li>• Designation of an on-site complaint and enforcement manager to respond to and track complaints.</li> <li>• Provision of adequate notification procedures for any road closures.</li> </ul>		<i>done</i>
			<i>N/a.</i>
<b>L. Utility Service Systems</b>			
<b>L.1:</b> Construction of the proposed Leona Quarry project could impede the ability of the City of Oakland to meet the waste diversion requirements of the California Integrated Waste Management Act (AB 939).	<b>L.1a:</b> Prior to issuance of building permits, the City of Oakland shall require the project applicant to comply with the City's Construction and Demolition Debris Waste Reduction and Recycling Plan, which requires submittal of a plan to divert at least 50 percent of the construction waste generated by the project from landfill disposal. This shall be submitted to the City of Oakland's Public Works Agency for review and approval.	41	<i>N/a 11/23/04</i>
<b>L.2:</b> The proposed project would increase the demand for water services and could potentially impact EBMUD's limited water supply.	<b>L.2a:</b> The project applicant shall implement Mitigation Measures A.1a, C.1a, C.2a, C.2b, C.3a, F.3a, H.1a, and H.1b.	16, 23, 41	<i>N/a 11/23/04</i>
<b>L.3:</b> The proposed project would increase the demand for sanitary sewer services.	<b>L.3a:</b> The project applicant shall implement the Mitigation Measures A.1a, C.1a, C.2a, C.2b, C.3a, F.3a, H.1a, and H.1b.	16, 23, 41	<i>N/a. 11/23/04</i>
<b>L.4:</b> The proposed project would increase the amount of impervious surface on the site and could affect the ability of the City of Oakland and the Alameda County Flood Control and Water Conservation District to adequately treat and drain stormwater runoff.	None required.	Not Applicable	<i>A detention basin is proposed for the site that adequately addresses the runoff.</i>

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<b>L.5:</b> Operation of the project and its components would increase the demand for electrical services and natural gas.	None required.	Not Applicable	
<b>L.6:</b> The proposed project would increase the amount of solid waste disposed of by the City of Oakland at the Altamont Landfill and Recycling Facility (Altamont Landfill).	None required.	Not Applicable	
<b>L.7:</b> Solid waste generated by operation of the proposed project could impede the City of Oakland from diverting 50 percent of its waste from landfills, as mandated under AB 939 (the California Integrated Waste Management Act).	<b>L.7a:</b> The City of Oakland shall require the project applicant to comply with its Recycling/Space Allocation Requirements, which requires submittal of building plans that specify adequate storage space for recyclable and compostable materials for each proposed unit to the City for review and approval.		
<b>L.8:</b> Construction and operation of the proposed project, when combined with the construction and operation of the proposed Naval Medical Center Oakland (Oak Knoll) project, would result in cumulative impacts on the provision of water and sanitary sewer services.	None required.	Not Applicable	
<b>M. Visual Quality</b>			
<b>M.1:</b> The project would result in a change to the scenic vistas of which the proposed project site is a part.	None required.	Not Applicable	
<b>M.2:</b> The proposed project would alter the existing visual character of the site and its surroundings.	<b>M.2a:</b> The City shall require that the local homeowners association or similar entity maintain the landscaping proposed as part of the project in the Lower Development, Restored Slope, and Campus Drive Areas.		<i>N/a. 11/23/04</i>
<b>M.3:</b> The proposed project would result in an increase in development that would generate some light and	Implementation of Mitigation Measures M.3a and M.3b, below.	14	<i>N/a. 11/24/04</i>

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glare at the project site.	<p><b>M.3a:</b> To minimize project-related spill light, the project sponsor shall install low-level street and pedestrian-scale light fixtures in outside areas. Light standards in these areas should be less than 16 feet above ground, with the lights aimed downward to illuminate the area around the fixture. Such light standards should be designed to provide pedestrian illumination levels of about 3 foot-candles. Additional lighting near loading areas should be greater for safety, but shielded to minimize the project-related spill light to offsite receptors.</p> <p><b>M.3b:</b> To minimize both spill light and glare, the project sponsor shall include timing devices that would minimize the amount of time that project lighting, including street lighting, would be utilized, where appropriate and feasible.</p>	14, 15	
		14, 15	

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ATTACHMENT C				
No	Condition of Approval	COA Nos.	MMRP	Status
	<b>Project Scope 423 Residential Units and More than 70 acres of open space</b>	Exhibit A item 6		
	2. 300 sf community center			
	2-acre Park			
	3-additional Recreation areas			
	Improved Village Green Area			
	Pedestrian Trail			
	More than 70 acres of open space			
	19 single family detached units along Campus Drive			
	404 townhouses and condominiums			
	Senior Affordable Housing at Eastmont Mall Deposit \$500,000	pg 5-Resso		
	Park and Ride share lot			
1	<b>PHASE WORK</b>	13z-bb		
2	<b>PHASE F WORK</b>	13bb		
3	<b>PRIOR TO VTM APPROVAL</b>	1		
4	Amend VTM per coa 34	34		revised VTM dated 3/17/03 has been submitted in compliance with COA.
5	<b>PRIOR TO SALE OR TRANSFER</b>			
6		2		not yet applicable. Houses have not been built and map is not recorded.
7	Inform successive owners of the terms of COA <b>WITHIN 90 DAYS FROM EFFECTIVE DATE, March 11, 2004</b>			
8	Establish Evergreen deposit fund for reviews and independent consultants	40,		agreement reached b/w city and developer on the fees. The final fee agreement is being reviewed.
9	Enter into Subdivision Improvement Agreement	15, 40,		Authorization from Council Approved 11/16/04. Final agreement is being reviewed.
10	Record COA with County of Alameda	8		coa recorded on 5/12/04
11	Time period to protest fees, dedication requirements, exactions, reservations and non-monetary exactions	6a, 6b		City and Desilva agreed on fees on 9/30/04. No protest was received.
12	Amend PUD plans and specification	4, 14		approved 3/24/04 by planning Commission



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	Condition of Approval	COA Nos.	MMRP	Status
13	Indemnify the City and secure gen. liability Ins(ensure the language in coa 10 is incorporated)	24i, 24j		GHAD established 12/02. GHAD documents being reviewed to comply with COA. Anticipate GHAD Board action by 1/ 05
14	Indemnify the City (ensure the language in coa 10 is incorporated)	9,10,11		executed 4/08/04
	<b>Before 1 Year from March 11, 2005</b>			
	set aside \$500,000 for alternate senior Housing	pg5-Reso		not yet applicable
15	<b>WITHIN TWO YEARS OF EFFECTIVE DATE OF March 11,2004</b>			
16	Start construction of Phase B : Grading, implementation of Reclamation Plan Amendment, Site Closure including commencement of reclamation work, completion of slope stability,Site Preparation for residential construction on lots 1-19 on campus Drive, Rough roadway improvements and utilities for A Street and all streets where residential improvement is proposed during 1st phase, construction of Gateway Emergency Vehicle Access, costruction of detentiopn basin.	5		Plans were reviewed and grading permit issued. Work started 4/23/04
17	<b>PHASE A WORK</b>	13a-h		reviewed and approved 4/23/04
18	<b>PRIOR TO APPROVAL OF GRADING PERMIT (Phase A)</b>			
19	Submit all Geotechnical Work and Final Grading plans and implement all mitigation measures in Section D including geology, seismicity, mineral resources. ( <b>note the additional required content of grading plan 17, 22, 23</b> ).	13a, 22	D 1a, D2.a.,D 3.a through d., D4.a,D5.a.,D6.a and b.	grading permit issued 4/23/04
20	Prepare and Implement Tree Removal Permit, Tree Protection plan . Shall be implemented per coa 18.	18,21,	B.10.a, 10.c,	done prior to issuance of grading permit.
21	Secure approval of Reclamation Plan amendment	12, 12a, 17, 18, 21,22,23,37,41		Reviewed by State. State Dept of Conservation confirms consistency with proposed end use ( see state letter dd 2/23/04).Council approved Reclamation 4/20/04
22	Post an acceptably rated Bond or bonds or other form of security acceptable to City Attorney for costs necessary for implementing and completing al work necessary to fulfill the requirements of Reclamation Plan work	12,17,18,21,22,23, 37,41		Bond for grading and Reclamation posted 4/16/04
23	Hydrologist or engineer to peer review grading plans and info.	23k, 23		letter from City peer Review Hydrologist received 4/19/04
24	Submit a detailed master improvement plan & Specifications for site	13, 35, 39		improvement plans submitted and reviewed and approved.

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	Condition of Approval	COA Nos.	MMRP	Status
25	Submit a construction phasing and mgmt Plan w/ mitigation measures	13e, 41		submitted and approved 4/23/04
26	Prepare and Implement <b>Revegetation plan</b> approved by City, substantially <b>consistent</b> with H.T. Harvey & Associates Plan entitled "Conceptual Revegetation Plan for reconstructed slope dated august 23,2001 and City's Tree Protection Ordinance.	13d, 18,	B.10a,E.3a	revised to reflect grading topography
27	Develop, submit and secure approval for Special Status Species			approved as part of grading
28	Implement special status Mitigation and Monitoring Plan	17	B.1a	approved as part of grading
29	Submit SWPPP to SWQCB and a proof to City		F.2a, 5a	approved as part of grading
30	Provide Dewatering Plan		F.2, F.3a	n/a
31	Comply with Regional Water Control Board	23b,	F.4a	done, NOI submitted 3.9.04. Staff and subdivider and consultants met with RWQCB to ensure compliance.
32	Complete Design of Detention Pond	23b,	D.6b, F.1a	done and constructed
33	Provide storm flow Monitoring	23f		weekly report is being submitted
34	Redirect Ridgemont Runoff	23a,23i		submitted 3.22.04 chk 009878, designed plans out to bid.
35	Provide construction Management and Phasing Plan	41,	H.1a,b, K. 8a	
36	Establish Traffic Improvement Program	12,25,	K 2a,2b,2c,2f,6a	in process. Staff, subdivider working with Cal trans to obtain permit. Consultant proposal for TIP and TIF being reviewed.
37	Provide dust abatement program		A 1a	approved as part of grading requirement. Dust monitoring reports are submitted weekly.
38	Secure Design Review and building permit for the walls	14n		will be ongoing during building permit process.
39	Attach condition of approval to each grading permit	8		attached to grading plans
40	Provide BMP's		F.2a	bmps part of Swppp approved
41	Prepare an operational control and detonation Plan for blasting (see construction management and phasing plan submitted)	41	H 1c,	Construction management and phasing plan approved with grading.

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	Condition of Approval	COA Nos.	MMRP	Status
42	Provide Noise Monitoring		H1	Construction management and phasing plan approved with grading. Noise monitoring reports available.
43	Post bond for Grading \$14,840,000			bond posted on 4/23/04
44	Special Inspection Deposit \$266,175		A 1a	part of consultant cost per 9/30/04 agreement.
45	<b>Upon Grading Completion</b>	pg 6-Reso		ongoing
	Lowney Associates to Certify grading compliance	pg 6-reso		ongoing
	City to provide letter to Petitioners and Developer	pg 6-reso		not yet applicable-upon completion of grading.
	Engineer-in-Charge to certify grading work	grad. Ordinance		not yet applicable-upon completion of grading.
46	<b>PRIOR TO ISSUANCE OF BUILDING PERMIT</b>		B-2	
	Complete Phase B work (see page 11 of 40)=commence reclamation work, complete slope stability, prepare site for residential construction on lots 1-19, Construct rough road improvements and utilities for A Street, Construct EVA, and construction of the detention basin	13i-n		Commenced 4/23/04
47	Submit draft educational material to new homeowners describing			submitted
48	the sensitive natural resources of the site			
49	Submit compliance plan to reduce Nox emissions to the Planning Director		A2	will be done as part of Construction Mgmt and Phasing Plan.
50	Submit and Implement landscape plan prepared by Bradanini & Associates		B10b	n/a. during building permit.
51	Execute Landscape Maintenance Agreement		B10b	
52	Geotechnical Engineer to identify structural mitigations and shall become incorporated into final design		D.1a	n/a. during building permit.
53	Geotech engineer to include analysis of ground motions along the Hayward fault per 1997 UBC		D.2a	n/a. during building permit.
54	Provide readings and results of the settlement plates		D.4a	plates are installed. Readings and reports needed prior to bldg. permit.
55	Provide Construction Mgmt and Phasing Plan		K.8a,41	n/a. during building permit.
56	Install recommended 10-foot deep subdrains per Geotech recommendations		D.6a	ongoing as part of grading activity

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57	Construct a stormwater management system that includes detention basin and outlet works capable of maintaining peak flows from 24-hr, 25 year design storm		F.1a	detention basin is constructed. As-built expected.
58	Provide copy of the groundwater Discharge Permit		F.3a	n/a
59	Provide Stormwater discharge plan to comply with Clean Water Program		F.4a	n/a. during building permit.
60	Provide maintenance schedules for removing sediments		F.4a	n/a. during building permit.
61	Develop and implement a vegetation control or fertilizer management plan		F.4b	submitted
62	Implement the measures to reduce daytime due to construction		H.1b	n/a. during building permit.
63	Bond for Traffic Improvements and traffic Study		k2	n/a. during building permit.
64	Comply with construction and demolition Debris Waste reduction and recycling plan	41	L.1a,	done during grading. Expected to comply during building permit application
65	Submit and comply with Recycling/Space Allocation Requirements		L.7a	n/a. during building permit.
66	Secure approval for the light fixtures from City		M.3a	n/a. during building permit.
67	Comply with Haul Route plan		k.8a	
68	Submit a geotechnical and engineering report that confirms all slope stability measures for the western slope and the resorted slope have been implemented to the degree to assure site and construction worker safety. Peer review required.	13n		ongoing with reports submitted.
69	Review and concur report from developer Geotechnical Engineer verifying the slope stability and worker safety.	13n		ongoing with reports submitted.
70	Implement a construction management and site survey security plan for the VTM Phase I area.	13n, 41		part of Const management and Phasing Plan.
71				
	Attach conditions of approval to each building permit	8		n/a. during building permit.
72	Submit Landscape plan for that phase	19i		ongoing. Phase I plans submitted and under review.
73				
74	<b>PRIOR TO APPROVAL OF THE BUILDING PERMIT FOR MODELS</b>			
75				
76	Submit and Implement Landscape Plan consistent with landscape Plan prepared by Bradanini & associates	19		master landscape plans reviewed and approved.
77	Submit Landscape plan for that phase	19i		
78				

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	Condition of Approval	COA Nos.	MMRP	Status
79	Landscape Plan Review Responsibility			PGA Design-Landscape Architect.
80				
81	<b>PRIOR TO ISSUANCE OF BUILDING PERMITS FOR VTM Phase II area</b>			n/a
82	Submit <b>Construction Phasing and Mgmt Plan (CPMP)</b> for all applicable mitigations in Air Quality(MM A.1a), Biological Resources,cultural resources,erosion control & storm Water Management, Solid Waste Reduction and Recycling, Noise,, Traffic, Circulation and Parking(see coa 41 for content of Construction Phasing and Management Plan)	13 Phase D, 41,	A 1a,B 1a, B 5a, B 6a, B 8a, C 1a,2b, 2c, 3a, F 2a, 2b, L 1a, H 1a, 1b, k 8.	CPMP for grading and improvement approved 4/23/04
83	Attach conditions of approval to each building permit	8		
84	Prepare and implement a master Landscape plan phases I & II and provide <b>landscape maintenance agreement.</b>	17,19,20, 21	B 10.b	n/a. during building permit.
85				
86	Submit master landscape plan b/4 issuance of the first successive bldg permit		B.10b:	done and approved.
87	For the 351st unit (excl gateway senior resid. & lots 1-19)	26 26a-h		
88				
89	Ensure compliance with sustainability measures	38a-f		
90	For the first Unit Implement MM #c		D.1, D.2	
91	<b>Complete grading and slope stabilization</b>	13o		
92	<b>Complete reclamation plan amendment</b>	13		
93	<b>Complete revegetation/restoration work per coa 18</b>	13o		
94	<b>Complete final street improvements excluding landscaping</b>	13p		
95	<b>Landscape of front entrance and detention basin per coa19</b>	13q		
96	<b>Review Landscape Plans</b>			
97	<b>Landscape of parcels B,C,D,J</b>	13u		
98	<b>Improve northwestern EVA</b>	13r		
99	<b>Complete Village Green landscaping and improvements Parcel E</b>	13s		
100	<b>Connect EVA from H to C Streets</b>	13t		
101	<b>Confirm the applicant has completed all required work under phase C</b>	13w		
102	<b>Confirm the applicant has completed all Reclamation Plan Amendment measures</b>	13w		

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	Condition of Approval	COA Nos.	MMRP	Status
	<b>AT ISSUANCE OF OCCUPANCY FOR THE 150TH UNIT</b>			
103	Provide HOA a Van pool vehicle in new condition with seating capacity of at least 12 and with at least Standard features	pg 7-reso		
104				
105	<b>AFTER 200 UNIT IS OCCUPIED AND AFTER 423 UNIT IS OCCUPIED</b>			
106	<b>Obtain traffic studies of intersections Keller/Fontaine, Mountain @ I580 West Bound, Keller@ Mountain</b>	pg7-reso		
107	<b>PHASE D WORK (includes)</b>	13x-y		
108	Continued construction in the VTM Phase I area, Construction in the VTM phase II Area, gateway Housing construction, Construction of Greenly Drive/Edwards Avenue Improvements.	13		
109	<b>PRIOR TO ISSUANCE OF CO PERMIT FOR THE 151ST UNIT AND PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 350TH UNIT (EXCL LOTS 1-19) (Phase D)</b>			
110	Complete and offer to the City Greenly/Edwards Avenue Improvements	13 phase D, 25		improvement is complete. Expecting as-built from engineer in-charge.
111	Enter into a two year landscape maintenance agreement	20		
112	Post landscape and warranty bonds	20		estimate of work expected. Staff and consultant will review.
113	Accept Greenly, Edwards Improvements	13 phase D, 25		n/a. expecting letter of completion from engineer in charge.
114	<b>PRIOR TO ISSUANCE OF CO FOR ANY UNIT IN VTM PHASE II AREA (Phase D)</b>			n/a
115	Complete the Altura Supplemental EVA connection and improvements.	13 phase D		
116	Complete EVA connection from I to A Streets.	13 phase D		
117	(note bonds and lc shall not be acceptable as a substitute for completing improvements)			
118	<b>PRIOR TO ISSUANCE OF CO FOR THE 351ST UNIT (excl lots 1-19 and Gateway SENIOR PROJECT)</b>			n/a
119	Complete interior Park Improvements(parcel Y)	13z		improvement and landscape plans reviewed and approved.
120	Complete all project trail connections and improvements	13aa		

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Attachment C

	Condition of Approval	COA Nos.	MMRP	Status
121	Complete all remaining street landscaping, revegetation and other open space improvements associated with any of the first 350 units that have received CO excl improvements adjacent remaining 53 units, lots 1-19 and Gateway Housing	13bb		Part of landscape plan submitted and reviewed.
122				
	<b>PRIOR TO ISSUANCE OF CO FOR REMAINING 53 UNITS(Phase F)</b>			n/a
123	Complete all remaining improvements	13bb, 25, 26		
124	<b>PRIOR TO APPROVAL OF FINAL MAP</b>			
125				
126	Submit site Plan for review and approval demonstrating substantial compliance w/ approved VTM and approved PUD DESIGN AND Specification documents.	30		Plan has not substantially changed from VTM: plan is consistent with revised VTM submitted and approved.
127	Review Responsibility			under review with staff and consultants
128	Submit CC& R to City for review	31		under review with staff and consultants
129	Implement all mitigation measures in Section B., Biology of the MMRP ( creation of 37 acres of suitable Alameda Whipsnake habitat	17, 18, 19, 32,	B	in Landscape plane being reviewed by City consultants. DEDICATION AND RESERVATION of 70 acres IS BEING DONE UNDER PHASE I NOT last phase.
130	Record of Conservation Easement concurrently w/last final map	17,	B.3	being recorded with first phase
131				
132	Form Geologic Hazard Abatement District (GHAD)	24,		staff working with developer to present to GHAD Board action in January 2005.
133	Fund independent GHAD Manager, GHAD to submit annual reports	24g, 24h		under review
134	Establish Reserve Funds	24c		GHAD documents under review
135	Provide start up funds for GHAD as determined by City	24d,24f		GHAD documents under review
136	Provide proof CCR showing who maintains slopes drainage	24a,b, 31,	B. 2	CC&R submitted, language will be included.

Compliance Tracking for  
Leona Quarry  
Attachment C

	Condition of Approval	COA Nos.	MMRP	Status
137	Submit Traffic improvement Plan to City for all improvements	25,		application to Cal Trans submitted. Traffic Signal at Greenly substantially complete.
138	Install traffic signals and implement mitigation measures	25a, 25c		improvements being reviewed
139				
140	Construct EVA and comply with mitigation measures	25d		part of improvement plans
141	Secure review and approval of minor rev. of internal circulation plan	27		part of improvement plans
142	Submit last Final Map, open space and conservation Easement	32		
143	Show all necessary Easements on the map	36,		part of final map for each phase.
144	<b>45days before recording each final map</b>			
145	<b>submit request for addresses and street names</b>	33,		street names approved by Bldg Services
146	Submit Traffic improvement Program to City.	13f, 25		in process
147	<b>DURING CONSTRUCTION</b>			
148	Implement mitigation measures on Air Quality in Section A	16,	A	monitored during construction. Reports from consultants available upon request.
149	<b>Implement Dust abatement program</b>	16,	A	monitored during construction. Reports from consultants available upon request.
150	Monitor compliance with MMRP A	16,	A	monitored by consultants and city staff during construction. Reports from consultants available upon request.
151	<b>Provide special inspection deposit for dust control</b>		A	monitored during construction. Reports from consultants available upon request.
152	Implement regetation plan		B.9	monitored during construction. Reports from consultants available upon request.
153	Comply with special status species mitigation and monitoring plan		B.1	monitored during construction. Reports from consultants available upon request.
154	Confine construction activities to lower dev. Area, Campus Dr area, Restored slope area and revegetation areas.		B 6.a	monitored during construction. Reports from consultants available upon request.



Compliance Tracking for  
Leona Quarry  
Attachment C

	Condition of Approval	COA Nos.	MMRP	Status
155	Fence off restored slope areas and any undeveloped areas mapped as			monitored during construction. Reports from consultants available upon request.
156	"Alameda Whipsnake Potential Habitat with split rail, post and Cable etc		B.3	monitored during construction. Reports from consultants available upon request.
157	Implement mitigation measures in Section C		C.1	part of Construction Management and Phasing plan approved during grading.
158				
159	<b>Prior to Final Inspection and Final CO for any unit</b>			n/a 11.23.04
	Complete all landscaping and on and off-site improvements for the phase or post security plus 25% to ensure completion	7		n/a. 11.23.04
160	<b>PRIOR TO ISSUANCE ANY CERTIFICATE OF OCCUPANCY (CO) (except for model homes) FOR THE FIRST 150 UNITS IN VTM PHASE I and any of the lots 1-19</b>			n/a 11.23.04
161	Complete all reclamation work	12, 17,18,21,22,23,37, 41		
162	Commence revegetation work at the earliest feasible time	12		
163	Complete Phase C work (see page 12 of 40)			
164	Fund the furnishing, installation, maintenance and repair of Bus shelter at a location approved by A.C Transit	16		
165	<b>Confirm that the reclamation plan amendment measures and phase C work are complete</b>	13i page 12		n/a 11.23.04
166				
167	For the 151st unit and prior to issuance	13,25,		
168	of building for the 350th unit-Phase D page 13			
169	For the last two units in Phase 1D	Phase C: 13h		
170	For the units in each phase enter into 2-yr Landscape maint. Agrmt	20, 13		
171	For any unit in VTM phase II Area	13(l) page 13		
172	Posts security for the landscape			
173	<b>Install signage along perimeter of the open space area at intervals of 300'</b>	17	B.2	n/a 11.23.04

Compliance Tracking for  
Leona Quarry  
Attachment C

#REF!	Condition of Approval	COA Nos.	MMRP	Status
	<b>Phase E</b>			
177	For the 351st unit(excl. lots 1-19 and Gateawy Senior Project)	13 page 13 phase E		
178	Distribute educational materials to new homeowners about sensitive			
179	natural resources of the site		B.2	
180	<b>Prior to CO For the Gateway Senior Housing Project</b>			n/a 11.23.04
181	Submit CCR to Planning Director to ensure use per Section 50079.5 is met	42,		
182	<b>Unit F</b>			
183	Prior to the issuance of Certificate of Occupancy for remaing 53 units	25, 26		
184				
185	<b>PRIOR TO IMPLEMENTATION OF IMPROVEMENTS</b>			
186	Secure approval from City and other agencies	25,		plans approved and construction of improvements started.
187	Review Responsibility			
188	<b>POST-CONSTRUCTION</b>			n/a 11.23.04
189	Monitor revegetation plan during 5-year establishment period		B.9	
190	Develop and distribute educational matrials to new homeowners			
191	describing the sensitive natural resources and urging control of pets		B.2	
192	Monitor plantings for <b>3 years</b> to assess the rate of survival and vigor.		B.10b.	
193	<b>UPON ISSUANCE OF CO FOR EACH UNIT</b>			n/a 11.23.04
194	Release the coa from the exceptions to title of the parcel for the unit	8		
195	<b>UPON COMPLETION OF THE PROJECT</b>			
196	Release coa from all property	8		
197	<b>PRIOR TO APPROVAL OF TREE REMOVAL PERMIT</b>			
198	Submit/Review SWPPP ( part of grading)			reviewed
199	Dust Control Program(part of const. Mgmt and phasing)			Submitted and being reviewed due 3/24
200	Air Quality Monitors		AI	subdivider included in Const Management Plan and Lowney to Monitor
201	<b>SPECIAL STATUS SPECIES MONITORING PROGRAM</b>		B1a	ongoing. Reports are vailable upon request.

Compliance Tracking for  
Leona Quarry  
Attachment C

	Condition of Approval	COA Nos.	MMRP	Status
202	Tree Removal Permit		B.10c	
203	Revegetation Plan	21,	B9	reviewed by Gallagher and Huntsman
204	Area of construction and fencing			performed prior to grading.
205	Provide Tree protection Plan	21	B 10c,	done prior to clear and grubbing
206	Arborist to oversite		B 10c	done
207	SOD survey			done prior to grading activity.
208	Bird Survey			done prior to grading activity.
209	Harzardous spills Training(part of Construction Mgmt)			Part of Const. Mgmt and Phasing Plan.
210	Sign req'd on Time of the day for work (7-7pm m-f, non on week ends)		B3	implemented before grading.
211	Pre-const Noise meeting			noise monitoring and reports ongoing. Staff meets every Tuesday to discuss construction issues.
212	Noise Reduction Plan( include as part of Const Management)			part of Construction Management and Phasing plan.
213	Identify On-site Noise Contact			required as part of grading condition.
214	Construction Management and Phasing Plan	coa 41	K8	approved with grading
215				
216	<b>SIGNAGE AT THE COLISEUM AND AIRPORT</b>			
217	SiGNAGE to be placed in the area of THE COLISEUM AND AIRPORT dircting traffic to use Seminary and 98th Avenue	pg 7-Reso		n/a 11.23.04
218				
219	<b>SIGNAGE ON I580 AND HIGHWAY 13</b>	PG7-RESO		n/a 11.23.04
220	Fund both installation of new signage on I580 and HWY 13 indicating that Seminary and 98th Avenue are the exits for the Airport and Coliseum and removal of inconsistent existing signage on I 580 and HWY 13	pg7-reso		n/a 11.23.04
221	Secure permit from Cal Trans for the signage			n/a 11.23.04

ATTACHMENT D

December 3, 2003

Job No.: 1020-00

BOND ESTIMATE  
TRACT 7357  
LEONA QUARRY  
OAKLAND, CALIFORNIA

Item	Description	Quantity	Unit	Price	Amount
<u>STREET WORK</u>					
1	Finish Grading P/L to P/L	206,000	SF \$	0.20 \$	41,200.00
2	4" AC Paving ('A' Street)	56,200	SF \$	1.20 \$	67,440.00
3	3.5" AC Paving	75,000	SF \$	1.05 \$	78,750.00
4	1.5" Aggregate Base ('A' Street)	56,200	SF \$	2.00 \$	112,400.00
5	10" Aggregate Base	75,000	SF \$	1.20 \$	90,000.00
6	4" AB for Curb & Gutter	9,000	LF \$	1.00 \$	9,000.00
7	4" AB for Sidewalk & Driveways	22,700	SF \$	0.50 \$	11,350.00
8	Signs & Striping	1	LS \$	10,000.00 \$	10,000.00
9	Monuments	48	EA \$	250.00 \$	12,000.00
	Subtotal			\$	432,140.00
<u>CONCRETE WORK</u>					
10	Rolled Curb & Gutter	5,700	LF \$	10.00 \$	57,000.00
11	Vertical Curb	3,300	LF \$	12.00 \$	39,600.00
12	4" Sidewalk ('A' Street)	9,700	SF \$	3.25 \$	31,525.00
13	6" Sidewalk	13,000	SF \$	5.00 \$	65,000.00
	Subtotal			\$	193,125.00
<u>STORM DRAIN</u>					
14	12" RCP Storm Drain	480	LF \$	25.00 \$	12,000.00
15	18" RCP Storm Drain	11,900	LF \$	40.00 \$	476,000.00
16	24" RCP Storm Drain	3,300	LF \$	50.00 \$	165,000.00
17	30" RCP Storm Drain	125	LF \$	60.00 \$	7,500.00
18	36" RCP Storm Drain	80	LF \$	75.00 \$	6,000.00
19	39" RCP Storm Drain	115	LF \$	80.00 \$	9,200.00
20	48" RCP Storm Drain	270	LF \$	100.00 \$	27,000.00
21	60" RCP Storm Drain	1,080	LF \$	130.00 \$	140,400.00
22	70" RCP Storm Drain	112	LF \$	150.00 \$	16,800.00
23	Type I Manhole	7	EA \$	2,300.00 \$	16,100.00
24	Type II Manhole	4	EA \$	5,000.00 \$	20,000.00
25	Type D-3 Inlets	116	EA \$	2,000.00 \$	232,000.00
26	Type D Inlets	48	EA \$	2,000.00 \$	96,000.00
27	Type C Inlets on Type II MH Base	11	EA \$	3,200.00 \$	35,200.00
28	Type B Inlets	50	EA \$	2,700.00 \$	135,000.00
29	Type B Inlets on Type II MH Base	1	EA \$	4,000.00 \$	4,000.00
30	Junction Boxes	3	EA \$	4,000.00 \$	12,000.00

Item	Description	Quantity	Unit	Price	Amount
<u>STORM DRAIN</u>					
31	Headwalls	1	EA	\$ 10,000.00	\$ 10,000.00
32	Outlet Structures (2 ea.)	1	LS	\$ 50,000.00	\$ 50,000.00
33	Cut Off Walls for 18" SD on slope	95	EA	\$ 700.00	\$ 66,500.00
34	Concrete lined ditches	23,000	LF	\$ 20.00	\$ 460,000.00
35	Connect to existing	1	LS	\$ 5,000.00	\$ 5,000.00
	Subtotal				\$ 2,001,700.00
<u>SANITARY SEWER</u>					
36	8" HDPE Sewer	5,100	LF	\$ 60.00	\$ 306,000.00
37	4" HDPE Lateral	63	EA	\$ 1,100.00	\$ 69,300.00
38	4" HDPE Lateral (Multiple Lots)	53	EA	\$ 1,000.00	\$ 53,000.00
39	6" HDPE Lateral (Senior Housing)	1	EA	\$ 1,100.00	\$ 1,100.00
40	Sewer Manholes (Type I)	41	EA	\$ 2,300.00	\$ 94,300.00
41	Connect to Existing	1	LS	\$ 1,000.00	\$ 1,000.00
	Subtotal				\$ 524,700.00
<u>ELECTRICAL/MISCELLANEOUS</u>					
42	Joint Trench Services	1	LS	\$ 500,000.00	\$ 500,000.00
43	Street Lights (Decorative)	49	EA	\$ 3,000.00	\$ 147,000.00
	Subtotal				\$ 647,000.00
<u>REVEGETATION PLANTING</u>					
44	Soil Amendment Materials - Mechanically Incorporated	1	LS	\$ 60,051.00	\$ 60,051.00
45	Drip Irrigation System Installation	1	LS	\$ 64,922.00	\$ 64,922.00
46	Plant Installation, Seed Application and Maintenance	1	LS	\$ 774,542.00	\$ 774,542.00
	Subtotal				\$ 899,515.00
	<b>SUBTOTAL CONSTRUCTION COST</b>				\$ 4,698,180.00
	<b>20% CONTINGENCY AND INFLATION</b>				\$ 939,636.00
	<b>TOTAL CONSTRUCTION COST (nearest 10,000)</b>				\$ 5,640,000.00

QUALIFICATIONS AND ASSUMPTIONS

1. *This Bond Estimates is based on the Tract 7351 Improvement Plans dated 12/3/03.*
2. *This Bond Estimates is based upon information available at this time and this office assumes no liability for changes in scope due to unforeseen conditions or changes required by governing agencies.*
4. *Cost for Landscaping and Irrigation not included.*
5. *Cost for Water System (EBMUD improvements) not included.*
6. *This estimate excludes, but is not limited to the exclusion of the following:*
  - a. *PG&E credits and reimbursements.*
  - b. *Retaining walls as structural elements of the buildings.*
  - c. *Solar facilities including fencing.*
  - d. *Consultant Fees.*
  - e. *Development Fees.*
  - f. *Fencing*

## ATTACHMENT B

December 3, 2003

Job No.: 1020-00

BOND ESTIMATE  
TRACT 7493  
LEONA QUARRY  
OAKLAND, CALIFORNIA

Item	Description	Quantity	Unit	Price	Amount
<u>STREET WORK</u>					
1	Finish Grading P/L to P/L	135,000	SF	\$ 0.20	\$ 27,000.00
2	3.5" AC Paving	88,000	SF	\$ 1.05	\$ 92,400.00
3	10" Aggregate Base	88,000	SF	\$ 1.20	\$ 105,600.00
4	4" AB for Curb & Gutter	8,590	LF	\$ 1.00	\$ 8,590.00
5	4" AB for Sidewalk & Driveways	16,000	SF	\$ 0.50	\$ 8,000.00
6	Signs & Striping	1	LS	\$ 10,000.00	\$ 10,000.00
7	Monuments	26	EA	\$ 250.00	\$ 6,500.00
	Subtotal				\$ 258,090.00
<u>EVA ROADS</u>					
8	EVA Roads - 2" AC on 6" AB	74,580	SF	\$ 2.75	\$ 205,095.00
9	Curb and Gutter at EVA Road (behind Gateway)	930	LF	\$ 12.00	\$ 11,160.00
	Subtotal				\$ 216,255.00
<u>CONCRETE WORK</u>					
10	Rolled Curb & Gutter	7,000	LF	\$ 10.00	\$ 70,000.00
11	Vertical Curb	660	LF	\$ 12.00	\$ 7,920.00
12	4" Sidewalk ('K' Street)	7,900	SF	\$ 3.25	\$ 25,675.00
13	6" Sideealk ('I and 'J' Streets)	9,000	SF	\$ 5.00	\$ 45,000.00
	Subtotal				\$ 148,595.00
<u>STORM DRAIN</u>					
14	18" RCP Storm Drain	2,450	LF	\$ 40.00	\$ 98,000.00
15	24" RCP Storm Drain	100	LF	\$ 50.00	\$ 5,000.00
16	30" RCP Storm Drain	950	LF	\$ 60.00	\$ 57,000.00
17	36" RCP Storm Drain	1,100	LF	\$ 75.00	\$ 82,500.00
18	Type I Manhole	1	EA	\$ 2,300.00	\$ 2,300.00
19	Type B Inlets	45	EA	\$ 2,700.00	\$ 121,500.00
20	Headwalls	1	EA	\$ 10,000.00	\$ 10,000.00
21	Connect to Existing	1	LS	\$ 5,000.00	\$ 5,000.00
	Subtotal				\$ 381,300.00

Item	Description	Quantity	Unit	Price	Amount
<u>SANITARY SEWER</u>					
22	8" HDPE Sewer	3,500	LF	\$ 60.00	\$ 210,000.00
23	4" HDPE Lateral	122	EA	\$ 1,100.00	\$ 134,200.00
24	4" HDPE Lateral (Multiple Lots)	72	EA	\$ 1,000.00	\$ 72,000.00
25	4" HDPE Lateral (Community Center)	1	EA	\$ 1,000.00	\$ 1,000.00
26	Sewer Manholes (Type I)	39	EA	\$ 2,300.00	\$ 89,700.00
27	Connect to Existing	1	LS	\$ 1,000.00	\$ 1,000.00
Subtotal					\$ 507,900.00
<u>ELECTRICAL/MICELLANEOUS</u>					
28	Joint Trench Services	1	LS	\$ 500,000.00	\$ 500,000.00
29	Street Lights (Decorative)	32	EA	\$ 3,000.00	\$ 96,000.00
Subtotal					\$ 596,000.00
SUBTOTAL CONSTRUCTION COST					\$ 2,108,140.00
20% CONTINGENCY AND INFLATION					\$ 421,628.00
TOTAL CONSTRUCTION COST (nearest 10,000)					\$ 2,530,000.00

QUALIFICATIONS AND ASSUMPTIONS

1. This Bond Estimate is based on the Tract 7493 Improvement Plans dated 12/3/03.
2. This Bond Estimate is based upon information available at this time and this office assumes no liability for changes in scope due to unforeseen conditions or changes required by governing agencies.
3. The grading of this site is of such a complex nature that the final design could greatly affect the final grading costs.
4. Cost for Landscaping and Irrigation not included.
5. Cost for Water System (EBMUD improvements) not included.
6. This estimate excludes, but is not limited to the exclusion of the following:
  - a. PG&E credits and reimbursements.
  - b. Retaining walls as structural elements of the buildings.
  - c. Solar facilities including fencing.
  - d. Consultant Fees.
  - e. Development Fees.
  - f. Fencing



Item	Description	Quantity	Unit	Price	Amount
<u>SANITARY SEWER</u>					
22	8" HDPE Sewer	3,500	LF	\$ 60.00	\$ 210,000.00
23	4" HDPE Lateral	122	EA	\$ 1,100.00	\$ 134,200.00
24	4" HDPE Lateral (Multiple Lots)	72	EA	\$ 1,000.00	\$ 72,000.00
25	4" HDPE Lateral (Community Center)	1	EA	\$ 1,000.00	\$ 1,000.00
26	Sewer Manholes (Type I)	39	EA	\$ 2,300.00	\$ 89,700.00
27	Connect to Existing	1	LS	\$ 1,000.00	\$ 1,000.00
	Subtotal				\$ 507,900.00
<u>ELECTRICAL/MICELLANEOUS</u>					
28	Joint Trench Services	1	LS	\$ 500,000.00	\$ 500,000.00
29	Street Lights (Decorative)	32	EA	\$ 3,000.00	\$ 96,000.00
	Subtotal				\$ 596,000.00
	SUBTOTAL CONSTRUCTION COST				\$ 2,108,140.00
	20% CONTINGENCY AND INFLATION				\$ 421,628.00
	TOTAL CONSTRUCTION COST (nearest 10,000)				\$ 2,530,000.00

QUALIFICATIONS AND ASSUMPTIONS

1. This Bond Estimate is based on the Tract 7493 Improvement Plans dated 12/9/03.
2. This Bond Estimate is based upon information available at this time and this office assumes no liability for changes in scope due to unforeseen conditions or changes required by governing agencies.
3. The grading of this site is of such a complex nature that the final design could greatly affect the final grading costs.
4. Cost for Landscaping and Irrigation not included.
5. Cost for Water System (EBMUD improvements) not included.
6. This estimate excludes, but is not limited to the exclusion of the following:
  - a. PG&E credits and reimbursements.
  - b. Retaining walls as structural elements of the buildings.
  - c. Solar facilities including fencing.
  - d. Consultant Fees.
  - e. Development Fees.
  - f. Fencing

ATTACHMENT E

TRAVELERS CASUALTY AND SURETY COMPANY  
Hartford, Connecticut 06183

BOND NO. 104316161  
\$ 25,370.00 premium is for  
a term of TWO year(s)

KNOW ALL MEN BY THESE PRESENTS:

That we, THE DESILVA GROUP, as Principal,  
and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation organized and doing business  
under and by virtue of the laws of the State of CONNECTICUT and duly licensed  
to conduct a general surety business in the State of California as Surety, are held and firmly bound unto the CITY OF OAKLAND  
as Obligee, in the penal sum of  
FIVE MILLION SIX HUNDRED THIRTY SEVEN THOUSAND EIGHT HUNDRED SIXTEEN AND NO/100  
(\$ 5,637,816.00 ) Dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors  
and administrators, jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

Whereas the Obligee and Principal have entered into an agreement whereby Principal agrees to install and complete certain  
designated public improvements, which agreement, identified as TRACT NUMBER 7351 LOCATED ONSITE AT LEONA QUARRY, is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said  
agreement

Now therefore, the condition of this obligation is such that is the above bounden principal, his or its heirs, executors,  
*administrators, successor or assigns, shall in all things stand to and abide by, well and truly keep and perform the covenants,*  
conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be  
kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning,  
and shall indemnify and save harmless obligee, its officers, agents and employees, as therein stipulated, than this obligation shall  
become null and void; otherwise it shall be and remain in full force and effect

As a part of the obligation secured hereby and in addition to the penal sum specified therefor, there shall be included costs  
and reasonable expenses and fees, including reasonable attorney's fees, incurred by Obligee in successfully enforcing such  
obligation, all to be taxed as costs and included in any judgement rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement  
or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on  
this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement  
or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on JUNE 24, 2004

PRINCIPAL: THE DESILVA GROUP

Ernest D. Sampkin VP, CFO

SURETY: TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA

Richard S. Svec  
RICHARD S. SVEC Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

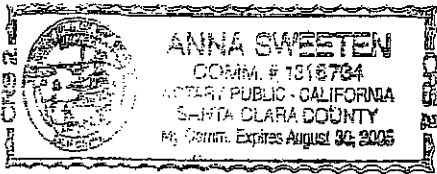
State of California \_\_\_\_\_

County of Santa Clara \_\_\_\_\_

On JUNE 24, 2004 before me, Anna Sweeten, Notary Public, \_\_\_\_\_

personally appeared Richard S. Svec \_\_\_\_\_

personally known to me- OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal

*Anna Sweeten*  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

- PARTNER(S)  LIMITED
- TRUSTEE(S)  GENERAL
- ATTORNEY-IN-FACT
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Alameda } ss.

On July 8, 2004 before me, Laura Ness, Notary Public,  
personally appeared Ernest D. Lampkin  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.  
Laura Ness  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

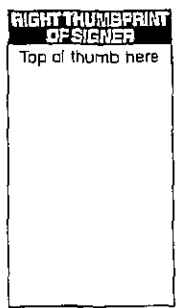
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



TRAVELERS CASUALTY AND SURETY COMPANY  
Hartford, Connecticut 06183

BOND NO. 104316160  
PREMIUM INCLUDED IN  
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, THE DESILVA GROUP, as Principal,  
and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation organized and doing business  
under and by virtue of the laws of the State of CONNECTICUT and duly licensed  
to conduct a general surety business in the State of California as Surety, are held and firmly bound unto the CITY OF OAKLAND  
as Oblige, in the penal sum of  
ONE MILLION TWO HUNDRED SIXTY FOUR THOUSAND EIGHT HUNDRED EIGHTY FOUR AND ( \$ 1,264,884.00 ) DOLLARS,  
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these  
presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

Whereas, the above-named Principal, has entered into an agreement which is made a part of this bond, with the CITY OF OAKLAND  
State of California, as Oblige, for the designated public  
improvements in the subdivision identified as TRACT NUMBER 7493 LOCATED ONSITE AT LEONA QUARRY  
as required by the Government Code of California.

Whereas, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and  
sufficient payment bond with the CITY OF OAKLAND to secure the claims  
to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, said principal and the undersigned, as surety, are held firmly bound unto the CITY OF OAKLAND  
and all contractors, subcontractors, laborers, materialmen and other persons  
employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure for material furnished or labor  
thereon of any kind, or for amounts due under the *Unemployment Insurance Act* with respect to such work or labor, that said surety will pay  
the same in an amount not exceeding the penal sum hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition  
to the penal sum thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY OF OAKLAND  
in successfully enforcing such obligation, to be awarded and fixed by the court,  
and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations  
entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give right of action to  
them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain  
in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the  
specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such  
change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on JUNE 24, 2004

PRINCIPAL: THE DESILVA GROUP

Ernest D. Lanphier VP, CFO

SURETY: TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA

Richard A. Siver

Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Alameda } ss.

On July 8, 2004 before me Laura Ness, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Ernest D. Lampkin  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal

Laura Ness  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

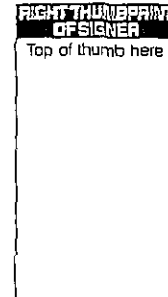
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

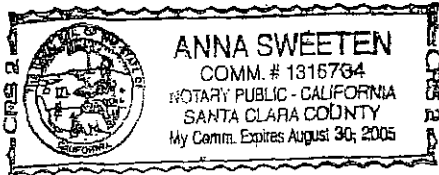
State of California

County of Santa Clara

On JUNE 24, 2004 before me, Anna Sweeten, Notary Public.

personally appeared Richard S. Svec

personally known to me- OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal

*Anna Sweeten*

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- TITLE(S)
- PARTNER(S)
  - LIMITED
  - TRUSTEE(S)
  - GENERAL
  - ATTORNEY-IN-FACT
  - GUARDIAN/CONSERVATOR
  - OTHER

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY  
Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Richard S. Svec, Rick F. Prentice, William J. Prentice, Anna Sweeten, Suman K. Toor, of San Jose, California, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.





## IMPORTANT DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (the "Act"). The Act establishes a short-term program under which the Federal Government will share in the payment of covered losses caused by certain acts of international terrorism. We are providing you with this notice to inform you of the key features of the Act, and to let you know what effect, if any, the Act will have on your premium.

Under the Act, insurers are required to provide coverage for certain losses caused by international acts of terrorism as defined in the Act. The Act further provides that the Federal Government will pay a share of such losses. Specifically, the Federal Government will pay 90% of the amount of covered losses caused by certain acts of terrorism which is in excess of Travelers' statutorily established deductible for that year. The Act also caps the amount of terrorism-related losses for which the Federal Government or an insurer can be responsible at \$100,000,000,000.00, provided that the insurer has met its deductible.

Please note that passage of the Act does not result in any change in coverage under the attached policy or bond (or the policy or bond being quoted). Please also note that no separate additional premium charge has been made for the terrorism coverage required by the Act. The premium charge that is allocable to such coverage is inseparable from and imbedded in your overall premium, and is no more than one percent of your premium.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of ALAMEDA

} ss.

On JULY 8, 2004 before me, LAURA NESS, NOTARY PUBLIC

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JAMES B. SUMMERS

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

*Laura Ness*  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Public Improvements

Document Date: 4/23/04

Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer --- Title(s): \_\_\_\_\_
- Partner ---  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here

TRAVELERS CASUALTY AND SURETY COMPANY

Hartford, Connecticut 06183

BOND NO. 104316160  
\$ 11,384.00 premium is for  
a term of TWO year(s)

KNOW ALL MEN BY THESE PRESENTS:

That we, THE DESILVA GROUP, as Principal, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation organized and doing business under and by virtue of the laws of the State of CONNECTICUT and duly licensed to conduct a general surety business in the State of California as Surety, are held and firmly bound unto the CITY OF OAKLAND as Obligee, in the penal sum of TWO MILLION FIVE HUNDRED TWENTY NINE THOUSAND SEVEN HUNDRED SIXTY EIGHT AND NO/100 (\$2,529,768.00 — ) Dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

Whereas the Obligee and Principal have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, identified as TRACT 7493 LOCATED ONSITE AT LEONA QUARRY, is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now therefore, the condition of this obligation is such that is the above bounden principal, his or its heirs, executors, administrators, successor or assigns, shall in all things stand to and abide by, well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless obligee, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the penal sum specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on JUNE 24, 2004

PRINCIPAL: THE DESILVA GROUP

Ewert D. Lamplink VP, CFO

SURETY: TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA

Richard S. Svec  
RICHARD S. SVEC Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

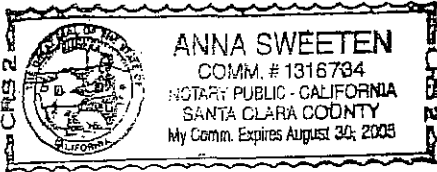
State of California

County of Santa Clara

On JUNE 24, 2004 before me, Anna Sweeten, Notary Public

personally appeared Richard S. Svec

personally known to me- OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal

Anna Sweeten  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- TITLE(S) \_\_\_\_\_
- PARTNER(S)  LIMITED
  - ATTORNEY-IN-FACT  GENERAL
  - TRUSTEE(S)
  - GUARDIAN/CONSERVATOR
  - OTHER: \_\_\_\_\_

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_

DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Alameda } ss.

On July 8, 2004 before me, Laura Ness, Notary Public  
Date Name and Title of Officer (e.g. Jane Doe, Notary Public)

personally appeared Ernest D. Lampkin  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.  
Laura Ness  
Signature of Notary Public

**OPTIONAL**

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Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

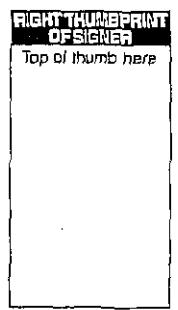
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



TRAVELERS CASUALTY AND SURETY COMPANY

Hartford, Connecticut 06183

BOND NO. 104316161

PREMIUM INCLUDED IN  
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, THE DESILVA GROUP, as Principal,  
and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a corporation organized and doing business  
under and by virtue of the laws of the State of CONNECTICUT and duly licensed  
to conduct a general surety business in the State of California as Surety, are held and firmly bound unto the CITY OF OAKLAND  
as Obligee, in the penal sum of  
TWO MILLION EIGHT HUNDRED EIGHTEEN THOUSAND NINE HUNDRED EIGHT AND NO/100 (\$ 2,818,908.00 ) DOLLARS,  
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally firmly by these  
presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

Whereas, the above-named Principal, has entered into an agreement which is made a part of this bond, with the CITY OF OAKLAND  
State of California, as Obligee, for the designated public  
improvements in the subdivision identified as TRACT NUMBER 7351 LOCATED ONSITE AT LEONA QUARRY  
as required by the Government Code of California.

Whereas, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and  
sufficient payment bond with the CITY OF OAKLAND to secure the claims  
to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, said principal and the undersigned, as surety, are held firmly bound unto the CITY OF OAKLAND  
and all contractors, subcontractors, laborers, materialmen and other persons  
employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure for material furnished or labor  
thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay  
the same in an amount not exceeding the penal sum hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition  
to the penal sum thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY OF OAKLAND  
in successfully enforcing such obligation, to be awarded and fixed by the court,  
and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations  
entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give right of action to  
them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain  
in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the  
specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such  
change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on JUNE 24, 2004

PRINCIPAL: THE DESILVA GROUP

Ernest D. Lampkin, VP, CFO

SURETY: TRAVELERS CASUALTY AND SURETY COMPANY  
OF AMERICA

Richard S. Svec

RICHARD S. SVEC

Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

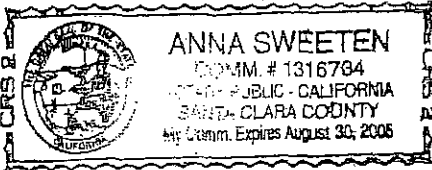
State of California

County of Santa Clara

On JUNE 24, 2004 before me, Anna Sweeten, Notary Public,

personally appeared Richard S. Svec

personally known to me- OR -  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal

*Anna Sweeten*

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- TITLE(S)
- PARTNER(S)
  - LIMITED
  - GENERAL
  - ATTORNEY-IN-FACT
  - TRUSTEE(S)
  - GUARDIAN/CONSERVATOR
  - OTHER: \_\_\_\_\_

- TITLE OR TYPE OF DOCUMENT
- NUMBER OF PAGES
- DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

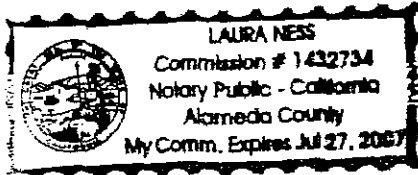
SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Alameda } ss.

On July 8, 2007 before me, Laura Ness, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Ernest D. Lampkin  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Laura Ness  
Signature of Notary Public

**OPTIONAL**

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**Description of Attached Document**

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Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

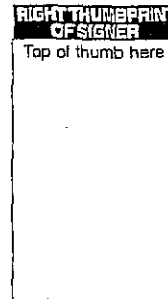
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_





TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY  
Hartford, Connecticut 06183-9062

POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: Richard S. Svec, Rick F. Prentice, William J. Prentice, Anna Sweeten, Suman K. Toor, of San Jose, California, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.



## IMPORTANT DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (the "Act"). The Act establishes a short-term program under which the Federal Government will share in the payment of covered losses caused by certain acts of international terrorism. We are providing you with this notice to inform you of the key features of the Act, and to let you know what effect, if any, the Act will have on your premium.

Under the Act, insurers are required to provide coverage for certain losses caused by international acts of terrorism as defined in the Act. The Act further provides that the Federal Government will pay a share of such losses. Specifically, the Federal Government will pay 90% of the amount of covered losses caused by certain acts of terrorism which is in excess of Travelers' statutorily established deductible for that year. The Act also caps the amount of terrorism-related losses for which the Federal Government or an insurer can be responsible at \$100,000,000,000.00, provided that the insurer has met its deductible.

Please note that passage of the Act does not result in any change in coverage under the attached policy or bond (or the policy or bond being quoted). Please also note that no separate additional premium charge has been made for the terrorism coverage required by the Act. The premium charge that is allocable to such coverage is inseparable from and imbedded in your overall premium, and is no more than one percent of your premium.

ATTACHMENT F

CITY OF OAKLAND



DALZIEL BUILDING . 250 FRANK H. OGAWA PLAZA . SUITE 4314 . OAKLAND . CALIFORNIA . 94612

TEL: (510) 238-6257

FAX: (510) 238-2233

November 15, 2004

Natural Heritage Institute  
2140 Shattuck Avenue, 5<sup>th</sup> Floor  
Berkeley, CA 94704

Attention: Richard Roose-Collins

Subject: Leona Quarry Subdivision Project-November 16, 2004 Agenda Item

Dear Mr. Roose-Collins:

We are in receipt of your letters dated October 25, 2004 and November 11, 2004 requesting the City Council to defer approval of the final maps for Leona Quarry Project previously scheduled on the November 16, 2004 City Council meeting until the City confirms that the project will comply with the conditions of approval. The letters contain several other issues and concerns from some members of Millsmont Homeowners Association that require research and detailed response. Staff has been working diligently with Desilva Group, Inc. and their engineers, City Consultants, contractors and other government agencies to ensure that all pertinent project conditions of approval are met.

Also, at the Public Works Committee meeting of October 26, 2004, the Committee took action to forward the resolution to full Council on November 16, 2004 with the stipulation that certain elements of the existing approved Storm Water Pollution Prevention Plan (SWPPP) and any recommendations required by the City or State Regional Water Quality Control Board (Regional Board) be fully implemented by November 16, 2004. The Committee directed staff to revise the resolution to clarify that the Final Maps were not to be approved at the November 16, 2004 City Council meeting. Staff has clarified the resolution to reflect the Committee directions and submitted a supplemental report for November 16, 2004 City Council action.

Marcel Uzegbu, the project manager for the Leona Quarry project has been assigned to research and report on the issues and concerns contained in your letters. I want to assure you that every issue and concern will be addressed in detail. We plan to respond to both letters on or before December 14, 2004. If you have any further questions, please contact Marcel Uzegbu at (510) 238-6257. We thank you for bringing the concerns to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Raul Godinez II".

RAUL GODINEZ II  
Director Public Works agency

A handwritten signature in black ink, appearing to read "Claudia Caffio".

CLAUDIA CAFFIO  
Director of Community and Economic Development Agency

Cc: Ignacio De La Fuente  
Jean Quan  
Desley Brooks  
Jane Brunner  
Henry Chang  
Larry Reid  
Nancy Nadel

John Russo  
Deborah Edgerly  
Heather Lee  
Mike Neary  
Fuad Sweiss  
Marcel Uzegbu  
Rocio Fierro

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REGIONAL WATER QUALITY CONTROL BOARD  
WATER SERVICES

OTHER OFFICES  
SACRAMENTO, CA  
NEVADA CITY, CA  
ANCHORAGE, AK

November 11, 2004

BY FACSIMILE TO (510) 238-2223 AND FIRST CLASS MAIL

Deborah Egerly  
City Administrator  
One City Hall Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612

**Re: Leona Quarry Project (November 16, 2004 Agenda Item 32)**

Dear Administrator Egerly:

The Millsmont Homeowners Association writes regarding the approval of the final maps for the Leona Quarry Project, which the City Council will consider on November 16, 2004. We reiterate the request made in our letter dated October 25, 2004, that the City Council briefly defer the decision whether to approve the final maps until the City assures that the plans for the Project comply with the Conditions of Approval, as well as applicable State and Federal laws which may further condition the development.

On November 2, 2004, the Regional Water Quality Control Board (RWQCB) issued "Notice of Non-Compliance with the Statewide Construction Stormwater Permit, Leona Quarry, City of Oakland, Alameda County" (hereafter Notice) to DeSilva Gates Construction. The Notice cited six specific violations of the Statewide General Permit for Discharges of Stormwater Associated with Construction Activity (Order 99-08-DWQ) (hereafter General Permit), which RWQCB staff observed during their October 26, 2004 site inspection. See General Permit, pp. 1-2. According to the RWQCB,

"Despite two previous meetings with Water Board staff to discuss our recommendations for this project, site conditions observed and photographed are not in compliance with the above provisions and have caused and continue to threaten to cause pollution to Waters of the State. It is apparent that *the site's current control measures are ineffective and most likely have caused significant sediment discharges* during the last two storm events. The Permit and this Board's Basin Plan prohibit the resultant uncontrolled discharges of sediment laden storm water to the storm drain system and to Waters of the State."

Administrator Deborah Edgerly  
November 11, 2004  
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*Id.*, p. 3 (emphasis added). The RWQCB directed DeSilva to address the violations by submitting (1) a technical report identifying the steps taken to protect the site from erosion and to adequately control storm water, and (2) a revised Storm Water Pollution Prevention Plan (SWPPP). *See id.*, pp. 4-5. We believe the Notice demonstrates that the Project is not proceeding in accordance with the Conditions of Approval or applicable laws.

We continue to believe that the City, DeSilva, RWQCB, Department of Fish and Game (DFG), and other interested stakeholders should meet and confer regarding whether the final maps adequately integrate all regulatory requirements. Given the Notice of Non-Compliance, we believe it is premature for the City to take final action on the final maps until such a meeting occurs. Clearly the November 15, 2004 deadline for submitting the revised SWPPP and the City Council's schedule to consider the final maps on November 16, 2004 do not allow sufficient time for such a meeting. Thus we request that the City defer taking final action on the maps until such a meeting is convened.

We support the RWQCB's finding that DeSilva is in noncompliance with the General Permit, and its direction to DeSilva to "take *immediate* steps to protect the entire site from any further erosion and to prevent the discharge of sediment-laden runoff during storm events." Notice, p. 3 (emphasis added). We have concerns regarding DeSilva's ability to prepare an *effective* SWPPP by November 15, 2004, and to fully implement such plan shortly thereafter. As the RWQCB stated in the Notice, DeSilva was made aware of the likely need for more effective erosion control measures prior to the rainy season, but failed to implement such measures in a timely manner. *See id.*, p. 2. Further, it appears that DeSilva has not provided Site/BMP inspection reports and sampling results in a timely manner. *See id.* However, we are encouraged that DeSilva has reported that it is beginning to implement revised measures and expects to submit the revised SWPPP by the deadline. *See id.*, p. 5. We have requested the opportunity to review the Technical Report and revised SWPPP once they are submitted to the RWQCB.

The General Permit prohibits storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* General Permit, Ordering Paragraph A.3; *see also* Ordering Paragraph B.1 ("Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment."). The discharger must comply with all of the conditions of this General Permit. *See* General Permit, Section C: Standard Provisions for Construction Activity, ¶ 1. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne

Administrator Deborah Ederly  
November 11, 2004  
Page 3

Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.”<sup>1</sup> *Id.*

The RWQCB is required to implement the provisions of the General Permit. *See* General Permit, Ordering ¶ D.1.a. Such implementation includes, but is not limited to, “requesting the submittal of [Storm Water Pollution Prevention Plans (SWPPPs)], reviewing SWPPPs, reviewing monitoring reports, conducting compliance inspections, and taking enforcement actions.” *Id.*

Although the RWQCB has authority to enforce the General Permit, the “General Permit does not preempt or supersede the authority of local storm water management agencies to prohibit, restrict, or control storm water discharges to separate storm sewer systems or other watercourses within their jurisdiction, as allowed by State and Federal law.” *Id.*, Finding ¶ 3, Ordering ¶ C.5. The City, as one of the members of the Alameda Countywide Clean Water Program (ACCWP), has developed a storm water management program (SWMP) in connection with their National Pollutant Discharge Elimination System (NPDES) permit from the RWQCB for storm water discharges. *See* SWRCB, Order R2-2003-0021 (Feb. 19, 2003). The objective of the SWMP is, “to reduce the discharge of pollutants in stormwater to the maximum extent practicable, and in a manner designed to achieve compliance with water quality standards and objectives, and effectively prohibit non-stormwater discharges into municipal storm drain systems and water courses within the Permittees’ jurisdictions.” *Id.*, Finding ¶ 8. The Permit emphasizes the Permittees’ responsibility to consider potential stormwater impacts when making land use decisions: “land use planning ... is the phase in which the greatest and most cost-effective opportunities to protect water quality in new and redevelopment exist.” *Id.*, Finding ¶ 35. Thus, under the terms of its own NPDES Permit from the RWQCB, the City should act to assure Leona Quarry Project complies with stormwater discharge requirements.

We respectfully request that the City Council DEFER APPROVAL OF the final maps for the Leona Quarry Project until the City confirms that the Project will comply with the Conditions of Approval and other applicable requirements of law. We again request that the City convene a meeting of the RWQCB, DFG, DeSilva, and other interested stakeholders, in an effort to collaboratively resolve the issues raised in our October 25, 2004 letter, and to otherwise assure that the final maps adequately integrate regulatory requirements.

---

<sup>1</sup> CWA section 505(a)(1), 33 U.S.C. section 1363(a)(1), provides, “any citizen may commence a civil action on his own behalf— (1) against any person ... who is alleged to be in violation of (A) an effluent standard or limitation under this chapter ....” The term “effluent standard or limitation” includes a storm water discharge permit issued under CWA section 402(p), 33 U.S.C. section 1342(p), such as the General Permit. *See* CWA section 505(f)(6), 33 U.S.C. 1365(f)(6).

Administrator Deborah Edgerly  
November 11, 2004  
Page 4

Thank you for considering these comments. If you have any questions regarding the content of this letter, please contact Nancy Sidebotham, (510) 635-2678, Chiye Azuma, (510) 632-6210, or Mark Brest van Kempen, (510) 568-6889.

Respectfully submitted,



Richard Roos-Collins  
Julie Gantenbein  
NATURAL HERITAGE INSTITUTE

Attorneys for MILLSMONT HOMEOWNERS  
ASSOCIATION

Cc:

By Facsimile and First Class Mail:

Marcel I. Uzegbu, P.E., Project Manager  
Engineering and Design  
Public Works Agency  
City Of Oakland  
250 Frank H. Ogawa Plaza, Suite 4314  
Oakland, CA 94612  
(510) 238-2233 (fax)

John Russo, Oakland City Attorney  
One Frank Ogawa Plaza, 6<sup>th</sup> floor  
One City Hall Plaza  
Oakland, California 94612  
510.238.6500(fax)

Kent Peyton, Project Manager  
DeSilva Gates Construction

Administrator Deborah Edgerly  
November 11, 2004  
Page 5

P.O. Box 2909  
Dublin, CA 94568  
(925) 803-4263 (fax)

By First Class Mail:

City Councilmember Jane Brunner  
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One City Hall Plaza  
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City Councilmember Danny Wan  
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One Frank Ogawa Plaza, 2<sup>nd</sup> floor  
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City Councilmember Desley Brooks  
One Frank Ogawa Plaza, 2<sup>nd</sup> floor  
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City Councilmember Larry Reid



Administrator Deborah Edgerly

November 11, 2004

Page 6

One Frank Ogawa Plaza, 2<sup>nd</sup> floor

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City Councilmember Henry Chang

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Dale Bowyer, Supervising Water Control Resources Engineer

San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400

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Robert W. Floerke, Regional Manager, Central Coast Region

California Department of Fish and Game

P.O. Box 47

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OTHER OFFICES  
SACRAMENTO, CA  
NEVADA CITY, CA  
ANCHORAGE, AK  
GABORONE, BOTSWANA, AFRICA

October 25, 2004

Deborah Edgerly  
City Administrator  
One City Hall Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 94612

Re: Leona Quarry Project (October 26, 2004 Agenda Item 1)

Dear Administrator Edgerly:

The Millsmont Homeowners Association writes regarding the approval of the final maps for the Leona Quarry Project, which the City Council will consider on October 26, 2004. Specifically, the City Administrator has forwarded to the Council a recommendation that it approve the "Resolution Authorizing the Director of the Public Works Agency to Enter Into a Subdivision Agreement With DeSilva Group, Inc. For Construction of Certain Improvements In a Real Estate Subdivision Entitled 'Tract 7351,' Leona Quarry Project; Approving the Final Tract Map Numbers 7351 and 7493; Fixing The Amount of the Security to Guarantee the Faithful Performance of Such Agreement and Adopting Plans and Specifications."

We understand the DeSilva Group, Inc. (developer) is ready to proceed with construction. We also understand and support the City's interest in making more affordable housing available to Oakland residents. However, the Homeowner's Association is concerned that the City has not completed its due diligence to assure that the Project will not cause improper damage to the environment downstream from the Project site, which includes Chimes Creek and riparian private properties owned by Millsmont Homeowners. We *respectfully request that the City Administrator briefly defer the decision whether to approve the final maps until the City assures that the plans for the Project comply with the Conditions of Approval, as well as applicable State laws which may further condition the development.*

The Homeowners Association is an unincorporated group of concerned residents who live in the Millsmont neighborhood in central east Oakland. Chimes Creek is the focal point of our community. We have interests that will be directly impacted by the proposed Leona Quarry Project.

Our letter is organized as follows. Section I provides a background of the Leona Quarry Project and its impacts on Chimes Creek. Section II contains specific comments regarding the adequacy of the final maps, including compliance with the Conditions of

Approval and state law. These comments are restated in the form of separate questions. We respectfully request that the City consider these comments and answer these specific questions, including specific citations to the record, before taking final action.

## I. BACKGROUND

The project is located at 7100 Mountain Boulevard, in the Oakland Hills, on 128 acres of land within the headwaters of Chimes Creek. City of Oakland Community and Economic Development Agency, Leona Quarry Draft Environmental Impact Report (2002) (Draft EIR), p. IV.F-1. A Modified Plan for development calls for the construction of 477 residential units in Leona Quarry, along with attendant support structures for the subdivision. City of Oakland Community and Economic Development Agency, Leona Quarry Final Environmental Impact Report (2002) (Final EIR), p. III-7.

Chimes Creek is a natural creek that originates in headwaters located both above and within the Leona Quarry Project. *See* City of Oakland Museum, Lion Creek Watershed Map (1999), *available at* <http://www.museumca.org/creeks/21-OMLion.html>. Its flow is perennial. Today, the creek flows westward across the surface of the Project, both as an expression of surface water and in underground conduits. The creek is culverted as it leaves the Project area, after which it flows under Interstate 580 to form the main trunk of the storm drain network flowing through the Burkhalter neighborhood. A section of the creek daylight behind residential properties on Delmont Avenue, then goes underground to cross Seminary Avenue, and surfaces briefly on the Mills College campus. Chimes Creek then joins Horseshoe Creek to form a part of the Lion Creek watershed, which drains into the Bay. Chimes Creek is defined as “waters of the United States.” *See* Draft EIR, p. IV.B-12. The City has designated it as a Category III Creek, pursuant to the City of Oakland’s Creek Protection, Storm Water Management and Discharge Control Ordinance (Creek Protection Ordinance). *See* Oakland Municipal Code, § 13.16. For work done in and around a Category III creek, a project developer must adhere to the following:

“In addition to normal submittal requirements related to other permits that must be obtained, a site plan must be submitted that shows the relationship and distances between the Development or Work to be conducted and the Top of the Bank of the Creek. In addition, a Creek Protection Plan must be submitted for review and approval that describes the Best Management Practices that will be employed to assure construction activity will not adversely impact Creek Bank, Riparian corridor or water quality.”

Oakland Municipal Code, § 13.16.140(b).

Prior to grading work on the Project site, even while quarrying operations continued around the creek, the portion of Chimes Creek that crossed the quarry supported cattails and other reeds, fairly established willows, and other vegetation. *See Declaration of Mark Brest van Kempen* (Oct. 25, 2004), p. 2 (Attachment 1). On February 4, 2004, Mr. Brest van Kempen observed hundreds of pacific tree frog tadpoles, dragonfly larvae and damselfly larvae in the Creek on the Project site. *See id.*

On June 10, 2002, the City of Oakland issued the Draft EIR for the Leona Quarry Project. The Final EIR issued on September 23, 2002. A number of hydrology and water quality impacts were identified in the course of environmental review, including:

- Development of the project site may create localized flooding and contribute to a cumulative flooding downstream.
- Construction activities may result in soil erosion and increase levels of suspended sediments and contaminants in storm water flows, resulting in adverse impacts to downstream water quality.
- Construction dewatering may result in discharge of sediment-laden groundwater or impacts to local groundwater gradients and flow.
- Upon completion of construction activities, the proposed project may result in a long-term increase in storm water runoff contaminant levels, degrading downstream receiving water quality.

Draft EIR, p. II-19.

*Given the already fragile conditions of Chimes Creek, these impacts generated concern in the neighborhood. The Draft EIR acknowledged that Chimes Creek was not capable of handling current runoff from the quarry:*

“Downstream of the project site, portions of storm drainage pipes that convey Chimes Creek are inadequately sized to handle peak flows. Chimes Creek is currently not capable of handling the quantity of runoff generated by large rainfall events. Flooding ... has occurred on several occasions.... Those stretches of Chimes Creek not enclosed by storm drains have unstable creek banks, suggesting that channel capacity is inadequate to handle peak flow volume. The reach directly above Seminary Avenue was stabilized using an

Administrator Deborah Edgerly

October 26, 2004

Page 4

underground bypass channel and surface lowflow channel. However, channel sections immediately upstream exhibited indications of bank instability and failure. The ACFC recognizes that increased discharge in the creek has led to erosion problems that degrade the creek environment, affect adjacent property owners, and contribute sediment that may interfere with downstream storm drain facilities.”

Draft EIR, p. IV.F-7.

The Homeowners Association has witnessed firsthand the degradation of the creek environment that resulted from the 1986 development of Ridgemont, which is above the quarry. Declaration of Nancy S. Sidebotham (Oct. 25, 2004) (Attachment 2), pp. 2-3. Runoff from the Ridgemont development increased the volume and velocity of flows through Chimes Creek. *See id.* The higher flows rapidly eroded the creek banks and channel. *See id.* In 1986, during the first heavy rains to follow Ridgemont construction, the high flows wreaked havoc on riparian vegetation. *See id.* Full-grown trees fell into the creek. *See id.* Below Nairobi Place, several feet of streambank simply collapsed. *See id.* The high flows exposed sewer lines that previously had been buried in the banks. *See id.* Since that time the sewer lines have ruptured every year, releasing sewage directly into the Creek. *See id.* At 6301 Hillmont Drive, the Public Works Agency supported a sewer pipe by tying it to an oak tree, a stopgap measure that has been in place since 1988. *See id.*

In January 2003, Maureen Dorsey, Burkhalter Neighbors, and Citizens for Oakland’s Open Space filed a Petition for Writ of Mandate alleging that the Final EIR did not adequately address the potential hydrological impacts of the proposed Project. *See* Maureen Dorsey et al. v. City of Oakland (Alameda Superior Court No. RG 03077607). The court issued the Peremptory Writ of Mandate and ordered the City to prepare a Subsequent EIR with regard to hydrological issues. *See id.*

The Final Subsequent EIR was issued January 14, 2004. *See* City of Oakland Community and Economic Development Agency, Final Subsequent Environmental Impact Report Limited to Hydrology (Jan. 14, 2004) (Final Subsequent EIR). The Final Subsequent EIR revised the mitigation measures required to minimize the impacts associated with increased runoff from the Project. *See id.*, p. II-1. The detention basin was enlarged to 15.6 acre-feet, and a surface drainage swale located along the western-most berm slope of the basin was added. *See id.* The Final Subsequent EIR found that constructing a storm water management system that included a larger detention basin and other mitigation measures would minimize flooding impacts to “less than significant.” City of Oakland Community and Economic Development Agency, Draft Subsequent Environmental Impact Report Limited to

Administrator Deborah Edgerly  
October 26, 2004  
Page 5

Hydrology (Jan. 14, 2004) (Draft Subsequent EIR), at p. II-5. The Draft EIR predicted that mitigation measures would reduce 25-year peak flows from the Project site, into Chimes Creek, from 168 cfs to 163 cfs. *See id.*, p. IV-19.

However, in April 2004, we began to notice that the creek was clouded with silt originating from pre-construction grading and dewatering activities on the Project site. *See* Sidebotham Declaration, p. 7, Attachment 2; Declaration of Chiye Azuma, (Oct. 25, 2004), p. 4 (Attachment 3). The City did not fine the developer in response to a number of complaints filed with the Public Works Agency. *See id.*

On August 4, 2004, the Public Works Agency did cite and fine DeSilva Gates for “an illicit discharge to the Chimes Creek.” Letter to DeSilva Gates Construction, LP, from Ronald Ward Oakland Public Works (Aug. 4, 2004). DeSilva was cited again on August 5<sup>th</sup> and 6<sup>th</sup> for “continuous illegal discharge to the City’s storm drain system,” which constituted a violation of the Oakland Creek Protection Ordinance. Letter to DeSilva Gates Construction, LP, from Ronald Ward, Oakland Public Works Agency (Aug. 5, 2004), *see also* letter to DeSilva Gates Construction, LP, from Ronald Ward, Oakland Public Works Agency (Aug. 6, 2004). Further, the notice of violation stated:

“The temporary sediment pond located at the south side of the project site is discharging turbid water into the City’s storm drain. This sediment pond was addressed in a letter to you dated July 1, 2004. The improvements requested in that letter have not been implemented. This discharge could have been avoided with prudent attention to the matter by DeSilva Gates.”

*Id.*

Given the findings of the Subsequent EIR that downstream impacts would be “less than significant” after mitigation measures were implemented, the Homeowners Association is surprised and alarmed that Marcel Uzegbu, City Engineer, told us at a meeting held on August 10, 2004 that the City likely will condemn private properties along the creek in order to accommodate the increased flows from the Leona Quarry Project. *See* Sidebotham Declaration, pp. 8-9, Attachment 2 (“We will probably have to take some of your land to widen the channel because I don’t think Chimes Creek can handle the volume of water that will be generated from the development.”). In addition, Mr. Uzegbu said the City would likely have to replace the sewer lines that run along Chimes Creek because the current lines were not large enough to carry the additional volume of wastewater the Leona Quarry Project is expected to generate. *See id.* Mr. Uzegbu was unwilling to estimate at that meeting how much property would need to be condemned in order to widen the channel *and* install larger

sewer lines. *See id.* We have requested a meeting to discuss the widening of the creek further, but Mr. Uzegbu has not responded. *See id.*

## II. COMMENTS ON ADEQUACY OF FINAL MAPS

The Homeowners Association is concerned that the final maps for the Project are not ready for the City Council's approval. The Homeowners Association requests that the City Administrator briefly defer the Council's decision regarding the final maps until the following outstanding issues are resolved.

### A. The Final Maps May Not Conform to the Use Permit.

The Agenda Report for the Leona Quarry Project states: "The subdivider will be required to adhere to best management practices during project construction. Measures to control erosion, contamination of storm water runoff, dust, noise, and heavy equipment emissions will be required." Oakland Public Works Agency, Agenda Report (Oct. 13, 2004) at pp. 2-3. We do not believe the record the City has compiled and provided to the public to date supports this statement. For this purpose, City Record means: the permit file for the development, City correspondence with regulatory agencies, and City responses to public comments.

The final maps should incorporate all the requirements listed in the Conditions of Approval. To date, City staff have not responded to our requests for confirmation that the final maps do indeed incorporate all the requirements listed in the Conditions of Approval.<sup>1</sup> *See* Azuma Declaration, pp.3-12, Attachment 3. Members of the Homeowners Association have not been allowed to see the most recent final maps; the City has not made a copy of the final maps available to us since July 2004. *See id.*, p. 2. Chiye Azuma, one of our members, has requested to view the most recent final maps in both written document requests and phone calls to City officials. *See id.* Based on our inspection of the site, it appears that a number of the hydrology-related conditions either have not been fulfilled, or necessary preparations have not been undertaken to ensure that conditions will be fulfilled in a timely manner. *See id.*

Conditions of Approval, paragraph 23, describes the Hydrology and Drainage Requirements for the Project. It requires that final grading and improvement plans for the Project include the following information, analysis, and requirements:

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<sup>1</sup> Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments, as required by CEQA. *See* CEQA Guidelines § 15126.4.

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- a. "A master site drainage and grading plan that: (i) incorporates one of the following detention basin system, (ii) meets the published design criteria set forth in ... "Hydrology and Hydraulics Criteria Summary for Western Alameda County" (1989) ... (iii) is consistent with the information, standards and requirements as set forth in the MMRP ...
- b. The Project Applicant shall meet the revised Clean Water Act requirements as established by the Regional Water Quality Control Board ...
- c. The final plan for the detention basin (Parcel A) shall incorporate: detailed landscaping and other specifications so that a water treatment area can be established within the basin including a planting plan based on the recommendations of a qualified hydrologist and biologist regarding contours that can support the proposed planting and not interfere with the design and detention capacity.
- d. Other specifications for the detention basin (Parcel A) ... including measures for sediment storage, design of fencing, access, and clean out maintenance specifications, liner monitoring specifications and repair procedures....
- e. The site drainage plan shall include detailed measures to detain storm water run-off to the maximum feasible degree, given geotechnical and other constraints through infiltration opportunities, bio-swales or grassy swales, and creating a vegetated swale in the Village Green area.
- f. A hydrologic review and confirmation of seasonal wet weather conditions for conveyance of the storm water.
- g. A review and recommendations pertaining to the creation of a perennial creek through the site that drains into the lower detention basin, consistent with condition of Approval No. 19.
- h. A geotechnical investigation, including soil borings as necessary, of the stability of the detention basin (Parcel C-C)....
- i. Applicant shall fund the cost to prepare detailed construction documents and all construction costs to redirect existing storm drainage in Ridgement Drive



away from the Leona Street basin and to connect it to the Project's drainage system.

j. Provisions for an inspection, monitoring, certification and maintenance process throughout the course of grading, construction and post construction to assure that the approved drainage plan and other measures are functioning properly....”

¶ The City Record does not confirm that the primary detention basin has been constructed to industry standards, consistent with Conditions of Approval, paragraph 23, sub-section (a).

As a result of the first seasonal rainfall, the inside slopes of the detention basin partially have “melted away.” *See* Azuma Declaration, at p. 7, Attachment 3. This is inconsistent with the requirement that the detention pond be lined with an impermeable clay liner, and then hydroseeded to prevent erosion. On October 19, 2004, after the first major storm, Chimes Creek was again running “muddy.” *See* Brest Van Kempen Declaration, at p. 1, Attachment 1. Mr. Brest van Kempen called Jun Osalbo, and accompanied him on a site inspection. *See id.* They found that a great deal of silty water was being released from the detention pond directly into the City's storm drain system, and then into Chimes Creek. *See id.*, at p. 2. A large percentage of the hydroseed washed away, several large swaths of wattle were compromised by mudslides and excessive wash-out, and the baker tanks that were previously used to filter runoff were overflowing. *See id.*; Azuma Declaration, at p. 8, Attachment 3; Brest van Kempen Declaration, at p. 2, Attachment 1.

¶ The City Record does not confirm the existence of any correspondence or other documentation that grassy swales or other bio-filtration measures have been incorporated into the final maps, consistent with Conditions of Approval, paragraph 23, sub-section (e). *See* Azuma Declaration, at p. 8, Attachment 3. Grassy swales had not been adequately incorporated in the final maps when one of our representatives was allowed to inspect them in July 2004. *See id.*

• The City Record does not confirm that a review and recommendations regarding the creation of a perennial creek have been completed, consistent with Conditions of Approval, paragraph 23, sub-section (g). *See id.*

• The City Record does not confirm that an effective inspection, monitoring, and maintenance program is in place, consistent with Conditions of Approval, paragraph 23, sub-section (j). *See* Azuma Declaration, p. 3 Attachment 3; Brest van Kempen Declaration, p.2, Attachment 1. *Given the number of complaints from the community, and the fact that*

investigations only seem to be initiated in response to complaints, it appears that the City has not implemented an effective monitoring, inspection, and maintenance program.

*Question 1. Has the City performed a comprehensive review of work on the Project, including onsite inspections and review of correspondence and reports to date, to ensure that the Project is in compliance with each and every requirement listed in the Conditions of Approval? If yes, please describe the City's specific findings.*

*Question 2. Has the City reviewed the final maps to ensure that they conform to the requirements contained in the Conditions of Approval, CEQA Mitigation Monitoring and Reporting Plan, and the Storm Water Pollution Prevention Plan? If yes, please describe the City's specific findings.*

*Question 3. How will the City require the developer to adhere to best management practices during Project construction? What is the City's standing policy for site inspections to ensure compliance with the Conditions of Approval?*

**B. It Is Premature to Approve the Final Maps Prior to the Issuance of All Necessary Permits Required by State Laws.**

The City Record does not confirm that the Project has obtained all the necessary permits. It is premature for the City to approve the final maps prior to regulatory agencies with jurisdiction over public resources exercising their statutory authority. Neither the Final EIR nor the Subsequent Final EIR provide a rational basis for allowing the Project to proceed without necessary permits. Some of the permits that appear to be missing from the City Record would otherwise require additional mitigation conditions for the Project.

**I. Water Quality Permits**

The City Record confirms that the developer has not obtained a dredge-and-fill permit under Clean Water Act (CWA) section 404, 33 U.S.C. 1344, or a water quality certification under CWA section 401, 33 U.S.C. § 1341, as implemented by the San Francisco Regional Water Quality Control Board (RWQCB) under the Porter-Cologne Act, Cal. Water Code §§ 13000-14958 (2002). The developer has also not obtained a waiver.

The people own the State's waters. *See* Water Code § 102. Use of that water is of public concern. *See id.* § 104. All waters shall be managed for the greatest public benefit. *See id.* § 105. Chimes Creek is public waters. According to the San Francisco Regional Water Quality Control Board (RWQCB):

“Should the [Leona Quarry] project include work in jurisdictional waters of the United States, ... then it could likely require a [dredge-and-fill] permit ... pursuant to Section 404 of the federal Clean Water Act (CWA). Such permits also require a project proponent to apply and receive Water Quality Certification from the Water Board pursuant to Section 401 of the CWA.”

Letter from Keith H. Lichten, Water Resource Control Engineer, RWQCB, to Claudia Cappio, City of Oakland (Dec. 4, 2003). In response, the City asserted that while Chimes Creek is a “water of the United States,” it does not meet the federal definition of wetlands. Final Subsequent EIR, p. IV.E-1. The City concluded that a CWA Section 404 permit was not necessary for the Project. Since the RWQCB has permitting jurisdiction under CWA section 404, it must decide whether this development requires such a permit. The Homeowners Association has not been able to find any record of the City requesting the RWQCB to make such a determination, or requesting the RWQCB to concur with the City’s determination.

Similarly, the decision regarding applicability of CWA section 401 certification lies exclusively with the RWQCB. We have not been able to find any record of the City requesting the RWQCB to make such a determination regarding the applicability of section 401 to the Project, or requesting the RWQCB to concur with the City’s determination.

*Question 4. Has the City requested that the RWQCB determine that section 404 permitting requirements do not apply to the Project, or requested that the RWQCB concur with the City’s conclusion that section 404 does not apply? If the City did not request such determinations, under what authority was the City acting when it decided a section 404 permit was not required?*

*Question 5. Has the City requested that the RWQCB determine that section 401 permitting requirements do not apply to the Project, or requested that the RWQCB concur with the City’s conclusion that section 401 does not apply? If the City did not request such a determination, under what authority was the City acting when it determined that a section 401 certification was not required?*

## **2. Fish and Game Code Section 1603 Streambed Alteration Agreement**

The City Record does not confirm that the developer has obtained a Fish and Game Code section 1603 Streambed Alteration Agreement.

The Department of Fish and Game (DFG) has jurisdiction to regulate taking of fish and wildlife, and modifications of their respective habitats. *See* 14 CCR § 783.1.

“The protection and conservation of the fish and wildlife resources of this state are hereby declared to be of utmost public importance. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state as well as providing a significant part of the people’s food supply and therefore their conservation is a proper responsibility of the state.”

Fish and Game Code § 1600. To fulfill this purpose, DFG has authority to regulate any diversion or obstruction of natural flow or other modification of a streambed. *See id.*, at § 1603. Section 1602 of the Fish and Game Code requires that a project sponsor notify DFG before commencing any substantial diversion or obstruction of the natural flow of a stream, or any substantial change to the streambed, bank, or channel. If DFG determines that such modification will substantially divert or obstruct natural flow or substantially change the bed, channel or bank of any river, stream or lake, the owner and DFG will undertake to reach an agreement which includes any measure necessary to protect fish and wildlife. *See id.* The activity may commence only after the agreement is final.

For purposes of DFG’s jurisdiction, a stream is defined broadly as, “a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.” *See* 14 CCR § 1.72. Fish is defined broadly to include, wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof. *See* Fish and Game Code § 45. It appears that the surface flow from the Chimes Creek headwaters that crossed the quarry prior to construction, and supported cattails, reeds, willows, frogs, and damselflies, meets these criteria. *See* Brest van Kempen Declaration, p. 1.

We have been unable to confirm whether the City has required the developer to contact DFG regarding the effects of earth-moving activities on the portions of Chimes Creek in the Project area. Based on our review of DFG’s comments on the Draft EIR, it does not appear that the applicability of Fish and Game Code section 1603 was ever addressed. *See* letter to Claudia Cappio, Oakland Community Economic and Development Agency, from Robert W. Floerke, DFG (July 16, 2002).

*Question 6. Has the City required the developer to contact DFG regarding the effects of earth-moving activities on the portions of Chimes Creek in the Project area? If not, what is the basis of the City’s decision not to include such a requirement?*

### 3. Creek Protection Permit

In addition to permitting requirements under State laws, the developer must comply with all City of Oakland rules and regulations. *See* Draft EIR, at p. II-20. The City Record does not confirm that the developer has complied with the Oakland Creek Protection Ordinance, which prohibits non-storm water discharges and increases in flow to the City storm sewer system. *See* Oakland Municipal Code, § 13.16.070(A). It also prohibits any person from “commit[ting] or caus[ing] Development or Work within the boundaries of a creekside property, or within the public right of way fronting a creekside property, unless a Creek Protection Permit has first been obtained from the Chief of Building Services.” *Id.*, § 13.16.120. Thus, under the Creek Protection Ordinance, the developer must (1) obtain a Category III Creek Protection Permit for construction on the project site, and (2) submit a Creek Protection Plan to the City to ensure continued preservation of the creek. *See* Draft EIR, at p. IV.B-23. De Silva’s Creek Protection Plan must be submitted for review and approval, and include a description of the Best Management Practices that will be employed to assure construction activity will not adversely impact the creek bank, riparian corridor, or water quality. *See* Oakland Municipal Code, § 13.16.140(c).

Approval of a Creek Protection Permit, as required for the Leona Quarry Project, is contingent on the following considerations:

- (1) Whether the proposed activity may discharge Pollutants into the Creek;
- (2) Whether the proposed activity may result in modifications to the natural flow of water in the Creek;
- (3) Whether the proposed activity may deposit new material into the Creek or cause bank erosion or instability; and
- (4) Whether the proposed activity may result in the alteration of the capacity of the Creek.

*See id.*, § 13.16.200(a). In addition, the project may not result in the following: (1) Degradation of the visual quality and natural appearance of the riparian corridor; and (2) Danger to public or private property. *See id.*, § 13.16.200(c), (e).

For Category III Creeks, the Creek Protection Ordinance requires permit applicants to post notices of their applications “in clear public view on the subject property and within a 300

foot radius of the subject property,” “ten calendar days before a decision is made on the application.” *See id.* at § 13.16.180. The Creek Ordinance also requires the Oakland Chief of Building Services to issue a written decision granting or denying a Creek Protection Permit. This decision must be mailed to “each Person who commented on the application,” and who provides necessary postage. *See id.* at § 13.16.210.

We have not been able to confirm that the City has issued a Creek Protection Permit for the Project. The Final EIR and Final Subsequent EIR do not contain reference to a Creek Protection Plan, and we have found no record of a Creek Protection Permit on file. Given the increased sedimentation and flows in the creek since work at the Project began, it would appear that any Creek Protection Plan that may have been submitted is not adequate to prevent degradation prohibited by the Creek Protection Ordinance. *See* Azuma Declaration, pp. 2-3, 5, Exhibit 3; Brest van Kempen Declaration, pp. 1-2, Exhibit 2. Further, we have found no record of public notice regarding the issuance of a Creek Protection Permit.

*Question 7. Has the City issued a Creek Protection Permit to the Leona Quarry Project for work done in and around Chimes Creek? If yes, did the City comply with the public review comment procedures for such a permit application?*

**C. The CEQA document Does not Address Foreseeable Impacts and May Need to Be Supplemented.**

Under the California Environmental Quality Act (CEQA), an EIR should address identify significant impacts on the environment of a project that are reasonably foreseeable. *See* Pub. Resources Code § 21002.1. A lead agency is required to recirculate an EIR when significant new information is disclosed after public review. *See* CEQA Guidelines § 15088.5.

The draft Resolution finds, “the actions authorized by this Resolution will not involve any new or more severe significant impacts, there are no substantial changes with respect to the circumstances under which the project was approved that involve new or substantially more severe significant environmental impacts, and no significant new information has come to light that would indicate new or more significant impacts ....” Based on Mr. Uzegbu’s statements at the August 10, 2004, meeting, we disagree.

According to Mr. Uzegbu’s statements, it appears the City has been aware for some time that the Project will result in flows that exceed the current capacity of Chimes Creek and the sewer system. *See* Sidebotham Declaration, p. 8. His statements are inconsistent with the Draft Subsequent EIR finding that mitigation measures would reduce 25-year peak flows from the Project site, into Chimes Creek, from 168 cfs to 163 cfs. *See* Draft Subsequent EIR, p. IV-19. The possibility of widening the creek to accommodate higher flows generated by the

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Project was not disclosed in three years of environmental review; it was not mentioned in the four iterations of the EIR that were prepared for the Project. Similarly, the possibility of installing larger sewer lines to accommodate increased volume of wastewater from the Project was not disclosed. *See* Sidebotham Declaration, p. 8. Both are significant impacts that should have been vetted in environmental review.

Based on Mr. Uzegbu's statements at the August 10, 2004 meeting, it appears that the City may be allowing the developer to proceed without requiring proper management of storm water and wastewater from the Leona Quarry Project. If this is the case, it would seem that the City is impermissibly protecting the rights of upstream private property owners, both future Leona Quarry property owners and current Ridgemonst property owners, at the expense of the public trust in Chimes Creek and of downstream property owners.

*Question 8. Did the EIRs disclose that the City may need to condemn private property in order to widen the channel of Chimes Creek so it could accommodate the increased runoff from the Leona Quarry Project?*

*Question 9. Did the EIRs disclose that the City may need to condemn private property along Chimes Creek in order to install larger sewer lines that will be necessary to handle the increased wastewater from the Leona Quarry Project, why was this action not disclosed during environmental review?*

*Question 10. Given the City staff's belief that the Leona Quarry Project will be the direct cause of the increased storm water into Chimes Creek and wastewater into the City's sewer system, who will be responsible for paying to widen the creek and/or install new sewer lines, taxpayers or DeSilva Gates?*

*Question 11. Is condemnation of downstream private property, in order to accommodate increased flood flow or to install larger sewer pipes for the benefit of upstream private property, a potentially significant impact under CEQA?*

### CONCLUSION

We respectfully request that the City Council DEFER APPROVAL OF the final maps for the Leona Quarry Project until the City resolves the issues raised in this letter, and specifically confirms that the Project will comply with the Conditions of Approval and other applicable requirements of law. We request that the City convene a meeting of the developer, RWQCB, DFG, and the Neighborhood Association in an effort to collaboratively resolve the issues raised by this letter.

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Thank you for considering these comments. If you have any questions regarding the content of this letter, please contact Nancy Sidebotham, (510) 635-2678, Chiye Azuma, (510) 632-6210, or Mark Brest van Kempen, (510) 568-6889.

Respectfully submitted,

---

Richard Roos-Collins  
Julie Gantenbein  
NATURAL HERITAGE INSTITUTE

Attorneys for MILLSMONT HOMEOWNERS  
ASSOCIATION

Cc:

*By Messenger:*

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**Attachment 1**

## DECLARATION OF MARK BREST VAN KEMPEN

I, MARK BREST VAN KEMPEN, declare the following:

1. The facts stated herein are known personally to me.
2. I have been a resident of the Oakland Hills area for four years. Chimes Creek runs through my backyard and my property extends on both sides of the creek.
3. I closely monitor Chimes Creek. I also have closely monitored work at the Leona Quarry Project site since it began in April 2004. I have attached photographs that I have taken of both the Creek and the Project site to this declaration. I can provide color copies of the photographs upon request. I have provided captions for the photographs attached to my declaration, which describe the scene as I perceived it.
4. Prior to the grading and pre-construction activities for the Project, there was surface flow from the Chimes Creek headwaters that crossed the Quarry. The flow was perennial, not intermittent. It supported a great deal of cattails *Juncus* and other reeds, as well as fairly well established willows and other vegetation. *See* photographs 1 and 2. On February 4, 2004, while documenting the watershed for a presentation, I observed hundreds of pacific tree frog tadpoles, dragonfly larvae and damselfly larvae in that section of the creek. There were also *Gambusia* (mosquito fish) in the creek, which were probably planted by the county for mosquito abatement.
5. When grading began on the project, Chimes Creek below the site became full of silt. This silting up of the creek would continue through working hours, gradually clear after grading activities stopped at night, and silt up again the next morning when work continued. I called and emailed photos of these violations to City inspectors daily for approximately two months. During that time, inspectors acknowledged that the creek was unacceptably silty, but

said that they were unable to find the source. Finally, in frustration, neighbors contacted the Regional Water Quality Control Board (RWQCB). The same afternoon we contacted the RWQCB, the City inspectors found that the developer was “illicitly discharging into city storm drains.” I do not know if the City inspectors would have cited the developer had it not been for our call to the RWQCB. The developer was not fined for the two months of discharge prior to the inspector’s discoveries.

6. On October 19, 2004, we experienced the first significant rainstorm of the season. Following the rains, Chimes Creek rose consistent with past storm events but then it suddenly turned very silty. *See* photograph 3. I called Jun Osalbo, Oakland inspector for the Leona Quarry Project, to report the problem. He agreed to meet me for a site inspection of the Project area. We found that a great deal of silty water was being released from the detention pond directly into the City’s storm drain system, and then into Chimes Creek. This appeared to be a clear violation of the Conditions of Approval for the Project. It also was inconsistent with the assurances my neighbors and I had received from the Project contractors that the detention pond was not releasing any water.

7. After this first storm event, it appeared that all of the measures to prevent dirty water from entering the storm drain system and Chimes Creek had been overwhelmed and/or failed. The rains had washed away a large percentage of the hydroseed. *See* photograph 4. Several large swaths of wattle had failed. The capacity of the baker tanks had been exceeded, causing them to overflow. *See* photograph 5.

8. Later this same day a City Inspector informed a neighbor concerned about the Creek that the discharge was not coming from the Quarry site. This was after I had witnessed him being informed of the discharging water from the detention pond.

8. Later this same day a City Inspector informed a neighbor concerned about the Creek that the discharge was not coming from the Quarry site. This was after I had witnessed him being informed of the discharging water from the detention pond.

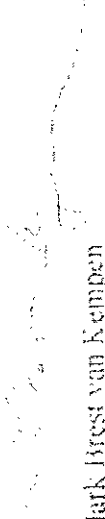
9. From this one day of rain the detention pond had filled up past the point at which it could treat any water from the site. See photograph 6. The developers have assured both the City and the community that contaminants introduced onto the site by the hundreds of cars and the activity of hundreds of residents on the site will be treated by the detention pond. This storm showed that this system, as currently constructed, will be wholly ineffective. Any contaminants on the site will be carried by storm water directly into Chimes Creek.

10. I have been disappointed repeatedly by how this Project has proceeded. I am extremely concerned with how the Project will proceed in the future. I have been assured repeatedly by both the City and the developers that this Project won't have any negative impact on the Creek, but I have documented numerous events that I consider to be clear violations of the Project's permits, events that I feel the City has not addressed adequately.

11. I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed the 25<sup>th</sup> day of October, 2004 at 3835 Delmont Ave., Oakland, CA, Alameda County.

Respectfully submitted

Dated: 25 October 2004



Mark Brest van Kempen

Photograph 1



Leona Quarry on Feb 4 2004, before grading began.  
This photograph shows portion of Chimes Creek that  
was destroyed by grading activity.

Photograph 2



Diagram showing water flow of Chimes Creek in lower Quarry.



Photograph 3



Chimes Creek as it appeared on October 19 2004.

Photograph 4



Leona Quarry on Oct 19 showing failures of erosion prevention measures.

Photograph 5



Silty water entering City storm drain on Oct 19, 2004.



Same storm drain showing discharge during previous rain in July 2004.

Photograph 6



Detention Pond on Oct 19, 2004 showing section of pond where water is supposed to flow through aquatic plants for treatment completely submerged after one day of rain.

Photograph 7



Chimes Creek flowing onto Quarry site on Oct 19, 2004.



Chimes Creek flowing onto quarry site after being graded over.

## Photograph 8



Photographs showing existing problems with Chimes Creek. Above: Flooding damaging house in 2002. Right: Sewer Main eroded by excessive run off.



Attachment 2

### DECLARATION OF NANCY S. SIDEBOTHAM

I, NANCY S. SIDEBOTHAM, declare the following:

1. The facts stated herein are known personally to me.
2. I have been a resident of the Oakland Hills area for 24 years of years. I own five pieces of property adjacent to Chimes Creek on the western side located on Hillmont Drive.
3. When I moved to my current residence in 1980, I could hear many frogs and crickets. I could stand at the bottom of my property and see the clear water, and hear the gurgling noise of the creek.
4. Chimes Creek flows all year long. My understanding, based on conversations with long time neighbors of the area, Kenneth T. Lass of Alameda County Public Works and Flood Control (ACFC), and discussions with City of Oakland staff over the years is that the headwaters of the creek are located above the Leona Quarry. Once the Creek leaves the Quarry, owned by Gallagher and Burk, it is channeled by culverts under Altamont Avenue, turning NW near the western end on Altamont and Hillmont, then daylights at Hillmont and Delmont. In the 1940's the Quarry, culverted the stream and channeled the water runoff into holding ponds, which previously served to keep the heavy flows during the rainy season prior to the Ridgemont Development in 1982. The storage ponds were necessary because the base of the Quarry was at bedrock and when the rains came there was no percolation. The quarrying continued up until approximately 13 years ago.
5. In the early 1980's, Oakland approved the Ridgemont Development. When the City of Oakland approved the development of Ridgemont they allowed the runoff to be channeled into Chimes and Lion Creeks. The channeling into Chimes came through the Leona Quarry, culverts and holding ponds and into the culvert to Chimes. It was at this time that I



began to observe drastic changes to Chimes Creek. The flow of water was heavier, faster, and wider. The frogs and wildlife disappeared. Within three years after moving to the area I began to notice significant erosion of the creek banks, and a deepening of the channel.

6. In 1986, the Ridgemont Development was nearly complete. When the heavy rains arrived, the effects of the increased runoff from Ridgemont into the creek were devastating. I witnessed trees fall into the creek due to the increased erosion of the banks: a full-grown acacia tree just dropped into the creek. The added runoff from Ridgemont and the heavy rainfalls in 1986 caused drastic erosion and the undermining of at least one mature acacia tree which fell straight down into the creek and changed the channel flow of the creek to the Hillmont side.

7. After the first major storm event in 1986, neighbors attempted to get help from the City of Oakland and Alameda Flood Control, but we were not successful. Some of my neighbors even built retaining walls, but because of lack of assistance and/or knowledge, these failed and had to be removed because they were contributing to the worsening erosion problem. Others had rocks brought in to try to stop the erosion and stabilize the sides of the creek.

8. With the development of Ridgemont and the rechanneling of runoff waters from the development through the Quarry and into Chimes Creek along with the rains of 1986 caused property below Nairobi, between Oakdale and Hillmont, to erode to the point where one of my neighbors, Richard Rodriguez of 6149 Hillmont Drive, lost 110 feet of his backyard. The County of Alameda held a neighborhood meeting at Burbank Elementary to discuss measures to mitigate the erosion problems to the Creek. Mr. Rodriguez ended up bringing a suit against the City in 1987 or 1988 and won. Repairs were made to the Nairobi section and below by the County and the City around 1989-90. Neighbors at the Nairobi section of Chimes Creek have told me they continue to have significant problems with overflow into their yards.

9. Sewer lines became exposed. The Nairobi sewer line became exposed around 1986. When sewer lines were installed, Chimes Creek was the lowest point on the topography of the area and the City sunk two sewer lines on either side of the Creek between Delmont and Hillmont. All the street storm drains were configured to also dump into Chimes Creek down an easement along the side of 6391 Hillmont and the property across from it on Delmont.

10. After the first incident in 1986, the sewage lines continued to rupture periodically and dump raw sewage into the creek. I would get phone calls about discoloration and foul odors coming from the creek. Public Works would come up once or twice every winter.

11. In the winter of 1988, there was a major break sewer line behind 6311 Hillmont Drive and wash out of nine feet of land and fencing at 6301 Hillmont Drive. . The City's Public Works Agency came and attempted to fix the problem by tying the sewer pipe to an oak tree, but this caused further erosion. Since that time, the City has come out every year to repair the same break; land continues to be lost, and the sewer line is still tied to the oak tree. On December 14, 1999, the City sent letters to neighbors of Chimes Creek stating that the City was going to rehabilitate the sanitary sewers above Nairobi Place. To date the City has not performed this work.

12. In 1999, Mike Neary and a representative from ACFC came out in the pouring rain and we stood out under the bay tree behind 6391 Hillmont Drive and watched the massive flow of water and how it was over shooting the banks. Mike Neary basically said that the City couldn't do anything because the problem was located on private property. The county representative just looked on and deferred to Mike.

13. Up until the lawsuit brought by Mr. Rodriguez, Kenneth T. Lass with ACFC Public Works came every year and maintained Chimes Creek. Ken and his crew cleaned, cut

vegetation, and removed debris that impacted the flow of the creek. After the lawsuit, ACFC refused to take any responsibility for the creek, and the City assumed this role.

14. The City previously had not been involved with the maintenance of the Creek. Despite what may have been good intentions on the part of the City, the community did not approve of the City's initial maintenance measures. It appeared the City had little experience with maintaining small, urban creeks. First, the City tried bulldozing a creek. This disturbed a good section of the wildlife habitat and riparian vegetation. The year following the bulldozing, the City sprayed pesticides to remove weeds, and not surprisingly, harmed riparian vegetation and wildlife.

15. Property owners continued to try to get the City and County to take effective action to stop, or at the very least stem, the erosion problems for the entire stretch of the daylighted Chimes Creek. Mike Neary, who is the Chief City Engineer today, and was an engineer in the 80's and 90's, stated that there was nothing the City could do because the creek was on private property. This seemed to become a standard response to our requests for help.

16. For the next several years, the pattern of erosion and flooding steadily worsened. Occasionally there would be severe, isolated events. For example, in 2000/2001, there was a massive break in one of the holding ponds located on the Quarry. The water flooded down and across Interstate 580 unto some of the backyards of homes on Sunnymere.

17. The history of the problems with Chimes Creek is well documented by the City of Oakland's Public Works Department, Environmental Services, and ACFC. I understand that former Councilperson Carter Gilmore, and County Supervisor Nate Miley, a former Councilperson, have extensive notes and documentation of the erosion problems that had plagued Chimes Creek since the Ridgement development. Back when the County was still

maintaining the Creek, I met with Carter Gilmore, Terry Roberts, Mike Neary and other City staff to discuss why there had not been additional oversight over the impacts the Ridgemont development would have on Chimes Creek. They promised me that they would look into the problems, Nate Miley even joked about the volumes he had on the Chimes Creek problems. I never saw any results of their investigations, and cannot confirm that they ever did look into the problems.

18. In 1998 the Drainage Task Force (DTF) was formed. In 1997, prior to the DTF, Nate Miley asked the Public Works Department to make Chimes Creek a priority and add it to the Planning and Review Division of Public Works. Under the supervision of then City Engineer Mike Neary, the Public Works Department made two site visits to photograph and survey the damaged properties. In 1998, Mike Neary, two Public Works staffers, and two representatives from ACFC walked the creek in a very heavy rainstorm. Again, I am not aware that these efforts lead to any tangible changes in the City's management of the Creek.

19. On July 17, 1999, the Service Delivery Team held a public meeting at Rainbow Recreation Center to discuss community concerns. Over 50 neighbors of Chimes Creek showed up to the meeting to discuss the creek's problems and ask for assistance. In August 1999, Joseph Levine, Construction Inspector Supervisor for Public Works, representing the SDS Team for District 5, walked the creek with me, took pictures, and promised to take some action. I am not aware that this visit resulted in any action by the City.

20. Leslie Estes, City of Oakland's Environmental Service, came out a couple of times, the last being 2001, to walk the creek and document the problems. To my knowledge those visits did not result in any actions by the City.

21. In the summer of 2002, the Zoning and Planning Department, headed by Leslie Gould and Calvin Wong, took a bus ride around the City to identify major problems. Chimes Creek was one of their stops. To my knowledge this visit did not result in the City taking any actions to resolve the problems at Chimes Creek.

22. I, as well as a number of my neighbors, have attended numerous City meetings. We have spoken to public servants such as: Carter Gilmore, Nate Miley, Elihu Harris, Terry Roberts, Mike Neary, Kenneth Lass, Calvin Wong, Leslie Gould, Leslie Estes, Claudia Cappio, to name a few, over the years, all working for the City of Oakland or County of Alameda. I have appreciated them taking the time to listen to our concerns and visit the site, and appreciated their acknowledgement of the seriousness of the problems with Chimes Creek. However, I am frustrated that ten years have passed and neither the City nor the County have developed a plan for preventing further degradation to Chimes, Creek, let alone a plan for restoration.

23. Today the Creek is deeper, the channel wider. The trees look like they are in the swamp areas of the deep south, with their roots completely exposed. The trees are falling over from lack of soil.

24. I am concerned the Leona Quarry Project will worsen this bad situation. I have closely followed the project since it was first proposed. I understand that in addition to the increased runoff from the Leona Quarry Project, the development plans call for all of Ridgemont's runoff to be channeled down through the quarry via the new development's culverts into a new 14-acre holding pond, and then on to Chimes Creek.

25. Since April 2004, when the grading for the Leona Quarry Project started, there has been constant runoff and dumping into Chimes Creek. In the first major rain in September

2004, the rain caused a major washout at the Project site, and some of my neighbors lost about a foot of land.

26. I expect the problem with exposed sewer lines breaking to occur this winter. As far as I know, the City has not resolved how to repair the pipe and secure it so it does not hang in mid air. I was asked this last winter to put yellow dye down my toilet so that City employees could find out where the break was down the line.

27. On August 10, 2004, I attended a meeting with Marcel Uzegbu, City Engineer overseeing the Project, a sewer department staff member from Public works, and neighbors Chiye Azuma, Mark Brest van Kempen and Paul Richards from Friends of Two Creeks and Mills College. We were told that the City was going to put in new sewer lines along either side of the Creek. We were told we have no choice because the City has an easement. The work will be done by outside contractors and they will come on each of our properties to do this. We were told that the new lines were needed because the current sewer lines were too old and not large enough to carry the additional volume that the City expects Leona Quarry Project to generate. Putting in the sewer lines and digging up on either side of the creek would only add to the weakening of the channel and add to the erosion problem. So, we asked, if the City were to redo the sewer lines, wouldn't it be prudent to also integrate creek reclamation at the same time?

28. At the August 10<sup>th</sup> meeting, I asked Marcel Uzegbu if the City was going to go back to the City Council and tell them that they (City Staff) had made a mistake on the original analysis about the impact the quarry development and the re-channeling of all of Ridgemont's runoff would have on Chimes Creek. Marcel then turned to me and stated, "We will probably have to take some of your land to widen the channel because I don't think Chimes Creek can handle the volume of water that will be generated from the development." I was shocked. I

stated, "Over my dead body and a lot of money." I have requested to meet with Marcel and discuss the City's plans to widen the creek and replace the sewer lines in order to accommodate the storm water runoff and wastewater from the Project, but he has not responded.

29. This had been a major focal point at all of the public meetings as well as the Planning Commission meetings, regarding the sewer capacities and whether Chimes Creek could handle the impact of this development and Ridgemon. There are letters in the EIR questioning the impact on both the sewers and Chimes Creek. Yet, these impacts have still not been addressed.

30. I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed the 25<sup>th</sup> day of October, 2004 at 6375 Hillmont Drive, Oakland, CA, Alameda County.

Respectfully submitted,

Dated: 25 October 2004

Nancy S. Sidebotham

**Attachment 3**



## DECLARATION OF CHIYE AZUMA

I, CHIYE AZUMA, declare the following:

1. The facts stated herein are known personally to me.

2. I have been a resident of the Oakland Hills area for two years, with this coming winter being my third rainy season by Chimes Creek. My property is located at 3829 Delmont Avenue, between Hillmont Drive and Nairobi Place, on the hillside of Delmont Avenue. Chimes Creek flows along the rear of the property, about ten feet (10') from the property line.

3. The presence of this creek was a very important part of our decision two years ago to purchase this property. The creek provides a small but lush riparian corridor that supports a number of native oaks and willows, as well as acacias, ivy, and other shrubs along its banks. The creek is also host to a group of acrobatic squirrels, various species of birds, and in years past, frogs and tadpoles. The gurgling sound of the creek water is a welcome respite from the urban sounds, most notably the roar of the 580 Freeway, which bounces off the hills onto the Millsmont neighborhood. Not only is the creek an attractive, lovely feature of our Delmont Avenue neighborhood, it is also a common thread that has brought the neighbors together.

4. I am currently employed by the City of Fremont as a Landscape Architect in the Engineering Division of the Development and Environmental Services Department. I am a state-licensed Landscape Architect, with more than 10 years of professional experience. I manage park development and maintenance projects. In addition to design and project management duties, I spend about 40 percent of my time reviewing tract development plans, as well as site development plans submitted to the City of Fremont for Building Permit Review. For Building Permit review, I am part of a team of reviewers, typically consisting of a planner, engineer and landscape architect.

*Declaration of Chiye Azuma  
Leona Quarry Project*

5. In recent years, and especially over this past year, I have had an expanded role in these plan reviews because local agencies have been exploring landscaping techniques which help to implement the National Pollution Discharge Elimination System (NPDES). I have been reviewing and commenting on plans prepared by civil engineers and architects relating to site development. These plans often incorporate biofiltration techniques (e.g., bioswales, vegetated infiltration areas, and modifications to the site design) to minimize pollution and erosion from stormwater runoff.

6. In addition to contacting City officials and staff, I carefully reviewed the following documents, which were prepared for the Project: (1) Mitigation Monitoring and Reporting Program (MMRP); (2) Conditions of Approval (COA) for Leona Quarry Project, and (3) the revised Stormwater Pollution Prevention Plan (SWPPP) dated April 23, 2004. I was also able to obtain a copy of the Improvement Plans (Preliminary Plans dated July 8, 2004) for Tract 7493 and Tract 7351 Leona Quarry. I have not been able to see any subsequent versions of the Improvement Plans or its details, despite my repeated requests to do so.

7. Based on my review of these documents I am concerned that onsite stormwater management during the past 6 months has not been implemented as required in these documents. Furthermore, these documents describe specific studies, reviews and checks that need to be undertaken prior to finalizing key elements of the site development. From the information that has been made available to the public to date, I have seen little evidence that this project has met these requirements.

8. Per MMRP paragraph F.4a, the approved Improvement Plans should show where Best Management Practices (BMPs) have been incorporated in the site design. The required BMPs include grass strips and grassy swales throughout the development, roof drains that drain

to natural surfaces or swales, permanent energy dissipaters for drainage outlets, design details for the detention basin that provide effective water quality control measures, maintenance schedules that will ensure the long term effectiveness of the detention basin. I have not been able to obtain a copy of or even view the Improvement Plans that the City Council is scheduled to approve on October 26, despite my numerous requests. On July 26, 2004, Mr. Uzegbu did provide me a set of the *Improvement Plans dated July 8, 2004*. The July plans do not adequately integrate site BMPs such as grassy swales and vegetated swales; moreover, the details of the main detention pond remain sketchy and unclear.

9. Per MMRP paragraph D5a, the project applicant is required in all phases of construction to implement BMPs to reduce and eliminate soil erosion. The Erosion Control Plan submitted as part of the *Grading Permit* show a number of erosion control measures including hydroseeding, straw wattles/rolls, etc. However, during the first phase of site work and particularly during the site dewatering stage, not many of these measures were in place, resulting in slope failures and frequent discharge of sediments and contaminants to Chimes Creek.

10. Per MMRP paragraph F.2, mitigation measures require, "BMPs selected and implemented for the project will be in place and operational prior to the onset of major earthwork on the site." However, these BMPS were not installed in April or May. In early April 2004, after work at the Project began, I noticed that Chimes Creek had turned reddish-brown in color, and at times would surge as if being pumped.

11. On April 2, 2004, I contacted William Madison, City of Oakland Environmental Services Division, to report the water quality problems at the creek. On April 10, 2004, I attended a *Town Hall Meeting* held by my local Councilwoman, Desley Brooks. In response to my concerns regarding the effects of Project activities on the creek, Ms. Brooks told me that I

was “confusing apples with oranges,” and, “that is how the creek normally appears.” She claimed the activities taking place at the Quarry were just “regular quarrying business.” I explained to her that it could not possibly be “normal quarrying activity,” because the Quarry had already removed a number of its facilities, including the asphalt parking area at the base of the Quarry.

12. At this time, Ms. Brooks assigned her assistant, Toni Cook, to help with my complaint. We agreed to visit the site so that Ms. Cook could understand what was happening. On April 24, 2004, Ms. Cook and I visited the Quarry site together where we observed grading activities in progress, and the dewatering of the holding pond.

13. During the months of April and May of 2004, my neighbors and I observed muddy, sediment laden water flowing down the creek. I contacted William Madison, Lesley Estes, Marcel Uzegbu, and Jun Osalbo in an effort to correct the problem.

14. William Madison of the City’s Environmental Services Division has a record of complaints he received regarding sediment-laden water in Chimes Creek; he maintains a chronological file entitled, “Chronology of Chimes Creek Illicit Discharge Investigations.” His record contains reference to complaints filed on April 6<sup>th</sup>, 9<sup>th</sup>, and 29<sup>th</sup>. He also conducted investigations in response to complaints made on May 6<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 26<sup>th</sup>, 27<sup>th</sup>, and 28<sup>th</sup>. This “Chronology” was prepared in response to my Public Records Request for a “Complaints log regarding pollution in Chimes Creek, starting from first call to Environmental Services, William Madison, on April 2, 2004, to present.”<sup>1</sup> From his documented responses, it appears that Mr. Madison had access to the construction site only for the first two complaints in early April. On April 6, he wrote that he “observed clean water violations on the construction

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<sup>1</sup> Copies of my written correspondence with City and regulatory officials and their responses are available upon request.

site, and turbid water flowing off the site. Issued an Order to Abate to DeSilva Group.” On April 9, he wrote, “City staff required DeSilva Group to implement a creek diversion plan on the Quarry construction site.” From this point on, however, Mr. Madison’s investigations were limited to the stormdrain system and manholes in the Burkhalter and Millsmont neighborhoods (Sunnymere, Altamont, Hillmont, and Delmont Streets). I recall a frustrating telephone conversation that I had with Mr. Madison during this time, in which he said, it was “out of my hands,” meaning the City had determined that the silty contamination was coming from some source other than the Quarry, and Mr. Madison no longer had access to the construction site.

15. In addition to notifying William Madison, I placed phone calls to Jun Osalbo, the designated Construction Inspector for the project. On May 14, 2004, Mr. Osalbo came to Delmont Avenue where he observed the muddy flow in the creek. He invited my neighbor, Mark Brest van Kempen, and me to go to the site later that day to see what was happening. However, when he returned that afternoon, Mr. Osalbo informed us that we could not go. Instead, we reviewed the stormdrain map that he brought with him. It is still not clear why he did not wish to visit the site with us that day.

16. On May 20, I had an extended phone conversation with Mr. Uzegbu. He repeatedly denied that the two black drainpipes could be the source of the contamination because they were completely sealed, and were “diverting” the creek that was coming down in the large corrugated pipe from the headwaters above. A few days later Mark Brest van Kempen photographed these black pipes coiled at the bottom of a muddy trench, which was all that remained of the former holding pond.

17. The developer and City staff repeatedly denied this dewatering activity was taking place. The denials continued until we circulated these photos showing drainpipes pumping out

muddy groundwater directly into the stormwater manhole, and contacted the RWQCB for additional oversight. *See* email to Keith Lichten, San Francisco Bay RWQCB, from Chiye Azuma (May 28, 2004). In support of my request for additional RWQCB oversight, I attached a record of the violations of which I was aware. *See id.*

18. In late May, I prepared a list of questions based on the Conditions of Approval for the project, and requested the help of Councilwoman Brook's office to get a written response from Mr. Uzegbu, the Overseeing Engineer for the Leona Quarry Project. Shortly thereafter, I received a call from Mica Miro, Councilwoman Brooks' assistant, who told me Ms. Brooks' office would not help us in getting this information, and that I should stop "nitpicking" and "looking over their shoulder." Ms. Miro said the City had "experts" working on this, and she went on to question my motives for requesting this information.

19. Mica Miro, Assistant to Councilwoman Desley Brooks, informed me, "Unfortunately, I will not be able to send notes from the weekly construction meetings, as these are private meetings between the City and the Contractors." *See* email to Chiye Azuma from Mica Miro (July 29, 2004). Later on, in response to my Public Records Request for notes or minutes from the weekly construction meetings, Mr. Uzegbu, on behalf of Councilwoman Brooks and Planning Director Claudia Cappio, responded, "The agenda of the meetings from April 2004 to September 2004 showing the action points discussed at the meetings are attached. There are no minutes." I find this response difficult to believe. For a project of this scope and public controversy, it would seem appropriate for Mr. Uzegbu, as the Overseeing Engineer, to maintain notes or minutes to keep track of the issues and actions discussed during this critical phase of this project.

20. Ms. Miro also informed me, "The City's role at this point is to ensure that all of the conditions of approval are met (you can find full text of the Conditions of Approval at <http://www.oaklandnet.com/exchange/>). As Marcel said at the meeting, both City staff and three independent consulting teams hired by the City are working diligently to see that this is done. The City will not push for any modifications that are not required under the conditions of approval." *See* email to Chiye Azuma from Mica Miro (July 29, 2004). This was a puzzling statement from Ms. Miro, as I had talked to her a number of times by then, each time clarifying that all we were asking for was confirmation that the Conditions of Approval were being met, and that local, state and federal codes and requirements were being followed. I asked Ms. Miro and Councilwoman Brooks to please let us know what it was of our requests that they considered "modifications not required under the Conditions of Approval." *See* email to Mica Miro from Chiye Azuma (July 30, 2004). I never received a response from either Ms. Miro or Councilwoman Brooks.

21. In addition to the unmitigated discharge of groundwater during dewatering, there were two major incidents in which the lack of adequate erosion control measures on site resulted in great damage to the downstream environment. The first of these events occurred on July 10, 2004 when the Quarry site was flooded with a broken water main from the hills above.

22. The second incident took place on September 19, 2004 after a short, but sudden, downpour left the intersection of Mountain and Edwards at the 580 Freeway onramp flooded with mud and creek banks scoured by a rapid current.

23. I have not been able to confirm that the Applicant has complied with MMRP paragraph F.3a, which requires the applicant to, "obtain a discharge permit from ACFC or the RWQCB," prior to discharge of groundwater generated during site dewatering activities. Nor

have I been able to determine whether the City required the Applicant to submit a construction dewatering plan. As stated previously, during the months of April and May, while the holding ponds were being drained and groundwater was being disposed of through unfiltered drain pipes, residents along Chimes Creek repeatedly notified the City of muddy, sediment laden water and periodic surges in the creek

24. COA 23 (g) requires the Developer include in the final improvement plans a “review and recommendations pertaining to the creation of a perennial creek through the site that drains into the lower detention basin, consistent with condition of Approval No. 19.” I have requested this information from Mr. Uzegbu on a number of occasions, including twice in a Public Records Request on behalf of the Millsmont Homeowners Association. Mr. Uzegbu initially told me that this item was superseded by the “Settlement,” which was strongly denied by Maureen Dorsey, one of the plaintiffs in this lawsuit. Later on, during our visit to his office on August 10, 2004, Mr. Uzegbu declared that Item 23 was superseded by Item 22 (Geology, Seismicity, and Mineral Resources) in the COA. To clarify this in writing, however, Mr. Uzegbu promised to provide a written response to this question by September 13, 2004, as he was scheduled for a vacation the following week. I did not receive any such communication by September 13, as promised, and in the documents package delivered on October 5, 2004, Mr. Uzegbu listed “Item 2. The recommendations from Berloger pertaining to the creation of perennial creek are enclosed.” This item was, however, missing from the package.

25. The Developer was expected to submit a revised SWPPP to the City by September 23, 2004. See email to Councilwoman Nancy Nadel from Mike Neary, Assistant Director, Design and Construction Services Dept., City of Oakland (September 21, 2004). I have no confirmation that the Developer complied with the City’s request. On August 25, 2004, I

*Declaration of Chiye Azuma  
Leona Quarry Project*



requested a copy of the revised SWPPP from Mr. Uzegbu. In a phone conversation I had with Keith Lichten, RWQCB, in June, after Laurie Taul's visit to the site, I was told that the RWQCB has requested a revised SWPPP. However, the copy made available to me on October 5, 2004 was dated April 23, 2004. Mr. Neary stated, "once the revised SWPPP is prepared, reviewed and accepted by the City, I would like to provide a summary of it on the website for information." *See id.* To my knowledge this information has not been posted to date. The SWPPP that is posted at the City's Leona Quarry website (<http://www.oaklandnet.com/leonaquarry/>) remains dated April 23, 2004 according to its Amendment Log. Section 200, SWPPP Amendments (Page 8) of the COA, clearly states, "This SWPPP shall be amended:

- If any condition of the Permits is violated or the general objective of reducing or eliminating pollutants in storm water discharges has not been achieved. If the RWQCB determines that a Permit violation has occurred, the SWPPP shall be amended and implemented within 14-calendar days after notification by the RWQCB;
- Annually, prior to the defined rainy season."

26. On July 19, 2004, the RWQCB requested that the developer provide a "detailed update regarding the corrective actions taken" after the July 10, 2004 water main break. *See* email to David Chapman and Kent Peyton, DeSilva Gates, from Laurie Taul, San Francisco Bay RWQCB (July 19, 2004). I have not been able to confirm with any of the staff at RWQCB or with the City that the developer responded to this request. With regard to the monitoring requirements that the RWQCB requested from the developer during the June 8<sup>th</sup> inspection, Mr. Uzegbu had assured us that he would provide us this information "as soon as it became available." Mr. Uzegbu has not provided this information to date.

27. On Tuesday, October 19, as I was driving home on I-580, I could see that the inside slopes of the detention basin had melted away from the runoff from the first rainfall of the

season. Much of the hydroseed had washed away, and the “impermeable” clay liner did not look as if it was holding up very well either. The photos that Mark Brest van Kempen took at the site on October 19 show a corrugated standpipe in the detention pond next to the outlet riser. The standpipe had multiple perforations from which the muddy water was discharging into the storm drain. This pipe was not included in the Site Improvement Plans of July 2004. According to the site inspector, Jun Osalbo, the addition of this pipe and its design was recently approved by Marcel Uzegbu, the Overseeing Engineer, City of Oakland. By allowing the water to drain through the holes in the standpipe, the purpose of the detention pond appears to be defeated. What is the purpose of this low standpipe? Was there a peer review and approval of this design by PWA? Why do Mr. Uzegbu and the DeSilva Gates Project Manager Kent Peyton continue to assert that there is no runoff escaping from the detention basin when it has been visually confirmed that it is otherwise? How do these anomalies comply with Item 23 of the Conditions of Approval?

28. By Saturday, October 23, 2004, we could see from the Millsmont neighborhood that the slopes in the Quarry had been re-hydroseeded to replenish the previous application that had washed away. Given that it will take a couple weeks, if not more, for the seeds to germinate, and perhaps another month or so for the roots to develop to work as an effective erosion control measure, why did the Developer wait until just before the start of the rainy season to apply the hydroseed? Mike Neary wrote to Councilwoman Nadel, “none of the hydro seeding .... had been done prior to this past weekend, since they are not required yet. The hydro seeding ... will be complete by October 15.” Email to Councilwoman Nadel from Mike Neary, Oakland Assistant Director for Design and Construction Services (September 21, 2004). Is this scheduling and definition of “completion” consistent with the list of works that should be

completed under Construction Phase B (Site Preparation), page 11 of the COA, and with COA 23 (c) which states, "The final plan for the detention basin (Parcel A) shall incorporate: detailed landscaping and other specifications so that a water treatment area can be established within the basin including a planting plan based on the recommendations of a qualified hydrologist and biologist regarding contours that can support the proposed planting and not interfere with the design and detention capacity." It would appear that the detention basin, as it stands now, is far from completion and its functionality very questionable. I have not been able to confirm the existence of any reviews or recommendations of a qualified hydrologist and biologist regarding the interface of the planting and the design and detention capacity of the detention pond.

29. I declare under penalty of perjury of the laws of the State of California and the United States of America that the foregoing is true and correct and that this declaration was executed the 25 day of October, 2004 at 3829 Delmont Avenue, Oakland, CA, Alameda County.

Respectfully submitted,

Dated: 25 October 2004

Chiye Azuma

Marie A. Cooper  
 Direct Phone: (925) 975-5367  
 Direct Fax: (925) 975-5390  
 marie.cooper@bingham.com  
 Our File No.: 2729950024

November 19, 2004

Via Facsimile and U.S. Mail

Bingham, McCutchen LLP  
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Members of the City Council  
 City of Oakland  
 City Hall  
 One Frank H. Ogawa Plaza  
 Oakland, CA 94612

Re: *Leona Quarry Construction Activities*

bingham.com

Dear Councilmembers:

I am writing on behalf of the DeSilva Group to respond to allegations made by the Millsmont Homeowners Association regarding the Leona Quarry Project.

A. Summary.

The HOA asks you not to approve the final map. The final map approval is ministerial, and many of the issues the HOA raises are belated and time-barred attacks on the original EIR this Council certified in 2002.

Other issues pertain to temporary construction impacts on drainage. DeSilva is addressing drainage issues vigorously by implementing further Best Management Practices ("BMPs") above and beyond those specified in the original Storm Water Pollution Prevention Plan ("SWPPP") and Erosion Control Plan for the site. These further BMPs exceed those typically required for a construction project, and they performed remarkably well during the storms last week. Representatives of the Regional Water Quality Control Board ("RWQCB") conducted two site visits last week, commenting that they were "favorably impressed" with the storm water treatment system, that site conditions were "a major improvement," and that

Boston  
 Hartford  
 London  
 Los Angeles  
 New York  
 San Francisco  
 Silicon Valley  
 Singapore  
 Walnut Creek  
 Washington

City Council  
City of Oakland  
November 19, 2004  
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even "the day after substantial rainfall, we found that the site looked very good." The RWQCB confirmed its satisfaction with the BMPs in the attached letter.<sup>1</sup>

DeSilva submitted an amended SWPPP on November 12<sup>th</sup> to the City and the RWQCB. City staff confirmed at the Council hearing on November 16<sup>th</sup> that DeSilva has implemented all the BMPs in that amended SWPPP. Accordingly, issues relating to storm water management and water quality during construction have been resolved, and there is no allegation of continuing noncompliance.

Bingham McCulchen LLP  
bingham.com

The ultimate solution is, of course, construction of the entire project, including its sophisticated stormwater management system and water quality protection measures. The stormwater detention capacity of the basin DeSilva is constructing is 25 acre feet. DeSilva agreed to construct such a basin despite the fact that it is much larger than is necessary to control storm flows from the Leona Quarry project, as determined by both the City's independent peer reviewer and the Supplemental EIR this Council certified. Delaying the project during the grading phase would only delay construction of these permanent solutions, and prolong the temporary construction impacts identified in the EIR. We request the Council to approve the final map as required by law, and to permit and encourage DeSilva to proceed with both implementation of further best management practices and construction of the project.

**B. The Only Issue Properly Before the Council Is Whether The Final Map Conforms To The Tentative Map.**

Approval of a final map is ministerial. The Map Act requires approval of the final map so long as it is in substantial compliance with the tentative map, and the subdivider has satisfied the conditions of approval attached to the tentative map. *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644, 656 (1978); see also Gov't Code § 66474.1. New or altered conditions may not be imposed, particularly those that are of a technical nature. *Anthony v. Snyder*, 116 Cal. App. 4<sup>th</sup> 643, 660, 664 (2004) (finding that the developer has a right to rely on the conditions established during tentative map approval). Also, because final map approval is

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<sup>1</sup> Attached is a copy of correspondence dated November 17, 2004 from RWQCB Assistant Executive Officer Lawrence P. Kolb, Ph.D., P.E., which is unsigned only because we received it electronically.

ministerial, there is no occasion for additional CEQA review. Guidelines 15162(c), 15268(b)(3). The Leona Quarry EIR, as supplemented and revised by the Supplemental EIR, is conclusively deemed adequate. Pub. Res. Code § 21167.2.

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The validity of the prior EIR is especially indisputable here, since the EIR has been validated by court judgment. The Council certified the EIR for Leona Quarry in 2002. Maureen Dorsey and others sued. The Court rejected every argument raised by the petitioners, but found the EIR inadequate on a ground it identified on its own initiative. The Court held that the City did not properly address potential conflicts of opinion between the EIR hydrologists and PWA, the hydrologists the City retained to peer review the EIR work. The Court issued a writ ordering preparation of a Supplemental EIR on stormwater management issues. It did not find any deficiencies in the water quality analysis or the analysis of wetlands. The City prepared a Supplemental EIR addressing the hydrology issues, which the Council certified in February of this year. The time to challenge even that Supplemental EIR expired in March without a single challenge being filed. The Supplemental EIR was presented to the Court to demonstrate compliance with its prior order. The Court agreed that the City had complied with CEQA and discharged the writ.

Accordingly, the only question properly before the Council is whether the project is complying with conditions of the tentative map. In making that determination, the Council must be guided by the *Conditions of Approval and the Mitigation Monitoring and Reporting Program (MMRP)* it approved in connection with the Leona Quarry Project. The MMRP specifies the timing of the mitigation measures, indicating when each must be in place. The measures that are not required until project buildout are not at issue here; the only relevant conditions are those that impose requirements during grading and construction.

**C. DeSilva Is Complying With All Requirements Regarding Silt Runoff During Grading and Construction.**

The Millsmont HOA is concerned that silt from grading activities has been transported by stormflows and carried into Chimes Creek. DeSilva is fulfilling every relevant condition of approval and the requirements of law by employing measures designed to minimize erosion and silt in stormwater runoff. Compliance with the law is measured by whether the developer is implementing Best Management Practices that are reasonable in light of site conditions. In addition to employing BMPs in accordance with the SWPPP and Erosion Control Plan already approved for the site, DeSilva has implemented further BMPs in

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response to the extreme and unexpected conditions presented by last month's storm events. DeSilva's initial measures, and its prompt implementation of further BMPs in response to site conditions, comply fully with the conditions of approval of the Leona Quarry Project relevant to construction activities, and with the Clean Water Act and General Construction Permit.

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The details are as follows. The EIR this Council certified for the Leona Quarry project explains the regulatory scheme relevant to water quality:

The San Francisco Bay [Regional Water Quality Control Board] RWQCB monitors and enforces the National Pollutant Discharge Elimination System (NPDES) stormwater permitting for the region. The [State Water Resources Control Board] SWRCB administers the NPDES Permit Program through its General NPDES Permit. Construction activities of five acres or more are subject to the permitting requirements of the NPDES General Permit for Discharges of Storm Water Runoff Associated with Construction Activity (General Construction Permit). The project sponsor must submit a Notice of Intent to the SWRCB in order to be covered by the General Permit prior to the beginning of construction. The General Construction Permit requires the preparation and implementation of a stormwater pollution prevention plan (SWPPP), which must be prepared before construction begins. Components of SWPPPs typically include specifications for best management practices (BMPs) to be implemented during project construction for the purpose of minimizing the discharge of pollutants in stormwater from the construction area. In addition a SWPPP includes measures to minimize the amount of pollutants in runoff after construction is completed, and identifies a plan to inspect and maintain project BMPs and facilities.

DEIR, pp. IV.F-10 to IV.F-11. Thus, the ultimate goal of this regulatory scheme is to minimize silt runoff through implementation of a SWPPP, which is revised as necessary to respond to site conditions. The law does not prohibit silt runoff, as it would not be possible to achieve that goal where grading has occurred. The law anticipates that a SWPPP may need revisions, and it focuses on BMPs rather than absolute prohibitions.

The EIR, and the Resolution this Council adopted to approve the project, impose mitigation measures requiring DeSilva to comply with this regulatory scheme. Mitigation measures F.2a-b, F.3a and F.5a pertain to water quality issues during grading and construction.<sup>2</sup> They are reflected in the *Mitigation Monitoring and Reporting Program (MMRP)*, at pages 24 to 28. The mitigation measures list potential BMPs, with the final selection and configuration of all BMPs to be detailed in a SWPPP and a final grading and master site drainage plan. The MMRP required DeSilva to prepare, and the City to approve, a SWPPP and final grading and master site drainage plan before approval of the grading and improvement plans. MMRP, p. 27. The MMRP also required, consistent with the Clean Water Act and the General Construction Permit, that the SWPPP be updated as needed to reflect changes in the project design and site conditions. MMRP, p. 28. Condition 23a imposes these mitigation measures as an enforceable condition of approval, as CEQA requires. Guideline 15126.4.

DeSilva has complied with all of these requirements. It prepared, and the City approved, a SWPPP and a final grading and master site drainage plan prior to issuance of the grading permit. The SWPPP incorporated applicable and feasible BMPs, including BMPs to control erosion and reduce silt in stormwater. DeSilva implemented the SWPPP. DeSilva has also supplemented and improved the BMPs, as contemplated by the SWPPP, to enhance erosion control and further reduce silt in runoff as warranted by developments in site conditions.

Specifically, flows from the upper area of the site are drained through two detention ponds, or are directed to the upper bowl where the flows permeate a rocky soil, enter a gravel filtered underdrain system and are treated by a Baker tank system. Large areas of the site were stabilized with mulch and hydroseed. Earthen roads all had straw wattles, ditches, and/or straw bale erosion control methods applied. These measures directed runoff to protected inlets, then to a sediment basin to allow settling of silt before discharge to the storm drain.

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<sup>2</sup> The HOA also references the requirements of mitigation measures F.1a, F.4a, F.4b and certain aspects of F.5a. These are measures designed to ensure that the project will comply with the Clean Water Act *after it is built out*. The MMRP does not require that these measures be in place throughout construction. See section I.D below.



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It became apparent after last month's unusually heavy and sudden storms that the BMPs specified in the SWPPP, although customary for construction sites of this nature, were not adequate to fully address last month's early and extreme storm events. Cloudy water was observed entering the storm drain. DeSilva itself reported the discharge. The RWQCB issued a notice of non-compliance identifying issues to be addressed in light of these storm events.

DeSilva is cooperating fully with the RWQCB and, in fact, initiated measures to improve erosion control even before requested to do so. DeSilva has been working with the City and RWQCB to implement additional BMPs, which DeSilva incorporated into the amended SWPPP it submitted on November 12th. The advanced measures include installation of an improved riser in the permanent detention basin to enhance separation of silt from stormwater before it discharges to the storm drain system. DeSilva has also installed gravel on project roadways, even those under construction. It has arranged for cutting edge filtration equipment to be brought on site and used. DeSilva has repaired inlet protection devices, installed additional inlets and inlet protection on 'H' Street, placed slope drains on the north slope and between 'C' and 'H' streets on the uncompleted slope, lined the ditch on the north slope with plastic, installed temporary piping from the Ridgmont basin, again hydroseeded the slopes, added straw wattles at the top of slopes, and intalled erosion control blankets on 2:1 slopes even though the RWQCB recommended doing so only for slopes steeper than 2:1. As noted above, the RWQCB has expressed complete satisfaction with these measures.

Neither the Clean Water Act, the General Construction Permit, the EIR nor any applicable regulations anticipate or require that there will be no impact to water quality during construction. Instead, the General Construction Permit provides that, during construction, the project seek to achieve water quality objectives to "the maximum extent practicable" through the implementation, supplementation and refinement of BMPs during construction activities. General Construction Permit, provisions C.2 and C.3. The EIR this Council certified, and the CEQA findings it adopted for this project, recognize this principle. This Council concluded that, after implementation of the mitigation measures, less than significant impacts would remain. MMRP, pp. 24, 26, 28.

These facts establish that DeSilva has fulfilled requirements for stormwater management and the protection of water quality during grading, and is undertaking additional protective measures identified following last month's storm events, as contemplated by the Clean Water Act and the General Construction Permit. Assistant Executive Officer Kolb's November 17 letter confirms the RWQCB's satisfaction with the adequacy of these measures. There

is no basis for finding a failure of conditions. Accordingly, the final map should be approved.

**D. Claims Regarding Measures Required Only For Project Buildout Are Not Relevant.**

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The HOA confuses the mitigation measures that must be in place when homes are sold and occupied with those that pertain to grading and construction. The HOA seems to assume that implementation of *every* mitigation measure imposed on the entire project is required prior to final map approval. The Mitigation Monitoring and Reporting Program adopted by this Council pursuant to CEQA clearly provides otherwise.

The HOA references mitigation measures F.1a, F.4a, F.4b and certain aspects of measure F.5a. These reference *water quality control* measures such as construction of berms, grassy swales, the water quality functions of the lower portions of the detention basin, and vegetation throughout the site. These also reference “roof drains to natural surfaces of swales where feasible,” and “permanent energy dissipaters.” Clearly, these measures are required for buildout, not for construction impacts. The MMRP recognizes this fact by requiring only that such items be shown in the final grading and master site drainage plans, to be reviewed by the City prior to issuance of the grading and improvement plans. MMRP, p. 27. The measures were shown in these plans, which were approved by the City. However, because the project itself is not yet constructed, these permanent measures are likewise not yet constructed. Nothing in the MMRP or CEQA does, or could, require that permanent measures, which are to be constructed as part of the project, be in place during project construction.

Some of the measures to which the HOA refers are required as permanent aspects of the detention basin. The appropriate time for the City to determine whether the detention basin has been properly constructed is during the final inspection for the detention basin. Accordingly, the measures are not presently required.

Nonetheless, the permanent detention basin is well under way. The basin has been graded, the clay liner installed, and the outlet structures are now complete. Only the vegetation, which cannot have been planted and grown yet, remains to be completed. Also, even though PWA determined that a basin of approximately 18 acre-feet of stormwater detention capacity will accommodate stormflows generated by the project under even the most conservative assumptions, DeSilva has agreed to construct and is constructing a 25-acre-foot basin that will provide even greater stormwater management benefits to the area.

DeSilva is working diligently towards installing all the permanent measures. It is installation of these permanent measures that will provide the best solution to the stormwater management and water quality concerns the HOA raises. The surest means of ensuring this protection is for the Council to deny the HOA's request for delay, and facilitate the continuation of the work DeSilva is doing.

**E. Claims Regarding Chimes Creek and Wetlands Are Time-Barred Attacks On The EIR Certified In 2002.**

The EIR addressed wetlands and potential impacts on Chimes Creek extensively. Its conclusions were based upon a wetlands delineation prepared by Wetlands Research Associates. This work was supplemented with a field-level reconnaissance survey by biologists on staff with ESA, the firm the City retained to prepare the EIR. As explained in the EIR, Wetlands Research Associates also analyzed Chimes Creek. DEIR, p. IV.B-10. The EIR concluded that the only onsite portion of Chimes Creek still in existence is the natural watercourse leading from the northern edge of the site to the existing upper pond, all in the Undeveloped Area the project will not disturb. DEIR, Figure IV.B-3. This natural creek drainage north of the pond comprises the only onsite potential jurisdictional waters of the United States, the only onsite location of a narrow band of riparian vegetation, and the only onsite location of the aquatic habitat provided by Chimes Creek. DEIR, Figures IV.B-2 and IV.B-3, pp. IV.B-3, IV.B-7 and IV.B-10.

Below the upper pond, the EIR explained, the flow of Chimes Creek had been "severely disturbed" by quarrying activities. The creek "flows underground before leaving the Undeveloped Area [and does not resurface until] the property edge near Interstate 580." DEIR, p. IV.B-3. The "lower reaches of the stream have been altered in the past by the construction of a large berm and other modification to route the stream underneath quarrying activities." DEIR, p. IV.B-12. In fact, the quarrying activities and the routing of the creek underground had left so little evidence of the former surface creek that its original course could only be approximated based on historical topography. DEIR, Figure IV.F-3.<sup>3</sup>

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<sup>3</sup> The HOA submitted photocopies of photographs supposedly showing a creek in the lower portion of the site. The photographs appear to depict only a siltation basin constructed to remove silt from surface water during the quarry operations,

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The EIR recognized that the project would not disturb the creek, including the fact that grading would occur only downstream of the site where the surface creek ceases its flow. It accordingly concluded that the project would comply with all federal, state and local requirements, and result in no impacts. It likewise concluded the project would not result in any fill within the creek or any indirect impact to its flow. DEIR, p. IV.B-12. Accordingly, it determined that no wetlands permits (Section 404 permits) or streambed alteration agreements (Section 1603 agreements) were required.

The EIR was presented to both the California Department of Fish and Game and the Regional Water Quality Control Board. Both agencies commented on the DEIR. The RWQCB noted that *if* jurisdictional waters were impacted, certain requirements would apply. In fact, the EIR explained, the project development avoided all “waters of the United States” and “waters of the State” and no fill permits were required or applied for. Neither the CDFG nor the RWQCB disagreed with the EIR conclusions noted above, and neither asserted that any additional permits or approvals were required for any aspects of the project relating to Chimes Creek. Based in part upon this lack of objection from these resource agencies, this Council certified the EIR, adopting its conclusions. CEQA Findings, ¶ 23. The Council also made findings indicating that all requirements of the City’s Creek Protection Ordinance had been met, despite serious questions about the application of that ordinance to grading that occurs only downstream of where the creek surface flows cease to exist.

The HOA is now belatedly challenging these conclusions. After not just one but two rounds of environmental review, after the project has been approved – twice – by the Council, and after the Court has validated the EIR’s adequacy and the Council’s findings, the HOA questions whether the City should have required additional permits. In essence, the HOA asks the Council to determine that it was wrong to adopt its findings and certify the EIR.

It is far too late to bring such a claim. As explained in Section A above, the EIR is now conclusively deemed valid, and the Council’s findings are likewise beyond

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(Footnote continued from Previous Page.)

not a creek. As established in the EIR, Chimes Creek did not flow over the ground surface within the quarry.

challenge. There are no discretionary decisions at issue that would enable the Council to consider whether further CEQA review is warranted. And, even if there were, there would be no basis for further review; the HOA presents no significant new information that could not have been discovered when the EIR was being prepared, or when the Supplemental EIR was being prepared. Pub. Res. Code § 21166, Guideline 15162.

If the HOA had legitimate concerns about wetlands or riparian habitat, it would have raised its questions in comments on the DEIR prepared for this controversial and highly publicized project, or it would have participated in the lawsuit over that EIR or, at the least, it would have raised its concerns in comments on the SEIR. Its timing indicates a last-ditch effort by newfound project opponents to stop or delay the project long after it was approved. In any event, there are no issues regarding wetlands or the onsite portion of the Creek that are open for Council consideration.

**F. No Condemnation For Widening of Chimes Creek Or Enlargement Of Sewer Infrastructure Is Contemplated For The Leona Quarry Project.**

The HOA claims that Mr. Uzegbu advised its members that the City plans to condemn private property to widen Chimes Creek and enlarge sewer infrastructure, all to serve the Leona Quarry project. The HOA was surprised at this announcement because this condemnation was not addressed in either the EIR or the SEIR.

DeSilva would also be surprised to learn that the City is planning to condemn property to serve the Leona Quarry project. However, Mr. Uzegbu has assured me both that this is not the case, and that he never made any such statements to representatives of the HOA.

The EIR and SEIR demonstrate that the project will reduce stormflow rates below preproject levels. The EIR also determined that offsite sewer infrastructure has adequate capacity to handle project flows. Accordingly, there is no need to condemn property to accommodate facilities for the Leona Quarry project.

**G. Conclusion.**

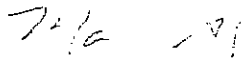
The Leona Quarry project has undergone one of the most extensive environmental and hydrological reviews seen in Oakland. The DeSilva Group promptly and cooperatively addressed stormwater management issues that arose during last month's storms, and the issues are resolved to the satisfaction of the RWQCB.

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Continued work on the entire project is needed to implement permanent solutions regarding stormwater management and water quality protection. The Council should approve the final map and allow DeSilva to proceed apace with these tasks.

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Sincerely yours,



Marie A. Cooper

cc: Claudia Cappio  
Marcel Uzegbu  
Heather Lee  
James Summers  
David Chapman



# California Regional Water Quality Control Board

## San Francisco Bay Region



Terry Tamminen  
Secretary for  
Environmental  
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Arnold Schwarzenegger  
Governor

November 17, 2004

Mr. James B. Summers, P.E.  
The DeSilva Group  
11555 Dublin Boulevard  
PO Box 2922  
Dublin, CA 94568

Dear Mr. Summers:

This is to confirm our recent discussion concerning erosion control at your Leona Quarry project in Oakland. Keith Lichten and I inspected the property on November 12, 2004, the day after substantial rainfall, and we found that the site looked very good. There was straw and stabilizer over almost all the exposed areas, and erosion control netting was in place on the steepest areas.

We also inspected the stormwater treatment system that uses chitosan for turbidity removal, and we were favorably impressed. The current condition of the site constitutes a major improvement, and we look forward to your continued efforts to manage this demanding site through the wet season ahead.

If you would like to discuss this further, I can be reached at 510.622-2372.

Yours truly

Lawrence P. Kolb, Ph.D., P.E.  
Assistant Executive Officer

Cc: Marcel Uzegbu, William Madison, and Faustino Jun Osalbo, City of Oakland  
Leslie Estes, Watershed Program Supervisor, City of Oakland