

Location:	Gravatt Drive
Assessor Parcel Numbers:	048H-7606-064; 065
Proposal:	Appeal of an Administrative Determination that the subject properties are "Creekside" properties under Oakland's Creek Protection Ordinance (Oakland Municipal Code (OMC) Chapter 13.16)
Proposal:	Subdivide two vacant lots into three lots
Appellants/Applicant:	DFI Properties, LLC
Contact Person/Phone Number:	Steve Anderson, (510) 420-8698
Case File Number:	APL16-011 (CDET16-004)
Planning Permits Required:	Tentative Parcel Map for Lot Subdivision, PLN15370/VTPM10342
General Plan:	Hillside Residential
Zoning:	RH4 Hillside Residential
Environmental Determination:	CEQA Guidelines sections 15307 and/or 15308 (Actions by Regulatory Agencies for Protection of Natural Resources and/or of the Environment) and Section 15061(b)(3) (general rule; no possibility of significant effect on the environment)
Historic Status:	Non-historic property
Service Delivery District:	2
City Council District:	1
Status:	Creek Determination issued May 9, 2016; Appealed May 18, 2016.
Action to be Taken:	Public Hearing
Staff recommendation:	Deny the appeal and uphold the Watershed Program Supervisor's decision that the properties are Creekside Properties.
Finality of Decision	Final (Not Appealable Pursuant to OMC Sec. 13.16.450)
For further information:	Contact case planner Caesar Quitevis at (510) 238-6343 or by email at cquitevis@oaklandnet.com .

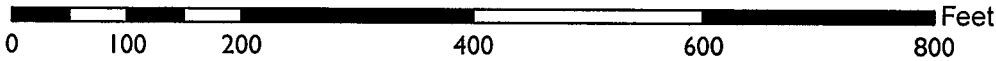
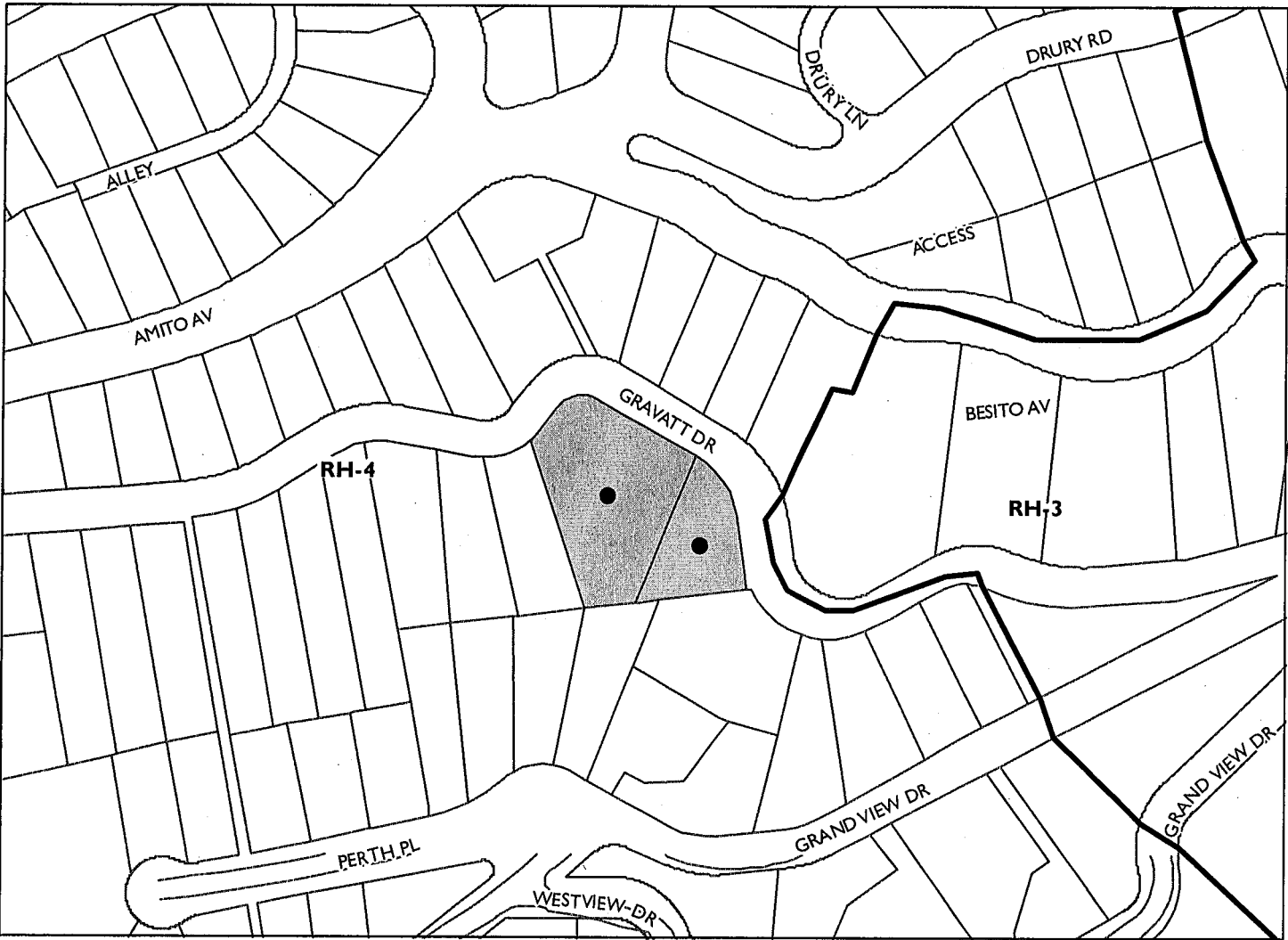
SUMMARY

This report responds to the Creek Determination Appeal filed by Mr. Steve Anderson (the "Appellant") on May 18, 2016 regarding the creek determination for the property located at 0 Gravatt Drive (APN #048H-7606-064 and 065 respectively¹), also referred to in this document as "Site" or "Property". The sole subject of the Appeal that is within the purview of the Planning Commission is whether the body of water on the property is a Creek, therefore making the property subject to the permit requirements of the Creek Protection and Storm Water Discharge Control Ordinance, Oakland Municipal Code ("OMC) Chapter 13.16 ("Creek Protection Ordinance" or "Ordinance"). Staff's determination is consistent with the policies and practices mandated since the Ordinance was unanimously adopted by City Council in December 1997. Staff recommends that the staff determination, that the watercourse on the Site is a creek, be upheld on appeal for the following reasons:

- Historical and current maps, aerial photos, sewer sheets, and site conditions support this determination.

¹ Hereafter, the APN #s will only contain the last 3 or 4 digits.

CITY OF OAKLAND PLANNING COMMISSION



Case File: APL16011 (CDET16004)
Appellant / Applicant: DFI Properties, Inc
Address: 0 Gravatt Drive
Zone: RH-4

- The required criteria for a creek determination are present on this site, including hydrological connectivity, bed, banks, and potential for sediment movement, and typical creek shaped macro- and micro-topography.
- The presence of riparian vegetation that is typical of vegetation present in creek corridors.
- The creek channel fits into a broad watershed pattern of tributary creeks flowing to the larger creek (Vicente Creek).
- The downstream contiguous parcel was determined to have a creek in 2002, **(Exhibit 1)**.
- The City sold the parcel as a creekside property in 2003, **(Exhibit 2)**.
- The creek on the property was already determined to be a creek in 2003 by a formal creek determination, **(Exhibit 3)**.
- 2004 field investigations by City creek mapping consultants, William Lettis and Associates, confirmed it was a creek, **(Exhibit 4)**.
- A 2008 wetland delineation by Mosaic and Associates biologist mapped the creek on the subject property, **(Exhibit 5)**.
- The May 2009 property (Appellant) owner submitted a statement of compliance to the City of Oakland “attesting that there is a creek” on the property.

Creek determinations are generally appealable only once, within ten days after receiving the determination. The first creek determination for this site was completed 2003 and was not appealed and that decision was final. While generally there should only be one formal creek determination per site,² there was, unfortunately, a data tracking error and a second formal creek determination was inadvertently completed in May 2016. Prior to completing the May 2016 creek determination, staff checked the permit tracking system for past determinations and (mistakenly) found no previous creek determinations. This error was most likely due to conversion of the City Permit Tracking System to a new parcel tracking data base and to the multiple iterations of subdivision and resultant changing parcel numbers that caused gaps in accurate tracking of past creek determinations. It is only as a result of this error that the complainant is able to appeal after the 2003 appeal rights had long expired.³

In sum, the Site has been determined to be a creek by the City’s watershed sciences expert consultants, by a developer biologist consultant wetland delineation, by two formal City staff

² The City acknowledges that when there is new information or a change in circumstances a second appeal may be permitted, such as a change in law, new site conditions, etc... Here, however, there is no new information or a change in circumstances.

³ The Appellant had actual and/or constructive knowledge of most, if not all, of the materials the City is relying upon in this appeal (since at least 2006), prior to filing its appeal. In any event, these materials were also provided in response to appellant’s Public Record Act requests, well in advance of the public hearing.

creek determinations and has been acknowledged and complied with as a creek property by past property owners, including the current appellant. There have been no changes to the City of Oakland definition of creek and the appellant has not demonstrated any new findings, physical changes or conditions at the site that would warrant reversing all previous determinations that there is a creek on the property on the Site (APN 064 and 065).

The finding is consistent with current policies and practices, as well as with State and Federal Clean Water requirements and current case law. The fact that this is a creekside property does not prevent future work on the property, it means that future work must be appropriately designed and implemented to be safe and consistent with the Creek Protection Ordinance.

PROPERTY DESCRIPTION

The subject properties are steep upper watershed downslope parcels located off of Gravatt Drive and north of Grand View Drive and Perth Place in the City of Oakland. The properties can be reached from Tunnel Road and Vicente Road from the south, or Alvarado Road and Amito Avenue from the north. The subject area is comprised of approximately 1.2 acres with a southerly solar exposure. There are views of the surrounding canyon area and views towards San Francisco Bay and downtown Oakland. The subject vacant property is surrounded by hillside single-family dwellings, and existing vegetation is located within the vicinity of watercourse channels.

GENERAL PLAN ANALYSIS

The properties are classified as Hillside Residential under the Oakland General Plan/Land & Use and Transportation Element. The Hillside Residential is intended to create, maintain, and enhance neighborhood residential areas that are characterized by detached, single unit structures on hillside lots. General Plan policy (N7.6) Development on Subdivided Parcels encourages development where site and building design minimize environmental impacts, building intensity, activity can be accommodated by available and planned infrastructure, and site and building designs are compatible with neighborhood character. In addition, the Open Space Conservation and Recreation (OSCAR) General Plan Element policies apply to sites under Hillside Residential to protect and enhance plant, animal, and open space resources; promote land stability; and conserve water resources, including creeks.

ZONING ANALYSIS

The properties are identified in the RH4 Hillside Residential Zone. The intent of the RH-4 Zone is to create, maintain, and enhance areas for single-family dwellings on lots of six thousand five hundred (6,500) to eight thousand (8,000) square feet and is typically appropriate in already developed areas of the Oakland Hills. A proposal has been submitted to the City (PLN15370) to combine portions of one of the subject properties (064) that contains the creek and an adjacent neighboring parcel (063), and subdivide these two parcels into three (**Exhibit 6**) (proposed Lot A would not contain a creek, but proposed Lots B and C are considered Creekside properties). The proposed Vesting Tentative Parcel Map, (VTPM10342) is subject to Subdivision Regulations

under Title 16, O.M.C.), and is awaiting processing based upon the Planning Commission decision with this Creek Determination Appeal.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists those projects, which are categorically exempt from environmental review. CEQA Guidelines Section 15307 exempts projects that consist of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. CEQA Guidelines Section 15308 exempts projects that consist of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. The Creek Protection Ordinance establishes the regulatory basis for the protection of creeks, waterbodies, and waterways. As a separate and independent basis from the other CEQA findings, this action is also exempt per CEQA Guidelines Section 15061(b)(3) (general rule; no possibility of significant effect on the environment).

BACKGROUND OF CREEK PROTECTION ORDINANCE AND GUIDELINES

On December 16, 1997 the Stormwater Management Ordinance was amended by City Council to include the Creek Protection Permit Program. The Ordinance was amended to meet State and Federal regulations regarding the protection of water and habitat quality, including the Clean Water Act, and to respond to community interest in creek protection. The purpose and intent of Oakland's Creek Ordinance includes:

- Safeguarding and preserving creeks and riparian corridors in a natural state
- Preserving and enhancing creekside vegetation and wildlife
- Preventing activities that would contribute significantly to flooding, erosion or sedimentation or that would destroy riparian areas or would inhibit their restoration;
- Enhancing recreational and beneficial uses of creeks
- Controlling erosion and sedimentation
- Protecting drainage facilities; and
- Protecting the public health and safety, and public and private property.

The Ordinance fulfills this intent, in part, by requiring creek protection permits for development on creekside properties. For the reasons stated in this report, staff recommends that the Planning Commission affirm the staff determination that the watercourse on the property is a creek.

BACKGROUND ON PROPERTY HISTORY

While this property has a long and complicated history, it has been considered a creekside property since 2001. (See attached detailed chronology (**Exhibit 7**) and accompanying Conceptual/Illustrative Graphic (**Exhibit 8**)). The most relevant information is as follows⁴:

- November 14, 2000 – City of Oakland Permit Tracking System (PTS) first flags property (5104) as adjacent to a protected creek.
- September 29, 2003 – The City sold the Property by auction as City Surplus Land with the clear and unambiguous statement on the deed of title stating that this property contained a watercourse and may be subject to the City’s Creek Protection Ordinance and other environmental regulation and permitting (**Exhibit 1**).

The sale of the property resulted in a single parcel, APN#5104 (**Exhibit 9**), with three legal lots (Lots 121, 127, and 128).

- December 19, 2003 – The City completed a Creek Determination (CDET03025) for the Site (Former Lots 128 and 127) and found that it is a “creekside property” (**Exhibit 3**).
- 2004 field investigations by City creek mapping consultants, William Lettis and Associates, confirmed it was a creek, (**Exhibit 4**).
- 2006 Appellant purchased the property
- December 22, 2008 - Mosaic Associates LLC, retained by Terra Linda Development (representative of the Appellant), completed their analysis, “Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. Under Section 404 of the Clean Water Act for 530 Gravatt Drive” (**Exhibit 5**), where the creek is delineated and incorporated in the subsequent subdivision application, Tentative Parcel Map TPM9884.
- The May 19, 2009 property owner (Appellant) submitted a statement of compliance to the City of Oakland “attesting that there is a creek” on the property (**Exhibit 10**).
- April 16, 2010 – A Tentative Parcel Map (TPM09884) (**Exhibit 11**) was approved along with a Creek Protection Permit (CP09082) for this Site.. The City’s Creek Permit application review considered and accepted the delineation of the creek centerline by consultants Mosaic Associates, LLC, and displayed on the survey and project site plans; the definition for the creek top of bank (**Exhibit 12**), as provided by Ulrick and Associates, consultant hydrologists; and Fugro West Inc. peer review analysis of the

⁴ The Appellant had actual and/or constructive knowledge of most, if not all, of the materials the City is relying upon in this appeal (since at least 2006), prior to filing its appeal. In any event, these materials were also provided in response to appellant’s Public Record Act requests

Jensen-Van Lienden (JVLA) geotechnical study, that includes a description of connectivity to Vicente Creek.

Ultimately a creek protection plan was approved and is to be implemented as part of the development build out under the Final Parcel Map, PM9884.

It should be noted the above consultants were all retained by DFI Properties LLC, the same group listed as Appellants.

- July 10, 2013 – A Creek Protection Permit application for the subject property (APN# 065 (formerly # 5106) was submitted to the City by Hillside Homes Group for the property owner, DFI Properties, Inc.

The Creek Protection Permit (CP13138) was issued for the proposed development, and identified a creek and riparian corridor on the subject property August 4, 2014 (**Exhibit 13**).

BASIS FOR THE APPEAL

The Appellant's contentions are in *italics/bold* with staff responses in regular font.

Appellant Contention

- I. The appellants claim the Creek Determination Misidentified, and Otherwise Misapplied the City's Creek Criteria, as Set Forth in Local Ordinance and Guides.***
 - A. The Drainage Ditch on the Property Does Not have Hydrologic Connectivity***
 - 1. A creek must have hydrologic connectivity*
 - 2. The drainage ditch does not connect to qualifying waterways above or below the Property.*
 - B. The Drainage Ditch on the Property Does Not Have a Proper Topographic Position***
 - 1. To qualify as a creek, there must be a "U" or "V" shape channel in specified locations.*
 - 2. The drainage ditch on the Property does not assume the proper "U" or "V" shape.*
 - C. The Additional Creek Conditions Noted in the Creek Determination Do Not Transform the Drainage Ditch into a Creek***

Staff Response

A detailed investigation of the site conditions, including field investigations, historical research, and analysis of existing data resources were used in the determination investigation. The determination was performed in accordance with the City of Oakland's standard operating procedures for creek determination investigations.

Staff findings

The following staff findings are based on site conditions that were evaluated through site investigations in 2001, 2002, 2003, 2008, 2009 and most recently on February 16, 2016 (for site visit photos see **Exhibit 14**) and other data.

Required Features of a Creek

The following lists the required features for an area to be considered a creek and whether they exist in subject creek.

Hydrological Connectivity

Upstream – The creek is a headwater creek with incised channel initiating on the property. The sources of water are surface flow, precipitation and channelized flow from stormwater infrastructure on Gravatt Drive leading to the creek channel that leads to the section that crosses the property

Downstream – The creek channel converges with a second creek near the lower edge of the property to form a channel that seems to disperse into an altered and flattened graded area and then enters the storm drainage system that connects the water into the main Vicente Creek.

Bed / Bank / Topography / Scour

Bed – The creek has a defined creek bed, including bed material that differs from the surrounding material (rock and/or gravel and very little vegetation).

Bank – The creek has defined creek banks that are clear upslope topography from the channel bottom.

Topography

Macro – The topography at the location of the creek is distinct ravine topography with the creek flowing in the depression in the fold of the hillside (**Exhibit 15**).

Micro – The creek exhibits creek-typical micro-topography with a meander and a distinct v-shaped channel.

In sum, all of the required criteria for determining creek are present at the creek on this site. The creek has hydrologic connectivity. The creek has distinct bed and bank. The creek displays typical creek shaped large scale topography with the creek running in the v-shaped area formed by the hillside. The creek displays localized-topography with a typically-shaped channel.

Indicator Creek Features

The following criteria are useful guides to help in the determination of creeks. While these criteria are often present in creeks in Oakland, they are not required and the absence of these features does not mean there is no creek.

Vegetation

There is vegetation present along the creek is typical of vegetation found in riparian corridors including Willow, California Laurel, and California blackberry.

Bed Material

The channel has bed materials that differs from the surrounding ground material, including gravel, and woody debris.

In sum, the creek has vegetation, bed material, and man-made structures indicative of a creek.

Other Data

Staff also reviewed the following materials to make their determination:

- A 2003 formal Creek determination of the parcel finding that this is a creekside property.
- A 2004 City report by watershed sciences experts William Lettis and Associates, the creators of the Oakland Museum East Bay Creek and Watershed Maps. The report included notes and photos from a field visit to the subject channel verifying that it is a creek.
- A 2008 wetland delineation report and map completed by Mosaic and Associates.
- 2009 staff site evaluation field notes.
- City GIS and topographical maps.
- Past development application materials and reports.

Conclusions

The site visit and investigation, and past documents provide substantial evidence to support the existence of the creek at this site. These resources show that the channel is hydrologically connected and is part of a larger creek drainage network, both historically and currently. The macro-topography of the area typifies creek area topography. Thus, the definition of a creek is met.

- II. *The Drainage Ditch is Not a Naturally Occurring or Engineered Channel, but a Stormwater Attenuation Feature, and Thus is Specifically Excluded from the Definition of a Creek***
- A. *The City defines the word “creek” in the municipal code and Guide as a naturally occurring or engineered channel.***
- B. *The drainage channel on the Property does not meet the foregoing definition for a number of reasons***

Staff Response

The creek is geographically situated at the low point of a deep ravine which is precisely where a naturally occurring creek would form. While creeks can have stormwater attenuating properties, a “stormwater attenuation feature” typically refers to a man-made retention or detention area.

- III. *The Creek Determination is Unsupported by Substantial Evidence***
- A. *The Creek Determination is supported by no evidence whatsoever, but rather consists of a number of conclusory opinions. Miller Starr Regalia received no response to Public Records Act requests #15404, #15405, #15480, and as a result reserve right to submit materials should the City provide evidence between the submission of this appeal and any public hearing that the City schedules to hear this matter.***

Staff Response

On the contrary, not only is the Creek Determination supported by site investigation evidence performed in accordance with the City of Oakland’s standard operating procedures for creek determinations, but independent of the Creek Determination, a review of parcel history, records of approved lot subdivision, and associated approved creek permit applications for individual development projects, provide substantial evidence to support the Property’s creek status.

The Creek Determination (CDET16004, May 9, 2016) affirms the Property as creekside property based on the criteria established in the City of Oakland’s Creek Protection Ordinance and its implementing Guidelines. Notwithstanding the Creek Determination’s statement that the properties were not previously flagged as Creekside in the ACCELA Database under parcel APNs 064 and 065, a review of parcel history will state otherwise. Even the Parcel Map in the Appeal documentation identifying the Property is incorrect because it does not reflect the current property line configuration recorded with the County of Alameda under the Parcel Map PM09884. A Chain of Title search would reveal that the Property parcel numbers changed four times.

The Property is recognized and acknowledged as creekside in City Databases, but is listed under prior County of Alameda Assessor Parcel numbers: 5104 (at the time of City Surplus Land auction as a single parcel (2003)), and subsequently 5106, 5107 (at the time Grant

Deeds establish three parcels and at the time of lot subdivision TPM09884 (2009)), but were not carried over to the current 064 and 065 (recorded parcels following TPM09884). The related Perth Place property 0903, mentioned in the Appeal Correspondence, is also historically a creekside property under prior permit history (EDR01-97, CP02187). **Exhibit 7** provides a Chronology of Parcel Creek Status and **Exhibit 8** is a Conceptual/Illustrative Graphic presentation of the parcel.

Based on separate and independent findings, the Tentative Parcel Map application (TPM09884) and associated Creek Permit (CP09082) were conditionally approved, based in part, on the consultant studies conducted by Mosaic Associates, LLC, Ulrick Associates, project hydrologists; Jensen-Van Lienden Associates (JVLA) geotechnical consultants, and Fugro West Associates as geotechnical peer reviewers. Mosaic delineated the watercourse centerline; Ulrick defined the creek top of bank and recommended a minimum creek buffer zone, JVLA, contributed the presence of landslide susceptible soils, and Fugro West identified the connectivity to Vicente Creek. Approval of the Creek Determination is consistent with the approval for the subdivision (TPM09884) and related creek permit (CP09082). The section on Background on Property History and Exhibit gives a chronology of the development of the Property.

The Appeal relies primarily on the May 17, 2016 Blue Consulting Group Creek Assessment Report which updates an earlier November 4, 2014 Blue Consulting Group site investigation and analysis looking for site-specific characteristics identified with a creek. This site investigation does not overturn a chronology of real property sales, lot subdivision recordation, or development project approval that recognize the Property as Creekside. Neither does the consultant study reflect on how the existing presence of landslide susceptible soil movement may alter a watercourse profile or identify the presence of a storm catch basin on Perth Place described under Background of the Appeal documentation. It should be noted that the Appellant had actual and/or constructive knowledge of most, if not all, of the materials the City is relying upon in this appeal, prior to filing its appeal. In any event, these materials were also provided in response to appellant's Public Record Act requests well in advance of the public hearing.

IV. Summary/Conclusion

A. Lacking Three Criteria to qualify as a creek

B. No more than a Stormwater Attenuation Feature

Staff Response

The Staff Response is that the watercourse channel DOES connect to existing creeks, specifically Vicente Creek, and therefore has hydrologic connectivity. Second, with regards to the proper "U" or "V" shape, the Property is located in an area susceptible to local landslide (JVLA geotechnical study for TPM09884) contributing to eroding channels and susceptible to stormwater issues that may contribute to the slope-bench appearance and unstable fill at Perth Place.

The creek does not exist merely as part of, or resulting from, the storm drain or stormwater attenuation system. Although the creek is now, as a result of infrastructure development, a part of the storm drain system, the creek did exist before the storm drain system was built and was not created by it. The site has both natural and engineered portions and carries primarily stormwater. All creeks are fed by stormwater. The origin of the creek, whether through human disturbance, deliberate engineering, and/or natural drainage is irrelevant for the determination of a creek according to the City of Oakland Creek Determination Guidelines and relevant case law. As stated in the definition of a creek (OMC 13.16.030), creeks may carry water either seasonally or year round. This definition is supported by legal precedent in the seminal court case, *Locklin v. City of Lafayette* (1994) 7 cal. 4th 327 ("Locklin"). The Locklin case, which has been incorporated into the Guidelines and is therefore used in Oakland, defines a natural watercourse (creek) as:

“A channel with defined bed and banks made and habitually used by water passing down as a collected body or stream in those seasons of the year and at those times when the streams in the region are accustomed to flow. It is wholly different from a swale, hollow, or depression through which may pass surface waters in time of storm not collected into a defined stream. A canyon or ravine through which surface water runoff customarily flows in rainy seasons is a natural watercourse. Alterations to a natural watercourse, such as the construction of conduits or other improvements in the bed of the stream, do not affect its status as a natural watercourse. A natural watercourse includes all channels through which, in the existing condition of the country, the water naturally flows, and may include new channels created in the course of urban development through which waters presently flow. Once surface waters have become part of a stream in a watercourse, they are no longer recognized as surface waters.” (Page 345)

CONCLUSIONS

As detailed above, Staff's determination that the watercourse on the Appellant's property is a creek is consistent with current policies and practices, as well as with the City of Oakland's Creek Protection Ordinance, its implementing Guidelines and State and Federal Clean Water Requirements, and current case law.

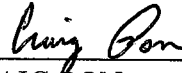
Substantial evidence, including historical and current maps, aerial photos, and site conditions, support the determination that the watercourse on the site is a creek. Additionally, prior administrative Planning approvals, including the approved subdivision map, TPM09884, and related Creek Permit, CP09082, only reinforce that the Properties in question are creekside properties.

RECOMMENDATIONS:

Staff recommends the Planning Commission:

- 1) Affirm staff's environmental determination; and
- 2) Deny the appeal and uphold the Watershed Program Manager's determination of a creek on the Appellant's properties. Specifically, APN # 063 and 064 are Creekside properties.

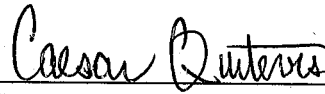
Prepared by:



CRAIG PON

Public Works Department

Watershed and Storm Water Management



CAESAR QUITEVIS

Planning and Building Department

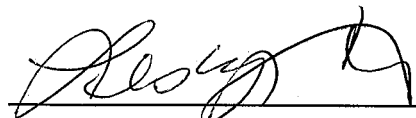
Bureau of Planning

Reviewed by:



SCOTT MILLER

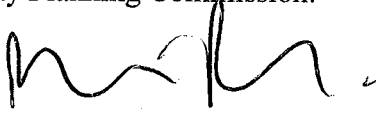
Zoning Manager of Bureau of Planning, Planning and Building Department



LESLEY ESTES

Manager of Watershed and Stormwater Management, Oakland Public Works

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI

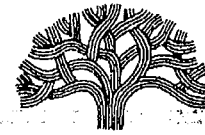
Interim Director of Planning and Building Department

EXHIBITS:

- 1 Perth Place Design Review and Creek Permit Review EDR01-97, CP02187
- 2 City of Oakland Surplus Land Auction Parcel Data
- 3 2003 Creek Determination
- 4 2004 William Lettis & Associates Creek Map showing estimated centerline of creek and Creekside parcels
- 5 Mosaic Associates' Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. Under Section 404 of the Clean Water Act for 530 Gravatt Drive
- 6 Graphic of Proposed Subdivision VTPM10342
- 7 Chronology of Parcel Creek Status
- 8 Conceptual/Illustrative Graphic presentation of the Parcel
- 9 Assessor Parcel Map reflecting one parcel number 05104 and Lots 121, 128, 127
- 10 Applicant Signed Statement of Compliance
- 11 TPM9884/CP09082 approval staff report
- 12 Ulrick & Associates definition of top of creek bank
- 13 CDV13203/CP13138 approval staff report
- 14 Creek Determination Documentation –site photos
- 15 Topographic Aerial Map

ATTACHMENTS:

- A. Appeal of Creek Determination, May 18, 2016
- B. Guide to Oakland's Creek Ordinance
- C. Creek Determination, CDET 16004, May 9, 2016



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Community and Economic Development Agency
 Planning & Zoning Services Division

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 TDD (510) 839-6451

January 25, 2002

Mr. Dale Richards
 D.R.S. Development, LLC
 56 Tamalpais Ave.
 San Anselmo, CA 94960

Exhibit 1

RE: Case File Number: EDR 01-97
 Address: 2 Perth Place (APN 048H-7606-009-03)
PRELIMINARY DESIGN REVIEW FINDINGS

Dear Mr. Richards:

The Zoning Division has reviewed the proposed design submitted on December 27, 2001 for conformance with the S-14 Zone's zoning standards and Design and Bulk Review regulations. After studying the plans, the site and neighborhood conditions, and public input, staff's analysis indicates that the design meets the applicable S-14 Zone regulations for building envelope/zoning standards and design and bulk review criteria. A Zoning approval, however, cannot be issued at this time due to the need for additional information and permitting related to environmental review for a Creek Permit. The following paragraphs contain information about zoning and bulk design review, and environmental review for a Creek Permit.

PUBLIC NOTIFICATION & PUBLIC COMMENTS

Three neighbors commented on the proposed development. Please review the enclosed letters regarding surface drainage, soil stability, and construction safety and noise related concerns. Where public comment is directed at design and bulk issues consistent with the review criteria, the public comment is considered under the design and bulk review determinations section of this report. Where issues are more related to the building permit and inspection processes, staff encourages you to contact your neighbors and address the issues as appropriate in the development of the design. Finally, where issues are related to environmental review and creek permit concerns, please review the following section of the report.

ENVIRONMENTAL REVIEW & CREEK PERMIT DETERMINATIONS

As you may know, a determination has been made by City officials that a creek exists on the subject property, and a Category 4 Creek Permit is required. Therefore, environmental review under the California Environmental Quality Act (CEQA) is required for review by the Zoning Division, along with the Creek Protection Plan and Hydrology Report required by the Engineering Services Division.

An Initial Study must be prepared, as the environmental document, to determine if there will be significant impacts on the creek due to the proposed development. The Creek Protection Plan and Hydrology Report may be attachments to the Initial Study, and will be reviewed concurrently. Staff encourages you to hire the appropriate consultants to prepare these documents. Please note that Zoning approval cannot be granted until environmental issues are satisfied.

DESIGN AND BULK REVIEW DETERMINATIONS

In order to receive S-14 Zone Design and Bulk Review approval, the proposed design must meet all 3 bulk review criteria (1.1 Neighborhood Fit, 1.2 Siting and Massing and 2.2 Building Massing Elements); at least 10 of the total 13 design and bulk criteria, and at least 1 criterion from Site Planning, Building Design, Streetscape and Landscaping. Basic information about zoning standards and the design and bulk review procedure is available in the S-14 Zoning Regulations Information handout. Detailed design and bulk review information, including the 13 criteria and related illustrations, is available in the booklet titled Expedited Design and Bulk Review -- Design Review Criteria for Single

Family Houses in the S-14 Zone. The Design and Bulk Review determinations for the proposed house are listed below to the extent possible with the level of clarity of the submitted drawings.

CRITERION	MET?	CRITERION	MET?
1.1 BULK: NEIGHBORHOOD FIT	Y	3.1 DRIVEWAYS AND GARAGE	Y
1.2 BULK: SITING AND MASSING	Y	3.2 STREETScape ARCHITECTURE	Y
1.3 SITE ACCESS	Y	3.3 STREET FRONTING YARDS	Y*
1.4 OUTDOOR SPACES	N	4.1 MAJOR LANDSCAPE ELEMENTS	N
2.1 ARCHITECTURAL COMPOSITION	N	4.2 2NDARY LANDSCAPE ELEMENTS	Y*
2.2 BULK: BLDG MASSING ELEMENTS	Y	BONUS CRITERION	N
2.3 ELEVATIONS	Y	TOTAL NUMBER OF CRITERIA MET	10
2.4 DETAILING AND MATERIALS	Y		

DESIGN AND BULK REVIEW COMMENTS

Comments are listed below for criteria not met. An "Inc." on the checklist indicates insufficient information to make a determination, while an asterisk next to a "Y" determination indicates that there is some minor issue that can be typically resolved with additional information or in the process of responding to another criterion.

In general, the design's siting and massing meet site planning and bulk review criteria and the design's architecture meets building design and streetscape criteria. The landscaping design is good start, but staff finds that there are insufficient large landscape elements to meet the major landscape elements criterion, and that the street fronting yard criterion would be met if additional trees and/or well design groupings of shrubs were included in the front yard area, along the entry path, and within the planter in meeting the major landscape elements criterion. These elements should provide some screening as well as decorative qualities. At the minimum one medium size tree should be added to the left of the driveway and one large or two medium size trees should be added to the right of the entry steps along with a few large shrubs within the planter and adjacent to the entry steps and planter. Ground covering is also needed to be specified in the front yard area.

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In addition to reviewing the aforementioned comments, city staff encourages all applicants to consider all necessary design modifications prior to resubmittal. We find the following general steps to be helpful to most applicants:

1. After reviewing this letter and the City's design review booklet, the project designer(s) and property owner(s) discuss possible changes to the project design, issues needing clarification.
2. The owner and project designer meet with the City staff or the City's design review consultant for your project. To help make this meeting productive, bring ideas for possible design changes. The design review consultant's role in the review process is to clarify issues with the applicant and provide feedback that will facilitate the applicant developing a new or revised design that meets the review criteria. *The design review consultant for this application is Arnold Mammarella. He can be reached at 510/763-4332.*
3. The project design team develops a revised design and submits 2 copies that design to the Zoning Division (in this case 2 copies of the revised landscape plan, along with information regarding the tree removal permit application).

Please note that you are permitted to submit one new or revised design under the current application prior to a final decision being made. Typically applicants are also afforded two meetings with City's design review consultant. When you are ready to resubmit, please direct all revisions and/or amendments to the City of Oakland Zoning Division, Design Review Section, Attn. Ann Clevenger, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland CA 94612, and include your name, the project address and the case number on all submitted material. We appreciate your cooperation and look forward to assisting you.

Sincerely,

GARY PATTON, Deputy Director of Planning and Zoning
Community and Economic Development Agency

By:



ANN CLEVENGER, AICP, S-14 Design Review Supervisor
Zoning Division

Enclosures:

Engineering Services Division Parcel-Review-Stamp
Neighbor Letters

cc: Dunbar H. Ogden, 1150 West View Drive, Berkeley, CA 94705
Stuart and Susan Lloyd-Hurwitz, 1102 Grand View Drive, Oakland, CA 94705
Andrew Olding, 600 Gravatt Drive, Oakland, CA 94705
Arnold Mammarella, Design Review Consultant

EDR01-97.PRE

SITE

LOT SIZE: 9,124 SQ. FT.

LOT COVERAGE (R-30)=

F.A.R.: 3,766 SQ. FT. / 9.1

BUILDING HEIGHT: 35'-0" (
34'-10"
@ TOWER

TREES TO BE REMOVED:

DRIVEWAY: 15% MAXIMUM

BASED ON CURRENT CITY RECORDS, THE FOLLOWING APPLIES TO THIS PARCEL. (CITY ASSUMES NO RESPONSIBILITY FOR ACCURACY OR COMPLETENESS THEREOF)

<u>330</u>	QUAD MAP NUMBER
<u>05</u>	LOT DIMENSIONS
<u>0</u>	FLOOD ZONE
<u>Y</u>	CREEK/WATER COURSE
<u>Shown</u>	EASEMENTS
<u>NO / NO</u>	FRAD / MITIGATION
<u>NO</u>	A-P ZONE
<u>LS</u>	COMG DESIGNATION
<u>NO</u>	LAND STABILITY
<u>N/A</u>	FACE OF CURB > PROPERTY LINE
	ENCROACHMENTS
RECORDS	<u>100</u>
DATE	<u>1-22-02</u>
COMMENTS	

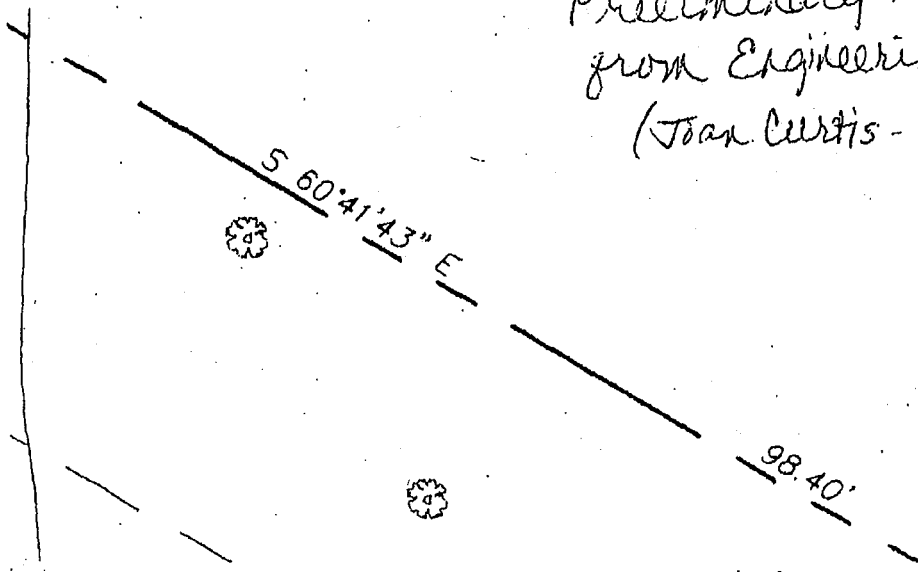
CITY OF OAKLAND VERIFICATION STAMP #01

#1 EDMG SOILS REPORT
REQ'D

#2 PER CONTOURS - PTS
CAT. 4

4" EUG.

*Preliminary Notes
 from Engineering Services
 (Joan Curtis - 238-4777)*



Quitevis, Caesar

From: Quitevis, Caesar
Sent: Thursday, March 31, 2016 4:18 PM
To: 'Steve Anderson' (steve@dfifunding.com)
Cc: Hathaway, Kristin
Subject: FW: Send data from MFP11254491 03/31/2016 14:46
Attachments: DOC033116.pdf

RE:048H760600903

Hello Steve,

I was able to pull up a copy of the archived decision letter (EDR01097) for the parcel (Perth Place, 048H760600903) that you're interested in, and have included it as an attachment. Both Planning and Engineering Services have accepted the parcel as a creek parcel. A Zoning approval could not be issued to Ms. Boruta, even though the design appeared to meet design review standards, because the project triggered a Category 4 Creek Permit. Zoning made a determination the project would be subject to CEQA or further environmental assessment, and, at that time, Engineering Services in the Building Bureau and Watershed & Stormwater Management in Public Works Agency co-jointly handled review of Creek Permits and the hydrology report review. I do not have more information on the sewer fall line.

Respectfully,

Caesar Quitevis, Planner II | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2316 | Oakland, CA 94612 | Phone: (510)238-6343 | Fax: (510) 238-4730 | Email: cquitevis@oaklandnet.com | Website: www.oaklandnet.com/planning

-----Original Message-----

From: [ZoningOffice Toshiba35238@oaklandnet.com](mailto:ZoningOffice_Toshiba35238@oaklandnet.com) [[mailto:ZoningOffice Toshiba35238@oaklandnet.com](mailto:ZoningOffice_Toshiba35238@oaklandnet.com)]
Sent: Thursday, March 31, 2016 2:47 PM
To: Quitevis, Caesar
Subject: Send data from MFP11254491 03/31/2016 14:46

Scanned from MFP11254491

Date:03/31/2016 14:46

Pages:4

Resolution:300x300 DPI

Document sent from Toshiba copier. Please do not reply to this message



250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 839-6451

January 25, 2002

Mr. Dale Richards
D.R.S. Development, LLC
56 Tamalpais Ave.
San Anselmo, CA 94960

RE: Case File Number: EDR 01-97
Address: 2 Perth Place (APN 048H-7606-009-03)
PRELIMINARY DESIGN REVIEW FINDINGS

Dear Mr. Richards:

The Zoning Division has reviewed the proposed design submitted on December 27, 2001 for conformance with the S-14 Zone's zoning standards and Design and Bulk Review regulations. After studying the plans, the site and neighborhood conditions, and public input, staff's analysis indicates that the design meets the applicable S-14 Zone regulations for building envelope/zoning standards and design and bulk review criteria. A Zoning approval, however, cannot be issued at this time due to the need for additional information and permitting related to environmental review for a Creek Permit. The following paragraphs contain information about zoning and bulk/design review, and environmental review for a Creek Permit.

PUBLIC NOTIFICATION & PUBLIC COMMENTS

Three neighbors commented on the proposed development. Please review the enclosed letters regarding surface drainage, soil stability, and construction safety and noise related concerns. Where public comment is directed at design and bulk issues consistent with the review criteria, the public comment is considered under the design and bulk review determinations section of this report. Where issues are more related to the building permit and inspection processes, staff encourages you to contact your neighbors and address the issues as appropriate in the development of the design. Finally, where issues are related to environmental review and creek permit concerns, please review the following section of the report.

ENVIRONMENTAL REVIEW & CREEK PERMIT DETERMINATIONS

As you may know, a determination has been made by City officials that a creek exists on the subject property, and a Category 4 Creek Permit is required. Therefore, environmental review under the California Environmental Quality Act (CEQA) is required for review by the Zoning Division, along with the Creek Protection Plan and Hydrology Report required by the Engineering Services Division.

An Initial Study must be prepared, as the environmental document, to determine if there will be significant impacts on the creek due to the proposed development. The Creek Protection Plan and Hydrology Report may be attachments to the Initial Study, and will be reviewed concurrently. Staff encourages you to hire the appropriate consultants to prepare these documents. Please note that Zoning approval cannot be granted until environmental issues are satisfied.

DESIGN AND BULK REVIEW DETERMINATIONS

In order to receive S-14 Zone Design and Bulk Review approval, the proposed design must meet all 3 bulk review criteria (1.1 Neighborhood Fit, 1.2 Siting and Massing and 2.2 Building Massing Elements); at least 10 of the total 13 design and bulk criteria, and at least 1 criterion from Site Planning, Building Design, Streetscape and Landscaping. Basic information about zoning standards and the design and bulk review procedure is available in the S-14 Zoning Regulations Information handout. Detailed design and bulk review information, including the 13 criteria and related illustrations, is available in the booklet titled Expedited Design and Bulk Review -- Design Review Criteria for Single

Family Houses in the S-14 Zone. The Design and Bulk Review determinations for the proposed house are listed below to the extent possible with the level of clarity of the submitted drawings.

CRITERION	MET?	CRITERION	MET?
1.1 BULK: NEIGHBORHOOD FIT	Y	3.1 DRIVEWAYS AND GARAGE	Y
1.2 BULK: SITING AND MASSING	Y	3.2 STREETScape ARCHITECTURE	Y
1.3 SITE ACCESS	Y	3.3 STREET FRONTING YARDS	Y*
1.4 OUTDOOR SPACES	N	4.1 MAJOR LANDSCAPE ELEMENTS	N
2.1 ARCHITECTURAL COMPOSITION	N	4.2 2NDARY LANDSCAPE ELEMENTS	Y*
2.2 BULK: BLDG MASSING ELEMENTS	Y	BONUS CRITERION	N
2.3 ELEVATIONS	Y	TOTAL NUMBER OF CRITERIA MET	10
2.4 DETAILING AND MATERIALS	Y		

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Sincerely,

GARY PATTON, Deputy Director of Planning and Zoning
Community and Economic Development Agency

By:



ANN CLEVINGER, AICP, S-14 Design Review Supervisor
Zoning Division

Enclosures:

Engineering Services Division Parcel Review Stamp
Neighbor Letters

cc: Dunbar H. Ogden, 1150 West View Drive, Berkeley, CA 94705
Stuart and Susan Lloyd-Hurwitz, 1102 Grand View Drive, Oakland, CA 94705
Andrew Olding, 600 Gravatt Drive, Oakland, CA 94705
Arnold Mammarella, Design Review Consultant

EDR01-97.PRE

SITE

LOT SIZE: 9,124 SQ. FT.

LOT COVERAGE (R-30)=

BASED ON CURRENT CITY RECORDS, THE FOLLOWING APPLIES TO THIS PARCEL. (CITY ASSUMES NO RESPONSIBILITY FOR ACCURACY OR COMPLETENESS THEREOF)

<u>338</u>	QUAD MAP NUMBER
<u>05</u>	LOT DIMENSIONS
<u>0</u>	FLOOD ZONE
<u>Y</u>	CREEK/WATER COURSE
<u>Show A</u>	EASEMENTS
<u>No 700</u>	ROAD / MITIGATION
<u>NO</u>	A-P ZONE
<u>LS</u>	CDMG DESIGNATION
<u>NO</u>	LAND STABILITY
<u>N/A</u>	FACE OF CURB - PROPERTY LINE
<u>NO</u>	ENCROACHMENTS
<u>RECORDS</u>	
<u>DATE</u>	<u>1-22-02</u>
<u>COMMENTS</u>	

CITY OF OAKLAND REVISION/STAMP 8/01

F.A.R.: 3,766 SQ. FT. / 9.1

BUILDING HEIGHT: 35'-0" (34'-10" @ TOWER)

TREES TO BE REMOVED:

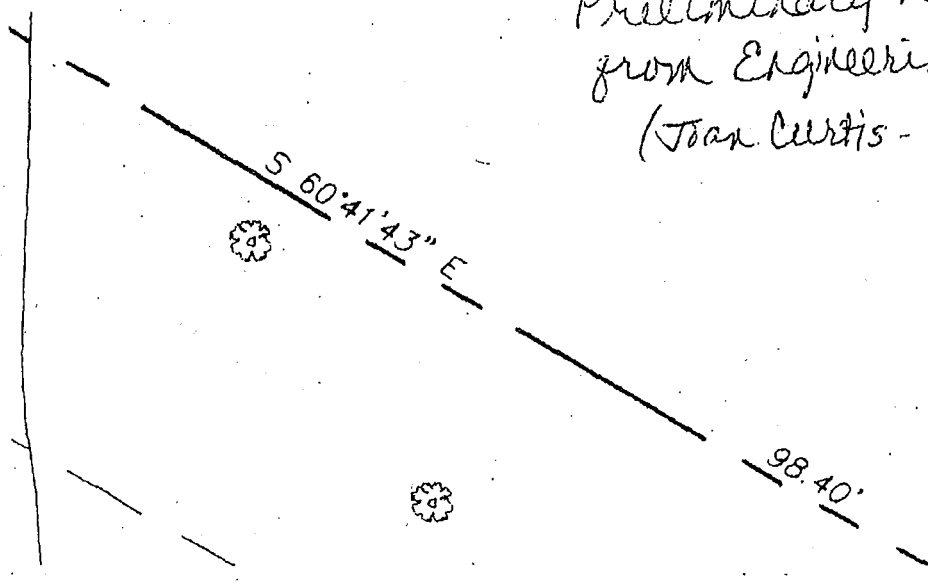
DRIVEWAY: 15% MAXIMUM

#1 CDMG SOILS REPORT REQ'D

#2 PER CONTOURS - PTS CAT. A

4" EUG.

Preliminary Notes
from Engineering Services
(Joan Curtis - 238-4777)



LOCATION: Gravatt Drive
ASSESSOR PARCEL NO. 048H-7606-051-04
MINIMUM BID: \$240,000
REQUIRED DEPOSIT: \$ 24,000

DESCRIPTION:

Size: 57, 935 square feet +/-

Shape: Irregular

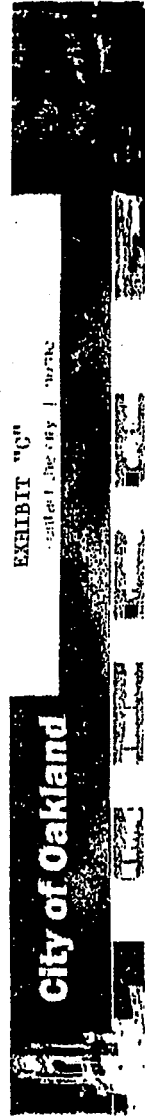
Topography: Steep Slope - Creek side property

Zoning: R-30

Utilities: Bidder to verify independently

PROPERTY DATA SHEET

Page 1 of 3



PROPERTY DATA SHEET



Access: Available from street

Improvements: none

Occupancy: none

LIMITATIONS AND INSPECTION

ALL PROPERTIES ARE SOLD IN "AS IS" CONDITION. The successful bidder agrees that, as of close of escrow, it will be acquiring the property in an "as-is" condition with all faults and conditions then existing on the property, including any hazardous substances or hazardous waste that may be located on, under, or around the property, whether known or unknown, and successful bidder assumes all responsibilities for such faults and conditions.

The City of Oakland makes no representation as to the potential use of this property. Bidder should check with the Planning Department regarding building restrictions, compliance and ultimate development, etc. The Planning Commission of the City of Oakland is instructed not to recommend for approval an application for zoning reclassification of each property for a period of two years from the date of sale by the City unless the application contains a statement in detail of the changes in circumstances which in the opinion of the Planning Commission does, in fact, justify a zoning reclassification.

The right, title and interest in the property to be sold shall not exceed that vested in the City of Oakland and the sale of this property is subject to all matters of public record and any easements, claims of easements, or reservations whether or not of record and to exceptions that may be shown in the Preliminary Title Report. The City of Oakland does not assume any liability for possible encumbrances of any kind on this property. If buyer desires title insurance, it is to be obtained at buyer's sole expense. Prospective bidders should consult local title companies if more complete information regarding the title of this property is required.

No warranty is made by the City of Oakland relative to the ground locations, property lines or the accuracy of the public records and/or the assessor's parcel maps related to this property. Should the successful bidder desire a survey of the property, this may be accomplished by an independent survey at the bidder's sole expense.

The property is not assessed for taxes while vested in the City. It will, however, be assessed after transfer into private ownership.

The sale of the property is exempt from CEQA. Buyer should be aware that if buyer seeks some form of approval or permit for development subsequent to buyer's purchase of this property, the local agency might require an environmental document and/or environmental analysis before giving its approval or permit.

This property may be situated within the Special Studies Zone as to designated under the Alquist-Priolo Special Studies Zones Act, Sections 2621-2625, inclusive of the California Public Resource Code. As such, approval of any future construction or development of any structure for human occupancy on this property may be subject to the findings contained in a geologic report prepared by a geologist registered in the State of California. No representations on this subject are made by the City of Oakland, and any prospective buyer should make their own inquiry or investigation onto the potential effect of this Act on this property.

This parcel contains a watercourse. Buyer shall be aware that creeks and watercourse will naturally erode the land over time, and water flow is likely to increase as development occurs upstream. Any structures built on this site should be designed to withstand these erosive forces. Use or development of a creekside property may require significant professional consulting services, technical study, limitations or modifications pertaining to density, proposed building size, character or location, CEQA/other environmental review, additional permits from other regulatory agencies, limitations on use, development, subdivision, and/or use of the property. Any such expenses would be at buyer's sole expense. The City accepts no liability for the maintenance of this watercourse or for future erosion or landslide damage to the land or structures on this site.

The City of Oakland makes no representations on with respect to the land use or other permitting issues that may affect this site or with respect to buyer's ability to develop or improve the site. Any prospective bidder bears the sole responsibility for investigating the status and developability of the property, which may include, without limitation, an official creek determination (available through the City), independent professional consulting services, and/or a planning pre-application for development of the site.

Buyer shall be aware that this lot is subject to the restrictions of the City's Creek Protection Ordinance. This parcel is also subject to a deed restriction that "no grading or excavation shall be performed and no structures shall be constructed within 20 feet of the top of the creek's banks.

This property may include protected trees requiring the procurement of a tree protection permit for any work done on the property. No representations on this subject or impact on future development is made by the City of Oakland, and any prospective bidder should make their own inquiry or investigation onto the potential effect of this status on the property.

There may be certain improvements located on the property, such as previously constructed foundations that may need to be removed, require additional City approvals or conditions which may limit the use and development of this property. No representations on this subject or impact on future development is made by the City of Oakland, and any prospective bidder should make their own inquiry or investigation onto the potential effect of these improvements on the use or development of this property.

The City of Oakland reserves the right to reject any and all offers and waive any informality or irregularity in any offer or to accept any offer deemed in the best interest of the City.

For further information you can send an email to:
realpropertyauction@oaklandnet.com

BACK



CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5301 • OAKLAND, CALIFORNIA 94612-2034

Public Works Agency
Environmental Services

FAX (510) 238-7286
TDD (510) 238-7644

December 19, 2003

Exhibit 3

Calvin Guinn
P.O. Box 29617
Oakland, CA 94606

RE: Creek Determination at Gravatt Drive (048H-7606-051-04) Lot 127

Dear Mr. Guinn,

Per your request on November 13, 2003 Environmental Services (ESD) staff conducted an investigation and site visit, on December 18, 2003 to determine whether this is a creekside property. This property was previously flagged as a creekside property in the City of Oakland Permit Tracking System. The Environmental Services determination is that:

This property IS a creekside property.

Comments:

The channel is determined a creek for the following reasons:

1. The channel is part of a contiguous waterway.
2. The waterway has a defined bed, bank, and signs of scour.
3. There is appropriate "U" or "V" shaped topography.

Though not required, the following additional creek conditions were found:

- A riparian corridor: a line of denser riparian vegetation.
- The channel has a bed with material that differ from the surrounding material.
- There are man-made structures common to waterways.

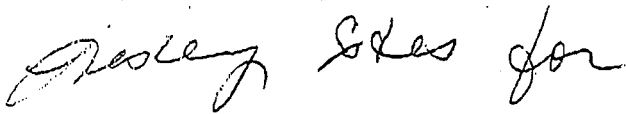
If it is believed that this determination was made in error, an appeal in accordance with section 13.16.460 of the Oakland Municipal Code must be filed within ten (10) calendar days of the date of this written decision. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Environmental Services Manager, or wherein his/her decision is not supported by substantial evidence in the record. Appellants must submit a Appeal to the Planning Commission form (available at the 2nd floor planning counter in the Dalziel Building, 250 Frank Ogawa Plaza), all supporting materials, and a copy of the receipt of

● Page 2

payment to the Planning Counter on the 2nd floor in the Dalziel Building, no later than 4:00pm on the 10th day after this written decision.

If you have any questions regarding this determination, contact Kristin Hathaway at 510 238-7571 or khathaway@oaklandnet.com.

Sincerely,

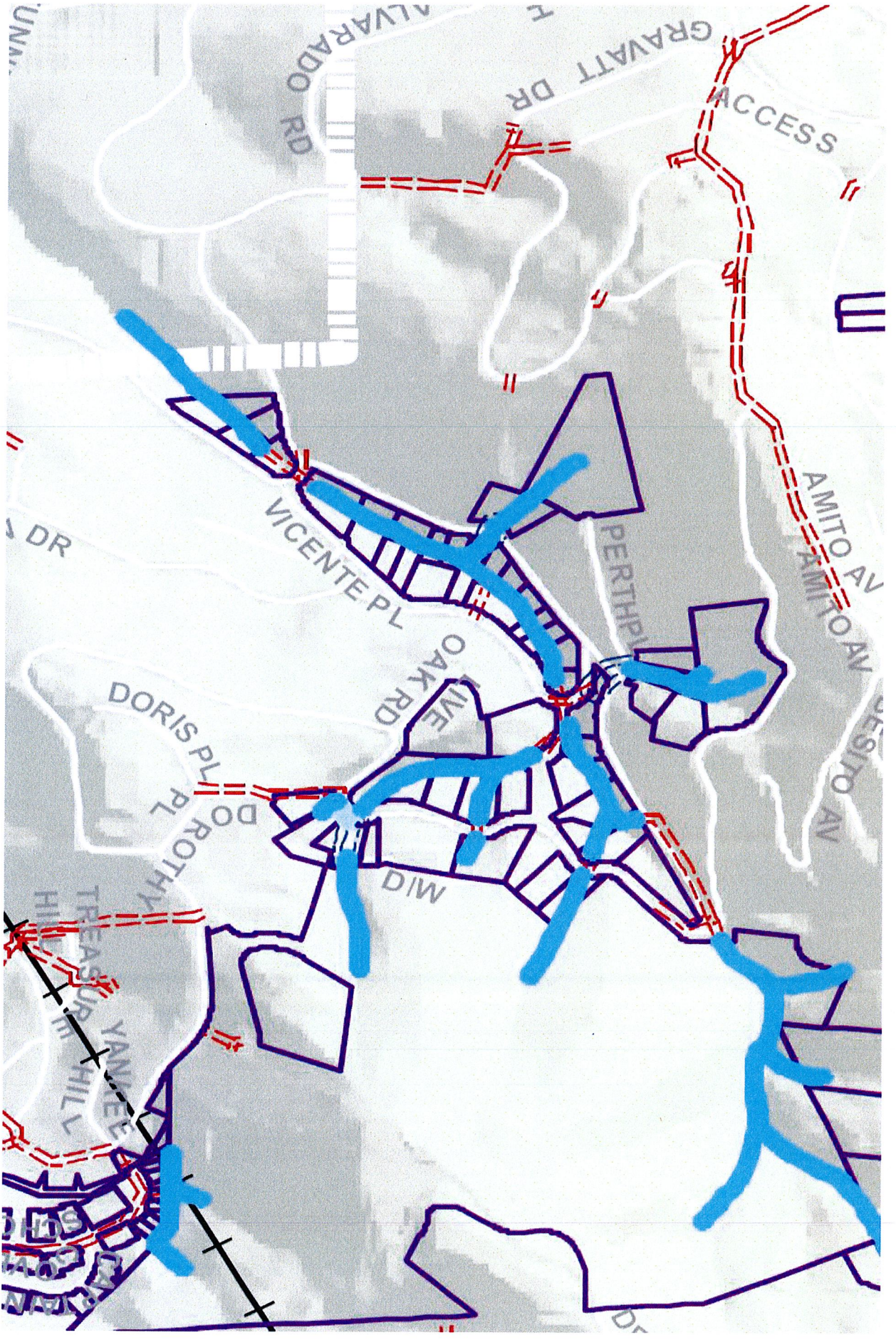


Brooke A. Levin
Environmental Services Manager

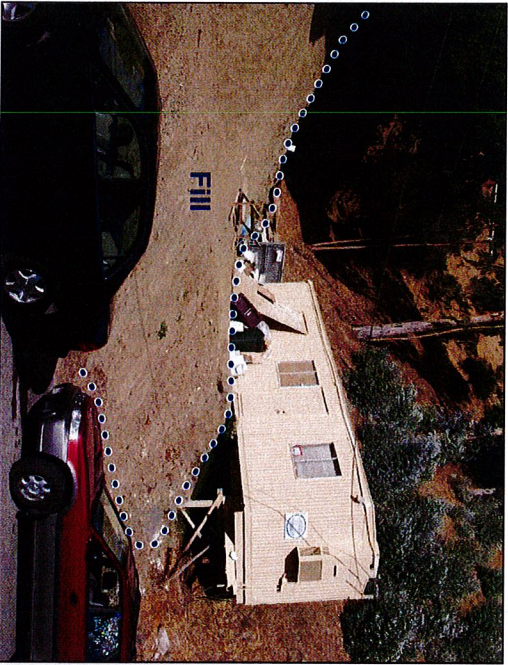
Attachments:

Guide to Oakland's Creek Ordinance
Alameda Countywide Clean Water Program BMP's
 Fresh Concrete and Mortar
 Roadwork and Paving
 Heavy Equipment Operation
 Painting and Solvents and Adhesives
 General Construction and Site Supervision
Native Plant Species Common to Oakland's Creeks
Using Plants to Stabilize Stream Banks

CC: Lesley Estes, PWA
Calvin Wong, CEDA
Gary Patton, CEDA
Ed Manasse, CEDA



2004 William Lettis & Associates – Creek Map



A)

Site 49. Photo (A) shows a deposit of artificial fill placed over creek. Photo (B) looks upslope at creek from the top of the fill deposit. The creek bed and banks were saturated at the time of inspection. The creek features become less distinct nearing the fill (photo B and C). A depression in the ground and silt fence suggests inlet location for inferred storm drain pipe .



B)



C)



Exhibit 5

MOSAIC ASSOCIATES LLC

647 TENNENT AVENUE, SUITE 102, PINOLE, CA 94564 PH: (510)964-0394 FAX: (510)964-0396

January 28, 2009

Mark D'Avignon
U.S. Army Corps of Engineers
1455 Market Street, 16th Floor
San Francisco, California 94103-1398

Re: Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. for the 530 Gravatt Drive Project, Alameda County

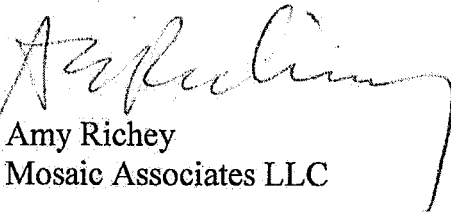
Dear Mark:

Enclosed is the *Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. Under Section 404 of the Clean Water Act for the 530 Gravatt Drive Project, Alameda County* (Mosaic Associates, December 22, 2008). This submittal is made on behalf of Terra Linda Development.

We would like to request an approved jurisdictional determination. Please assign someone from your staff and ask them to contact us with any questions and to schedule a site visit.

A full copy of the report and an extra map are enclosed.

Sincerely,



Amy Richey
Mosaic Associates LLC

cc Laura Blair, Terra Linda Development

**DELINEATION AND PRELIMINARY
JURISDICTIONAL DETERMINATION OF WETLANDS AND OTHER WATERS OF
THE U.S. UNDER SECTION 404 OF THE CLEAN WATER ACT**

**FOR THE
530 GRAVATT DRIVE PROJECT
OAKLAND, ALAMEDA COUNTY, CALIFORNIA**

December 22, 2008

Prepared for:

Laura Blair
Terra Linda Development
19 Embarcadero Cove, Second Floor
Oakland, CA 94606

Prepared by:



**MOSAIC ASSOCIATES LLC
647 TENNENT AVE., SUITE 102
PINOLE, CA 94564
PH: (510) 964-0394 FAX: (510) 964-0396**

Introduction

Mosaic Associates LLC conducted a wetland delineation study to determine the existence and extent of waters, including wetlands, potentially subject to the U.S. Army Corps of Engineers jurisdiction under §404 of the 1972 Clean Water Act (CWA). The CWA regulates activities that result in the discharge of dredged or fill material into waters of the U.S., including wetlands. Waters of the U.S. include all traditional navigable waters, such as rivers and tidally influenced watercourses; and other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds. The U.S. Army Corps of Engineers (Corps) has the principal authority to regulate discharges of dredge or fill material into waters of the U.S.

This report details our analysis of the presence of potentially jurisdictional wetlands and other waters within the Study Area (Figures 1 and 2) at the approximately two-acre property located at 530 Gravatt Drive, located in Oakland, Alameda County, California.

Methods

Amy Richey and Judy Bendix of Mosaic Associates visited the Study Area on 12/3/2008. We examined the Study Area in the field for indicators of hydrophytic vegetation, hydric soils, and wetland hydrology. A total of 1 sample point was taken within the Study Area and recorded on a Corps data form provided in the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* ("Interim Manual") (Environmental Laboratory, December 2006). The data form is presented in Appendix A.

This wetland delineation and preliminary jurisdictional determination followed the guidelines provided in the Interim Manual and the *Corps of Engineers Wetlands Delineation Manual* ("Corps Manual") (Environmental Laboratory 1987). Based on topography and the presence or absence of field indicators including vegetation, hydrology and soils, the limits of potential jurisdictional wetlands and other waters of the U.S. was determined. The extent of potential wetlands and waters of the U.S. was mapped by hand in the field. The field data was processed in the office by hand.

The Corps and Interim Manuals recommend a three parameter approach to determining the presence of jurisdictional wetlands based on the presence of 1) hydrophytic vegetation, 2) wetland hydrology, and 3) hydric soils. In normal circumstances and in unproblematic areas, potential jurisdictional wetlands must display at least one positive indicator from each of the three parameters. Criteria to determine the presence of vegetation, hydrology, and soil indicators are discussed in detail below.

Wetlands are defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" (§404 Clean Water Act). Indicators of all three wetlands parameters (hydric soils, hydrophytic vegetation, wetlands hydrology) must be present for a site to be classified as a wetland (Environmental Laboratory 1987).

Waters of the U.S. are defined as 1) waters used in interstate or foreign commerce, 2) waters subject to the ebb and flow of tide, 3) all interstate waters including interstate wetlands; intrastate lakes, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce, and 4) areas that are or could be used for recreation by interstate or foreign travelers, fish or shellfish that is sold in interstate or foreign commerce, or industrial purposes in interstate commerce (§328.3(a)). Recent decisions by the U.S. Supreme Court have narrowed the definition of waters of the U.S. to exclude "isolated" wetlands (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers et al.*, 2001) and wetlands adjacent to non-navigable and not relatively permanent tributaries where there is no "significant nexus" in hydrologic or ecologic terms (*Rapanos v. United States* and *Carabell v. United States*, 2006).

Hydrophytic vegetation includes those plant species that possess physiological features or reproductive adaptations that allow them to persist in soils subject to prolonged inundation and anaerobic soil conditions. Plant species are classified by their probability of being associated with wetlands or uplands (see Table 1). Dominant species are selected using the "50/20 rule", in which any species in a given stratum that occupies $\geq 20\%$ cover is considered a dominant species; or, when no species makes up 20% cover, then each species required to make up 50% of the cover is considered dominant. For a sample point to meet this criterion, more than 50 percent of the dominant plant species in each of the strata must be OBL, FACW, or FAC indicator species.

Nomenclature used in this report conforms to *The Jepson Manual* (Hickman, 1993) for plants. Plant community names conform to Holland (1986) and Sawyer and Keeler-Wolf (1995); wetland community names conforming to Cowardin, et al. (1979) are also given. The wetland indicator status of plant species conforms to Reed (1988) (see Table 1).

Table 1. Wetland Plant Indicator Status

Indicator Status	Description	Est. Frequency of Occurrence in Wetlands
OBL	Obligate wetland, almost always found in wetlands	>99%
FACW(+/-)	Facultative wetland, usually found in wetlands	67-99%
FAC	Facultative, equal occurrence in wetlands or non-wetlands	34-66%
FACU	Facultative upland, usually found in non-wetlands	1-33%
UPL / NL	Obligate upland/Not listed, almost always found in non-wetlands	<1%
NI	No Indicator (insufficient information available to determine an indicator status)	Unknown

Hydric soils include non-drained organic soils, mineral soils with a high water table, ponded soils, and flooded soils. Characteristic field indicators of hydric soils include the presence of a histic epipedon, the presence of sulfidic material, the presence of an aquic or peraquic moisture regime, reducing soil conditions, soil color (including gleyed soils or soils with a low matrix chroma, with or without bright mottles), iron or manganese concretions, and soils listed as hydric by the USDA.

For the hydrology parameter to be met, a site must be seasonally inundated or saturated for at least 12.5 percent of the growing season; areas inundated or saturated for 5-12.5 percent of the growing season might or might not meet the parameter. The growing season in the location of the Study Area is 365 days (NRCS 2008, see Appendix D); thus, this particular site would need to be inundated or saturated to within 12 inches of the soil surface for around 18-46 consecutive days during the growing season to meet the wetland hydrology criterion (15-46 days = 5% x 365, 12.5% x 365 frost free days).

Limitations

This document is intended as a wetland delineation and preliminary jurisdictional determination based on the Corps' guidelines. Wetlands and other waters within the Study Area covered herein may be considered potentially jurisdictional by the Corps. The definitive judgment of the location and extent of potentially jurisdictional wetlands and waters, is however, confirmed by the appropriate agency(s).

Vegetation communities may vary depending on weather conditions and the time of year. Plants that are dominant at the time of this survey may shift in importance depending on rainfall conditions and the season of the survey, or population shifts over time. Certain plant species, especially annuals, may not be present in a given year. In some cases, plant identifications in the report are tentative due to the absence of morphological characters present only at certain times of year. Plants which have a provisional identification, based on vegetative morphology, gestalt, or species range, are identified with a *cf* in the species table provided below.

The conclusions of this delineation are based on conditions observed at the time of the field survey. The results of the delineation are preliminary, pending verification by the Corps.

Existing Conditions

SETTING

The Gravatt Property wetland mitigation Study Area is located in Oakland, Alameda County, California (APN 048H-7606-051-04). It is located north of Highway 24, east of Grizzly Peak Boulevard, and west of Highway 13. It can be accessed from Highway 13 (Ashby Avenue) by proceeding east on Ashby Avenue, turning northeast onto Claremont Avenue, south onto Alvarado Road, east onto Amito Drive, and finally a hairpin east onto Gravatt Drive (see Figures 1-3). It is located just south of the City of Berkeley border, approximately 1.3 miles south of the U.C. Berkeley football stadium. Surrounding land use is primarily residential, with nearby open space lands.

NORTHERN COYOTE BRUSH SCRUB

Northern coyote brush scrub is generally considered a sub-type of various coastal and inland scrub habitats. In general, coyote brush (*Baccharis pilularis*) can form dense stands following disturbance of somewhat mesic sites on heavy soils. This scrub community consists of shrubs up to eight feet tall with a well-developed herbaceous or low woody understory. Vegetative cover in this type is mostly dense with scattered grassy openings; though on this site, the grassy openings are more prevalent. An increase in soil depth and moisture availability seems to favor dominance by coyote brush. This vegetation community is found in patches on coastal bluffs, slopes and terraces within the fog incursion zone from southern Oregon to the Central Coast and South Coast of California. Northern coyote brush scrub frequently intergrades with such plant assemblages as northern (Franciscan) coastal scrub, coast live oak woodland, coastal terrace prairie, perennial needlegrass grasslands, and even in openings in chaparral, cismontane woodland and coniferous forests near the coast.

In the Study Area, this community type occurs in patches on the north slopes and within drainages. The vegetation in these patches is dense, tall, and impenetrable. The vegetation supports a fairly diverse mix of native scrub species characteristic of coastal scrub. Co-dominant species present include California blackberry (*Rubus ursinus*), poison oak (*Toxicodendron diversilobum*), and California bay (*Umbellularia californica*). The highly invasive non-native shrub French broom (*Genista monspessulana*) is very abundant to the south and east in the Study Area within this vegetation type.

On site, northern coyote brush scrub conforms to the coyote brush series as described in Sawyer and Keeler-Wolf (1995) and would be classified as an upland following Cowardin, *et al.* (1979).

CHARACTERIZATION OF THE SOILS

Underlying geology in the area is made up of one unit: the Great Valley complex (Ku), which is defined as undivided sandstone, siltstone, and shale (Late Cretaceous). The bedrock is brownish-gray, fine- to coarse-grained, thin bedded to massive sandstone and greenish-gray to black shale and silty shale. The complex also includes minor pebbly sandstone and conglomerate. This unit has yielded foraminifers of Cenomanian to Maastrichtian age (Graymer *et al.* 2002, see Figure 5).

One soil unit, the Maymen series (see Figure 4), is mapped as occurring within the Study Area (USDA 2001). A description of the Maymen series is presented below, and the full USDA soils description is provided in Appendix C.

MAYMEN SERIES

The Maymen series consists of shallow, somewhat excessively drained soils that formed in material weathered from sandstone, shale, and conglomerate. Maymen soils are on mountains and have slopes of 5 to 100 percent. The mean annual precipitation is about 42 inches and the mean annual temperature is about 54 degrees F. The mean annual soil temperature is 47 degrees to 59 degrees F.

Depth to bedrock is 10 to 20 inches. The soil between a depth of 6 inches and the lithic contact is dry in all parts from mid-May or June through September or early October and is moist in all parts from November through May. These soils have high to very high runoff, and moderate to moderately rapid permeability. Rock fragments make up 3 to 35 percent of the soil.

Lands comprised of the Maymen series are used mainly for watershed, wildlife habitat and recreation. Vegetation is usually open stands of chaparral consisting of chamise, manzanita, several species of ceanothus, several species of scrub or dwarf oak, and scattered small trees in protected sites. These extensive soils occur in the Coast Ranges and western slopes of the Sierra Nevada of California.

CHARACTERIZATION OF THE HYDROLOGY

The dominant hydrologic feature on site consists of the two minor drainage channels which converge approximately 35 feet north of the southern boundary of the Study Area, fed via underground drainage pipes near Gravatt Drive.

The principal hydrologic sources for the Study Area are direct precipitation, surface runoff from surrounding uplands, and channelized flow through the incised channels.

CONNECTION TO TRADITIONAL NAVIGABLE WATERS

Downstream of the convergence of the channels, surface flow appears to dissipate underground south of the Study Area, but some areas of slumping indicate where water travels before discharging to a storm drain inlet near the intersection of Perth Place and Grand View Drive. Flows from the storm drain system may discharge south of the Study Area to Temescal Creek, which is daylighted only in portions along its length, and which eventually discharges to San Francisco Bay.

Preliminary Findings

WETLANDS AND OTHER WATERS OF THE U.S.

The incised channels on the Gravatt property contain a defined bed and bank for 269LF. The channels do not contain wetland vegetation. However, one sample point was taken under the only willow canopy in the study area to determine wetland status (Sample point 1, see Appendix A). The sample point did not meet the vegetation parameter for wetlands.

A total of 269 linear feet (0.016 acre, 682 square feet) of other waters of the U.S. potentially falling under the jurisdiction of the Corps was observed within the Study Area. A map of the Study Area is provided as Appendix B.

Table 2. Summary of Potentially Jurisdictional Features

Habitat Type	Total Area
Other Waters of the US	269 Linear Feet 0.016 acre 682 sq. ft.

HYDROPHYTIC VEGETATION

All plant species within the sample point were identified and their wetland indicator status recorded. Plant species and indicator status observed within the Study Area are listed in Table 5, below.

Vegetation with hydrophytic indicators was observed in the lower portions of the channel system, and strong upland plant species were observed on the more well-drained slopes within the Study Area. There is an area near the convergence of the drainages that hosts three to four mature red willow trees, but other dominant species in the shrub layer and understory are "not listed" in Reed (1988), and therefore considered upland species.

Table 3. Wetland Indicator Status of Plant Species Occurring in the Study Area

Botanical Name	Common Name	Indicator Status
<i>Baccharis pilularis</i>	coyote brush	NL
<i>Conium maculatum</i>	poison hemlock	NL
<i>Genista monspessulana</i>	French broom	NL
<i>Poa secunda</i> cf	Sandberg bluegrass	NL
<i>Rubus ursinus</i>	California blackberry	FACW
<i>Salix laevigata</i>	red willow	FACW

HYDRIC SOILS

The field indicators of hydric soils detected at the sample point in the Study Area was redox dark surface (F6). This hydric soil indicator was observed in the incised channel, but not outside of it.

WETLAND HYDROLOGY

The primary field indicator of wetland hydrology we observed was water-stained leaves (B9). The secondary indicator observed was drainage patterns (B10). Wetland hydrology indicators were evident in the incised channel. Please see Appendix A for the single data sheet, and Appendix B for the wetland and waters delineation map.

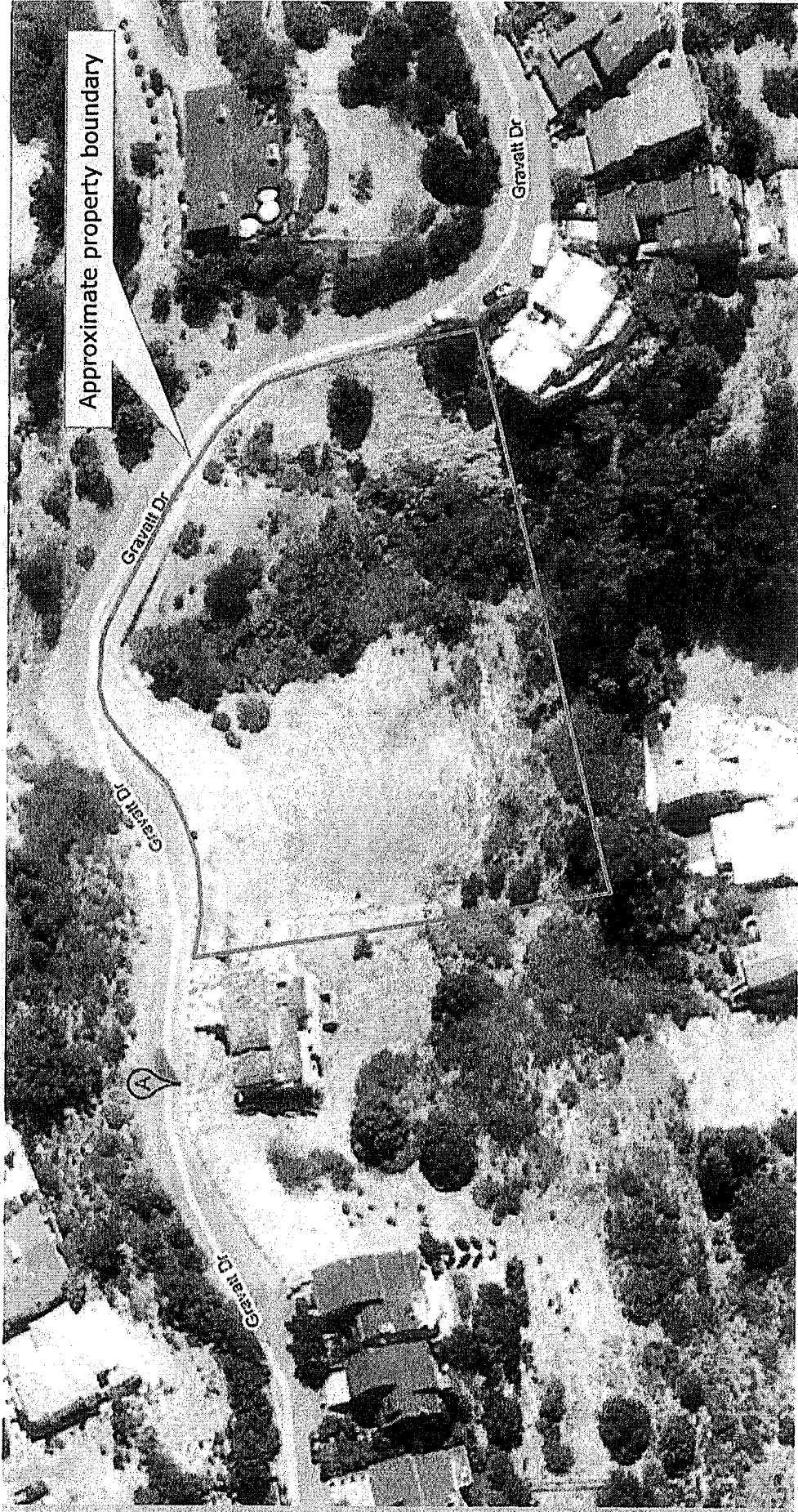
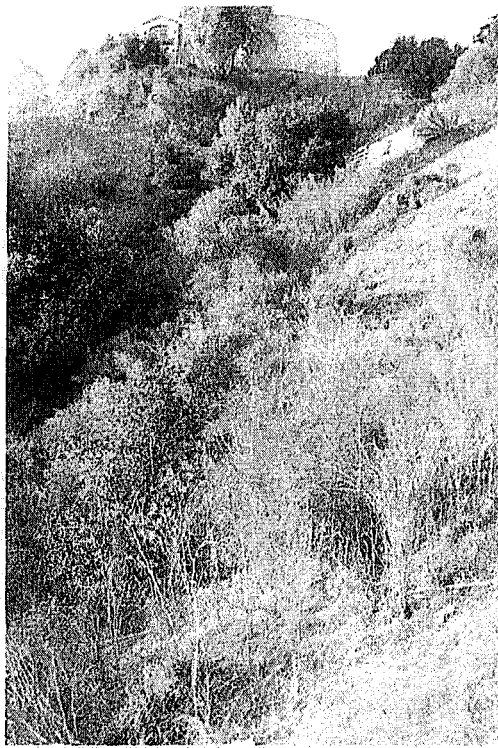


Photo courtesy Google maps

Mosaic Associates LLC
647 Tennent Ave., Suite 102
Pinole, CA 94564
Ph: (510) 964-0394 Fax: (510) 964-0396



FIGURE 3
Aerial Photo, 530 Gravatt Drive, Oakland, Alameda County, CA



(a)



(b)



(c)



Mosaic Associates LLC
647 Tennent Ave., Suite 102
Pinole, CA 94564
Ph: (510) 964-0394 Fax: (510) 964-0396

FIGURE 6
Photos of the Study Area, 12/3/08 (a) view of northern coyote brush vegetation type, (b) view of foothill/valley needlegrass vegetation type, and (c) view of soil erosion south of the Study Area.

EXHIBIT 7**Chronology of Parcel/Creek Status (12/7/16)**

- 2/23/1925 Re-Subdivision of the Map of Claremont Heights identifies the subject property area under three parcels: Lots 121, 127, 128.
- 11/14/2000 City of Oakland Permit Tracking System (PTS) parcel comments identify that Parcel No. 5104, Gravatt Drive; and Parcel No. 0903, Perth Place; are contiguous parcels adjacent to a protected creek.
- 12/27/2001 Design Review application #EDR01-97 is filed to construct a new SFD at 2 Perth Place, Parcel No. 0903, Lot 125, Re-Subdivision Map of Claremont Heights; and which abuts and is directly south of 5104.
- 11/27/2002 Related to EDR01-97, Creek Permit application #CP02187 is filed and accompanied by Hydrology Analysis prepared by Friar Associates, 11/20/02, and the report identifies an incised drainage swale and by the modified Rational Method derive a flow velocity (4 fps) and peak flow (1cfs).
- 1/25/2002 Case application CP02187 (Lot 125) is classified as a Category 4 Creek Permit and a CEQA Initial Study was determined necessary by City officials.
- 9/29/2003 At the time of land auction of City Surplus Land, the City of Oakland Property Data Sheet identifies Parcel No. 5104 (comprised of three lots, Lot 121, 127 and 128) as one parcel for sale and is described with containing a watercourse where the **"Buyer shall be aware that this lot is subject to the restrictions of the City's Creek Protection Ordinance."**
- 2003 City of Oakland surplus land auction results in sale of the property to Ms. Traci McKnight under a single parcel number 048H760605104, a total of 52, 935 sq. ft. with three lots: Lots 121, 127, and Lot 128.
- 11/13/2003 Creek Determination, CDET03025, is filed for Lot 127, Parcel No. 5104.
- 12/19/2003 CDET03025 Creek Determination application results in a determination that Lot 127 is a creekside property.
- 09/08/2005 Creek Determination application CDET05015 is filed and results in a determination that Lot 121 is **not** a creekside property.
- 1/05/2006 Financial Services & Consultation Inc. (identified in Title Report as Trustor for Financial Title Company, where the Beneficiary is DFI Funding Inc (**Appellant**)) purchased land from McKnight and from Parcel No. 5104, 3 separate Grant Deeds are filed and result in separate parcel numbers for each: Lot 121, Parcel 5105; Lot 127, Parcel 5107; and Lot 128, Parcel 5106.

- 12/22/2008 Mosaic Associates LLC, retained by Terra Linda Development, issued their analysis, "Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. Under Section 404 of the Clean Water Act for 530 Gravatt Drive" where the creek is delineated and incorporated in the subsequent subdivision application, Tentative Parcel Map TPM9884.
- 5/27/2009 TPM9884 Tentative Parcel Map application is filed to subdivide Lot 127 and Lot 128 from two into four parcels by the applicant, Terra Linda Development, for the owner DFI Properties, Inc (**Appellant**). The applicant attests to the presence of a creek on or near the project site by signing the application statement of compliance (5/19/09) for Category of Creek Permit.
- 7/2/2009 DFI Funding (**Appellant**) retains Ulrick & Associates, Hydrology Consultants, to propose a top of bank determination when existing site conditions do not readily conform with the Creek Ordinance definition of top of bank. Ulrick & Associates, Hydrologists propose Top of Bank based on field investigation and bank full definition and define the width and depth of the subject drainage channel.
- 9/16/2009 Ulrick & Associates updates top of bank determination to satisfy City Staff comments where revised hydraulic calculations results in 1'-7" width of channel flow and a channel width that may vary between 4'-0" and 2'-0", which City Officials accept.
- 4/16/2010 TPM 9884 is conditionally approved along with the associated Creek Protection Permit, CP09082, as a Category 3 Creek Permit. New Parcel Numbers assigned: 062 (formerly portion of Lot 128), 063 (formerly portion of Lot 128); 064 (formerly Lot 128 and portion of Lot 127), and 65 (formerly Lot 127).
- 7/10/2013 Case Application #CDV13203, CP13138 is filed to construct SFD on creekside property under Parcel No. 5107 (APN # 065), and is filed by applicant Hillside Homes Group for owner DFI Properties, Inc. (**Appellant**). The applicant attests to the presence of a creek on or near the project site by signing the application statement of compliance (7/23/13) for Category of Creek Permit.
- 8/4/2014 CDV13203 and related Creek Protection Permit application, CP13138 are conditionally approved.
- 11/17/2015 Application #PLN15370/VTPM10342 is filed to subdivide two lots into three affecting, portions of existing Lots 63 (proposed Lot B, formerly portion of Lot 128) and 064 (proposed Lot C; formerly Lot 128 and portion of Lot 127) where the proposed lot sizes would be below median lot size required by Subdivision Regulations (OMC 16.24.040 Lot Design Standards).
- 11/19/2015 PLN15370 City Engineering comments raise stormwater impact issues and development feasibility with the identified creek.
- 2/16/2016 Creek Determination application #CDET16004 is filed by DFI Properties under Parcel Nos 064 (proposed Lot C, formerly Lot 128 and portion of Lot 127) and Lot 065, formerly Lot

127 accompanied by Blue Consulting Group creek assessment (1/13/16) with documentation that parcel should not qualify as creekside property based on wetland delineation standards.

5/09/2016 CDET16004 is issued by Public Works Department Watershed and Stormwater Management with the determination that the property Lots 064 and Lot 065 are creekside properties.

5/18/2016 APL16011 is filed by DFI to appeal CDET16004 determination accompanied by revised Blue Consulting Group creek assessment.

In sum, DFI (**Appellant**) had actual and/or constructive knowledge of the above information, including that the subject Site was a creekside property (since at least 2006), prior to its filing of the May 2016 appeal. Moreover,

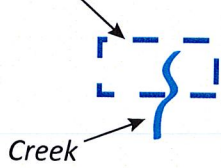
- 1) APN # 062 was previously determined **NOT** to be a Creekside Property;
- 2) APN# 063 (portion of Lot 128) was previously determined **NOT** to be a Creekside Property; and
- 3) APN # 064 (formerly Lot 128 and portion of 127) and APN # 065 , the subject of this appeal, was previously determined to be a Creekside Property and Creek Protection Permit issued for APN # 065, which was reconfirmed in May 2016.

EXHIBIT 8

Conceptual / Illustrative Graphic (11/23/16)
APL16011

Exhibit 8

PTS 2000
IDs Creekside Property



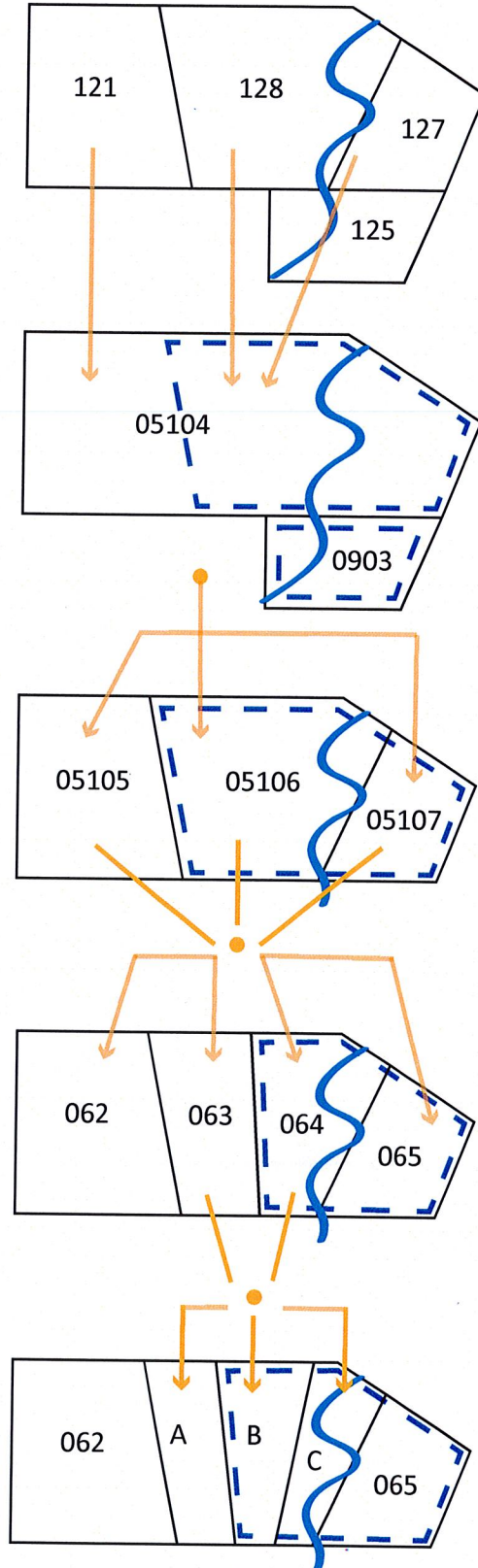
CDET 03025
12-19-03

CP02187
(Perth Place)
0903

CP09082
(TPM9884)

CP13138
(065)

CDET 16004
5-9-16



1925
Map of
Claremont Heights

2003
City Surplus
Land Auction –
disclosed that lot is
subject to Creek
Protection Ordinance

2006
Separate
Grant Deeds
Recorded

2009
TPM 9884

2016 - proposed
VTPM 10342

ASSESSOR'S MAP 48H

Code Area No. 17-003

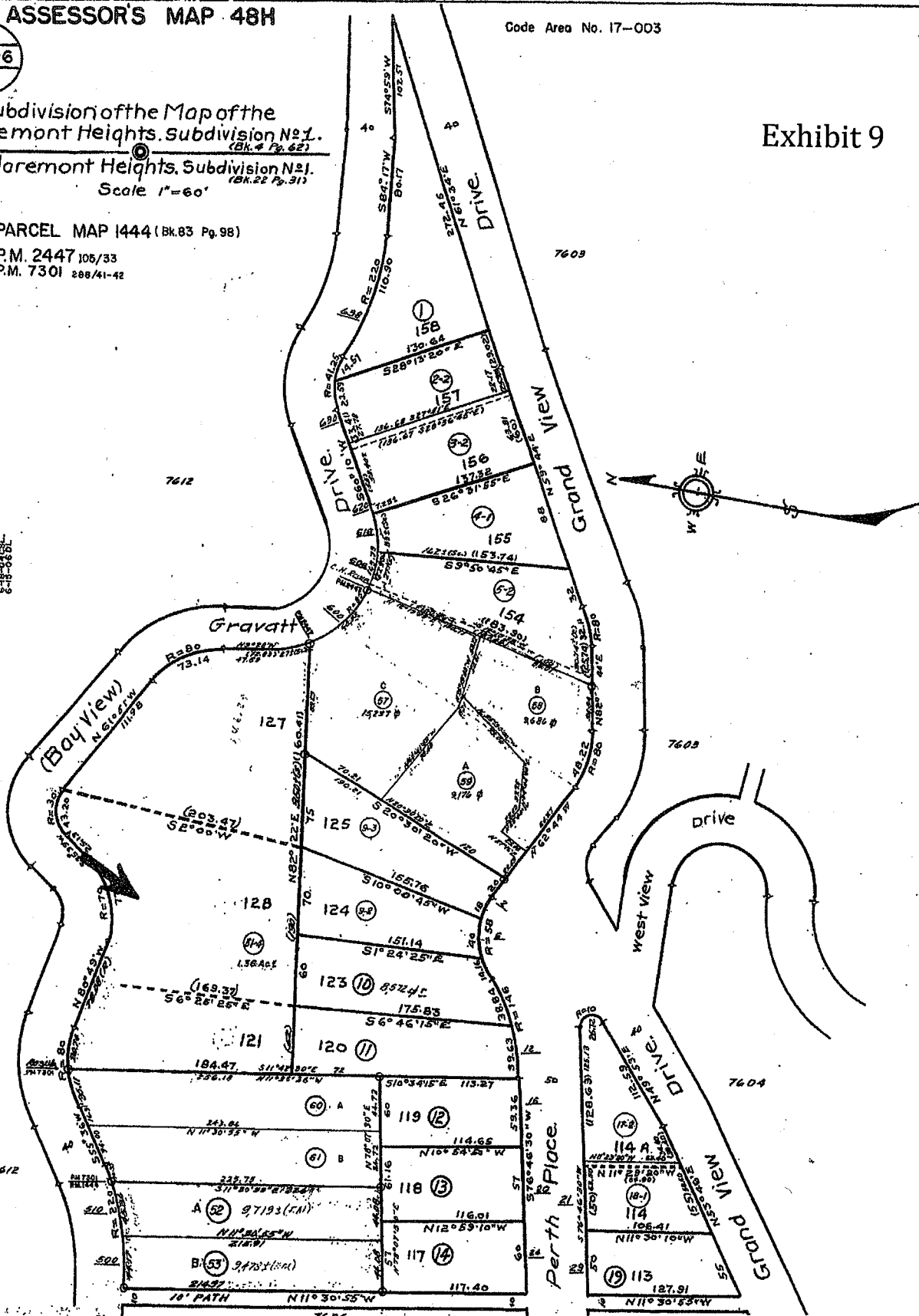
7606
Pg. 1

ReSubdivision of the Map of the
Claremont Heights Subdivision No. 1.
(Bk. 4 Pg. 62)
Claremont Heights Subdivision No. 2.
(Bk. 22 Pg. 31)
Scale 1"=60'

Exhibit 9

PARCEL MAP 1444 (Bk. 83 Pg. 98)
P.M. 2447 106/33
P.M. 7301 288/41-42

Revised 4-27-2009
11-20-00 BY
2-20-00 G.L.
5-20-00 G.L.
08-14-00 VE
11-14-00 VE
12-14-00 VE
12-18-00 VE



Ref:



CITY OF OAKLAND
BASIC APPLICATION FOR DEVELOPMENT REVIEW
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Zoning Information: 510-238-3911
www.oaklandnet.com

Exhibit 10

CERTAIN APPLICATIONS ARE ACCEPTED BY APPOINTMENT ONLY!

Please call (510) 238-3940 to schedule an appointment if your project involves any of the following:

- Conditional Use Permit, Variance, Regular Design Review, Parcel Map Waiver, Tentative Parcel Map, Tentative Tract Map, New dwelling unit(s), 1,000 sq. ft. or more of new floor area/footprint, Additions >= 100% of existing floor area/footprint

All other projects may be submitted to the zoning counter without an appointment.

Submit applications for Small Project Design Review to station #12 at the zoning counter by signing the sign-up sheet.

1. TYPE OF APPLICATION

(Check all that apply)

Development Permits

- Conditional Use Permit (Major, Minor, or Interim), Variance (Major or Minor), Regular Design Review, Small Project Design Review, Tree Preservation or Removal Permit, Creek Protection Permit (separate application required), Other:

Subdivision Applications

- Parcel Map Waiver (Lot Line Adjustment/Merger), Tentative Parcel Map (subdivision for 1 - 4 lots), Tentative Tract Map (subdivision for 5 or more lots), Planned Unit Development/Mini-Lot Development

Other Applications

- Request for Environmental Review, General Plan Amendment, Rezoning

2. GENERAL INFORMATION

APPLICANT'S NAME/COMPANY: Carlos Plazola / Terra Linda Development

PROPERTY ADDRESS: 530 Gravatt

ASSESSOR'S PARCEL NUMBER: SEE ATTACHED LOT AREA (ACRES/SQ. FT.): 49570

EXISTING USE OF PROPERTY: one residential home

DESCRIPTION OF PROPOSAL (including type of use, hours of operation, number of employees, etc., on additional sheets if needed.):

Parcel map waiver on two existing lots + subdivision into a total of 4 lots

TO BE COMPLETED BY STAFF

GENERAL PLAN LAND USE CLASS.: ZONING:

FEES:

APPLICATION FEE: \$ 5,723.73
POSTER DEPOSIT: \$ 50.00
VIOLATION FEE: \$
TREE PERMIT FEE: \$
CREEK PERMIT FEE: \$ 1,348.32
TOTAL FEES DUE: \$

EXPECTED PROCESSING TIME:

1 Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal.
2 For permit applications requiring public notice, a refundable security deposit is required for the on-site poster containing the public notice.
3 For permit applications to legalize work that has already been started, the REPORT FEE portion of any permit application fee is DOUBLED.
4 Expected processing time is only an estimate and is subject to change without notice due to staff workload, public hearing availability, and the completeness or complexity of the application.

3. PROPERTY OWNER AND APPLICANT INFORMATION

Original signatures or clear & legible copies are required.

Owner: DFI Funding / Steve Anderson

Owner Mailing Address: 4120 Douglas Boulevard Ste 306-621

City/State: Granite Bay CA

Zip: _____

Phone No.: 420-8698

Fax No.: _____

E-mail: _____

To be completed only if Applicant is not the Property Owner:

I authorize the applicant indicated below to submit the application on my behalf.

DFI LLC

[Signature]

Signature of Property Owner (Name)

Applicant (Authorized Agent), if different from Owner: Carlos Pineda

Applicant Mailing Address: 19 Embarcadero Cove

City/State: Oakland CA

Zip: 94602

Phone No.: 510-207-7238

Fax No.: _____

E-mail: cpineda@arcobuilders.com

I understand that approval of this application does not constitute approval for any administrative review, conditional use permit, variance, or exception from any other City regulations which are not specifically the subject of this application. I understand further that I remain responsible for satisfying requirements of any private restrictions or covenants appurtenant to the property. I understand that the Applicant and/or Owner phone number listed above will be included on any public notice for the project.

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies may result in the revocation of planning permits as determined by the Planning Director. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature above.

I certify that statements made to me about the time it takes to review and process this application are general. I am aware that the City has attempted to request everything necessary for an accurate and complete review of my proposal; however, that after my application has been submitted and reviewed by City staff, it may be necessary for the City to request additional information and/or materials. I understand that any failure to submit the additional information and/or materials in a timely manner may render the application inactive and that periods of inactivity do not count towards statutory time limits applicable to the processing of this application.

I certify that all existing Protected Trees either on the site or within 10 feet of development activity are indicated on both the Site and Landscape Plan. I understand that if any Protected Trees are to be removed, or if Protected Trees exist within 10 feet of the proposed development activity (even if they are not being removed), I must apply for a Tree Preservation/Removal Permit (Section 6).

I certify that I have reviewed the Oakland Creek Protection Ordinance and understand that I may be subject to a Creek Protection permit pursuant to the Creek Protection, Storm Water Management and Discharge Control Ordinance (Chapter 13.16 of the Oakland Municipal Code) and that I have completed the Creek Protection Ordinance section of this application (Section 7).

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY, THAT ALL THE INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT.

DFI LLC
[Signature]
Signature of Owner or Authorized Agent

5/19/09
Date

7. CREEK PROTECTION ORDINANCE

See page 9 for more information on creeks and these regulations

Pursuant to the Creek Protection, Storm Water Management and Discharge Control Ordinance (§13.16 O.M.C.) a Creek Protection Permit is required for any proposed construction activity occurring on a Creekside property. The extent to which your development will be regulated by the Creek Protection Ordinance depends upon the location and type of proposed work.

WHAT IS A CREEK?

"A Creek is a watercourse that is a naturally occurring swale or depression, or engineered channel that carries fresh or estuarine water either seasonally or year around."

A creek must include the following two components:

1. The channel is part of a contiguous waterway. It is hydrologically connected to a waterway above or below the site or is connected to lakes, the estuary, or Bay. Creek headwaters, found at the top of watersheds, are connected in the downhill direction. Additionally, creeks in Oakland are often connected through underground culverts. Only the open sections of creeks are subject to the permit, and
2. There is a creek bed, bank and topography such as a u-shape, v-shape channel, ditch or waterway (identified through field investigation, topographical maps, and aerial photos). To help with identification in the field a creek may also have the following features (the absence of these features does NOT mean there is no creek):
 - A riparian corridor, which is a line of denser vegetation flowing downhill. This is sometimes missing due to landscaping or vegetation removal practices, landslide or fire.
 - The channel has a bed with material that differs from the surrounding material (i.e. more rocky, or gravelly, little or no vegetation).
 - There are man-made structures common to waterways, - for example bank retaining walls, trash racks, culverts, inlets, rip rap, etc.

I ATTEST THAT: (check one)

- (1) **I do not know if there is a Creek on or near the proposed project site.** I have submitted a request for a field inspection by the City of Oakland (see Master Fee Schedule for non-refundable "Creek Determination" fee) to the CEDA cashier.
- (2) **No Creek exists on or near the project site;** (check one)
- (a) Based on my review of the characteristics of the project site, as well as all relevant maps and plans, and the Creek Determination criteria provided in the "What is a Creek?" section above; or
- (b) Based on the attached report prepared by a relevant licensed professional.

However, if the City determines that a Creek exists on or near the project site, a Creek Protection Permit is required.

- (3) **A Creek DOES exist on or near the project site and;** (check one)
- (a) The proposed project only entails interior construction and/or alterations (including remodeling), and therefore requires a **Category 1 Creek Permit** (this is a no fee permit and only requires distribution of educational materials); or
- (b) The proposed project only entails exterior work that does not include earthwork and is located more than 100 feet from the centerline of the Creek, and therefore requires a **Category 2 Creek Permit** (this permit requires a site plan and distribution of educational materials); or
- (c) The proposed project only entails (a) exterior work that is located between 20 feet from the top of the Creek bank and 100 feet from the centerline of the Creek, and/or (b) exterior work that includes earthwork involving more than three (3) cubic yards of material located beyond 20 feet from the top of the Creek bank, and therefore requires a **Category 3 Creek Permit** (this permit requires site plan, creek protection plan and environmental review); or
- (d) The project entails exterior work conducted from the centerline of the Creek to within 20 feet from the top of the Creek bank, and therefore requires a **Category 4 Creek Permit** (this permit requires site plan, creek protection plan, environmental review and hydrology report).

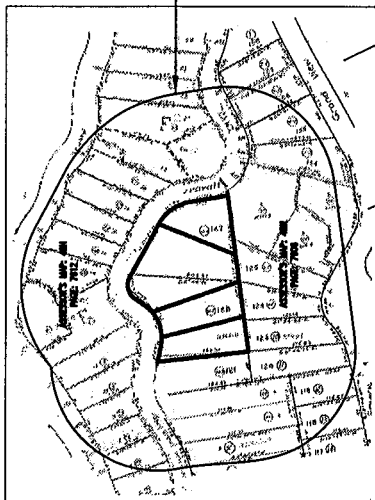
The Creek Permit requirements for your project are subject to verification by the City of Oakland and may differ from what you have indicated above. Additionally, you are responsible for contacting and obtaining all required permits from the relevant state and federal permitting agencies for Category 3 and Category 4 Creek Permits.

Exhibit 11

REFERENCES:

THE FOLLOWING DOCUMENTS WERE REVIEWED AS A PART OF THE BOUNDARY ANALYSIS AND FIELD SURVEY OF THE SUBJECT PROPERTY. THEY ARE CITED HEREIN FOR CLARITY AND TO PERPETUATE THE FACT THAT THEY WERE CONSIDERED. MAP REFERENCES ULTIMATELY UTILIZED IN THE CONCLUSION ARE SHOWN NEXT TO THE RELEVANT DIMENSIONS IN BRACKETS []:

- (A) THAT CERTAIN MAP ENTITLED "RESUBDIVISION OF THE MAP OF CLAREMONT HEIGHTS" FILED FEBRUARY 19, 1925 IN BOOK 4, OF MAPS AT PAGES 62 & 63, OFFICIAL RECORDS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA.
- (B) MONUMENT RECORDS ON FILE IN THE CITY OF OAKLAND SURVEYORS' OFFICE.
- (C) GRANT DEED RECORDED JANUARY 2, 2004 AS DOCUMENT NO. 2004-000180, OFFICIAL RECORDS, COUNTY OF ALAMEDA.



BLOCK DIAGRAM
SCALE 1" = 150'
200' RADII FROM SITE'S PERIMETER.

BASIS OF BEARINGS:

THE CALCULATED BEARING OF N78°27'38"W BETWEEN THE FOUND MONUMENTS IN GRAVATT DRIVE LOCATED ON EITHER SIDE OF THE SUBJECT LOTS AND AS SHOWN ON THE MAP OF THE "RESUBDIVISION OF THE MAP OF CLAREMONT HEIGHTS".

BASIS OF ELEVATIONS:

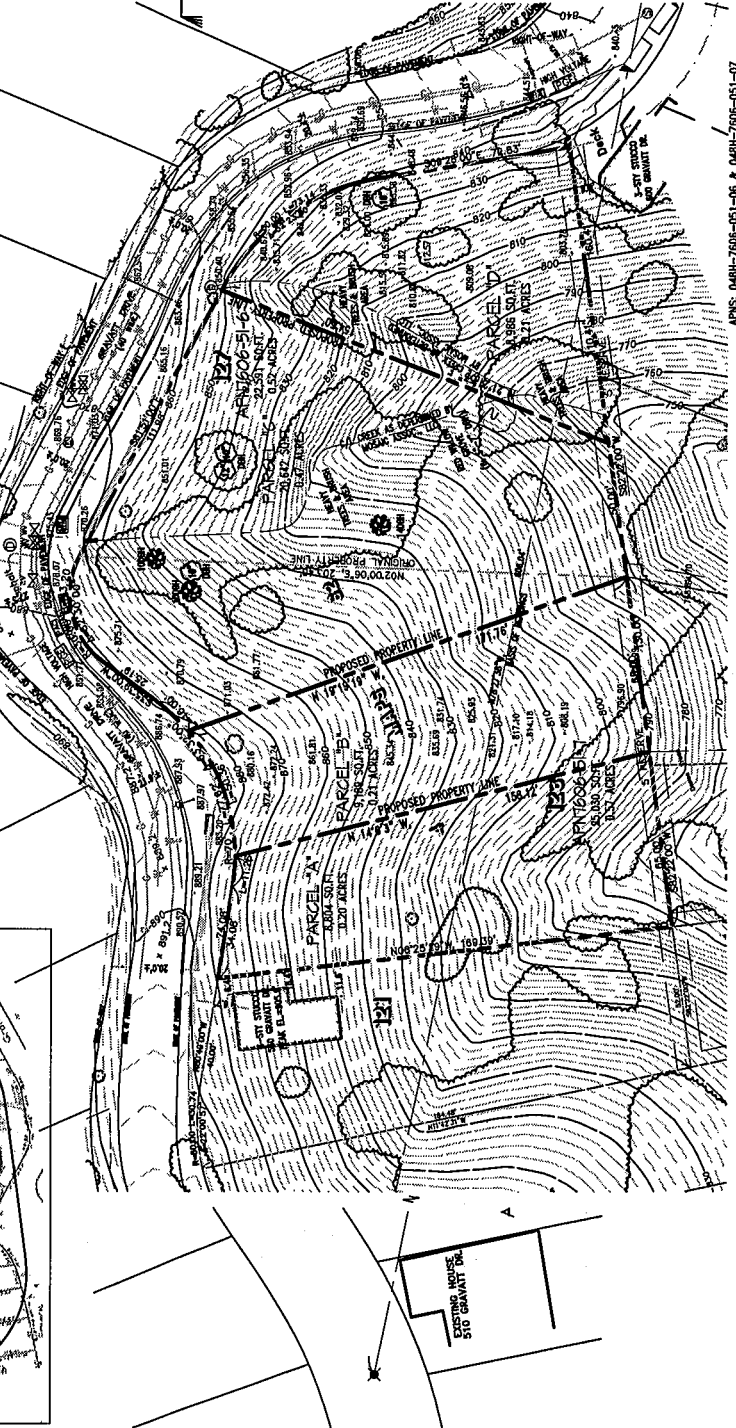
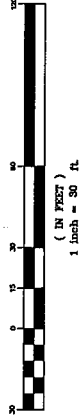
THE BENCHMARK DATA PROVIDED BY CITY OF OAKLAND SURVEYOR'S OFFICE, THE MONUMENT IN GRAVATT DRIVE SHOWN HEREON AT THE EL.= 833.52', CITY OF OAKLAND DATUM.

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AT THE REQUEST OF DPT FUNDING ON JULY, 2008. I AM NOT PROVIDING THIS MAP FOR ANY OTHER PURPOSE THAT ALL EXISTING GRASSES AND CONTIGUOUS DELINEATED UPON THIS MAP ARE CITY OF OAKLAND DATUM.



GRAPHIC SCALE



LEGEND:

- BLD. BUILDING
- C/L CENTERLINE
- CONC. CONCRETE
- FOUN. FOUNDATION
- FD. FIRE HYDRANT
- FENCE FENCE
- MC. MAIL BOX
- W. WATER
- P/L PROPOSED PROPERTY LINE
- STY. STORM DRAIN
- STY. STORM DRAIN MANHOLE
- CB. CLEANOUT
- DRIVEWAY CURB CUTS
- ELEV. ELEVATION
- X 148.66 ELECTROD

- FD CITY MONUMENT
- FIRE HYDRANT
- FENCE LINE
- PACELL BOX
- POST BOX
- WATER
- PROPOSED PROPERTY LINE
- SEWER MANHOLE
- SIGN
- STORM DRAIN MANHOLE
- CALIFORNIA BAY W/D/A
- OAK W/D/A
- WATER VALVE
- ELECTRIC LINE
- UNDERGROUND FIBER OPTICS
- UNDERGROUND GAS LINE
- UNDERGROUND SEWER LINE
- UNDERGROUND WATER LINE

TENTATIVE PARCEL MAP 9884 FOR 4 NEW LOTS OF 580 GRAVATT DRIVE

BEING A SUBDIVISION OF THE LAND DESCRIBED IN
THE GRANT DEED RECORDED JANUARY 2, 2004
AS INSTRUMENT NO. 2004-000180
CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SURVEY ENGINEER

PROPERTY OWNERS:
DPT PROPERTIES, LLC
4170 DOWLING BOULEVARD,
STE. 306-521
GRANITE BAY, CA 9546

**TRUE NORTH
SURVEYING, INC.**

DATE:
MAY, 2009

1084 SHOTWELL STREET,
SAN FRANCISCO, CALIFORNIA 94110
TEL: (415) 401-7333 FAX: (415) 401-7353

APNS: 048H-7606-051-06 & 048H-7606-051-07

ASSESSOR'S MAP 48H

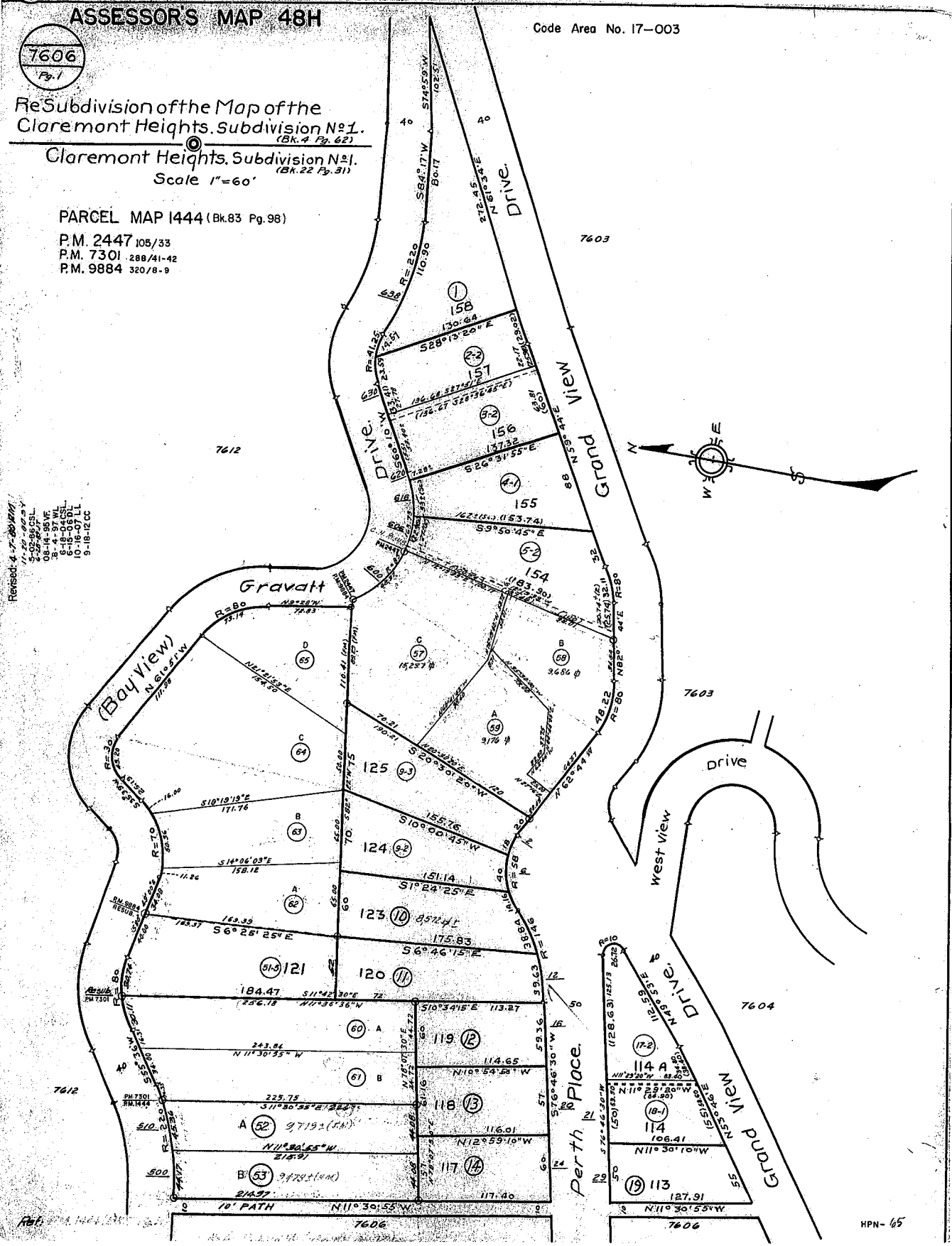
Code Area No. 17-003

7606
Pg. 1

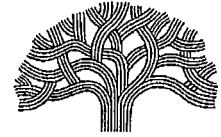
ReSubdivision of the Map of the
Claremont Heights Subdivision No. 1.
(Bk. 4 Pg. 62)
Claremont Heights Subdivision No. 2.
(Bk. 22 Pg. 31)
Scale 1"=60'

PARCEL MAP 1444 (Bk. 83 Pg. 98)
P.M. 2447 105/33
P.M. 7301 288/41-42
P.M. 9884 320/8-9

Revised: 4-28-2007
12-15-03
10-15-03
08-14-05 VE
8-18-04 CCL
6-18-04 CCL
6-18-04 CCL
9-18-04 CCL
9-18-04 CCL



CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

April 16, 2010

Mr. Carlos Plazola
Terra Linda Development
19 Embarcadero Cove, Second Floor
Oakland, CA 94606

RE: Case File No. TPM 9884/CP09-082, Gravatt Drive, Lots 127 and 128 (APNs: 048H-7606-051-06 and 048H-7606-051-07))

Dear Mr. Plazola:

Your applications for a Tentative Parcel Map to subdivide two existing parcels with a gross site area of 47,621 square feet into four lots (Parcel "A" at 8,804 square feet; Parcel "B" at 9,189 square feet; Parcel "C" at 20,642 square feet, and Parcel "D" at 8,986 square feet) has been **APPROVED**. The project also complies with the Creek Protection Permit criteria (Section 13.16) as set forth in the Oakland Municipal Code. Attachment A contains the findings for Tentative Parcel Map approval (Section 16.08.030) and Lot Design Standards (Section 16.24.040) of the Oakland Subdivision Regulations and the reasons your proposal satisfies them. Attachment B contains the findings for the Creek Protection Permit approval (Section 13.16) and the reasons your proposal satisfies them. Attachment C contains Conditions of Approval for the project. This project is effective ten (10) days after the date of this letter unless appealed as explained below.

Information regarding the proposed project is summarized below:

General Plan Land Use Classification: Hillside Residential

Zoning Designation: R-30 One-Family Residential Zone

Environmental Determination: Exempt, Section 15332 of the State CEQA Guidelines: In-Fill Development Projects; Section 15183 of the State CEQA Guidelines, projects consistent with a community plan, general plan, or zoning

Historic Status: No historic record, vacant parcels

Service Delivery District: 2

City Council District: 1

An Appeal to the City Planning Commission of this Administrative Case decision may be submitted within ten (10) calendar days after the date of this letter, and by 4:00 p.m. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Caesar Quitevis, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Administrator or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1,181.93** in accordance with the City of Oakland Master Fee Schedule. In addition, a payment of **\$1,424.05** is required for an appeal of the Creek Protection Permit. The appeal itself must raise each and every issue that is contested,

along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you from raising such issues during your appeal and/or in court. If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the Appeal hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the Commission's final decision.

If you have any questions, please contact the case planner, **Caesar Quitevis, Planner II** at (510) 238-6343 or email at cquitevis@oaklandnet.com.

Sincerely,



SCOTT MILLER
Zoning Manager

cc: Ray Derania Acting Building Official, CEDA Building Services
Jing Wong, , Civil Engineer, CEDA Building Services
Lesley Estes, Watershed Program Supervisor, CEDA DEC
Philip C. Basada, P.E. Oakland Fire Department, Fire Prevention Bureau
Tom Anthony, Alterre Partners, LLC, 463 38th Street, Oakland, CA 94609
Janis Barbour, 1035 Grand View Drive, Oakland, CA 94705-1625
Fred Booker, 1071 Grand View Drive, Oakland, CA 94705-1625

Attachments:

- A. Findings for Approval: Tentative Parcel Map
- B. Findings for Approval: Creek Protection Permit
- C. Conditions of Approval
- D. Notice of Exemption
- E. Engineering Services Tentative Parcel Map #TPM9884 comments

ATTACHMENT A

FINDINGS FOR APPROVAL:

This proposal meets the Lot Design Standards (Section 16.24.040) and does not contain characteristics that require denial pursuant to the Tentative Parcel Map Findings (Section 16.08.030) as set forth below. Required findings are shown in normal type; reasons your proposal does or does not satisfy them are shown in **bold** type.

SECTION 16.04.010 PURPOSE:

“...ensure that the development of the subdivision is consistent with the goals and policies of the Oakland General Plan.”

The project subdivides two existing parcels into four. The site is located in the Hillside Residential General Plan Land Use classification. The proposed lot design is consistent for Hillside Residential in that the proposed use will be residential in character and consistent with the maximum allowable density of five principal units per gross acre. The project also conforms with relevant General Plan policies found in adopted General Plan Elements including Land Use and Transportation (LUTE), and the Open Space, Conservation and Recreation (OSCAR) elements.

SECTION 16.24.040 LOT DESIGN STANDARDS

Lot design shall be consistent with the provisions of Section 16.04.010, Purpose, and the following provisions:

- A No lot shall be created without frontage on a public street, as defined by Section 16.04.030, except:
1. Lots created in conjunction with approved private access easements;
 2. A single lot with frontage on a public street by means of a vehicular access corridor provided that in all cases the corridor shall have a minimum width of twenty (20) feet and shall not exceed three hundred (300) feet in length. Provided further, the corridor shall be a portion of the lot it serves, except that its area (square footage) shall not be included in computing the minimum lot area requirements of the zoning district.
- Each proposed subdivision lot fronts on Gravatt Drive and meets the minimum subdivision lot size of 8,000 square feet for Hill Area subdivision (General Plan Land Use and Transportation Element Policy N7.3).**
- B. The side lines of lots shall run at right angles or radially to the street upon which the lot fronts, except where impractical by reason of unusual topography.
- Each proposed subdivision lot has frontage along Gravatt Drive and all side lot lines run at right angles or radially to Gravatt Drive.**
- C. All applicable requirements of the zoning regulations shall be met.
- Development on each subdivision lot of new detached single family dwellings will be subject to the standards as set forth under the R-30 zoning regulations and to the design criteria as set forth under the Design Review Manual for One- and Two-Unit Dwellings. Lots are configured in a manner to preserve groups of trees, creeks, and other amenities, and minimize hazards to the public.**
- D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area except:
1. Where the area is still considered acreage;

2. Where a deliberate change in the character of the area has been initiated by the adoption of a specific plan, a change in zone, a development control map, or a planned unit development. Each subdivision lot follows the Hillside Residential minimum lot size of eight thousand (8,000) square feet, where Lot "A" is sized at 8,804 square feet; Lot "B" is sized at 9,189 square feet; Lot "C" is 20,642, and Lot "D" is sized at 8,986 square feet.

E. Lots shall be designed in a manner to preserve and enhance natural out-croppings of rock, specimen trees or group of trees, creeks or other amenities.
The lots are designed to minimize impact to existing watershed creeks and vegetation. Analysis of geotechnical conditions by a licensed professional geotechnical engineer consultant includes recommended measures to stabilize the slopes against sliding and excessive erosion. The report also recommends measures to minimize hazards or problems from construction.

16.08.030 - TENTATIVE MAP FINDINGS (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act))

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

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

The proposed map is consistent with the Hillside Residential General Plan Land Use Classification.

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

The proposed map is consistent with the Hillside Residential General Plan Land Use Classification.

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

The hillside site is physically suitable for the one-family detached unit residential development proposed based on technical analysis for soils, slope stability, and erosion control, and creek protection measures. The project components include landslide repair, sufficient creek protection setbacks, stormwater management measures, and compact building envelope footprints that reduce impervious surface area contributing to runoff flow. Additional conformance with standard conditions of approval will provide conditions that have enabled similar hillside properties to be developed in a safe manner, and that enhance the surrounding neighborhood.

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

The site and residential facilities are suitable for the density proposed and conforms with Hill area density of five principle dwellings per gross acre.

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

The design of the subdivision is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. Analysis of the site by professional geotechnical consultants (Jensen -Van Lienden Associates, Inc., 12/1/09, 10/28/09,

6/8/09, 11/26/08) recommends repair to slide areas, measures to stabilize the slope from erosion, and measures for improved stormwater management.

The hydrological analysis (Ulrick and Associates, 9/16/09, 7/2/09). offers a top of bank determination from the creek channel that enabled determination of a minimum twenty-two (22) foot creek protection buffer from the channel centerline to the limits of construction activity.

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

The Gravatt property has environmental constraints that required careful consideration to minimize impacts to public health and safety. The property exhibits steep hillside slopes, visual slope erosion, a history of slides, existing vegetation and several oak trees of high value, drainage patterns that define two evolving creeks, and riparian habitat.

The analysis required to determine subdivision feasibility included a hydrology study, geotechnical study, a proposed creek protection plan, stormwater management measures, and the protection of, and safe connection to sewer utilities. The conclusions and recommendations formed from the combined analysis satisfy City concerns.

Site improvement measures are to be incorporated into the project that repair specific slide-prone areas, protect the creek and do not create modifications to the creek, minimize impervious surface area to reduce runoff volume, incorporate treatment measures for stormwater runoff (to satisfy stormwater quality control requirements), and include site improvements that safeguard functional sewer utility connections, including a City-approved sewer discharge pump system.

- G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. (This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.)**

No conflict with easements currently exist.

- H. That the design of the subdivision does not provide to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision**

It is feasible that passive natural heating or cooling can be incorporated in the future.

ATTACHMENT B

The proposal meets the criteria for Creek Protection Permit approval (Section 13.16.200) as set forth below. Required findings are shown in normal type; reasons your proposal does or does not satisfy them are shown in bold type.

SECTION 13.16.200 - CREEK PROTECTION CRITERIA FOR PERMIT APPROVAL

- A. Will the proposed activity (during construction and after project is complete) (directly or indirectly) cause a substantial adverse impact on the creek?
 Yes/No

The proposed subdivision design will not cause a substantial adverse impact on the creek because the overall project will incorporate a combination of measures to address creek protection. Stormwater treatment measures, hillside landscaping, soil stabilization and local area slide repair, storm culvert discharge energy dissipation, and Best Management construction activity measures will prevent substantial adverse impacts on the creek. Some grading will occur on slopes beyond the twenty-two foot protection buffer from the creek flowline, but Standard Conditions of Approval require that protection measures during the construction and post construction shall be installed and implemented to prevent sedimentation of the creek and erosion of the creek channel banks.

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

- 1. Will the proposed activity discharge a substantial amount of pollutants into the creek?
 Yes/No

The proposed activity will not discharge a substantial amount of pollutants into the creek because the construction and post construction stormwater management measures will be designed to prevent impacts to creek.

- 2. Will the proposed activity result in substantial modifications to the natural flow of water in the creek?
 Yes/No

The proposed activity will not increase runoff flow because measures are incorporated into the site improvements to reduce to the extent practicable water runoff from impervious surfaces to the creek, to slow down the amount of runoff to reduce erosion and flow to the creek, and to dissipate peak flows at existing outflow culverts to the creek.

- 3. Will the proposed activity deposit a substantial amount of new material into the creek or cause substantial bank erosion or instability?
 Yes/No

During construction, Standard Conditions of Approval and project specific performance specifications for the construction have been designed to prevent erosion of the bank or the deposit of substantial amounts of new material into the creek.

- 4. Will the proposed activity result in substantial alteration of the capacity of the creek?
 Yes/No

The capacity of the creek will not be impacted due to the project stormwater treatment measures to slow the volume and flow of runoff from proposed development and construction activity so as not to substantially alter the capacity of the creek.

- 5. Are there any other factors which would indicate that the proposed activity will adversely affect the creek?
 Yes/ No

See findings for Item #4 above.

- 6. Will the proposed activity substantially adversely affect the riparian corridor, including riparian vegetation, animal wildlife or result in loss of wildlife habitat?
 Yes/ No

The slope stabilization measures, stormwater treatment measures, and creek protection measures implemented during and post construction will not adversely impact riparian conditions within twenty feet of the creek channel.

- B. Will the proposed activity substantially degrade the visual quality and natural appearance of the riparian corridor?
 Yes/ No

See findings for Item #5 above.

- C. Is the proposed activity inconsistent with the intent and purposes of OMC Chapter 13.16?
 Yes/ No

The proposed activity is consistent with the intent and purposes of Chapter 13.16 of the Oakland Municipal Code, in that the project protects and preserves the operational character of the creek, prevents erosion of the hillside slope.

- D. Will the proposed activity substantially endanger public or private property?
 Yes/ No

The proposed stormwater treatment measures, slope stabilization, and creek protection measures will capture stormwater runoff and disperse the energy and water in a controlled manner, and subsequently protect public and private property.

- E. Will the proposed activity (directly or indirectly) substantially threaten the public's health or safety?
 Yes/ No

The proposed subdivision will have minimal impact on the public's health and safety because project specific measures are incorporated into the project and Standard Conditions of Approval will provide measures to further protect the creek and hillside slopes.

Based on the forgoing, the Creek Protection Permit for the above-described project is hereby GRANTED.

ATTACHMENT C

STANDARD CONDITIONS

1. Approved Use

Ongoing

The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter, and the plans date received **January 28, 2010**, consultant responses dated **December 1, 2009**, and updated as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

This action by the Director of Planning ("this Approval") includes the approvals set forth below for a Tentative Parcel Map to subdivide two existing hillside lots with a gross site area of 47,621 square feet into four lots (Parcel "A" at 8,804 square feet; Parcel "B" at 9,189 square feet; Parcel "C" at 20,642 square feet, and Parcel "D" at 8,986 square feet) and a Creek Protection Permit for proposed work within 100 feet of an existing creek.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire in two years from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the Planning Code and Subdivision Regulations of the City of Oakland. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Modification to Plans

Ongoing

Changes to approved plans that would amend the Tentative Map shall be submitted to and approved by the Zoning Administrator prior to recordation of the Final Parcel Map.

5. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency.

- b) The applicant shall submit approved building plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

6. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- b) Violation of any term, condition, or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these conditions if it is found that there is violation of any of the conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

7. Signed Copy of the Conditions

With submittal of a demolition, grading, and building permit

A copy of the approval letter and conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

8. Indemnification

Ongoing

- a) The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

9. **Compliance with Conditions of Approval**

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

10. **Severability**

Ongoing

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

11. **Job Site Plans**

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

12. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management**

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

13. **Required Landscape Plan for New Construction and Certain Additions to Residential Facilities**

Prior to issuance of a building permit

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

- a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.
- c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Planning and Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.

- d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

14. Landscape Requirements for Street Frontages.

Prior to issuance of a final inspection of the building permit

- a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.
- b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of Parks and Recreation.

15. Assurance of Landscaping Completion.

Prior to issuance of a final inspection of the building permit

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, case deposit, or letter of credit acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such bond, case deposit, or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

16. Landscape Maintenance.

Ongoing

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required fences, walls and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

17. Landscape Requirements for Downslope Lots.

Prior to issuance of a final inspection of the building permit

On downslope lots where the height of the rear elevation of the primary Residential Facility exceeds twenty-eight (28) feet, landscaping that meets the following requirements shall be planted to screen the rear face of the building:

- a) A minimum of one (1) fifteen-gallon tree or five (5) five-gallon shrubs, or substantially equivalent landscaping as approved by the Director of City Planning, shall be provided for each fifteen (15) feet of lot width, measured at the rear face of the residence.
- b) The landscape screening shall be elected and maintained such that it is sufficient in size within five (5) years of planting to screen, at a minimum, the lower ten (10) feet of the structure.

18. Dust Control

Prior to issuance of a demolition, grading or building permit

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

- a) Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- e) Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
- f) Limit the amount of the disturbed area at any one time, where feasible.
- g) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- h) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- i) Replant vegetation in disturbed areas as quickly as feasible.
- j) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- k) Limit traffic speeds on unpaved roads to 15 miles per hour.
- l) Clean off the tires or tracks of all trucks and equipment leaving any unpaved construction areas.

19. Construction Emissions

Prior to issuance of a demolition, grading or building permit

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- a) Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1 provides the issuance of authorities to construct and permits to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- b) Perform low- NO_x tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) shall be performed for such equipment used continuously during the construction period.

20. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

21. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

22. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and
- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

23. Operational Noise-General

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

24. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.

25. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

26. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction,

renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

27. Tree Removal Permit on Creekside Properties

Prior to issuance of a final inspection of the building permit

Prior to removal of any tree located on the project site which is identified as a creekside property, the project applicant must secure the applicable creek protection permit, and abide by the conditions of that permit.

28. Tree Removal Permit

Prior to issuance of a demolition, grading, or building permit

Prior to removal of any protected trees, per the Protected Tree Ordinance, located on the project site or in the public right-of-way adjacent to the project, the project applicant must secure a tree removal permit from the Tree Division of the Public Works Agency, and abide by the conditions of that permit.

29. Tree Replacement Plantings

Prior to issuance of a final inspection of the building permit

Replacement plantings shall be required for erosion control, groundwater replenishment, visual screening and wildlife habitat, and in order to prevent excessive loss of shade, in accordance with the following criteria:

- a) No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.
- b) Replacement tree species shall consist of *Sequoia sempervirens* (Coast Redwood), *Quercus agrifolia* (Coast Live Oak), *Arbutus menziesii* (Madrone), *Aesculus californica* (California Buckeye) or *Umbellularia californica* (California Bay Laurel) or other tree species acceptable to the Tree Services Division.
- c) Replacement trees shall be at least of twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate.
- d) Minimum planting areas must be available on site as follows:
 - i. For *Sequoia sempervirens*, three hundred fifteen square feet per tree;

- ii. For all other species listed in #2 above, seven hundred (700) square feet per tree.
- e) In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee as determined by the master fee schedule of the city may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians.
- f) Plantings shall be installed prior to the issuance of a final inspection of the building permit, subject to seasonal constraints, and shall be maintained by the project applicant until established. The Tree Reviewer of the Tree Division of the Public Works Agency may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the project applicant's expense.

30. Tree Protection During Construction

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
- c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
- d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

31. Archaeological Resources

Ongoing throughout demolition, grading, and/or construction

- a) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.
- b) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.
- c) Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist shall recommend appropriate analysis and treatment, and shall prepare a report on the findings for submittal to the Northwest Information Center.

32. Human Remains

Ongoing throughout demolition, grading, and/or construction

In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

33. Paleontological Resources

Ongoing throughout demolition, grading, and/or construction

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a

qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

34. Erosion and Sedimentation Control Plan

Prior to any grading activities

a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Ongoing throughout grading and construction activities

b) The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.

35. Soils Report

Required as part of the submittal of a Tentative Tract or Tentative Parcel Map.

A preliminary soils report for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include:

A. Logs of borings and/or profiles of test pits and trenches:

- a) The minimum number of borings acceptable, when not used in combination with test pits or trenches, shall be two (2), when in the opinion of the Soils Engineer such borings shall be sufficient to establish a soils profile suitable for the design of all the footings, foundations, and retaining structures.
- b) The depth of each boring shall be sufficient to provide adequate design criteria for all proposed structures.
- c) All boring logs shall be included in the soils report.

B. Test pits and trenches

- a) Test pits and trenches shall be of sufficient length and depth to establish a suitable soils profile for the design of all proposed structures.
- b) Soils profiles of all test pits and trenches shall be included in the soils report.
- C. A plat shall be included which shows the relationship of all the borings, test pits, and trenches to the exterior boundary of the site. The plat shall also show the location of all proposed site improvements. All proposed improvements shall be labeled.
- D. Copies of all data generated by the field and/or laboratory testing to determine allowable soil bearing pressures, sheer strength, active and passive pressures, maximum allowable slopes where applicable and any other information which may be required for the proper design of foundations, retaining walls, and other structures to be erected subsequent to or concurrent with work done under the grading permit.
- E. Soils Report. A written report shall be submitted which shall include, but is not limited to, the following:
 - a) Site description;
 - b) Local and site geology;
 - c) Review of previous field and laboratory investigations for the site;
 - d) Review of information on or in the vicinity of the site on file at the Information Counter, City of Oakland, Office of Planning and Building;
 - e) Site stability shall be addressed with particular attention to existing conditions and proposed corrective attention to existing conditions and proposed corrective actions at locations where land stability problems exist;
 - f) Conclusions and recommendations for foundations and retaining structures, resistance to lateral loading, slopes, and specifications, for fills, and pavement design as required;
 - g) Conclusions and recommendations for temporary and permanent erosion control and drainage. If not provided in a separate report they shall be appended to the required soils report;
 - h) All other items which a Soils Engineer deems necessary;
 - i) The signature and registration number of the Civil Engineer preparing the report.
- F. The Director of Planning and Building may reject a report that she/he believes is not sufficient. The Director of Planning and Building may refuse to accept a soils report if the certification date of the responsible soils engineer on said document is more than three years old. In this instance, the Director may require that the old soils report be recertified, that an addendum to the soils report be submitted, or that a new soils report be provided.

36. Fire Safety Phasing Plan

Prior to issuance of a demolition, grading, and/or construction and concurrent with any p-job submittal permit

The project applicant shall submit a separate fire safety phasing plan to the Planning and Zoning Division and Fire Services Division for their review and approval. The fire safety plan shall include all of the fire safety features incorporated into the project and the schedule for implementation of the features. Fire Services Division may require changes to the plan or may reject the plan if it does not adequately address fire hazards associated with the project as a whole or the individual phase.

37. **Vegetation Management Plan on Creekside Properties**

<http://www.oaklandnet.com/wildfirePrevention/DosandDonts.pdf>

Prior to issuance of a demolition, grading, and/or construction and Ongoing

The project applicant shall submit a vegetation management plan for review and approval by the Planning and Zoning Division, Fire Services Division, and Environmental Services Division of the Public Works Agency that includes, if deemed appropriate, the following measures:

- a) Identify and do not disturb a 20-foot creek buffer from the top of the creek bank. If the top of bank cannot be identified, leave a 50-foot buffer from the centerline of the creek or as wide a buffer as possible between the creek centerline and the proposed site development.
- b) Identify and leave "islands" of vegetation in order to prevent erosion and landslides and protect nesting habitat.
- c) Leave at least 6 inches of vegetation on the site.
- d) Trim tree branches from the ground up (limbing up) and leave tree canopy intact.
- e) Leave stumps and roots from cut down trees to prevent erosion.
- f) Plant fire-appropriate, drought-tolerant, preferably native vegetation.
- g) Err on the side of caution. If you don't know if a plant, tree or area is sensitive, ask for a second opinion before you cut.
- h) Provide erosion and sediment control protection if cutting vegetation on a steep slope.
- i) Leave tall shrubbery at least 3-feet high.
- j) Fence off sensitive plant habitats and creek areas to protect from goat grazing.
- k) Obtain a tree protection permit for a protected tree (includes all mature trees except eucalyptus and Monterey pine).
- l) Contact the City Tree Department (615-5850) for dead trees.
- m) Do not clear-cut vegetation. This can lead to erosion and severe water quality problems and destroy important habitat.
- n) Do not remove vegetation within 20-feet of the top of bank. If the top of bank cannot be identified, do not cut within 50-feet of the centerline of the creek or as wide a buffer as possible between the creek centerline and the proposed site development.
- o) Do not trim/prune branches that are larger than 4 inches in diameter.
- p) Do not remove tree canopy.
- q) Do not dump cut vegetation in a creek.
- r) Do not cut tall shrubbery to less than 3-feet high.
- s) Do not cut off short vegetation (grasses, ground-cover) to less than 6-inches high.

38. **Fire Safety**

Prior to and ongoing throughout demolition, grading, and/or construction

The project applicant and construction contractor will ensure that during project construction, all construction vehicles and equipment will be fitted with spark arrestors to minimize accidental ignition of dry construction debris and surrounding dry vegetation.

39. **Drainage Plan for Projects on Slopes Greater than 20%**

Prior to issuance of building permit (or other construction-related permit)

The project drawings submitted for a building permit (or other construction-related permit) shall contain a drainage plan to be reviewed and approved by the Building Services Division. The drainage plan shall include measures to reduce the post-construction volume and velocity of stormwater runoff to the maximum extent practicable. Stormwater runoff shall not be augmented to adjacent properties or creeks. The drainage plan shall include and identify the following:

- i. All proposed impervious surface on the site;

- ii. Anticipated directional flows of on-site stormwater runoff;
- iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;
- iv. Source control measures to limit the potential for stormwater pollution; and
- v. Stormwater treatment measures to remove pollutants from stormwater runoff.

40. Erosion, Sedimentation, and Debris Control Measures

Prior to issuance of demolition, grading, or construction-related permit

The project applicant shall submit an erosion and sedimentation control plan for review and approval by the Building Services Division. All work shall incorporate all applicable "Best Management Practices (BMPs) for the construction industry, and as outlined in the Alameda Countywide Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:

- a) On sloped properties, the downhill end of the construction area must be protected with silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the creek.
- b) In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation, including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.
- c) Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.
- d) All work in or near creek channels must be performed with hand tools and by a minimum number of people. Immediately upon completion of this work, soil must be repacked and native vegetation planted.
- e) Install filter materials (such as sandbags, filter fabric, etc.) acceptable to the Engineering Division at the storm drain inlets nearest to the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.
- f) *Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.*
- g) Direct and locate tool and equipment cleaning so that wash water does not discharge into the creek.
- h) Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site.

- i) Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- j) Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- k) Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the creek, street, gutter, stormdrains.
- l) All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB).
- m) Temporary fencing is required for sites without existing fencing between the creek and the construction site and shall be placed along the side adjacent to construction (or both sides of the creek if applicable) at the maximum practical distance from the creek centerline. This area shall not be disturbed during construction without prior approval of Planning and Zoning.
- n) All erosion and sedimentation control measures shall be monitored regularly by the project applicant. The City may require erosion and sedimentation control measures to be inspected by a qualified environmental consultant (paid for by the project applicant) during or after rain events. If measures are insufficient to control sedimentation and erosion then the project applicant shall develop and implement additional and more effective measures immediately.

41. Site Design Measures for Post-Construction Stormwater Management

Prior to issuance of building permit or other construction-related permit

The project drawings submitted for a building permit (or other construction-related permit) shall contain a final site plan to be reviewed and approved by Planning and Zoning. The final site plan shall incorporate appropriate site design measures to manage stormwater runoff and minimize impacts to water quality after the construction of the project. These measures may include, but are not limited to, the following:

- a) Minimize impervious surfaces, especially directly connected impervious surfaces;
- b) Utilize permeable paving in place of impervious paving where appropriate;
- c) Cluster buildings;
- d) Preserve quality open space; and
- e) Establish vegetated buffer areas.

Ongoing:

The approved plan shall be implemented and the site design measures shown on the plan shall be permanently maintained.

42. Source Control Measures to Limit Stormwater Pollution

Prior to issuance of building permit or other construction-related permit:

The applicant shall implement and maintain all structural source control measures imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

Ongoing:

The applicant, or his or her successor, shall implement all operational Best Management Practices (BMPs) imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

43. Erosion and Sedimentation Control Measures

During all construction activities:

A qualified engineer and/or environmental consultant shall be retained to make site visits during all grading activities and resurfacing activities. All erosion and sediment control measures implemented during construction activities shall be monitored on a weekly basis and on a daily basis during rain events. If measures are insufficient to control sediment and erosion, then the applicant shall develop and implement more effective measures immediately.

44. Creek Protection Plan

<http://www.oaklandpw.com/creeks>

Prior to and ongoing throughout demolition, grading, and/or construction activities

a) The approved creek protection plan shall be included in the project drawings submitted for a building permit (or other construction-related permit). The project applicant shall implement the creek protection plan to minimize potential impacts to the creek during and after construction of the project. The plan shall fully describe in plan and written form all erosion, sediment, stormwater, and construction management measures to be implemented on-site.

b) If the plan includes a stormwater system, all stormwater outfalls shall include energy dissipation that slows the velocity of the water at the point of outflow to maximize infiltration and minimize erosion. The project shall not result in a substantial increase in stormwater runoff volume or velocity to the creek or storm drains.

45. Regulatory Permits and Authorizations

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

Prior to construction within the vicinity of the creek, the project applicant shall obtain all necessary regulatory permits and authorizations from the U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), California Department of Fish and Game, and the City of Oakland, and shall comply with all conditions issued by applicable agencies. Required permit approvals and certifications may include, but not be limited to the following:

- a) U.S. Army Corps of Engineers (Corps): Section 404. Permit approval from the Corps shall be obtained for the placement of dredge or fill material in Waters of the U.S., if any, within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act.
- b) Regional Water Quality Control Board (RWQCB): Section 401 Water Quality Certification. Certification that the project will not violate state water quality standards is required before the Corps can issue a 404 permit, above.
- c) California Department of Fish and Game (CDFG): Section 1602 Lake and Streambed Alteration Agreement. Work that will alter the bed or bank of a stream requires authorization from CDFG.

46. Creek Monitoring

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

A qualified geotechnical engineer and/or environmental consultant shall be retained and paid for by the project applicant to make site visits during all grading activities; and as a follow-up, submit to the

Building Services Division a letter certifying that the erosion and sedimentation control measures set forth in the Creek Protection Permit submittal material have been instituted during the grading activities.

47. Creek Landscaping Plan

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

The project applicant shall develop a final detailed landscaping and irrigation plan for review and approval by the Planning and Zoning Division prepared by a licensed landscape architect or other qualified person. Such a plan shall include a planting schedule, detailing plant types and locations, and a system for temporary irrigation of plantings.

- a) Plant and maintain only drought-tolerant plants on the site where appropriate as well as native and riparian plants in and adjacent to riparian corridors. Along the riparian corridor, native plants shall not be disturbed to the maximum extent feasible. Any areas disturbed along the riparian corridor shall be replanted with mature native riparian vegetation and be maintained to ensure survival.
- b) All landscaping indicated on the approved landscape plan shall be installed prior to the issuance of a Final inspection of the building permit, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code.
- c) All landscaping areas shown on the approved plans shall be maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All paving or impervious surfaces shall occur only on approved areas.

48. Stormwater and Sewer

Prior to completing the final design for the project's sewer service

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

49. Submittal of Final Map and Final Map Requirements

Within two years of the effective date of approval, and ongoing

A Final Map shall be submitted to the Building Services Department, within 2 years of the approval of this permit. The final submittal for the map shall include all common areas, pathways, and dedicated sewer and storm drain easements in a form acceptable to the City Engineer and acceptance language of the City Engineer. The applicant shall record the Final Map and a written legal description of the reconfigured parcels as part of the deed with the Alameda County Recorder's Office and proof of such recordation shall be provided to the Planning Department. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

50. Certification of Parcel Map

Ongoing

A Parcel Map may be certified by the City Engineer at the expiration of the ten-day appeal period from the date of this approval.

51. Address Signs

Ongoing

Address signs shall be located at the front of the site where they can be clearly identified from the street. The design and location of illuminated address signs shall be submitted to and approved by the Zoning Administrator prior to the filing for a final map; the signs shall be installed prior to issuance of the final map.

52. Engineering and Fire Services Comments

Prior to recordation of the parcel Map

The project shall address concerns to the satisfaction of both Engineering Services feedback and comments. The applicant shall obtain any encroachment permits necessary for any permanent or temporary element located in the public right-of-way such as the existing fence/wall in the public right-of-way prior to the Parcel Map being signed by the City Engineer.

53. Homeowners Association

Ongoing

A homeowners association, or other acceptable legal entity, shall be established to maintain the building and all common facilities including open spaces, landscaping, and pedestrian access ways, in accordance with approved plans. Membership in the association shall be made a condition of ownership. The developer shall be a member of such association until all units are sold and for one year thereafter. The Declaration of Restrictions for the development (CC&Rs) shall include the following requirements and restrictions:

There shall be no storage of large items that would prohibit the use of automobile parking within designated parking and driveway areas. Those areas shall be kept free of obstruction and available for their designated use at all times. Boats, trailers, camper tops, inoperable vehicles, and the like shall not be parking or stored within these designated parking and driveway areas.

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Zoning Administrator/Planning Commission action on April, **2010**. I agree to abide by and conform to these conditions, as well as to all provisions of the

Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____(date)

Signature of Contractor _____(date)

RETURN TO:

City of Oakland
Community and Economic Development Agency
Planning and Zoning Division
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: TPM 9884/CP09-082

Project Applicant: Carlos Plazola, Terra Linda Development

Project Location: Gravatt Drive vacant lots #127 and 128 (APNs: 048H-7606-051-06 and 048H-7606-051-07)

Project Description: Tentative Parcel Map to subdivide two existing parcels with a gross site area of 47,621 square feet into four lots (Parcel "A" at 8,804 square feet; Parcel "B" at 9,189 square feet; Parcel "C" at 20,642 square feet, and Parcel "D" at 8,986 square feet) and a Creek Protection Permit for residential development adjacent an existing creek..

Exempt Status: (check All that apply)

Statutory Exemptions

{Article 18:Section 21080;15260}

- Ministerial {Sec.15268}
- Feasibility/Planning Study {Sec.15262}
- Emergency Project {Sec.15269}
- General Rule {Sec.15061(b)(3)}
- Other: {Sec. 15183 _____}

Categorical Exemptions

{Article 19:Section 21084;15300}

- Existing Facilities {Sec.15301}
- Replacement or Reconstruction {Sec.15302}
- Small Structures {Sec.15303}
- Minor Alterations {Sec.15304}
- Minor Subdivisions {Sec.15315}
- Infill Projects {Sec.15332}
- Other {Sec. _____}

Reasons why project is exempt: With respect to Categorical Exemptions under Class 32 :

1. That the project is consistent with applicable general plan designation and all applicable general plan policies as well as applicable zoning designation and regulations: **The project conforms with relevant General Plan policies found in adopted General Plan Elements including Land Use and Transportation (LUTE), and the Open Space, Conservation and Recreation (OSCAR) elements. Each proposed subdivision lot front on Gravatt Drive and meets the minimum subdivision lot size of 8,000 square feet for Hill Area subdivision (General Plan Land Use and Transportation Policy N7.3). Development on each subdivision lot will be subject to the standards as set forth under the R-30 zoning regulations and to the design criteria as set forth under the Design Review Manual for One- and Two-Unit Dwellings;**
2. That the project development occurs within city limits on a project site of no more than five acres substantially surrounded by urban areas: **The subdivision lots constitute 1.1 acres of land and in an established hillside detached unit residential area;**
3. That the project site has no value as habitat for endangered, rare, or threatened species: **The subdivision lots are located in an existing hillside residential neighborhood with little value for habitat for endangered, rare or threatened species. The subdivision lots are configured in a manner to preserve groups of trees, creeks, and other amenities, so as to pose no and minimize hazards to the public;**
4. That approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality: **The lots are designed to minimize impact to existing watershed creeks and vegetation. Analysis of geotechnical conditions by a licensed professional geotechnical engineer consultant includes recommended**

measures to stabilize the slopes against sliding and excessive erosion. The report also recommends measures to minimize hazards or problems from construction. Conditions of Approval are imposed on the project to minimize effects relating to traffic, noise, air quality, and water quality; and

5. That the site can be adequately served by all required utilities and public services: Site improvements and existing utilities will adequately serve the subdivision. The project incorporates additional stormwater treatment measures and erosion control measures that safeguard functional sewer utility service and reduce impacts to stormwater drainage facilities.

Lead Agency: City of Oakland, Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor Oakland, CA 94612.

Department/Contact Person: Caesar Quitevis, Planner II

Phone: (510) 238-6343

April 16, 2010
Date:

Scott Miller
SCOTT MILLER
Zoning Manager
Community and Economic Development Agency
Environmental Review Officer

_(Rev. 5/08)

Pursuant to Section 711.4(d)(1) of the California Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish & Game fees.

Exhibit 12

Ulrick & Associates Groundwater Hydrology

19 Donna Maria Way
Orinda, CA 94563-4111

telephone 925 376-3721
facsimile 925 376-2771

julrick@ulrick.com
www.ulrick.com

September 16, 2009

Mr. Steve Anderson
DFI Funding, Inc.
6363 Christie Avenue #1916
Emeryville, CA 94608

Subject: Response to Comments dated September 2009 by Scott Miller
Zoning Manger, CEDA Planning & Zoning, City of Oakland
Case #TPM 9884/CP09
Top of Bank Determination
Drainage Channel on Parcel C (Lot 127)
570 Gravatt Drive, Berkeley, CA 94705
APN 7606-51-6 and 7606-51-7

Dear Mr. Anderson:

The following additional information is provided in response to the subject comments from the City of Oakland.

Because the usual geomorphic or land form indicators of creek top of bank are not evident at this site, I used hydrologic calculations of the likely depth and width of flowing water as an indication of top of bank. The calculations are very conservative, over estimating the likely flow. The final determination of the width of the channel between the tops of banks was more than twice the likely width indicated by the hydraulic calculations.

I have revised my hydrologic/hydraulic calculations in reponse to comments from the City (see attached calculations). Mean annual rainfall is increased from 24 to 29 inches per year. A 2-year storm recurrence interval, 5 minute duration rainfall intensity is increased from 0.15 to 0.20 inches. And the hydraulic roughness of the channel (Manning's n) is increased from 0.20 to 0.25. In addition to the depth and width of flow for the "bankfull stage" 2-year storm recurrence interval, I have also calculated the width of flow for 100- and 500- year storm recurrence intervals.

These revised calculations find that the 2-year recurrence interval flow is 64 gallons per minute (0.14 cubic feet per second). The depth of flow at this discharge is 0.13 feet, a little over an inch and a half; and the width of flow between the tops of banks is 1.5 feet.

Mr. Steve Anderson
September 16, 2009
Page 2

As an indication of the upper limits of flow in the channel, the 100-year storm recurrence interval flow is 105 gallons per minute (0.23 cubic feet per second). The depth of flow at this discharge is 0.16 feet, about two inches, and the width of flow between the tops of banks is 1.6 feet. The 500-year storm recurrence interval flow is 133 gallons per minute (0.30 cubic feet per second). The depth of flow at this discharge is 0.18 feet, about 2.2 inches, and the width of flow between the tops of banks is 1.7 feet.

Based on my site inspection and using the above calculations only as an indication of the likely width of channel flow, it is my opinion that the width of the subject drainage channel between the tops of banks is no greater than 4 feet, 2 feet on either side of the channel centerline shown on the attached maps. This is more than twice the likely channel width indicated by the hydraulic calculations, even for a 500-year storm.

Limitations

The scope of this investigation was limited to that previously stated. Site observations were limited to surface conditions that were visible and accessible at the time of my visit.

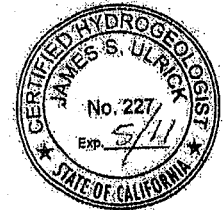
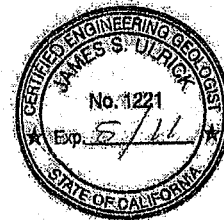
In carrying out this investigation, accepted engineering geology procedures have been employed, and the opinions and conclusions herein are made in accordance with generally accepted principles and practices of the profession. This warranty is in lieu of all other warranties, either expressed or implied.

Sincerely,



James S. Ulrick
Consulting Hydrogeologist

Professional Geologist #3834
Certified Engineering Geologist #1221
Certified Hydrogeologist #227



Attachments: Site Plan
Location of Drainage Channel and Watershed Boundary
Calculations

TPM 9884/CP09082
RECEIVED

JUL 08 2009

**CITY PLANNING COMMISSION
ZONING DIVISION**

Ulrick & Associates
Groundwater Hydrology

19 Donna Maria Way
Orinda, CA 94563-4111

telephone 925 376-3721
facsimile 925 376-2771

julrick@ulrick.com
www.ulrick.com

July 2, 2009

Mr. Steve Anderson
DFI Funding, Inc.
6363 Christie Avenue #1916
Emeryville, CA 94608

Subject: Top of Bank Determination
Drainage Channel on Parcel C (Lot 127)
570 Gravatt Drive, Berkeley, CA 94705
APN 7606-51-6 and 7606-51-7

Dear Mr. Anderson:

A single-family residence is proposed for construction on Parcel C (Lot 127) of a 4-parcel 1.1 acre site (Figures 1, 2, and 3). The east side of this proposed residence will be near the subject drainage swale. The City of Oakland Creek Protection and Storm Water Discharge Control Ordinance, Oakland Municipal Code ("OMC") Chapter 13.16 ("Creek Protection Ordinance") requires that structures be set back 20 feet from the top of bank of a watercourse. The purpose of this study was to define the top of banks of the subject drainage swale, so that the proposed building can be located in accordance with the Creek Protection Ordinance.

Scope of Work

I inspected the site on June 28, 2009. This included climbing into the upper part of the drainage, below Gravatt Drive; visual inspection of the drainage of Gravatt Drive, and visual inspection of the watershed area above Gravatt Drive. I inspected U.S. Geological Survey topographic maps prior to my site inspection. I also reviewed reports by Mosaic Associates (Determination of Wetlands, December 22, 2008) and Jensen – Van Lienden Associates (Preliminary Geotechnical and Geologic Study, November 26, 2008).

Observations

The subject drainage channel topographic form extends from the top of the ridge at Amito Drive above Gravatt Drive down to Perth Place to the south of the property. However, the watershed area above Gravatt Drive is disconnected from the drainage below Gravatt Drive. Runoff from the watershed area above Gravatt Drive is intercepted by the street and flows down the street toward Vicente Creek (otherwise known as the Grandview Branch of Temescal Creek) at the intersection of Gravatt and Grand View Drives. There is no storm drain culvert beneath Gravatt Drive at the location of the subject drainage channel. Thus, the watershed area of the drainage channel below Gravatt Drive consists only of the area downslope from the street.

Top of Bank Determination

Top of bank is defined as the bankfull stage of a creek or the point at which the flow just begins to overtop the channel banks and enter the floodplain (Leopold, Wolman, and Miller, 1964). Bankfull stage has been found to correspond to the peak flow with a recurrence interval of approximately 1.5 years, or two out of three years. The bankfull stage does the most amount of work in forming the channel shape. More frequent, lower flows are less effective in forming the channel shape because of a lower intensity. Less frequent, higher flows are also less effective in forming channel shape because they occur less often.

The top of bank of a creek can often be determined in the field as the break in slope between the channel bank and the flood plain. This is the method defined by the Creek Protection Ordinance (Sec. 13.16.030). However, the subject drainage channel does not have a clearly defined break in slope between the channel bank and the flood plain for the following reasons:

- 1) The current watershed is a relic of an earlier, much larger watershed, due to capture of the upper part of the watershed by the construction of Gravatt Drive in approximately the 1950s, and
- 2) Soil creep on the steep, approximately 2:1, hillside obscures the channel topographic form caused by flowing water.

In order to define the top of bank for this drainage channel, the existing watershed runoff to a point 75 feet below Gravatt Drive (830 foot elevation contour, approximately the downslope extent of the proposed residence on Parcel C) was determined for a 2-year recurrence interval storm (a slightly larger than bankfull storm), using the rational method (Figure 3 and attached calculations; ABAG, May 1995).

The flow depth for this amount of runoff down the channel was calculated using the Manning equation, assuming a trapezoidal channel cross section with a one-foot wide bed and 2:1 bank slopes. These calculations find that the 2-year recurrence interval flow is 48 gallons per minute (0.11 cubic feet per second). The depth of flow at this discharge is 0.09 feet, a little over an inch; and the width of flow between the tops of banks is 1.4 feet. These values were calculated based on very conservative estimates for the surface water runoff coefficient of 0.70 (70 percent of

rainfall runs off the ground surface) and the channel roughness coefficient of 0.200 (extreme resistance to flow due to heavy brush and channel irregularities).

As an indication of the upper limit of flow in the channel, the 100-year storm recurrence interval flow is 99 gallons per minute (0.22 cubic feet per second). The depth of flow at this discharge is 0.13 feet, a little over an inch and a half; and the width of flow between the tops of banks is 1.5 feet.

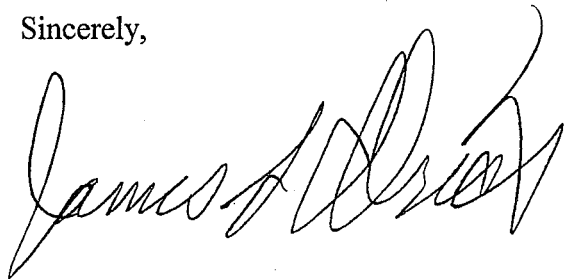
Based on my site inspection and the above calculations, the width of the subject drainage channel between the tops of banks is no greater than 4 feet, 2 feet on either side of the channel centerline shown on the attached map.

Limitations

The scope of this investigation was limited to that previously stated. Site observations were limited to surface conditions that were visible and accessible at the time of my visit.

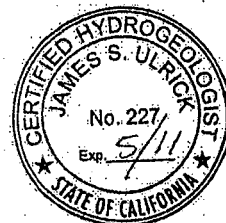
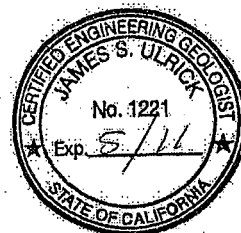
In carrying out this investigation, accepted engineering geology procedures have been employed, and the opinions and conclusions herein are made in accordance with generally accepted principles and practices of the profession. This warranty is in lieu of all other warranties, either expressed or implied.

Sincerely,



James S. Ulrick
Consulting Hydrogeologist

Professional Geologist #3834
Certified Engineering Geologist #1221
Certified Hydrogeologist #227



References

Association of Bay Area Governments (ABAG), 1995, A Manual of Standards for Erosion & Sediment Control Measures.

Chow, Ven Te, 1959, Open-Channel Hydraulics, McGraw-Hill, Inc.

City of Oakland, 1997, Creek Protection and Storm Water Discharge Control Ordinance, Oakland Municipal Code ("OMC") Chapter 13.16 ("Creek Protection Ordinance").

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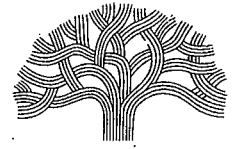
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Leopold, Luna B., M.G. Wolman, and J.P. Miller, 1964, Fluvial Processes in Geomorphology, Dover Publications, Inc.

Mosaic Associates LLC, December 22, 2008, Delineation and Preliminary Jurisdictional Determination of Wetlands and Other Waters of the U.S. Under Section 404 of the Clean Water Act.

Sowers, Janet M., 1995, Creek & Watershed Map of Oakland & Berkeley, Oakland Museum of California.

U.S. Geological Survey, 1997, Oakland East 7.5-Minute Topographic Map.



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Zoning Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

August 4, 2014

Mr. Robert Nebolon, Architect
801 Camelia Street, Suite E
Berkeley, CA 94710

RE: Case File No. CDV13-203, CP13138, 590 Gravatt Drive, (APN: 048H-7606-051-06)

Dear Mr. Nebolon:

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

Proposal:	Construct a three-story 3,929 square foot single family dwelling with an attached garage on a steep downslope and creekside property on a 8,986 square foot lot.
Applicant:	Hillside Homes Group, Inc.
Owner:	DFI Properties, LLC
Case File Number:	CDV13203, CP13138, T1300044
Planning Permits Required:	Minor Conditional Use Permit to exceed the 36'-0" maximum wall height of the primary building (39'-5" proposed); Minor Variances to encroach in the sideyard setback (10% lot width, or 10'-0" required, 5'-0" proposed, and to exceed the rear garage wall height (41'-0" permitted, 43'-8" proposed) Regular Design Review for new construction of a single family dwelling; Category 3 Creek Protection Permit for work between 100'-0" of the creek centerline and 20'-0" of the top of creek bank, and related tree removal
General Plan:	Hillside Residential
Zoning:	RH-4 Hillside Residential Zone
Environmental Determination:	Exempt, Section 15303 of the State CEQA Guidelines; new structures; Section 15183 projects consistent with a community plan, general plan, or zoning
Historic Status:	Vacant Lot
Service Delivery District:	2
City Council District:	1

An Appeal to the City Planning Commission of this Creek Permit decision may be submitted within ten (10) calendar days after the date of this letter, and 4:00 p.m. An appeal shall be on a form provided by

the Bureau of Planning - Zoning, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Caesar Quitevis, Planner II**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Administrator or wherein his/her decision is not supported by the evidence in the record and must include payment of **\$1,503.23** in accordance with the City of Oakland Master Fee Schedule. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you from raising such issues during your appeal and/or in court. If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Department of Planning and Building, at, or prior to, the Appeal hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the Commission's final decision.

A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. You may record the NOE, the Environmental Declaration, and, if applicable, the De Minimis Impact Findings at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of **Caesar Quitevis, Planner II**. Although recordation of the Notice of Exemption (NOE) is optional pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE reduces the statute of limitations on challenges to your project, based on environmental issues, to 35 days after the NOE is recorded with the County. In the absence of a recorded NOE, the statute of limitations for challenges extends to 180 days.

If you have any questions, please contact the case planner, **Caesar Quitevis** at (510) 238-6343 or clquitevis@oaklandnet.com.

Sincerely,



SCOTT MILLER
Zoning Manager

cc: Bill Quesada, Planner IV, Inspection Services, Planning and Building Department
Ed Patmont, 184 Rudgear Drive, Walnut Creek, CA 94596

Attachments: A. Findings for Design Review
B. Conditions of Approval
C. Notice of Exemption
D. Notice of Limitations of Use of Property

ATTACHMENT A

The proposal meets all the required findings under Sections 17.134.050, 17.136.050, and 17.148.050 respectively, of the Oakland Planning Code, OMC Title 17 as set forth below and which are required to approve your application. Required findings are shown in **bold** type; reasons your proposal meets the findings are shown in normal type.

SECTION 17.134.050(A) – CONDITIONAL USE PERMIT CRITERIA:

- A. The locations, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

A Conditional Use Permit is required in the case of a downslope lot with a greater than 60% slope, when a proposed new residential facility exceeds the 36'-0" maximum wall height of the primary building, but does not exceed the 40'-0" wall height. The subject property's downslope gradient is approximately 84% and the proposed building rear wall height is 39'-5". There are few alternatives and a practical difficulty would result to step the building to relate to the topography and lower the wall height to comply with the normally required 36'-0" height limit. The primary difficulty is that a minimum buffer distance of 22'-0" from the creek has been established to preserve and maintain the creek and riparian habitat. As a result, the building depth is shallow (31'-0"), but the building height is therefore taller (39'-5") at the rear facing wall. The proposed development will not adversely affect the livability or appropriate development of abutting properties or the basic character of the residential neighborhood because similar properties have been built on steep lots in similar situations, and reflect a tall rear building wall. Architectural details, window fenestrations, and changes to exterior finish materials provide articulation and scale to the building volume to mitigate bulk and relate to surrounding hillside residential buildings.

- B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

With consideration given to the steep topography of the site, its riparian character, and the hillside residential character of the area, the proposed development will be compatible with surrounding residences. The proposed development's 1,600 square foot building footprint is comparable to other properties in the area and will minimize potential impacts to the creek and slope. Additionally, conformance with Conditions of Approval requires measures to maintain the riparian corridor. The proposal will have minimal impacts to abutting properties on Gravatt or Perth Place. The proposed design will be as attractive as the nature of the use and its location and setting warrant.

- C. The proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed development will enhance the livability of the surrounding area by maintaining the residential character of the area and protect the site's natural features.

- D. The proposal conforms with all applicable Regular Design Review criteria set forth in Section 17.136.050 of the Oakland Planning Code.

See the findings under the Regular Design Review criteria, Section 17.136.050.

- E. For proposals involving a One- or Two-Family Residential Facility: If the Conditional Use Permit concerns a regulation governing height, minimum yards, or maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:

1. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage, and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation, and for conditional use permits that allow height increases, the proposal provides detailing, articulation, or other design elements that mitigate any bulk created by the additional height.

The proposed development's detailing, articulation, and other design elements help mitigate potential bulk issues created by the additional height. See Item #A above.

SECTION 17.136.050(A) - REGULAR DESIGN REVIEW CRITERIA:

- A. Residential Facilities:
1. That the proposed design will create a building, or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:

The proposal is to construct a three-story 3,929 square foot single family dwelling on a downslope lot. The subject property is bordered to the south by hillside single family homes located along Gravatt Drive and Perth Place that range from Contemporary Modern to Mediterranean style with tile roofs and predominantly using stucco as an exterior finish material. Existing vegetation provides screening to the west and the existing dwelling to the south is oriented towards the southwest with little view impact from the project. With new proposed landscaping and architectural details, window fenestration, and changes to exterior finish materials to provide articulation and scale to the building volume, potential bulk issues are minimized, and the proposed development relates to the surrounding hillside area in setting, scale, bulk, height, materials, and textures.

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics.

The proposed design protects natural features of the site in several ways. The depth of the proposed building footprint observes the minimum 22'-0" buffer established between the development and the creek (at the closest corner). Stormwater control measures, including a dissipation area and new landscape planting are incorporated into the design to manage and control stormwater runoff to the creek. The use of architectural details, window fenestration, and changes to exterior finish materials provides articulation and scale to the building volume and mitigates potential bulk. Together, the proposed design will protect, preserve, and enhance the desirable residential hillside neighborhood character of the surrounding area.

3. That the proposed design will be sensitive to the topography and landscape.

To the extent possible, the building volume steps with the topography and maintains a minimum distance from the creek and riparian habitat. The 84% gradient for this steep downslope lot and the relatively shallow depth of the building provides minimal opportunities to reduce bulk; however, the proposed design's landscape planting, architectural details, window fenestration, outdoor decks, and changes to exterior finish materials mitigates potential building bulk and relate the overall building mass to the topography and landscape.

4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

See Item #3 above.

5. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which has been adopted by the Planning Commission or City Council.

All elements of the proposal conform with the Oakland General Plan and its policies, e.g. Policy N7.5, Respecting the Existing Development Pattern in a Hillside Residential neighborhood. The proposed design was also reviewed with respect to applicable Design Review criteria as referenced in the Design Review Manual for One- and Two-Unit Residences and was determined to be as attractive as the nature of the use and its location and setting warrant (See Design Review findings, Items #A.1, #A.2, #A.3 above).

- B. For Non-Residential Facilities and Signs

Not applicable.

- C. For Local Register Properties that are not Landmarks or Located in the S-7/S-20 Zone.

Not applicable.

- D. For Potential Designated Historic Properties that are not Local Register Properties:

The project is a vacant lot.

E. For Retaining Walls

The extent of retaining walls is limited to the driveway and front yard area. No additional downslope retaining walls will be visible.

SECTION 17.148.050(a) VARIANCE CRITERIA:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

Strict compliance with the minimum 10% lot width (12'-6') setback regulation presents a practical difficulty because of the requirement to minimize impacts to the creek and maintain at least a 22'-0" buffer. Strict compliance with the maximum 41'-0" building wall height at the rear garage wall presents a practical difficulty because of the 84% structure slope and again the requirement to maintain a minimum 22'-0" buffer from the creek. The proposed 5'-0" side yard setback and 43'-8" rear wall garage height results in an effective design solution improving livability and appearance of the project given consideration to architectural details, window fenestrations, outdoor decks, and changes to exterior finish materials, and mitigates potential building bulk and relates the overall building mass to the topography and landscape.

2. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

Strict compliance would deprive the applicant of privileges enjoyed by owners of similarly zoned property to construct a functional single family dwelling that relates to the natural features of the site and is compatible with surrounding residential properties.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The sideyard setback variance will not adversely impact the character, livability or appropriate development of the abutting property to the south because the footprint orientation minimizes potential conflicts to privacy and views. The proposed development development's detailing, articulation, and other design elements help mitigate any bulk created by the additional height where the rear garage wall exceeds the maximum height.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations. **Granting the variances to the sideyard setback and garage height regulations will not constitute a grant of special privilege or be inconsistent with the purposes of the zoning regulations because neighborhood characteristics of scale, materials, and architectural character are maintained.**

5. That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages, and carports, etc.) conform with regular the design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed development conforms with design review criteria through architectural details, window fenestration, outdoor decks, and changes to exterior finish materials that mitigates potential building bulk and because neighborhood characteristics of scale, materials, and architectural character are maintained.

6. That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:
- a. The proposal when reviewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage, and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height.

The project applicant has made a reasonable effort to reduce to the maximum extent feasible potential adverse impacts relating to building bulk and building scale. The proposed development development's detailing, articulation, and other design elements help mitigate any bulk created by the additional height where the rear garage wall exceeds the maximum height. With respect to the sideyard variance, consideration was given to protect and maintain the riparian character of the site, and therefore resulted in a reduced sideyard setback.

SECTION 13.16.200 CREEK PROTECTION PERMIT CRITERIA:

- A. Will the proposed activity (during construction and after project is complete) (directly or indirectly) cause a substantial adverse impact on the creek?
es/No

The Project will not cause a substantial adverse impact on the creek for several reasons:

1. **The Project work is located so as not to disturb existing riparian vegetation that runs parallel to the creek.**
2. **The Project work shall implement creek protection measures, including, but not limited to temporary silt fencing, designated staging areas during construction, rainwater detention pits/wells, and Best Management Practices required as part of the Conditions of Approval to minimize disturbance to the creek;**
3. **The Project will incorporate stormwater management measures including, but limited to permeable material located in the front yard, landscaping to improve on-site dissipation and a dissipater to manage stormwater runoff from impervious surface areas; and**
4. **Standard Conditions of Approval imposed on the Project require that protective measures during construction shall be installed and implemented to prevent**

discharge of pollutants into the creek, prevent sedimentation into the creek, and prevent erosion of the creek bank.

In making the above finding, the Director of Building Services must, at a minimum,

consider the following factors:

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

Yes/No

The Project will not discharge a substantial amount of pollutants into the creek because protection measures will be implemented prior to construction. Adherence to Best Management Practices and conformance with Standard Conditions of Approval will minimize pollutants from entering the creek to prevent potential pollutants from reaching the creek.

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

Yes/No

The Project construction activity will not increase any concentrated rainwater runoff flow towards the creek channel, or its creek banks, and therefore, the Project will not have a significant impact on the creek's flow of water.

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

Yes/No

The Project will not deposit a substantial amount of new material into the creek or cause erosion or instability of the creek bank because of the following:

- a. **There is little likelihood that new material will be deposited into the creek because existing riparian vegetation which serves to absorb rainwater runoff and stabilizes the bank will not be disturbed and will remain in place; and**
- b. **Adherence to Best Management Practices during construction will prevent new material into the creek nor cause erosion or instability of the creek bank.**

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

Yes/No

The Project is designed with protection measures located away from the creek to minimize any alteration to the capacity of the creek.

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

Yes/No

The impacts due to increased impervious surface areas attributed to the proposed building footprint and roof are minimized by localized area drains that direct runoff to a central dissipater and provide dissipation of concentrated flows. Therefore, no other related factors will adversely impact the creek.

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

Yes/No

Due to the limited scope of work, and no disturbance to the creek channel, there is little likelihood of impacts on existing riparian vegetation, wildlife, or wildlife habitat.

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

Yes/No

There is little likelihood that the Project will degrade the visual quality of the creek because due to the location of the building footprint, the character of the riparian corridor is maintained, and measures to prevent erosion, and minimize an increase in concentrated stormwater runoff will prevent impacts to the natural appearance of the riparian corridor.

- C. Is the proposed activity inconsistent with the intent and purposes of OMC Chapter 13.16?

Yes/No

Conformance to the Standard Conditions of Approval and project specific measures will ensure the Project's compliance with the City's Creek Protection Ordinance.

- D. Will the proposed activity substantially endanger public or private property?

Yes/No

Provisions incorporated into the Project, including the dissipation wells, permeable areas, and silt fencing and fiber rolls during construction will not result in substantial danger to public or private property.

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

Yes/No

The Project provides a both a private and public benefit by maintaining the residential character of the area and safeguards the quality of the creek, and maintains the visual quality of the surrounding area.

Based on the forgoing, the Creek Protection Permit for the above described project is hereby

GRANTED.

ATTACHMENT B
CONDITIONS OF APPROVAL ATTACHED AND INCORPORATED INTO
CASE: CDV13-203, CP13-138
(590 Gravatt Drive)
(APN: 048H-7606-051-06)

STANDARD CONDITIONS

1. Approved Use

Ongoing

The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter, and the building plans submitted on **February 13, 2014**, and landscape and creek protection plans dated **June 6, 2014**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

This action by the **Director of Planning** ("this Approval") includes the approvals set forth below for a Minor Conditional Use Permit, Regular Design Review, and Minor Variance to construct a three-story 3,929 square foot single family dwelling with attached garage on a steep downslope and creekside property of a 8,986 square foot lot.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- c) Violation of any term, conditions, or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these conditions if it is found that there is violation of any of the conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in said Action and the applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment, or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations

contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

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

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. Required Landscape Plan for New Construction and Certain Additions to Residential Facilities

Prior to issuance of a final inspections of the building permit

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

- a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.
- c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Planning and

Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.

- d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

13. Assurance of Landscaping Completion.

Prior to Issuance of a Certificate of Occupancy

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, cash deposit, or letter of credit, **acceptable to the City**, shall be provided for the planting of the required landscaping. The amount of such bond, cash deposit or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

14. Landscape Requirements for Downslope Lots.

Prior to issuance of a final inspection of the building permit

On downslope lots where the height of the rear elevation of the primary Residential Facility exceeds twenty-eight (28) feet, landscaping that meets the following requirements shall be planted to screen the rear face of the building:

- a) A minimum of one (1) fifteen-gallon tree or five (5) five-gallon shrubs, or substantially equivalent landscaping as approved by the Director of City Planning, shall be provided for each fifteen (15) feet of lot width, measured at the rear face of the residence.
- b) The landscape screening shall be elected and maintained such that it is sufficient in size within five (5) years of planting to screen, at a minimum, the lower ten (10) feet of the structure.

15. Landscape Maintenance.

Ongoing

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required fences, walls and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

16. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Ongoing throughout demolition, grading, and/or construction

During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

- a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

- e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- f) Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.
- h) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- i) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.

17. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

18. Noise Control***Ongoing throughout demolition, grading, and/or construction***

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

19. Noise Complaint Procedures***Ongoing throughout demolition, grading, and/or construction***

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- a) A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and
- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

20. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the appropriate City of Oakland agencies. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.

21. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction best management practices are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. The applicant is responsible to avoid, eliminate delays with the unexpected discovery of contaminated soils with hazardous materials.
- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until

the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

22. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

23. Tree Removal Permit on Creekside Properties

Prior to issuance of a final inspection of the building permit

Prior to removal of any tree located on the project site which is identified as a creekside property, the project applicant must secure the applicable creek protection permit, and abide by the conditions of that permit.

24. Tree Removal Permit

Prior to issuance of a demolition, grading, or building permit

Prior to removal of any protected trees, per the Protected Tree Ordinance, located on the project site or in the public right-of-way adjacent to the project, the project applicant must secure a tree removal permit from the Tree Division of the Public Works Agency, and abide by the conditions of that permit. The associated Tree Permit is #T1300044.

25. Tree Removal During Breeding Season

Prior to issuance of a tree removal permit

To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to start of work from March 15 through May 31, and within 30 days prior to the start of work from June 1 through August 15. The pre-removal surveys shall be submitted to the Planning and Zoning Division and the Tree Services Division of the Public Works Agency. If the survey indicates the potential presences of nesting raptors or other birds,

the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.

26. Tree Protection During Construction

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
- c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
- d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations

27. Tree Replacement Plantings

Prior to issuance of a final inspection of the building permit

Replacement plantings shall be required for erosion control, groundwater replenishment, visual screening and wildlife habitat, and in order to prevent excessive loss of shade, in accordance with the following criteria:

- a) No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.
- b) Replacement tree species shall consist of *Sequoia sempervirens* (Coast Redwood), *Quercus agrifolia* (Coast Live Oak), *Arbutus menziesii* (Madrone), *Aesculus californica* (California Buckeye) or *Umbellularia californica* (California Bay Laurel) or other tree species acceptable to the Tree Services Division.
- c) Replacement trees shall be at least of twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate.
- d) Minimum planting areas must be available on site as follows:
 - i. For *Sequoia sempervirens*, three hundred fifteen square feet per tree;
 - ii. For all other species listed in #2 above, seven hundred (700) square feet per tree.
- e) In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee as determined by the master fee schedule of the city may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians.
- f) Plantings shall be installed prior to the issuance of a final inspection of the building permit, subject to seasonal constraints, and shall be maintained by the project applicant until established. The Tree Reviewer of the Tree Division of the Public Works Agency may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the project applicant's expense.

28. Tree Protection During Construction

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- g) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- h) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
- i) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of

any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.

- j) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- k) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- l) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

29. Drainage Plan for Projects on Slopes Greater than 20%

Prior to issuance of building permit (or other construction-related permit)

The project drawings submitted for a building permit (or other construction-related permit) shall contain a drainage plan to be reviewed and approved by the Building Services Division. The drainage plan shall include measures to reduce the post-construction volume and velocity of stormwater runoff to the maximum extent practicable. Stormwater runoff shall not be augmented to adjacent properties or creeks. The drainage plan shall include and identify the following:

- i. All proposed impervious surface on the site;
- ii. Anticipated directional flows of on-site stormwater runoff;
- iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;
- iv. Source control measures to limit the potential for stormwater pollution; and
- v. Stormwater treatment measures to remove pollutants from stormwater runoff.

30. Erosion, Sedimentation, and Debris Control Measures

Prior to issuance of demolition, grading, or construction-related permit

The project applicant shall submit an erosion and sedimentation control plan for review and approval by the Building Services Division. All work shall incorporate all applicable "Best Management Practices (BMPs) for the construction industry, and as outlined in the Alameda Countywide Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:

- a) On sloped properties, the downhill end of the construction area must be protected with silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the street, gutters, stormdrains.
- b) In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and

sedimentation, including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.

- c) Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.
- d) Install filter materials acceptable to the Engineering Division at the storm drain inlets nearest to the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.
- e) Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.
- f) Direct and locate tool and equipment cleaning so that wash water does not discharge into the street, gutters, or stormdrains.
- g) Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site.
- h) Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- i) Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- j) Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the street, gutter, stormdrains.
- k) All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB).
- l) All erosion and sedimentation control measures shall be monitored regularly by the project applicant. The City may require erosion and sedimentation control measures to be inspected by a qualified environmental consultant (paid for by the project applicant) during or after rain events. If measures are insufficient to control sedimentation and erosion then the project applicant shall develop and implement additional and more effective measures immediately

31. Vegetation Management Plan on Creekside Properties

<http://www.oaklandnet.com/wildfirePrevention/DosandDonts.pdf>

Prior to issuance of a demolition, grading, and/or construction and Ongoing

The project applicant shall submit a vegetation management plan for review and approval by the Planning and Zoning Division, Fire Services Division, and Environmental Services Division of the Public Works Agency that includes, if deemed appropriate, the following measures:

- a) Identify and do not disturb a 20-foot creek buffer from the top of the creek bank. If the top of bank cannot be identified, leave a 50-foot buffer from the centerline of the creek or as wide a buffer as possible between the creek centerline and the proposed site development.
- b) Identify and leave "islands" of vegetation in order to prevent erosion and landslides and protect nesting habitat.
- c) Leave at least 6 inches of vegetation on the site.
- d) Trim tree branches from the ground up (limbing up) and leave tree canopy intact.
- e) Leave stumps and roots from cut down trees to prevent erosion.
- f) Plant fire-appropriate, drought-tolerant, preferably native vegetation.
- g) Err on the side of caution. If you don't know if a plant, tree or area is sensitive, ask for a second opinion before you cut.
- h) Provide erosion and sediment control protection if cutting vegetation on a steep slope.
- i) Leave tall shrubbery at least 3-feet high.
- j) Fence off sensitive plant habitats and creek areas to protect from goat grazing.
- k) Obtain a tree protection permit for a protected tree (includes all mature trees except eucalyptus and Monterey pine).
- l) Contact the City Tree Department (615-5850) for dead trees.
- m) Do not clear-cut vegetation. This can lead to erosion and severe water quality problems and destroy important habitat.
- n) Do not remove vegetation within 20-feet of the top of bank. If the top of bank cannot be identified, do not cut within 50-feet of the centerline of the creek or as wide a buffer as possible between the creek centerline and the proposed site development.
- o) Do not trim/prune branches that are larger than 4 inches in diameter.
- p) Do not remove tree canopy.
- q) Do not dump cut vegetation in a creek.
- r) Do not cut tall shrubbery to less than 3-feet high.
- s) Do not cut off short vegetation (grasses, ground-cover) to less than 6-inches high.

32. Creek Protection Plan

<http://www.oaklandpw.com/creeks>

Prior to and ongoing throughout demolition, grading, and/or construction activities

- a) The approved creek protection plan shall be included in the project drawings submitted for a building permit (or other construction-related permit). The project applicant shall implement the creek protection plan to minimize potential impacts to the creek during and after construction of the project. The plan shall fully describe in plan and written form all erosion, sediment, stormwater, and construction management measures to be implemented on-site.
- b) If the plan includes a stormwater system, all stormwater outfalls shall include energy dissipation that slows the velocity of the water at the point of outflow to maximize infiltration and minimize erosion. The project shall not result in a substantial increase in stormwater runoff volume or velocity to the creek or storm drains.

33. Regulatory Permits and Authorizations

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

Prior to construction within the vicinity of the creek, the project applicant shall obtain all necessary regulatory permits and authorizations from the U.S. Army Corps of Engineers (Corps), Regional Water Quality Control Board (RWQCB), California Department of Fish and Game, and the City of Oakland, and shall comply with all conditions issued by applicable agencies. Required permit approvals and certifications may include, but not be limited to the following:

- a) U.S. Army Corps of Engineers (Corps): Section 404. Permit approval from the Corps shall be obtained for the placement of dredge or fill material in Waters of the U.S., if any, within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act.
- b) Regional Water Quality Control Board (RWQCB): Section 401 Water Quality Certification. Certification that the project will not violate state water quality standards is required before the Corps can issue a 404 permit, above.
- c) California Department of Fish and Game (CDFG): Section 1602 Lake and Streambed Alteration Agreement. Work that will alter the bed or bank of a stream requires authorization from CDFG.

34. Creek Monitoring

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

A qualified geotechnical engineer and/or environmental consultant shall be retained and paid for by the project applicant to make site visits during all grading activities; and as a follow-up, submit to the Building Services Division a letter certifying that the erosion and sedimentation control measures set forth in the Creek Protection Permit submittal material have been instituted during the grading activities.

35. Creek Landscaping Plan

Prior to issuance of a demolition, grading, or building permit within vicinity of the creek

The project applicant shall develop a final detailed landscaping and irrigation plan for review and approval by the Planning and Zoning Division prepared by a licensed landscape architect or other qualified person. Such a plan shall include a planting schedule, detailing plant types and locations, and a system for temporary irrigation of plantings.

- a) Plant and maintain only drought-tolerant plants on the site where appropriate as well as native and riparian plants in and adjacent to riparian corridors. Along the riparian corridor, native plants shall not be disturbed to the maximum extent feasible. Any areas disturbed along the riparian corridor shall be replanted with mature native riparian vegetation and be maintained to ensure survival.
- b) All landscaping indicated on the approved landscape plan shall be installed prior to the issuance of a Final inspection of the building permit, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code.
- c) All landscaping areas shown on the approved plans shall be maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All paving or impervious surfaces shall occur only on approved areas.

36. Source Control Measures to Limit Stormwater Pollution

Prior to issuance of building permit (or other construction-related permit)

The applicant shall implement and maintain all structural source control measures imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

Ongoing

The applicant, or his or her successor, shall implement all operational Best Management Practices (BMPs) imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

37. Stormwater and Sewer

Prior to completing the final design for the project's sewer service

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

38. Compliance with the Green Building Ordinance, OMC Chapter 18.02

Prior to issuance of a demolition, grading, or building permit

The applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, OMC Chapter 18.02.

- a) The following information shall be submitted to the Building Services Division for review and approval with the application for a building permit:
 - i. Documentation showing compliance with Title 24 of the 2008 California Building Energy Efficiency Standards.
 - ii. Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.
 - iii. Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.
 - iv. Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (b) below.
 - v. Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance.
 - vi. Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.
 - vii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.
- b) The set of plans in subsection (a) shall demonstrate compliance with the following:
 - i. CALGreen mandatory measures.

- ii. All pre-requisites per the GreenPoint Rated checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of the Planning and Zoning permit.
- iii. **Minimum green building point level/certification requirement: 50 points (30 Energy; 5 IAQ/Health; 6 Resources; 9 Water)** per the appropriate checklist approved during the Planning entitlement process.
- iv. All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Planning and Zoning Division that shows the previously approved points that will be eliminated or substituted.
- v. The required green building point minimums in the appropriate credit categories.

During construction

The applicant shall comply with the applicable requirements CALGreen and the Green Building Ordinance, Chapter 18.02.

- a) The following information shall be submitted to the Building Inspections Division of the Building Services Division for review and approval:
 - i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.
 - ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.
 - iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

After construction, as specified below

Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to Build It Green and attain the minimum certification/point level identified in subsection (a) above. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Planning and Zoning Division the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above.

PROJECT SPECIFIC CONDITIONS:

39. Dissipation Design Supporting Documentation

Prior to issuance of a demolition, grading, or building permit

Applicant shall verify that the rate of flow through the dissipater and volume of water through the proposed dissipation area can be adequately handled by the proposed design and that the rate of flow through the proposed landscaping will ensure that erosion or other instability will not result. If necessary, the design, i.e. dimensions, materials, location, shall be revised to achieve these criteria, based on engineering analysis and supporting calculations. The updated/revised design shall be submitted for review and approval by the City prior to permit issuance.

40. Recordation of Notice of Limitations of Use on Property

Prior to issuance of a demolition, grading, or building permit

The applicant shall file and record a Notice of Limitations of Use of Property with the County of Alameda that shall prohibit the use of the lower level bonus floor area to be converted or used as a second or secondary dwelling unit unless prior review and approval is granted by the Bureau of Planning, Zoning Division.

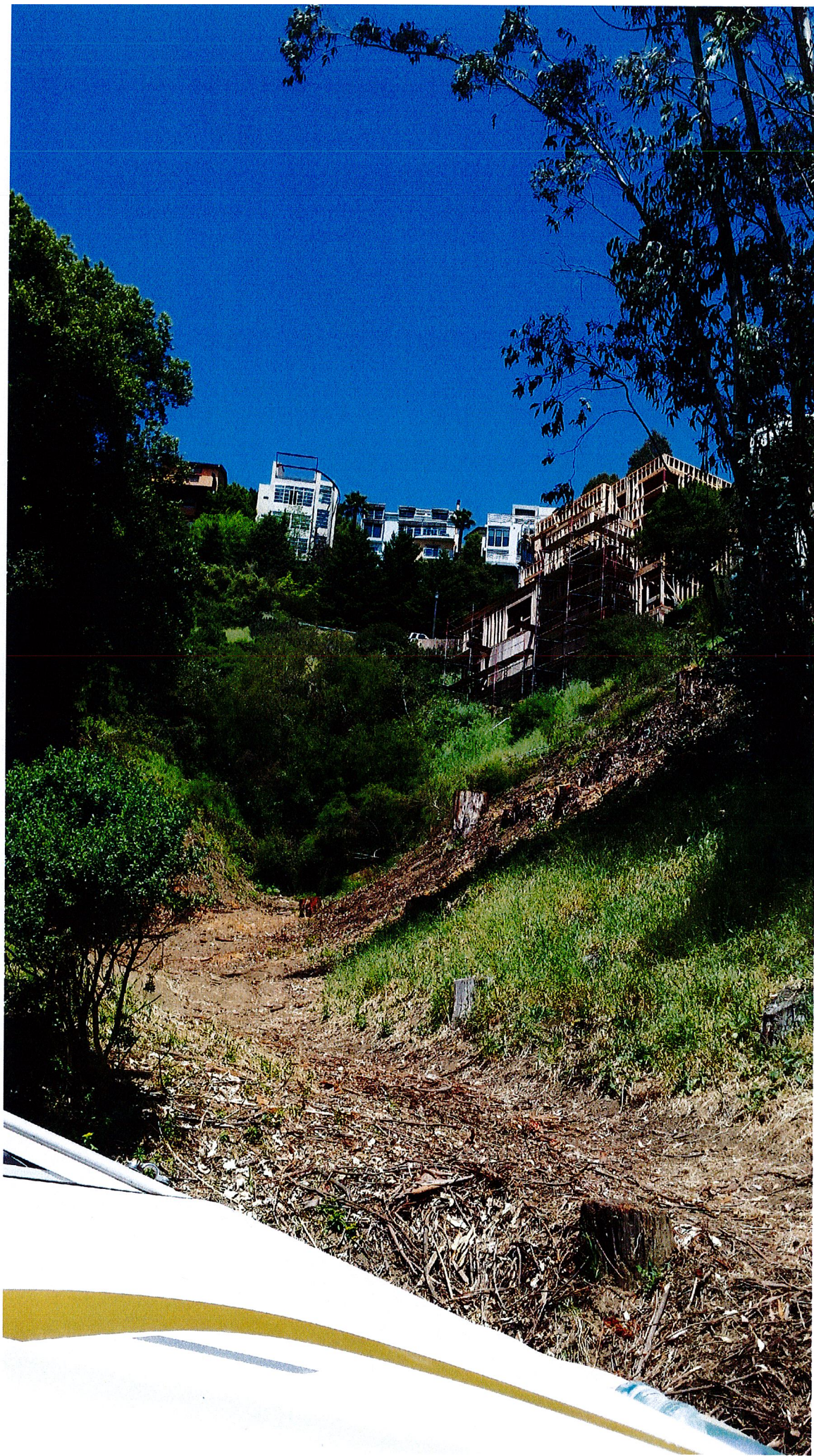
Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by the Zoning Manager action on _____. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant/Developer:

_____ (date)







ATTACHMENTS

- A. Appeal of Creek Determination, May 18, 2016
- B. Guide to Oakland's Creek Ordinance
- C. Creek Determination, CDET 16004, May 9, 2016

Attachment A



CITY OF OAKLAND

APPEAL FORM

FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: CDET #16004
Project Address of Appealed Project: Two properties at 0 Gravatt Dr. (APNs 048H-7606-064 & 065)
Assigned Case Planner/City Staff: Lesley Estes / Caesar Quitevis

APPELLANT INFORMATION:

Printed Name: Steve Anderson Phone Number: 510.420.8698
Mailing Address: 6363 Christie Ave., #1916 Alternate Contact Number:
City/Zip Code Emeryville / 94608 Representing: DFI Properties, LLC
Email: steve@dfifunding.com

An appeal is hereby submitted on:

[X] AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
Denying an application for an Administrative Decision
[X] Administrative Determination or Interpretation by the Zoning Administrator
Other (please specify)

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
Determination of General Plan Conformity (OPC Sec. 17.01.080)
Design Review (OPC Sec. 17.136.080)
Small Project Design Review (OPC Sec. 17.136.130)
Minor Conditional Use Permit (OPC Sec. 17.134.060)
Minor Variance (OPC Sec. 17.148.060)
Tentative Parcel Map (OMC Section 16.304.100)
Certain Environmental Determinations (OPC Sec. 17.158.220)
Creek Protection Permit (OMC Sec. 13.16.450)
[X] Creek Determination (OMC Sec. 13.16.460)
City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
Other (please specify) Note: The OMC appears to provide that Creek Determinations are applicable

under Section 13.16.450, and not Section 13.16.460.

(Continued on reverse)

(Continued)

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

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

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

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

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

Please see the attached letter of appeal from Miller Starr Regalia and its exhibits,

 which are incorporated herein by reference.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)



Signature of Appellant or Representative of
Appealing Organization

5/18/16

Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

.....
Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:



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May 18, 2016

VIA E-MAIL AND MESSENGER

Chairman Jim Moore and Members of the
Oakland Planning Commission
c/o Robert D. Merkamp, Planning Commission
Secretary
City of Oakland
250 Frank H. Ogawa Plaza, Ste. 3315
Oakland, CA 94612
E-Mail: rmerkamp@oaklandnet.com

Re: Appeal of Creek Determination (CDET#16004) of Two Properties at
0 Gravatt Drive (APN #048H-7606-064 and APN #048H-7606-065)

Dear Chairman Moore and Members of the Planning Commission:

Miller Starr Regalia represents DFI Properties, LLC ("DFI") in its appeal of a Creek Determination (CDET#16004) that the City of Oakland Public Works Department ("Department") made with respect to property owned by DFI along Gravatt Drive in the Claremont Hills neighborhood. This appeal is filed pursuant to Oakland Municipal Code section 13.16.450 and all other applicable law.

DFI is the owner of the two lots that are the subject of the Creek Determination and this appeal (i.e., APN #048H-7606-064 and APN #048H-7606-065, referred to herein as the "Property"). On May 9, 2016, the Department determined that a drainage ditch on the Property qualified as a creek, as defined by local law. This Creek Determination is attached hereto as **Exhibit A**.

DFI appeals the Creek Determination on the following bases:

- The Department used the wrong criteria in determining whether a creek existed on the Property.
- The Department erroneously determined that the drainage ditch on the Property is hydrologically connected to a waterway above and below the Property.
- The Department erroneously determined that the Property is located at the top of a watershed in watershed headwaters.

- The Department erroneously determined that the drainage ditch on the Property and the surrounding upland habitat have the proper topography of a creek.
- The drainage ditch is not a natural or engineered watercourse but a storm attenuation feature and, for that reason alone, it does not qualify as a creek.
- The Creek Determination is conclusory and unsupported by substantial evidence.

The foregoing errors and abuses of discretion are described in more detail below.

I. **Background.**

DFI is a small business that seeks to develop the Property with single family homes. In addition to the Property, the company is developing a single family home at 540 Gravatt Drive (the lot next door), which has been designed by an award-winning local architect, Robert Nebolon, and will be featured as the “2016 Idea House” later this year in Sunset Magazine.¹

The Property, located in the Claremont Hills neighborhood, is characterized by steep slopes, and its boundaries are roughly depicted in **Figures 1 & 2**, below:



¹ See <http://www.sunset.com/home/idea-houses/berkeley-hills-idea-house>.

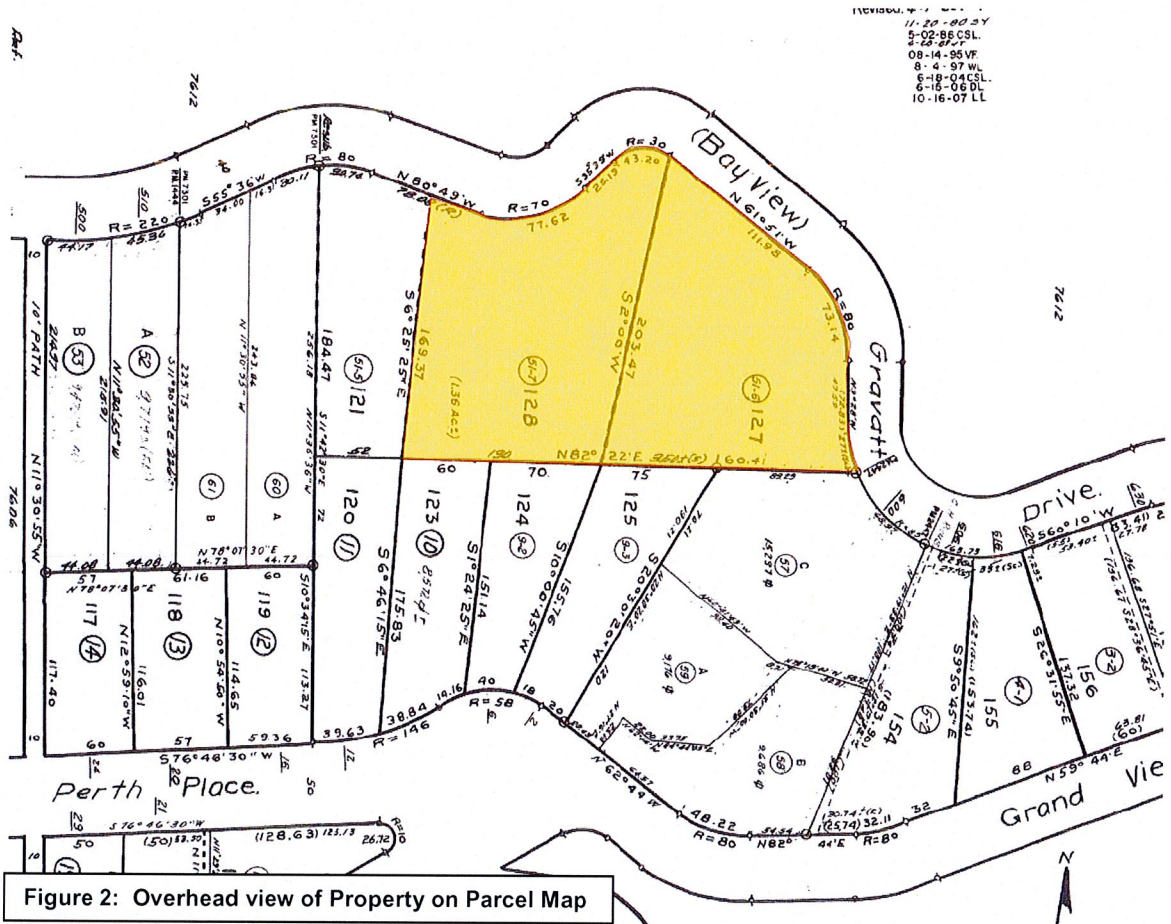


Figure 2: Overhead view of Property on Parcel Map

The Property's hydrology is not especially complicated.

At issue is a drainage channel that, on occasion, carries stormwaters for a distance of about 200 feet, starting near the lip of Gravatt Drive and ending at a stand of red willow trees located on a parcel adjacent to the Property. This channel is depicted in **Figure 3**, below. This figure, and an accompanying hydrology report, were prepared by the environmental firm BLUE Consulting Group; the hydrology report is attached hereto as **Exhibit B**.



To simplify matters, it is best to consider the area's hydrology in stages, starting with how stormwaters flow into the Property from uphill locations.

The Property is located near the top of a ridge and, after rainstorms, ephemeral stormwater "sheet-flows"² off of the surrounding uplands and impermeable surfaces — including the street, driveways, and residences/rain gutters — and collects on Gravatt Drive. (See **Figure 1** [water tower above Property is at ridgeline]; see **Figure 3** [showing water flow on roadway]). Once collected on the roadway, water travels west until it reaches a bend in Gravatt Drive near the northern boundary of the Property, where the City has constructed a stormwater catchment system. This system collects street waters and transports them underground through a corrugated metal pipe to the Property. (See **Figure 4** [photo of the stormwater inlet]; **Figure 3** [location on map of stormwater inlet and pipe].) Please note, there is no spring, seep, creek, or natural headwater that has been observed or recorded upstream of the Property. (**Exhibit B**, p. 5.)



Figure 4

The corrugated metal pipe deposits the collected stormwater flows approximately 15 feet south of the shoulder of Gravatt Drive, and is the only way by which any waters flow onto the Property. There is no evidence of flow, hydric soils, or hydrophytic plant species observed in the area above (i.e., north of) the pipe. (**Exhibit B**, p. 5.) Once on the Property, stormwaters follow a "narrow, deep and unvegetated erosive cut through ... disturbed upland habitat." (*Id.*) This habitat is comprised of weedy vegetation growing on compacted, plowed, or otherwise disturbed ground. (*Id.*) There is no engineered channel or culvert, contrary to what the Creek Determination indicates. (See **Exhibit A**, p. 1.)

The erosive cut in the soil descends through the Property for about 175 feet, and continues for about another 25 feet onto an adjacent parcel to the south, where it terminates. (**Exhibit B**, p. 6.) More

specifically, the eroded channel terminates on a slope-bench (i.e., a graded, flat area that effectively terraces the slope), where a cluster of red willow trees have grown. There is no evidence that stormwaters have, either recently or historically,

²A "sheet-flow" is an overland flow or downslope movement of water taking the form of a thin, continuous film over relatively smooth soil or rock surfaces and not concentrated into channels larger than rills.

continued past the red willow trees (e.g., onto Perth Place, a roadway below the Property). Furthermore, there is no stormwater infrastructure (e.g. inlets or culverts) within Perth Place that would indicate that stormwater flows have continued, or were intended to continue, offsite and onto this roadway. (*Id.*; see also **Exhibit B**, photographs 3 and 4 [photos of land and vegetation between red willows and Perth Place, showing absence of erosive cuts in the land].) The study area as a whole (which includes the Property and the adjacent parcel to the south) effectively functions as a detention basin that artificially supports (hydrologically) the presence of willow trees in a natural upland environment.

Previous to the City's recent Creek Determination, the Property was "not previously flagged as Creekside" in City databases. (**Exhibit A**, p. 1, ¶ 1.)

On February 16, 2016, City staff apparently conducted an investigation and site visit. (*Id.*) On May 9, 2016, the City issued the Creek Determination letter, but did not attach any evidence corroborating the conclusions set forth in its letter. (See, generally, **Exhibit A**.)

II. **The Creek Determination Misidentified, and Otherwise Misapplied, the City's Creek Criteria, as Set Forth in Local Ordinance and Guides.**

The City has established a lengthy and detailed list of criteria by which City staff must make Creek Determinations. Under the municipal code, a "creek" means "a watercourse that is a naturally occurring swale or depression, or engineered channel which carries fresh or estuarine water either seasonally or year round within the city boundaries, as identified in [City maps] and/or any area identified through a field investigation by the Environmental Services Manager as meeting the above criteria." (OMC, § 13.16.030.A.) In an apparent effort to ensure that creek determinations are not made arbitrarily, the City has adopted a "Guide to Oakland's Creek Protection Ordinance," referred to hereafter as the "Guide."

The Guide provides that "[a] creek **must** include **all** of the following three features: (1) hydrologic connectivity, (2) presence of channel form, **and** (3) topographic position. A creek begins at the first point at which these features are met." (Guide, p. 2 [emph. original].)

Because the Guide has addressed creek determinations in a meticulous, systematic way, this letter of appeal will endeavor to follow the City's framework.

A. ***The Drainage Ditch on the Property Does Not Have Hydrologic Connectivity.***

1. *A creek must have hydrologic connectivity.*

Under the City's first criterion, a creek must be "hydrologically connected to a waterway above and below the site," or be "connected to a spring, headwaters, lake, the Estuary, or the Bay." (Guide, p. 2.)

The Guide clarifies that "if **any** of the following conditions are present, the hydrological connectivity requirement is generally met:

- Creek headwaters, springs, storm drain culverts, underground seepage, or groundwater flow are considered connectivity. Sections above and/or below this connectivity are creeks if they meet the other required features (i.e., a creek flowing through a culvert is a creek both above and below the culvert.)
- Creeks may be connected across or over manmade improvements such as roads. When flowing across or over such improvements within the public right-of-way, other than creek channel improvements, it is not considered a creek. Sections above and/or below this connectivity are creeks if they meet the other required features."

(Guide, p. 2.) As explained below, the drainage ditch on the Property does not meet the foregoing conditions.

2. *The drainage ditch does not connect to qualifying waterways above or below the Property.*

The Creek Determination found that the drainage ditch "is part of a contiguous waterway, and is hydrologically connected to the waterway above or below the property." (**Exhibit A**, p. 1 [Reason 1].) It further found that the Property is "located at the top of [sic] watershed in watershed headwaters." (**Exhibit A**, p. 1 [Reason 2].)

As a threshold matter, it appears that City staff used the wrong criterion to evaluate the Drainage Ditch. The Guide indicates that a creek must be connected to waterways "above **and** below the site," or connected to a spring, headwaters, lake, estuary, or bay. (Guide, p. 2 [emph. added].) Therefore, insofar as the drainage ditch is severed from either an upstream or downstream waterway, it is not, according to the Guide, a creek.

Regardless, the drainage ditch here is not connected to any other qualifying waterway above or below the Property.

Above the Property, there are no springs, seeps, natural headwater sources, or any water channels that would qualify as a creek. (See **Exhibit B**, p. 5.) The stormwaters entering the Property are comprised wholly of sheet runoff from uphill residential properties and open space, which collects on Gravatt Drive. (See *id.*) This street stormwater then is captured by an inlet on the roadway, and travels underground to the Property through a corrugated metal pipe. (See *id.*)

Under the City's creek determination framework, this corrugated metal pipe would qualify as "connectivity" if the pipe connected to an uphill creek. (See Guide, p. 2.) But, as explained above, uphill waters consist wholly of sheet runoff and street stormwaters, and do not meet the City's creek criteria.

Once on the Property, the drainage waters continue through an eroded channel and terminate on the Property at a stand of red willows located on an adjacent parcel to the south. (See **Exhibit B**, p. 6.) The water collects on a slope-bench, and does not travel further downslope onto the nearest roadway, Perth Place, or into the nearest creek (Vicente Creek, which is below Perth Place and roughly follows along the southside of Grandview Drive).

In summary, waters draining through the upland portion of the Claremont Hills above the Project site are not creeks, but unchanneled runoff. These stormwaters collect on Gravatt Drive and drain onto the Property through a metal pipe. The stormwaters then follow an eroded channel for about 200 feet to a stand of red willow trees, and do not exit this area, much less connect to a creek. Because the eroded channel on the Property is not "hydrologically connected to a waterway above and below the site," or otherwise "connected to a spring, headwaters, lake, the Estuary, or the Bay," it does not meet the first creek criterion. (See Guide, p. 2.) Because a creek must meet all three of the criteria set forth in the Guide, the ditch's lack of hydrologic connectivity alone disqualifies it from being listed by the City as a creek.

B. *The Drainage Ditch on the Property Does Not Have A Proper Topographic Position.*

1. *To qualify as a creek, there must be a "U" or "V" shape channel in specified locations.*

The Guide also provides that creeks must occupy a specific topographic position, and establishes "Clarification Criteria" as follows:

"If any of the following conditions are present, the hydrological connectivity requirement is generally met:

- Micro-topography such as a 'U' shape or 'V' shape channel typically located at the low point of a macro-topographic feature.

- Macro-topography consists of bowl, 'U', or 'V' shaped topography with high points draining to a valley or ravine as part of a large drainage network leading to large creeks, lakes, the Estuary and/or the Bay.
- Flatland macro-topography may consist of shallow bowl or 'U' shaped topography. Generally these creeks flow from the hills toward the Estuary and Bay following the slope of the land.
- Creek topography can be indicated on a topography map by a 'U' or 'V' shape pointed in the uphill direction."

(Guide, p. 3.)

2. *The drainage ditch on the Property does not assume the proper "U" or "V" shape.*

The Creek Determination found that the drainage ditch on the Property has an "appropriate 'U' or 'V' shaped topography." (**Exhibit A**, p. 1 [Reason 4].)

Indeed, the drainage ditch does assume a "U" or "V" shape at portions of its alignment on the property, but the ditch does not meet the City's topographic criterion for two reasons:

- In terms of macro-topography, the Property does not, as required, drain to a valley or ravine as part of a large drainage network leading to large creeks, lakes, the Estuary and/or the Bay. As explained in Section II.A of this appeal, the eroded channel on the Property does not connect to any downstream creeks, lakes, or other designated waterways.
- In terms of micro-topography, there is no "U" shape or "V" shape channel located at the low point of a macro-topographic feature. The drainage ditch ends on a flat slope-bench where red willow trees have grown. Even if one considers the entire slope from Gravatt Drive to Perth Place as the appropriate "macro-topographic feature," there is no "U" or "V" shape channel carved into the slope between the red willow trees and Perth Place. (See **Exhibit B**, photograph 4; see *a/so* Guide, p. 4 [A creek "is wholly different from a swale, hollow, or depression"].)

For each of the above reasons, the eroded channel on the Property does not occupy a qualifying topographic position. (See Guide, p. 3.) Because a creek must meet all three of the criteria set forth in the Guide, the failure of the drainage ditch to satisfy the City's topographic criterion disqualifies the ditch from being listed by the City as a creek.

C. ***The “Additional Creek Conditions” Noted in the Creek Determination Do Not Transform the Drainage Ditch into a Creek.***

The Creek Determination indicates that additional creek conditions were found on the Property, including: (1) a riparian corridor; (2) a creek channel with bed material differing from surrounding materials; and (3) man-made structures common to waterways. (**Exhibit A**, p. 1.)

The presence or absence of these features is not determinative of whether a creek exists, but rather operates “[t]o help with screening and identification in the field of a creek.” (Guide, p. 3.) While the absence of such features does not preclude a determination that a waterway is a creek, the presence of these features does not override the Guide’s clear statement that “[a] creek **must** include **all** of the following three features: (1) hydrologic connectivity, (2) presence of channel form, **and** (3) topographic position. A creek begins at the first point at which these features are met.” (Guide, p. 2 [emph. original].)

Accordingly, if a ditch does not satisfy any one of the foregoing three criteria, the presence of “additional features” does not override the calculus and establish a creek.

III. **The Drainage Ditch is Not a Naturally Occurring or Engineered Channel, but a Stormwater Attenuation Feature, and Thus is Specifically Excluded from the Definition of a Creek.**

A. ***The City defines the word “creek” in the municipal code and Guide as a naturally occurring or engineered channel.***

Under the municipal code, a “creek” means “a watercourse that is a naturally occurring swale or depression, or engineered channel which carries fresh or estuarine water either seasonally or year round within the city boundaries” (OMC, § 13.16.030.A.) The Guide further provides that “[a] natural watercourse includes all channels through which, in the existing condition of the country, the water naturally flows, and may include new channels created in the course of urban development through which waters presently flow.” (Guide, p. 4.)

The definition of a creek “generally excludes ... biofiltration swales, faux creeks, *detention basins*, mosquito ditches, or *stormwater attenuation features*.” (Guide, p. 4 [emph. added].)

B. ***The drainage channel on the Property does not meet the foregoing definition for a number of reasons.***

As discussed above, stormwaters that enter the Property through the corrugated metal pipe then travel down a drainage ditch for approximately 200 feet and, ultimately, collect on a slope-bench where a stand of red willows have grown. This

man-made system — the street inlet, pipe, and slope-bench — function together with the channel as a detention basin or storm attenuation feature. (See Guide, p. 4.) This system never was intended to divert water further downhill. For instance, the roadway that sits at the base of the slope, Perth Place, contains no stormwater infrastructure within its alignment (e.g., inlets or culverts) that would indicate stormwaters were intended to flow to this roadway.

But for the City's stormwater infrastructure on Gravatt Drive, the channel would not exist. There is nothing natural about it, and it is expressly excluded from being qualified as a creek by the Guide. (But note that, even if the drainage channel did qualify as a "natural" waterway, or did not fall within one of the listed exclusions, it still would not qualify as a "creek" for the reasons listed in Section II of this appeal letter.)

IV. The Creek Determination is Unsupported by Substantial Evidence.

The Creek Determination must be supported by substantial evidence. In this case, the Creek Determination is supported by no evidence whatsoever, but rather consists of a number of conclusory opinions.

On May 12 and 16, 2016, Miller Starr Regalia submitted Public Records Act requests asking for evidence to support the City's determination. (Public Records Act Requests ##15404, 15405, 15480.) To date, Miller Starr Regalia has received no response. We therefore reserve right to submit additional materials if City staff create or produce evidence between the submission of this appeal and any public hearing that the City schedules to hear this matter.

V. Conclusion

Per the City's regulatory framework, a "creek begins at the first point at which" three features are present: (1) hydrologic connectivity, (2) presence of a channel form, and (3) topographic position. (Guide, p. 2.) The drainage channel on the Property fails to meet two of these three necessary criteria — i.e., this channel does not connect to any creeks uphill or downhill, and the channel does not have the proper "U" or "V" shape in critical locations. Rather, the drainage ditch on the Property is an isolated, 200-foot long erosive cut that, infrequently, accomodates street stormwater.

Separately and independently, the drainage channel on the Property, together with the Gravatte Drive inlet, the corrugated metal pipe, and the bench-slope, function as a detention basin/storm attenuation feature, and never were intended to convey water to downhill locations. For this reason alone, the drainage channel does not fall within the City's definition of a "creek."

Accordingly, we respectfully request that the Planning Commission determine that there is no creek on the property, and reverse the Creek Determination.

Sincerely,

MILLER STARR REGALIA



Sean R. Marciniak

SRM:srm

Encls.

cc: Lesley Estes, Watershed Program Supervisor, Public Works Department
Scott Miller, Planning, Building, and Neighborhood Services
Caesar Quitevis, Planning, Building, and Neighborhood Services
David Harlan, Planning, Building, and Neighborhood Services
Kristin Hathaway, Public Works Department, Watershed and Stormwater
Management
Anthony M. Leones, Esq., Miller Starr Regalia
Steve Anderson, DFI Funding, LLC
Michael K. Jefferson, President and Senior Biologist, BLUE Consulting Group

CITY OF OAKLAND



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Oakland Public Works Department (510) 238-3171
Bureau of Engineering & Construction – Watershed and Stormwater Management FAX (510) 238-2245
TDD (510) 238-7644

May 9, 2016

Steve Anderson, President
DFI Properties, LLC
6363 Christie Avenue #1916
Emeryville, CA 94608

**RE: Creek Determination (CDET#16004) of Two Properties at 0 Gravatt Drive
(APN #048H-7606-064 and APN #048H-7606-065)**

Dear Mr. Anderson,

Per your request on February 16, 2016, Watershed and Stormwater Management staff conducted an investigation and site visit, on May 2, 2016, to determine whether these properties are Creekside properties. These properties were not previously flagged as Creekside in the City of Oakland Planning, Building, and Neighborhood Services ACCELA Database. The Watershed and Stormwater Management determination is that:

This property IS a Creekside property.

Comments:

The channel is determined a creek for the following reasons:

1. The channel is part of a contiguous waterway, and is hydrologically connected to the waterway above or below the property
2. The subject properties are located at the top of watershed in watershed headwaters
3. The waterway has a defined bed, bank, and signs of scour
4. **There is appropriate “U” or “V” shaped topography on the properties**

Though not required, the following additional creek conditions were found:

- A riparian corridor: a line of denser riparian native vegetation
- The creek channel has a bed with material that differs from the surrounding material (i.e. more rocky, or gravelly, little or no vegetation)
- There are man-made structures common to waterways (e.g. storm drain inlets and culverts)

If it is believed that this determination was made in error, an appeal in accordance with Section 13.16.450 of the Oakland Municipal Code must be filed within ten (10) calendar days of the date of this written decision. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Watershed and Stormwater Management Manager, or wherein his/her decision is not supported by substantial evidence in the record. Appellants must submit a Appeal to the Planning Commission form (available at the 2nd floor planning counter in the Dalziel Building, 250 Frank Ogawa Plaza), all supporting materials, and a copy of the receipt of payment to the Planning Counter on the 2nd floor in the Dalziel Building, no later than 4:00pm on the 10th day after this written decision.

If you have any questions regarding this determination, contact Craig Pon at (510) 238-6544 or cpon@oaklandnet.com.

Sincerely,



Lesley Estes
Watershed Program Supervisor

Attachments:

Guide to Oakland's Creek Ordinance

Alameda Countywide Clean Water Program BMP's

Fresh Concrete and Mortar

Roadwork and Paving

Heavy Equipment Operation

Painting and Solvents and Adhesives

General Construction and Site Supervision

Native Plant Species Common to Oakland's Creeks

Using Plants to Stabilize Stream Banks

CC:

Scott Miller, Planning, Building, and Neighborhood Services

Caesar Quitevis, Planning, Building, and Neighborhood Services

David Harlan, Planning, Building, and Neighborhood Services

Kristin Hathaway, Public Works Department, Watershed and Stormwater Management

BLUE CONSULTING GROUP

BIOLOGY - LAND USE & - ENTITLEMENTS



May 17, 2016

Steve Anderson
President, DFI Funding
4120 Douglas Blvd. #306
Granite Bay, CA 95746

Subject: Creek Assessment Letter Report; Gravatt Property, City of Oakland, California

Mr. Anderson:

This letter report documents the results of the completed Creek Assessment as defined by the City of Oakland. The field survey and this letter report have been prepared by BLUE Consulting Group (BLUE) senior biologist Michael Jefferson, a qualified wetland and creek delineator. No Creek, as defined by the City of Oakland's Creek Protection Ordinance (OMCC 13.16), was identified on or off-site (no upstream or down stream flow line) during the November 4th, 2014 onsite Creek Assessment.

INTRODUCTION

The Gravatt Drive property is located immediately south of Gravatt Drive and north of the intersection of Grand View Drive and Perth Place in the City of Oakland, in Alameda County, California. The Gravatt property survey **area encompasses five Alameda County assessor's parcel numbers (APNs): 48H-7606-63, 48H-7606-64, 48H-7606-65, 48H-7606-9-3, and 48H-7606-9-2**, totaling approximately 1.2 acres in the incorporated City of Oakland, California.

For the purpose of this Creek Assessment, the study area includes the aforementioned five parcels as well as a buffer area of approximately 200 feet. The study area is bordered by the improved roadway Gravatt Drive to the north, improved roadway Perth Place to the south and is generally surrounded by residential developments. Gravatt Drive supports stormwater attenuation infrastructure comprised of inlets within the roadway (to collect the stormwater from the paved surfaces), detention structures (adjacent to the roadway, onsite), and an outlet pipe. Directly above the property (to the north) is a water tower with pipes extending down a maintained grassland slope to intersect Gravatt Drive.

The study area is situated on Township 01 South, Range 03W, Section 07 of the Oakland East U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle (quad), Mount Diablo Meridian (USGS, 1980). The centroid of the study area is **122° 13' 55.85" North, 37° 51' 36.46" West**.

The Gravatt property can be accessed via California State Freeway 24 West (CA-24 W) in the City of Oakland. From CA-24, take the exit toward Old Tunnel Road, continue on Broadway, take Caldecott Ln, Tunnel Rd, Vicente Rd, and Grand View Dr. to Gravatt Dr.

METHODOLOGY

All areas within the Property and surrounding area were assessed on November 4th, 2014 by Senior biologist and wetland specialist, Michael Jefferson.

Potential Creek features were all identified and investigated to determine whether they met the criteria of a City of Oakland (City) Creek. All features meeting the City guidance criteria were identified. The assessment was conducted during the fall (November). The region received no significant rainfall within the last week before the assessment was conducted. Rainfall patterns were not atypical for that time frame of the surveys.

Delineated boundaries of all features identified within the study area were recorded using a 1" =100' aerial photograph.

Prior to conducting the field delineation, the following information sources were reviewed:

- Oakland East quad and topographical maps (USGS, 1980; CNDDDB, 2007);
- Color aerial photography of the study area and vicinity (Google Earth, 2014);
- Soil survey maps and unit descriptions (NRCS, 2014a);
- Hydric soil information (NRCS, 2014b); and
- U.S. Fish and Wildlife Service (USFWS) Wetlands Online Mapper (USFWS, 2014).

SUMMARY OF CREEK REGULATIONS

Wetlands may be regulated by several different agencies or jurisdictions with several different definitions of wetlands. As a result, a particular wetland may have more than one jurisdictional boundary and/or definition.

Within the City of Oakland (OMCC 13.16), Creeks are defined as:

"...a watercourse that is a naturally occurring swale or depression or engineered channel that carries fresh or estuarine water either seasonally or year around."

And

A Natural Watercourse (in Oakland, a "Creek"):

"Is a channel with defined bed and banks made and habitually used by water passing down as a collected body or stream in those seasons of the year and at those times when the streams in the region are accustomed to flow. It is wholly different from a swale, hollow or depression through which may pass surface waters in time of storm not collected into a defined stream. A canyon or ravine through which surface water runoff customarily flows in rainy seasons is a natural watercourse. Alterations to a natural watercourse, such as the construction of conduits or other improvements in the bed of the stream, do not affect its status as a natural watercourse. A natural watercourse includes all channels through which, in the existing condition of the country, the water naturally flows and may include new channels created in the course of urban development through which waters presently flow. Once surface waters have become part of a stream in a watercourse, they are no longer recognized as surface waters." (Guide to Oakland's Creek Protection Ordinance, p. 4.)

Required Physical Features of a Creek

A creek must include *all* of the following three features: (1) hydrologic connectivity, (2) presence of channel form and (3) topographic position. A creek begins at the first point at which these features are met.

1. **Hydrologic Connectivity:** The creek is part of a contiguous waterway. It is hydrologically connected to a waterway above and below the site or is connected to a spring, headwaters, lake, the Estuary, or the Bay.
2. **Channel Form:** There is a channel, including a bed, bank, and features that indicate actual or potential sediment movement.
3. **Topographic Position:** Creeks must occupy a specific topographic position.

General Creek Functional Guidelines

The following are typical functions of creeks in Oakland. These functions act as general guidelines to be used in creek determinations:

- Carries fresh or estuarine water either seasonally or year round
- Supports native riparian, wetland, and/or aquatic habitats
- Maintains channel form (which includes bed and bank)
- Provides flood control and storm drainage
- Removes pollutants and improves water quality
- Transports, stores, and/or sorts sediment
- Maintains stable flow regime, including water transport, detention, and/or infiltration
- Provides community and aesthetic value

Exclusions

The definition of creeks generally excludes the following conditions or features, although these conditions may represent hydrologic connectivity for an upstream and/or downstream creek.

- The following structures (while the structures themselves are not considered creeks, the presence of these structures does not preclude the determination of a creek):
 - Improved roads
 - Rain gutter gullies fed only by the rain gutters of a building or other roof runoff
 - Curb/gutter, pipes, culverts, fully enclosed storm sewers, inlets, and catch basins
- Bio-filtration swales, faux creeks, detention basins, mosquito ditches or stormwater attenuation features that were not intended to function as a creek or wetland, and/or were not installed as mitigation for creek or wetland disturbance.

ENVIRONMENTAL SETTING

Precipitation

The Union City – San Francisco Bay (Station #171) climate data obtained from a station approximately 26 miles southeast of the Gravatt property in Alameda County documented an average total annual precipitation of 9.2

inches for the November 2013 to October 2014 water year (CIMIS, 2014). The Richmond, California Station (047414) monthly record climate data recorded an average total annual precipitation of 23.14 inches from December 1, 1950 to March 31, 2013 (WRCC, 2014). Therefore, the average precipitation obtained for the 2013 through 2014 water year is approximately 40 percent of the average total annual precipitation documented over the last 63 years. No rain events had been recorded for the site for a minimum of five days prior to the survey.

Soil Types

One soil types occur in the study area. **Table 1** identifies the soil type by series, map symbols, and hydric characteristics. The soil description is discussed below.

TABLE 1
MAPPED SOIL TYPES

Soil Series	Map Symbol	Hydric
Maymen loam, 30 to 75 percent slopes	126	No
Source: NRCS, 2014a and 2014b.		

Maymen loam, 30 to 75 Percent Slopes (126)

This soil type is found on the backslopes of with parent material of residuum weathered from sedimentary rock. Depth to water table is more than 80 inches. Depth to restrictive feature is 10 to 20 inches to lithic bedrock. The soil type is somewhat excessively drained with a very low capacity of the most limiting layer to transmit water. The soil profile is typically loam from 0 to 19 inches, and unweathered bedrock from 19 to 23 inches (NRCS, 2014a).

EXISTING CONDITIONS

The Gravatt Drive property survey area is composed of approximately 1.2 acres of undeveloped land, ranging in elevation from a high of approximately 895 feet Above Mean Sea Level (AMSL) in the northwest portion of the property to a low of approximately 715 feet AMSL in the southern portion of the property. Ruderal/disturbed habitat, including the manufactured slopes and infrastructure, dominated the survey area. Non-jurisdictional (not regulated by the State (CDFW) or Federal (USACOE) Agencies) willows were observed in a clump south of the center of the property; see attached Habitat and Hydrology Map and Pictures 1-4.

An isolated eroded channel was observed extending from 15 feet south of the northern property line (out of the stormwater attenuation structure outlet) and terminating within the observed cluster of willow trees (no offsite connectivity). No standing water or City defined Creek was observed in the study area.

Hydrology

The study area is located within the San Francisco Bay Watershed, USGS eighth field hydrologic unit #18050004 and is located in a region underlain by the Santa Clara Valley - East Bay Plain Groundwater Basin, which is a northwest trending flat alluvial plain that encompasses approximately 115 square miles. This groundwater basin is more than 600 feet below ground surface and is defined as the contact between unconsolidated materials and bedrock (SWRCB, 2014).

No spring, seep, or natural headwater source was observed or is recorded onsite or upslope (USGS, 2015). No engineered channel or culvert (allowing for either up or downstream flows below Gravatt to the north or Perth Place to the south) is present. The stormwater flows on Gravatt Drive are generated from rain sheet-flowing off of the surrounding upslope impermeable surfaces, including the street, driveways, and residences/rain gutters, and the surrounding upland slopes.

No evidence of flow, hydric soils or hydrophytic species were observed in the area above the offsite Gravatt Drive curb inlet (no upstream Creek) or leading off of the Property to the South, across Perth Place (no downstream connection). It is evident that all of the water within the eroded channel is a direct result of the stormwater attenuation system which collects and delivers the stormwater from the paved surface of Gravatt Drive. There are no creek headwaters, springs, storm drain culverts, underground seepage, or groundwater flow on or adjacent to the site or within Gravatt Drive. A stormwater inlet (to collect stormwater off of the street surface) is located on Gravatt Drive, immediately across from the northern Property line.

Immediately adjacent to the northern Property Line (PL) and extending south onsite approximately 15 feet is a portion of Gravatt Drives stormwater attenuation infrastructure. This consists of an inlet within the paved northern side of Gravatt Drive (directly across from the onsite brick retention structure), the brick retention structure and the outlet Corrugated Metal Pipe (CMP). This CMP drains the street stormwater collected in the street inlet (located at the low point on the north side of Gravatt), onto the unprotected upland slope located in the northern portion of the property. No upstream flows cross Gravatt uncontrolled and enter the site and no stormwater Culvert (conveying upstream offsite flows below Gravatt) is present.

The observed narrow, deep and un-vegetated erosive cut through the disturbed upland habitat (no wetland plants are in the upper eroded channel) was created over time as a result of an unregulated storm drain outlet and its' **erosive flows. It appears that during rain events, surface water runoff collected from the Gravatt Street inlet (across the street from the property) is conveyed from the onsite stormwater infrastructure (brick structure), through the 12" CMP and down the slope. At the outlet point (from the CMP) there are no flow controls or slope protections.**

With no up or down-stream connection, the observed eroded **channel with the indicative 'V' and 'U' shaped topography starts approximately 15 feet below the Property Line and Gravatt Drive (brick structure and CMP outlet) and stretches partially down the hill until it dissipates amongst the cluster of willows. South of the willows, and leading south to Perth Place, there is no evidence of the indicative 'V' and 'U' shaped topography created by flowing water or subsurface flows. Due to the limited surface area of the impermeable road surface (Gravatt Drive) where the stormwater is collected, and it being the only source of water in this system, there is not a significant enough volume of stormwater to continue the erosive cut further south.**

Habitat

Onsite, the area is dominated by 1.2 acres of disturbed habitat.

Ruderal/Disturbed Habitat

Ruderal/disturbed habitat is generally comprised of weedy vegetation growing on compacted, plowed, or otherwise disturbed ground. Within the survey area, this area consists of weedy non-native species and non-native ornamental (landscape) vegetation. Non-native plant species typical of ruderal habitat include ornamental trees such as pepper (*Schinus* spp.), gum shrubs such as acacia (*Acacia* spp.) and oleander (*Nerium oleander*). Dominant weedy vegetation associated with this habitat type includes riggut brome (*Bromus diandrus*), soft chess (*Bromus hordeaceus*), winter vetch (*Vicia villosa*), prickly lettuce (*Lactuca serriola*), common sowthistle (*Sonchus oleraceus*), short-pod mustard (*Hirschfeldia incana*), wild oat (*Avena fatua*), and rough cat's ear (*Hypochaeris radicata*). Disturbed land and habitat as observed within the survey area typically provides little habitat for wildlife species, therefore, rare and/or sensitive wildlife species are not expected to occur.

The ruderal/disturbed habitat within the survey area includes manufactured slopes associated with Gravatt Drive, surrounding residential developments, and the stormwater attenuation infrastructure.

The observed non-jurisdictional unregulated disturbed red willow (*Salix laevigata*) individuals (six mature red willows) are located within the central portion of the survey area and are surrounded by eucalyptus sp., scrub oak (*Quercus berberidifolia*) and an understory composed of upland species such as poison oak (*Toxicodendron diversilobum*), non-natives such as brome (*Bromus* spp.), and pride of Madeira (*Echium candicans*), which grows specifically in poor, dry soils.

The willow trees are located together in a cluster at the southernmost end of an eroded channel which extends south to the center of the property from the stormwater attenuation structure located south of Gravatt Drive. No other wetland species were observed within the eroded channel (up to the CMP outlet). The observed eroded channel extending from below Gravatt Street and extending to the cluster of onsite red willows do not qualify as either CDFW or USACE jurisdictional waters/wetlands due to a lack of Creek indicators. The lacking indicators include: lack of both up and down-stream connectivity, natural flows, hydric soils and the associated hydrophytic species required for Creeks/wetlands. Finally, there is no evidence that there was a historic Creek (USFWS, ACOE, USGS; 2015) or wetland onsite or immediately up or down stream from the study area.

CREEK ASSESSMENT RESULTS

As described, a City Creek Assessment was completed within the survey area by senior biologist Michael Jefferson. While an un-engineered eroded channel (not naturally or historically occurring watercourse) was observed through a portion of the site, and exhibits many of the typical functions of a City defined Creek, the observed isolated eroded channel does not qualify as a City Creek due to a lack of both up and down-stream connectivity. Furthermore, the onsite condition created by the erosion from the Gravatt Drive improved roadway stormwater attenuation features (road inlet, brick structure and CMP), is described and specifically listed as an exempted area/condition (see Exclusions, *stormwater attenuation features*; P.3).

CONCLUSION

No Creek, as defined by the City of Oakland's Creek Protection Ordinance (OMCC 13.16), was identified on or off-site (no upstream or downstream Creek occurrence or connectivity) during the November 4th, 2014 onsite Creek Assessment.

CERTIFICATION

I, Michael Jefferson, hereby certify that I have written this report, that the statements furnished herein and in the attached exhibits present the data and information required for this biological evaluation, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Sincerely,



Michael Jefferson
Senior Biologist
BLUE Consulting Group

Attached: Survey Area Habitat and Hydrology Map
 Survey Area Pictures 1-4

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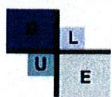
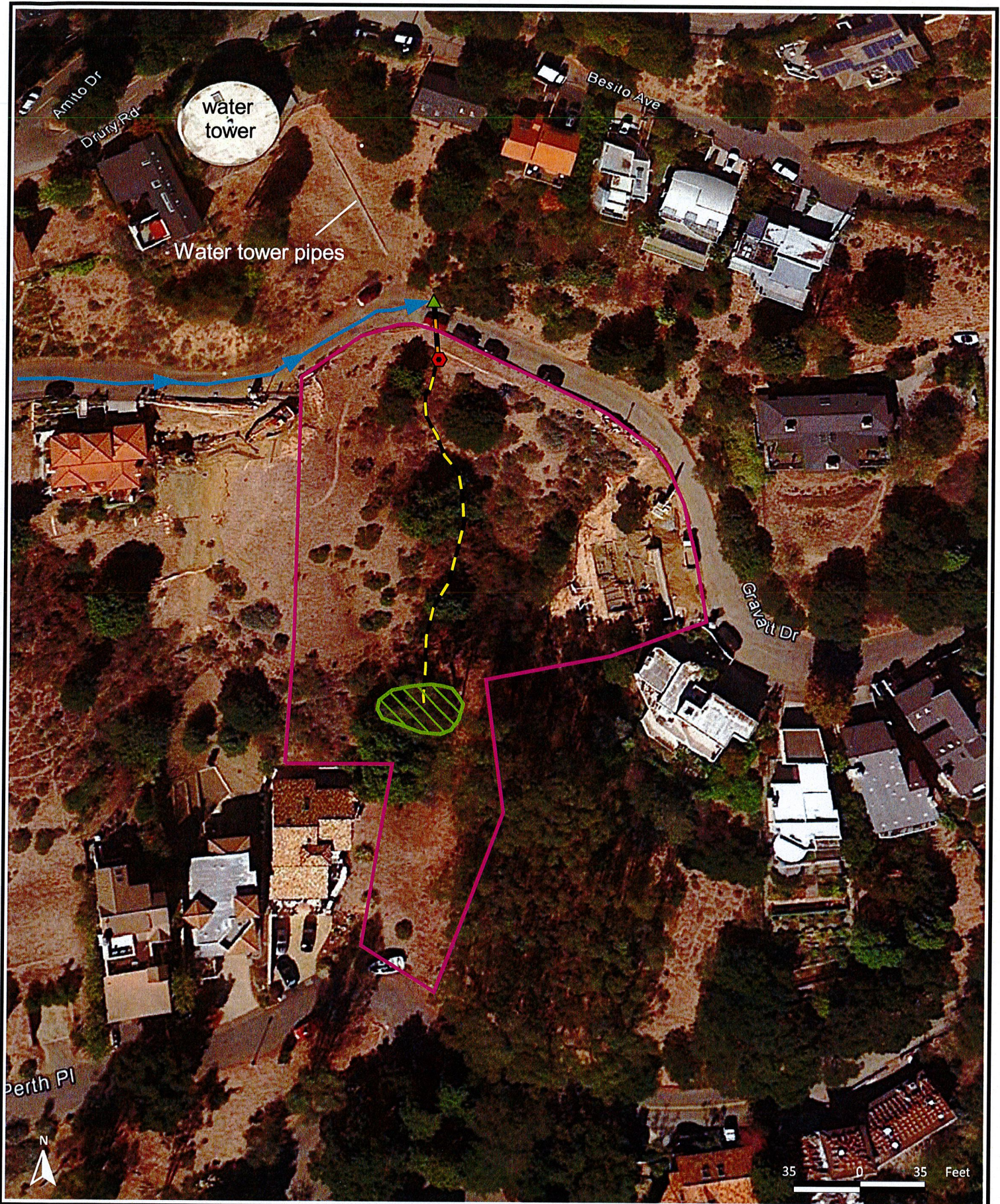
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Attachments: Survey Area Habitat and Hydrology Map

Survey Area Pictures 1-4



- Survey Area
- Willow Trees

- ▲ Street Inlet
- Brick Structure

- ⚡ Pipe
- ⚡ Artificial Channel
- ↔ Gravatt Drive Stormwater Flows

**Gravatt Drive
Habitat and Hydrology
Map**



Photograph 1

Onsite; Looking north over Upland Habitat towards the Brick Stormwater Attenuation Structure which then pipes the collected stormwater onto the slope, approximately 15 feet below Gravatt Drive.

There is no 'V' or 'U' topography between the northern property line and the initiation of the eroded channel below the brick structure and outlet pipe.

Offsite, in the background, is the water tower and upland slopes below it (no Creek above Gravatt Drive).



Photograph 2

Offsite; Looking north from the northern property line over Gravatt Drive and the stormwater attenuation road inlet.

No culvert, or structure facing uphill to catch potential flows coming from north of Gravatt Drive (upslope) are present and no topographic evidence of a 'V' or 'U' shaped eroded channel.

There is a pedestrian trail up the hill.

GUIDE TO OAKLAND'S CREEK PROTECTION ORDINANCE

"City of Oakland Creek Protection, Storm Water Management and Discharge Control Ordinance"
Oakland Municipal Code Chapter 13.16

Oakland's creeks are a valuable resource to the City of Oakland. They remove water pollutants and improve water quality, provide flood control and stormwater drainage, are vital to wildlife habitat, and create neighborhood beauty and improved quality of life. For many years, Oakland residents and policy makers have recognized the importance of creeks by including preservation language in planning documents such as the Open Space and Recreation Element of the General Plan. In 1997, the community joined with policy makers to create additional protection policies through the creation of a Creek Protection Permit. After months of community meetings and policy discussions, the City of Oakland's Stormwater Ordinance was amended on December 16, 1997 to include these creek protection measures. The Ordinance includes permitting guidelines for development and construction projects taking place in or near creeks. The intent of the permit is to assure that work done on a creekside property will avoid or limit, to the extent feasible, having a negative impact to the creek at both the time of construction and in the future.

CITY OF OAKLAND CREEK PROTECTION, STORMWATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE

PURPOSE AND INTENT:

- "...Safeguarding and preserving creeks and riparian corridors in a natural state;
- Preserving and enhancing creekside vegetation and wildlife;
- Preventing activities that would contribute significantly to flooding, erosion or sedimentation, or that would destroy riparian areas or would inhibit their restoration;
- Enhancing recreational and beneficial uses of creeks;
- Controlling erosion and sedimentation;
- Protecting drainage facilities; and
- Protecting the public health and safety, and public and private property."

To see the entire ordinance go to the Watershed Improvement Program website at www.oaklandpw.com/creeks.

What is a Creek?

"A Creek is a watercourse that is a naturally occurring swale or depression, or engineered channel that carries fresh or estuarine water either seasonally or year around."

A) Required Physical Features of a Creek

A creek **must** include **all** of the following three features: (1) hydrologic connectivity, (2) presence of channel form, and (3) topographic position. A creek begins at the first point at which these features are met.

1. **Hydrologic Connectivity**—The creek is part of a contiguous waterway. It is hydrologically connected to a waterway above and below the site or is connected to a spring, headwaters, lake, the Estuary, or the Bay.

Clarification Criteria: The following clarify specific conditions that must be present in order to satisfy the hydrologic connectivity criteria. If **any** of the following conditions are present, the hydrological connectivity requirement is generally met:

- Creek headwaters, springs, storm drain culverts, underground seepage, or groundwater flow are considered connectivity. Sections above and/or below this connectivity are creeks if they meet the other required features (i.e. a creek flowing through a culvert is a creek both above and below the culvert.).
- Creeks may be connected across or over manmade improvements such as roads. When flowing across or over such improvements within the public right-of-way, other than creek channel improvements, it is not considered a creek. Sections above and/or below this connectivity are creeks if they meet the other required features.

2. **Channel Form**—There is a channel, including a bed, bank, and features that indicate actual or potential sediment movement.

Clarification Criteria: The following clarify specific conditions that must be present in order to satisfy the hydrologic connectivity criteria. If **any** of the following conditions are present, the hydrological connectivity requirement is generally met:

- Creek channels may be natural, altered, or engineered.
- Creek channels begin at the point of bed and bank initiation.
- Springs are considered the start of a creek if located uphill from creek initiation.
- A creek channel must have enough flow under present-day conditions to maintain channel form and to move sediment. A non-engineered creek channel bed and bank are created and maintained by erosion and sedimentation, thus the presence of a channel with bed and bank is itself evidence of sufficient flow. Flow volume or timing are **not** criteria for creek determination.
- Scour, sedimentation, sediment sorting, undercut banks and/or other erosion, deposition, or transport features are signs of sediment movement.
- Engineered or altered channels are partially or wholly made of earth, concrete, rip rap, or other materials. The hardened nature of these channel bed and banks, and a lack of available sediment along the channel reach, may prevent signs of sediment movement or scour. Such channels need not have explicit evidence of sediment transport.
- If a creek is connected underground and the area overlying this underground connection is considered a wetland using the Army Corps of Engineers wetland delineation criteria, this portion is a creek despite possibly lacking creek channel form.

- If a creek is underground due to being filled without appropriate permits from all applicable regulatory agencies (federal, state, and local), or due to a landslide, it is considered a creek.

3. **Topographic Position**—Creeks must occupy a specific topographic position.

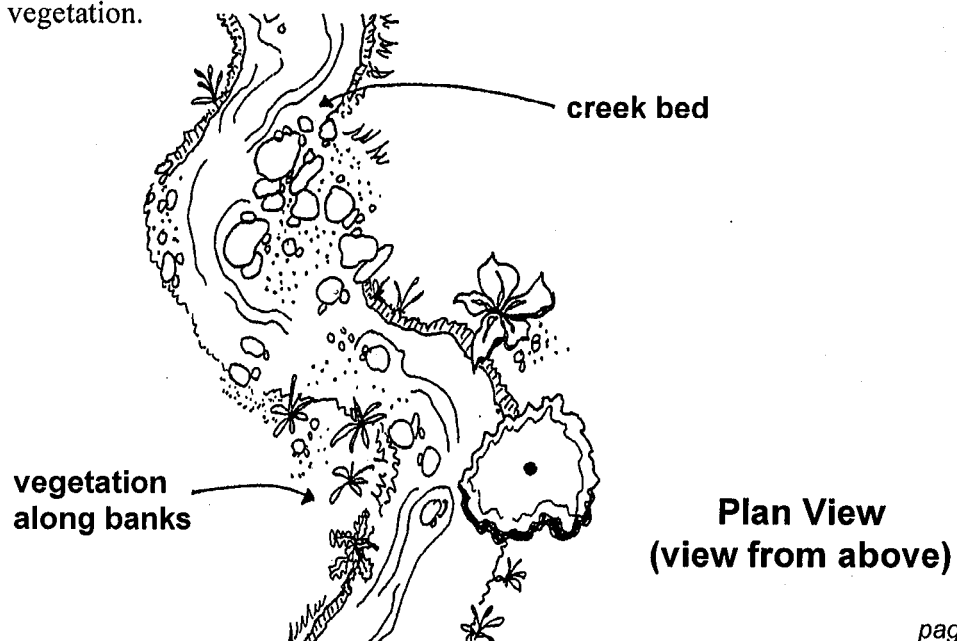
Clarification Criteria: The following clarify specific conditions that must be present in order to satisfy the hydrologic connectivity criteria. If any of the following conditions are present, the hydrological connectivity requirement is generally met:

- Micro-topography such as a 'U' shape or 'V' shape channel typically located at the low point of a macro-topographic feature.
- Macro-topography consists of bowl, 'U', or 'V' shaped topography with high points draining to a valley or ravine as part of a large drainage network leading to large creeks, lakes, the Estuary, and/or the Bay.
- Flatland macro-topography may consist of shallow bowl or 'U' shaped topography. Generally these creeks flow from the hills toward the Estuary and Bay following the slope of the land.
- Creek topography can be indicated on a topography map by a 'U' or 'V' shape pointed in the uphill direction.

B) Indicator Features

To help with screening and identification in the field a creek may also have the following features (the absence of these features does **NOT** mean there is no creek):

- A riparian corridor—a corridor of relatively denser vegetation roughly parallel to the creek channel, or soil conditions that would support native riparian vegetation. Riparian vegetation is sometimes missing due to landscaping or vegetation removal practices, landslide, or fire.
- Bed with material that differs from the surrounding geologic material (i.e. more rocky, or gravelly, little or no vegetation, sorted by size).
- Man-made structures common to waterways, for example bank retaining walls, trash racks, culverts, inlets, rip rap, road bends, etc.
- Tidal or backwater influence, and/or nutrient or resource exchange with the Estuary or the Bay.
- Wetland vegetation.



Exclusions

The definition of creeks generally excludes the following conditions or features, although these conditions may represent hydrologic connectivity for an upstream and/or downstream creek:

- The following structures (while the structures themselves are not considered creeks, the presence of these structures does not preclude the determination of a creek):
 - Improved roads,
 - Rain gutter gullies fed **only** by the rain gutters of a building or other roof runoff,
 - Curb/gutter, pipes, culverts, fully enclosed storm sewers, inlets, and catch basins.
- Biofiltration swales, faux creeks, detention basins, mosquito ditches, or stormwater attenuation features that were not intended to function as a creek or wetland, and/or were not installed as mitigation for creek or wetland disturbance.

Seminal Court Case (Locklin v. City of Lafayette (1994) 7 Cal. 4th 327)

The Locklin court case has provided additional guidance in clarifying the definition of a “Creek” in Oakland and is consistent with current City policy and practice. The Locklin definition of a “natural watercourse” is similar to Oakland’s definition of a creek.

A Natural Watercourse (in Oakland, a “Creek”):

“is a channel with defined bed and banks made and habitually used by water passing down as a collected body or stream in those seasons of the year and at those times when the streams in the region are accustomed to flow. It is wholly different from a swale, hollow, or depression through which may pass surface waters in time of storm not collected into a defined stream. A canyon or ravine through which surface water runoff customarily flows in rainy seasons is a natural watercourse. Alterations to a natural watercourse, such as the construction of conduits or other improvements in the bed of the stream, do not affect its status as a natural watercourse. A natural watercourse includes all channels through which, in the existing condition of the country, the water naturally flows, and may include new channels created in the course of urban development through which waters presently flow. Once surface waters have become part of a stream in a watercourse, they are no longer recognized as surface waters.” (page 345)

General Creek Functional Guidelines

The following are typical functions of creeks in Oakland. These functions act as general guidelines to be used in creek determinations:

- Carries fresh or estuarine water either seasonally or year round,
- Supports native riparian, wetland, and/or aquatic habitats,
- Maintains channel form (which includes bed and bank),
- Provides flood control and storm drainage,
- Removes pollutants and improves water quality,
- Transports, stores, and/or sorts sediment,
- Maintains stable flow regime, including water transport, detention, and/or infiltration, and
- Provides community and aesthetic value.

When is a Creek Protection Permit required?

The extent to which your development or construction will be regulated by this Ordinance depends upon the type of work you are doing and where it is taking place. The following provides a brief description of the four categories of creekside work requiring a permit:

Creek Protection Permit Categories:

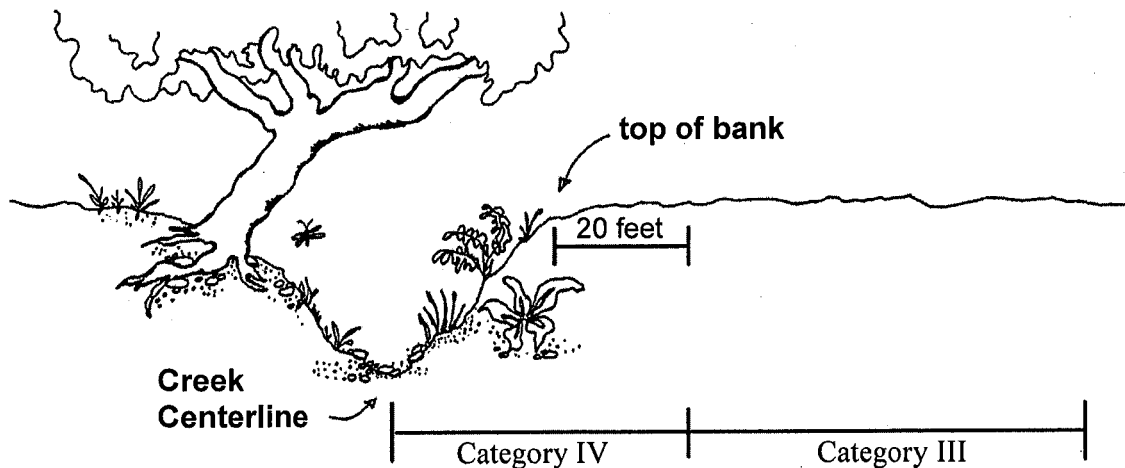
Category 1: Interior construction and alterations including remodeling.

Category 2: Exterior work that does not include earthwork and is located more than 100 feet from the centerline of the Creek.

Category 3: Exterior work that is located between 20 feet from the top of the Creek bank and 100 feet from the centerline of the Creek; or Exterior work that includes earthwork involving more than three (3) cubic yards of material, beyond 20 feet from the top of the Creek bank.

Category 4: Exterior work conducted from the centerline of the Creek to within 20 feet from the top of the Creek bank.

Creek protection permits may be reclassified to a higher or lower category depending on potential project impacts. Apply for reclassification at the Building and Engineering Services Counter.



Application Documents:

Site Plan: For projects that fall in category 2, 3 or 4, a site plan must be submitted with the permit application. The site plan should clearly illustrate the relationship and distance of the project to the creek centerline and top of the creek bank.

Notices: If your project falls into category 3 or 4 you will be required to post public notices within a 300 ft. radius of the project location. A category 4 permit will also require mailing of public notices.

Creek Protection Plan: If your project falls into category 3 or 4 you will be required to submit a creek protection plan that describes how you will protect the creek, its banks, riparian vegetation, wildlife, surrounding habitat, and the creek's natural appearance during and after construction.

CEQA: Category 3 and 4 projects will be reviewed for compliance with the California Environmental Quality Act.

Hydrology Report: Category 4 permits require a hydrology report.

Criteria for permit approval includes whether or not the project will:

- Cause discharge of a substantial amount of pollutants (i.e. dirt, pesticides or oil);
- Cause substantial modifications to the natural flow of water or capacity;
- Cause substantial erosion or bank instability (as determined by a soils engineer);
- Substantially, adversely affect the riparian corridor, vegetation, or wildlife;
- Substantially degrade the visual quality and natural appearance of the corridor,
- Be consistent with the intent and purposes of the ordinance, or
- Endanger public or private property or threaten public health or safety.

To see the entire ordinance go to the Watershed Improvement Program website at www.oaklandpw.com/creeks.

Some projects may have little or no impact on the creek. In that case, the permit may only require the property owner to read educational materials, provided by the City. Other projects may require that conditions be placed on project design (see *"What may be required for approval of a creek protection permit?"* on next page).

Failure to apply for a Creek Protection Permit, or failure to comply with permit conditions, could result in a stop work order, restoration of the site, fees, penalties and fines.

What should be included in a Creek Protection Plan?

A Creek Protection Plan is prepared for City review and approval prior to issuance of the Creek Protection Permit for categories 3 and 4. A Creek Protection Plan may include but is not limited to the following elements:

- Education on creek protection provided to workers on the site;
- Litter prevention measures, (for example, how is debris, loose dirt. etc. stored);
- Dust control measures;
- Methods of cleaning tools and equipment;
- Construction site fencing;
- Future and ongoing sediment and erosion control measures;
- Wet weather protection;
- Special circumstances/additional information; or
- Emergency preparations for construction related spills.

The Creek Protection Plan may be prepared by the owner of the property, an architect, engineer, or contractor and will obligate the applicant to implement the approved provisions of the plan.

What is a hydrology report?

A hydrology report, required for a category 4 permit, must be prepared by a licensed engineer with creek hydrology expertise. Review and approval by the City is required prior to issuance of a Creek Protection Permit. A hydrology report may include, but is not limited to the following elements:

- Flows and water surface levels;
- Address how future development in the area (unrelated to the proposed work) may impact flows;
- Creek bank stability, before and after the project;
- Impact of proposed work with regard to direction, as well as quantity of flow in the Creek;
- Upstream and downstream conditions, before and after project construction;
- Location of major drainage facilities (e.g. trash racks, culverts, discharge points, etc.);
- Profiles of the stream;
- Cross sections;
- Proposed improvements to the Creek; including any vegetative or other natural screening enhancements utilized;
- Impacts of proposed project on existing vegetation or wildlife within the affected riparian corridor; and
- Required permits or approvals from regulatory agencies such as the California Department of Fish and Game, Army Corps of Engineers, and the State Regional Water Quality Control Board.
- Any additional information deemed reasonable by the Director of Building Services.

What may be required for approval of a creek protection permit?

The following are typical conditions of permit approval that help projects meet the intent and criteria in the creek protection ordinance. (This list is not inclusive and other conditions may be imposed).

The applicant may be required to:

- plant and maintain native riparian vegetation for landscaping along creek areas (plant lists are available at the Building Services counter);
- use soil bioengineering techniques for bank stabilization and to control erosion, such as brush layering, cuttings, staking, and fascines;
- implement stormwater quality protection measures such biofiltration, porous pavement, modular pavers and permeable surfaces, installation of vegetation and vegetated swales, biofiltering, infiltrative landscaping, and other on-site stormwater treatments;
- implement appropriate drainage controls to prevent concentration of water and velocity, such as dissipation and infiltration;
- implement appropriate construction controls such as locating stockpile away from the creek, installing temporary erosion control;
- comply with seasonal limits on grading, grubbing or pier drilling;
- install vegetation and tree protection measures during construction such as fencing;
- comply with limits on pesticide and fertilizer use;

- and, in a very few cases actual design changes will be necessary when proposed structures are too close to the creek and riparian corridor.

What is typically NOT allowed?

Projects and activities that would generally not meet the criteria in the ordinance:

- removal of riparian vegetation zones (even if in a fire area, fire abatement guidelines are available at the building and engineering services counter)
- culverting or undergrounding of the creek
- changing or moving the location of the creek
- structures spanning the creek (such as bridge, house, garage, or deck)
- structures in or on the creek bank
- draining into the creek without controls for velocity (speed and energy) and pollution
- agriculture activities on creek banks or in creek beds
- rip rap, rock gabion or concrete in the creek or on the creek bank
- check dams in the creek
- alteration of the creek flow direction, velocity, turbidity or chemical makeup
- creation of ponds
- introduction of non-native vegetation or wildlife
- removal of tree canopies over creeks
- grading of creek banks
- filling, pile driving, or deposition of any new material to creek bank or bed

Note: In order for the City to approve any of the above activities, the applicant must demonstrate, to the City's satisfaction that, (1) the application of the Creek Protection Ordinance to a specific project would create an unconstitutional "taking" of property without just compensation (e.g., there are no feasible alternatives to the activity and without the activity the applicant will be deprived of economically viable use of their property) and that the activity, if permitted, would be carried out only to the extent necessary to avoid a "taking"; or (2) that the activity will result in restoration or improvement to creek water quality, hydrology and/or riparian habitat; or (3) denial of the permit would continue or exacerbate a threat to property and/or the public's health or safety (i.e., the work is necessary to protect drainage facilities, prevent or repair erosion/landslides and there are no feasible alternatives to the work).

Can an applicant appeal the City's determination?

Determination of whether there is a creek (identification of a creek, or headwaters) is made by the Environmental Services Manager and can be appealed to the City Planning Commission with an appeal fee. Decisions on the Creek Protection Permit are made by the Director of Building Services and can be appealed to the City Planning Commission with an appeal fee.

Both appeals must be made within ten (10) calendar days of the contested decision, be in writing, state specifically wherein it is claimed that there was an error or abuse of discretion, or where the decision was not supported by substantial evidence before the City, and be accompanied by the

appropriate appeal fee. If you challenge a City determination in court, you may be limited to issues raised in your appeal form (and attachments). Appeal forms can be obtained from the City of Oakland, Community and Economic Development Agency, Planning Permit Counter, 250 Frank Ogawa Plaza, 2nd Floor, Oakland, CA 94612.

Creek Ordinance Helpful Hints

- incorporate creek protection measures into plans and designs **before** applying for a creek protection permit
- City cannot provide design services. Applicants should use a professional who specializes in land stability, erosion control and creek environments
- inform professionals that are working on your project about the creek protection ordinance before they begin design or work
- design your project so that it will have the least impact to the creek
- keep new structures as far from the creek as possible
- incorporate native riparian vegetation into landscape design
- incorporate integrated pest management techniques into landscape maintenance to prevent unnecessary pollutants from entering the creek
- design drainage so that as much runoff as is possible and safe, is retained on the property and not drained directly into creek.
- drain runoff through vegetation to prevent pollutants from entering the creek
- use energy dissipaters to drain water in order to reduce erosion
- keep construction stockpiles and work areas as far from the creek as possible

Use the following quick checklist before you submit you application:

- Have you designed your project or activity so that it so that it avoids or limits impacts to the creek?
- Have you reviewed typical conditions of approval and incorporated appropriate creek protection measures in your plans?
- Do you believe you meet the Criteria for Permit approval of this Ordinance?
- Have you completed and included all the necessary documents with your application (see below)?

Checklist of documents for Creek Protection Permits:

CATEGORY 1

- Application cover sheet

CATEGORY 2

- Application cover sheet
- Creek Site Plan

CATEGORY 3

- Application cover sheet
- Creek Site Plan
- Creek Protection Plan
- Post public notices

- Environmental documents required due to California Environmental Quality Act Review

CATEGORY 4

- Application cover sheet
- Creek Site Plan
- Creek Protection Plan
- Post and mail public notices
- Hydrology Report
- Environmental documents required due to California Environmental Quality Act Review

- For information regarding Oakland's Creek Protection Permit call the City of Oakland, Community and Economic Development Agency's Civil Engineering Information Counter at (510) 238-4777.
- For more information about the City of Oakland's Watershed Improvement Program and the creek protection ordinance, go to our website at www.oaklandpw.com/creeks.

What other permits may be required?

Any project on a creek property may also require approval from other regulatory agencies relating to watershed protection. Check with the following agencies to see if a permit is required for your project.

City of Oakland Permit Center

250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612
(510) 238-3443

The Permit Center can help you identify the permits you need, assist you with the application process, help you move your permits through review and approval process, and inform you about new, cost-effective environmental compliance technologies.

The U.S. Army Corps of Engineers

333 Market Street, 8th Floor, San Francisco, CA 94105-2197
(415) 977-8461

The Corps permit is required for work in a creek bed or within the high water or high tide line of any water body. Call the Corp to obtain a Permit Application Packet.

California Department of Fish and Game

P.O. Box 47, Yountville, CA 94599
(707) 944-5520 or (707) 944-5586

The California Department of Fish and Game has jurisdiction over any work in the riparian corridor. Work in, on, over or under the creek between the streambed sloping upwards to the top of the bank and beyond to the boundary of the riparian corridor. The Department of Fish and Game requires a Streambed Alteration Agreement (SAA) for projects that will divert or obstruct the natural flow of water, change the bed, channel or bank of any creek, or propose to remove any material from a creekbed.

San Francisco Water Quality Control Board

1515 Clay Street, Suite 1400, Oakland, CA 94612
(510) 622-2300

The Regional Board's overall mission is to protect surface and groundwaters of the San Francisco Bay Region. The Regional Board requires permits for any project that may potentially adversely affect the creek or waterway.

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

Oakland Public Works Department
Bureau of Engineering & Construction – Watershed and Stormwater Management

(510) 238-3171
FAX (510) 238-2245
TDD (510) 238-7644

May 9, 2016

Steve Anderson, President
DFI Properties, LLC
6363 Christie Avenue #1916
Emeryville, CA 94608

**RE: Creek Determination (CDET#16004) of Two Properties at 0 Gravatt Drive
(APN #048H-7606-064 and APN #048H-7606-065)**

Dear Mr. Anderson,

Per your request on February 16, 2016, Watershed and Stormwater Management staff conducted an investigation and site visit, on May 2, 2016, to determine whether these properties are Creekside properties. These properties were not previously flagged as Creekside in the City of Oakland Planning, Building, and Neighborhood Services ACCELA Database. The Watershed and Stormwater Management determination is that:

This property IS a Creekside property.

Comments:

The channel is determined a creek for the following reasons:

1. The channel is part of a contiguous waterway, and is hydrologically connected to the waterway above or below the property
2. The subject properties are located at the top of watershed in watershed headwaters
3. The waterway has a defined bed, bank, and signs of scour
4. There is appropriate “U” or “V” shaped topography on the properties

Though not required, the following additional creek conditions were found:

- A riparian corridor: a line of denser riparian native vegetation
- The creek channel has a bed with material that differs from the surrounding material (i.e. more rocky, or gravelly, little or no vegetation)
- There are man-made structures common to waterways (e.g. storm drain inlets and culverts)

If it is believed that this determination was made in error, an appeal in accordance with Section 13.16.450 of the Oakland Municipal Code must be filed within ten (10) calendar days of the date of this written decision. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Watershed and Stormwater Management Manager, or wherein his/her decision is not supported by substantial evidence in the record. Appellants must submit a Appeal to the Planning Commission form (available at the 2nd floor planning counter in the Dalziel Building, 250 Frank Ogawa Plaza), all supporting materials, and a copy of the receipt of payment to the Planning Counter on the 2nd floor in the Dalziel Building, no later than 4:00pm on the 10th day after this written decision.

If you have any questions regarding this determination, contact Craig Pon at (510) 238-6544 or cpon@oaklandnet.com.

Sincerely,



Lesley Estes
Watershed Program Supervisor

Attachments:

Guide to Oakland's Creek Ordinance

Alameda Countywide Clean Water Program BMP's

- Fresh Concrete and Mortar
- Roadwork and Paving
- Heavy Equipment Operation
- Painting and Solvents and Adhesives
- General Construction and Site Supervision

Native Plant Species Common to Oakland's Creeks

Using Plants to Stabilize Stream Banks

CC:

- Scott Miller, Planning, Building, and Neighborhood Services
- Caesar Quitevis, Planning, Building, and Neighborhood Services
- David Harlan, Planning, Building, and Neighborhood Services
- Kristin Hathaway, Public Works Department, Watershed and Stormwater Management

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Sent To **Steve Anderson, President**

Street, Apt. No.;
or PO Box No. **6363 Christie Avenue #1916**

City, State, ZIP+4
Emeryville, CA 94608

PS Form 3800, June 2002 See Reverse for Instructions

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<p>1. Article Addressed to:</p> <p style="padding-left: 20px;">Steve Anderson, President DFI Properties, LLC 6363 Christie Avenue #1916 Emeryville, CA 94608</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7004 1350 0000 4637 0840</p>	

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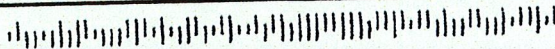
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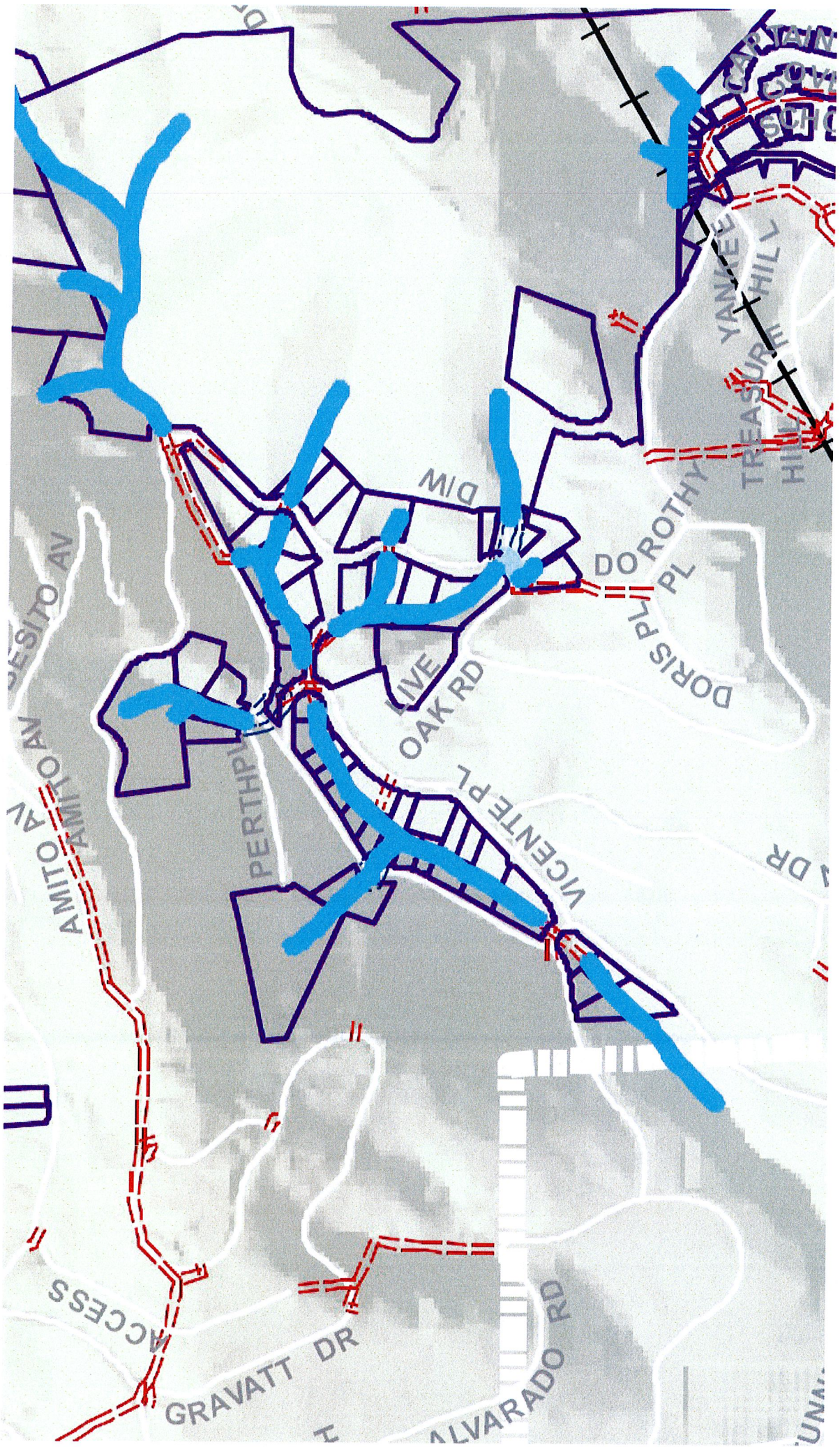
City of Oakland
Public Works Agency *DEPT-38C-*
~~Environmental Services Division~~ *WATERSECT*
250 Frank H. Ogawa Plaza, Suite ~~5301~~ *4314*
Oakland, CA 94612
C/o CRAIG POW

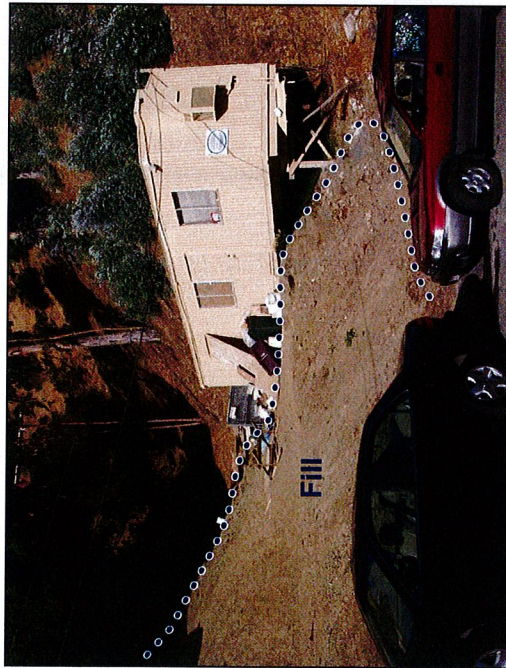


Creek Determination Site Log

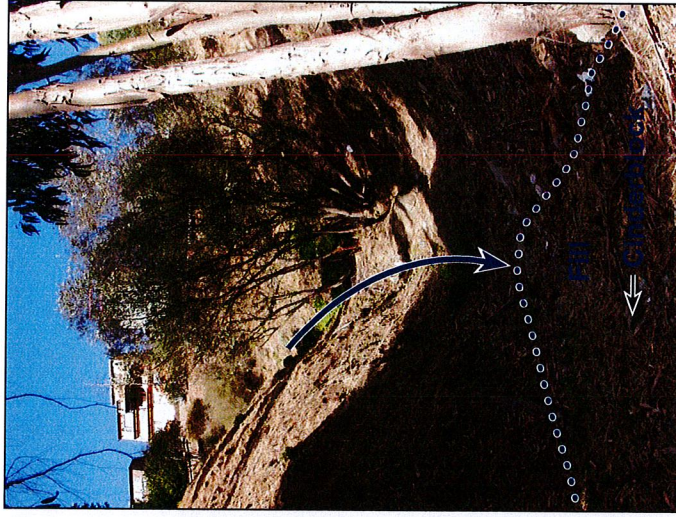
Date: 5-2-2016	Address: 0 GRAYATT DRIVE (APN # 048H-7606-064 + 048H-7606-065)
APN: 048H-7606-064 048H-7606-065	Cross-Street: GRANDVIEW DRIVE PERTH PLACE (DOWN GRADIENT)
Preliminary Investigation:	Sewer Sheet: 338, 343 Aerial Topo Lines: PWA GIS Drainage Map: PWA
Nearby Creekside Parcels:	Connectivity Upstream:
Bank:	Notes:
Water:	Connectivity Downstream:
Topography:	Bed:
Vegetation:	Disturbance:
Property/Area Notes:	Man-made structures:
Findings:	Time Spent:

Scale: 1 Lowest / Least - 10 Greatest / Most





A)

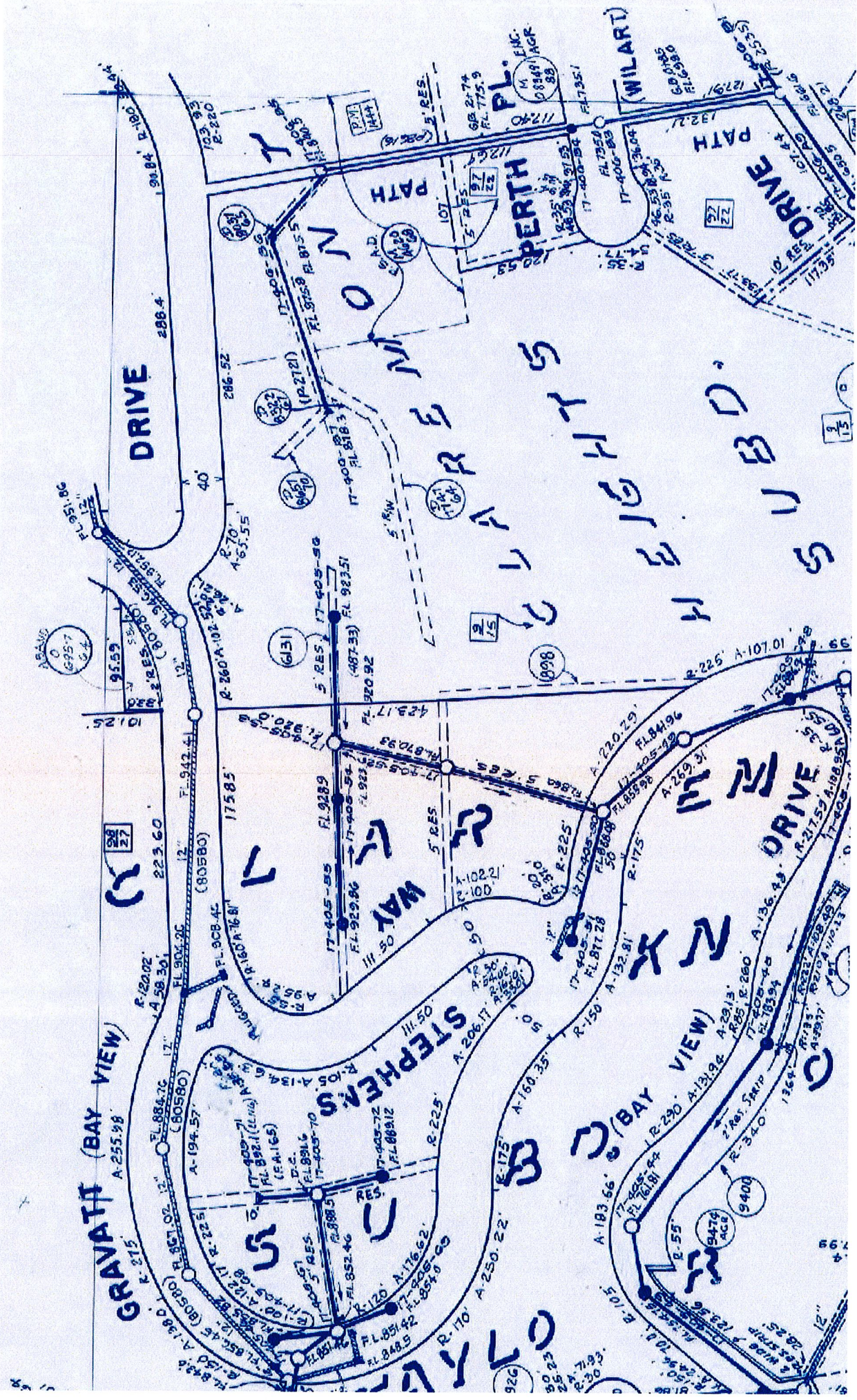


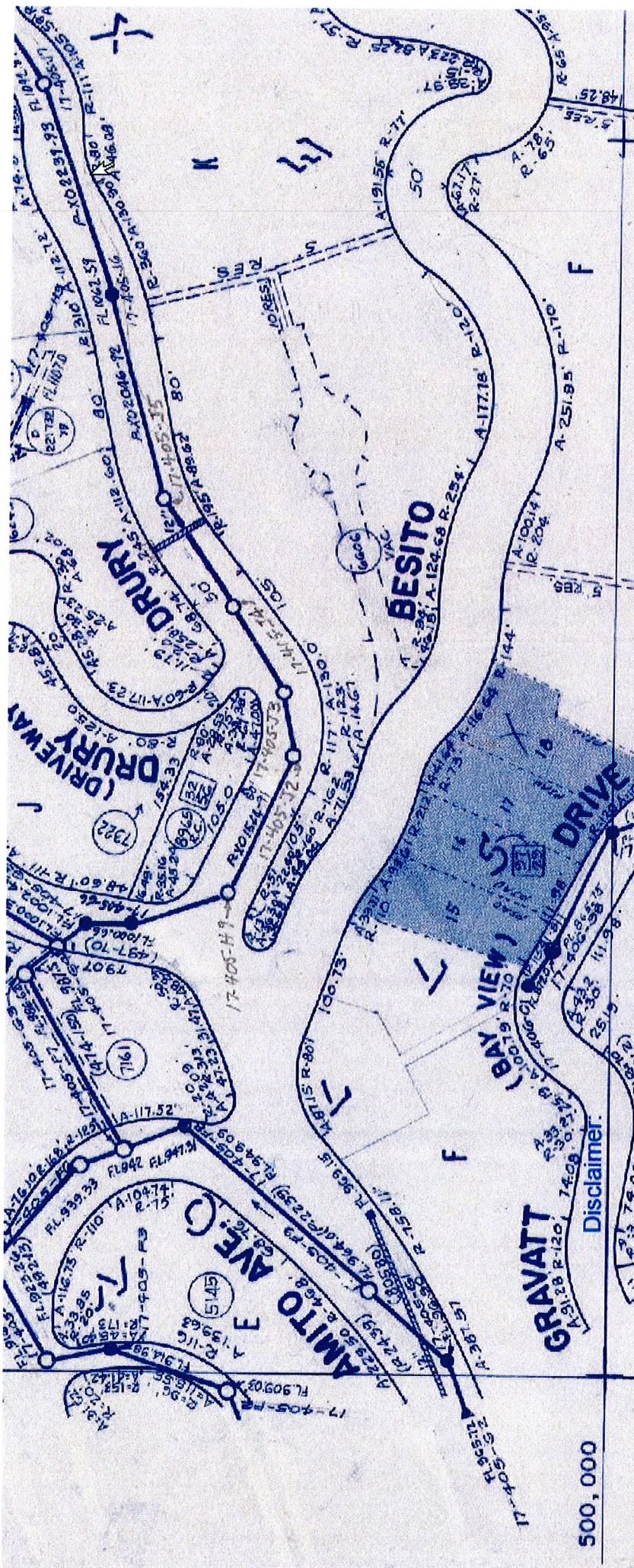
B)



C)

Site 49. Photo (A) shows a deposit of artificial fill placed over creek. Photo (B) looks upslope at creek from the top of the fill deposit. The creek bed and banks were saturated at the time of inspection. The creek features become less distinct near the fill (photo B and C). A depression in the ground and silt fence suggests inlet location for inferred storm drain pipe .





500,000

1,500,000

Disclaimer.

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Assessor Parcel Record for APN 048-H-7606-064-00

Parcel Number:	48H-7606-64
Property Address:	530 GRAVATT DR, OAKLAND 94603
Owner Name:	DFI PROPERTIES LLC
Care of:	#306-521
Attention:	
Mailing Address:	4120 DOUGLAS BLVD, GRANITE BAY CA 95746-5936
Use Code:	VACANT RESIDENTIAL LAND, ZONED 4 UNITS OR LESS
Recorder Number:	-000000
Recorder Date:	
Mailing Address Effective Date:	3/9/2012
Last Document Input Date:	
Deactivation Date:	
Exemption Code:	

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County Assessor Display

Assessor Parcel Record for APN 048-H-7606-065-00

Parcel Number:	48H-7606-65
Property Address:	530 GRAVATT DR, OAKLAND 94603
Owner Name:	DFI PROPERTIES LLC
Care of:	#306-521
Attention:	
Mailing Address:	4120 DOUGLAS BLVD, GRANITE BAY CA 95746-5936
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ASSESSOR'S MAP 48H

Code Area No. 17-003

7606
Pg. 1

ReSubdivision of the Map of the
Claremont Heights Subdivision No. 1.
(Bk. 4 Pg. 62)
Claremont Heights Subdivision No. 1.
(Bk. 22 Pg. 31)
Scale 1"=60'

PARCEL MAP 1444 (Bk. 83 Pg. 98)

P.M. 2447 105/33
P.M. 7301 288/41-42
P.M. 9884 320/8-9

Revised: 4-7-86 (pg. 1)
1-20-85 (pg. 1)
2-23-85 (pg. 1)
3-4-87 (pg. 1)
4-18-88 (pg. 1)
5-18-88 (pg. 1)
6-18-88 (pg. 1)
7-18-88 (pg. 1)
8-18-88 (pg. 1)
9-18-88 (pg. 1)
10-18-88 (pg. 1)
11-18-88 (pg. 1)
12-18-88 (pg. 1)

