

FINAL ENVIRONMENTAL IMPACT REPORT

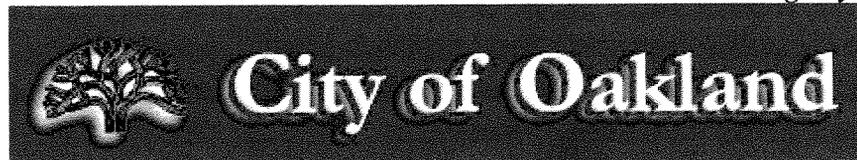
for the

Crestmont Project

File #: ER 050007; TPM 7940

State Clearinghouse Number: 2005112005

Lead Agency:



Community and Economic Development Agency
250 Frank Ogawa Plaza, Suite 2114
Oakland, California 94612

October 2006

**NOTICE OF AVAILABILITY OF FINAL ENVIRONMENTAL IMPACT REPORT
FOR THE CRESTMONT PROJECT A 4 LOT SUBDIVISION**

TO: All Interested Parties

SUBJECT: Notice of Availability of Final Environmental Impact Report for the Crestmont Project

CASE NUMBER: ER 050007 **SCH#: 2005112005**

PROJECT LOCATION: The East slope of Crestmont Drive at the intersection of Westfield Way, Oakland, Ca. 94619

PROJECT SPONSOR: Andalucia Properties, LLC/Dennis Woodruff.

BRIEF DESCRIPTION OF PROJECT: The proposed project is located in the Oakland hills, at the northeast intersection of Crestmont Drive and Westfield Way. The proposed project would provide for the construction of four single- family dwellings. To mitigate potential impacts on Federal and stated listed protected plant species, the project sponsor has eliminated one building site and proposes to create a conservation easement over about two-thirds of the entire site. The proposed project includes the following components: (1) a tentative parcel map to subdivide two existing parcels into four lots; (2) development of the project site for four custom-built residences, including parking and landscaping and construct a single family home on each lot; (3) install sidewalks and retaining walls along Crestmont Drive; (4) geo-technical stabilization of the site through design and construction of retaining walls and drainage for each home; (5) wild land fire mitigation; (6) storm water management facilities. The site is located in the South Hills Planning Area of Oakland General Plan with a land use designation of Hillside Residential and is therefore subject to Neighborhood Objectives and Policies N3, N6, and N11. The Zoning District is R-30, One-Family Hillside Residential Zone.

ENVIRONMENTAL REVIEW: On May 2 , 2006, the City issued a Draft EIR published for this project, and a 45-day public review and comment period occurred from May 2, 2006, to June 16, 2006. All comments that were received have been compiled and responded to in a Final EIR, The preparation of the Final EIR has been overseen by the City of Oakland's Environmental Review Officer or his/her representative, and the conclusions and recommendations in the EIR document represent the independent conclusions and recommendations of the City. Copies of the Final EIR will be available for distribution to interested parties at no charge starting at 3:00pm on Friday, October 6, 2006, at the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:00 a.m. to 4:00 p.m.

PUBLIC HEARING: The Oakland Planning Commission will hold a public hearing on Wednesday October 18, 2006 to consider certification of the Final EIR and action on planning approvals for the project. The City will publish public notice of the Hearing with the specific time and location in advance, as required by law. For further information, please contact Robert Merkamp Planner III, at (510) 238-6283, or by email to rmerkamp@Oaklandnet.com.



Claudia Cappio
Director of Planning and Zoning and
Environmental Review Officer

Date: October 4, 2006

CHAPTER I

Introduction

A. CEQA Process

On May 2, 2006, the City of Oakland (Lead Agency) released for public review a Draft Environmental Impact Report (Draft EIR or DEIR) for the Crestmont Project. The 45-day public review and comment period on the Draft EIR began on May 2, 2006, and closed at 4:00 p.m. on June 16, 2006.

The City of Oakland Planning Commission held a public hearing on the Draft EIR on June 7, 2006 to solicit public comments and formulate its advisory comments on the Draft EIR to the Planning Commission.

The Draft EIR for the Crestmont Project, together with this response to comments document, constitute the Final Environmental Impact Report (Final EIR or FEIR) for the project. The Final EIR is an informational document prepared by the Lead Agency that must be considered by decision makers (including the Oakland City Planning Commission and City Council) before approving or denying the proposed project.

The City of Oakland (Lead Agency) has prepared this document, pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15132 of the CEQA Guidelines, which specifies the following:

"The Final EIR shall consist of:

- (a) The Draft EIR or a revision of that draft;
- (b) Comments and recommendations received on the Draft EIR either verbatim or in a summary;
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- (d) The response of the Lead Agency to significant environmental points raised in review and consultation process;
- (e) Any other information added by the Lead Agency."

This Final EIR incorporates comments from public agencies and the general public and contains appropriate responses by the Lead Agency to those comments.

B. Organization of the Final EIR

This document contains information that responds to issues and comments raised during the

public comment period on the Draft EIR. Comments received after the close of the public comment period, and appropriate responses thereto, are also included and noted as such. The document is organized as follows after this introductory chapter:

Chapter II. Changes to the Draft EIR, contains changes and corrections to the Draft EIR initiated by the Lead Agency or resulting from comments on the Draft EIR.

Chapter III. *List of All Agencies, Organizations, and Individuals who made verbal comments on the Draft EIR* at the Public hearing before the Planning Commission on June 7, 2006, a summary of those comments, and the **Responses to those Comments**.

Chapter IV, *List of all Agencies, Organizations, and Individuals that submitted written comments on the Draft EIR* during the public review and comment period May 2, - June 16, 2006, and within a reasonable time frame after. The list includes the receipt date of each written correspondence. The correspondence is included with the material and significant issues raised in the correspondence indicated with a number annotated in the margin of the correspondence. The response to each indicated numbered issue is set forth on a separate page following the correspondence. The annotated written correspondence of each commenter is included in Chapter IV is as *follows*:

- A. Letter from Homeowners of Crestmont Association, dated May 17, 2006
- B. Letter from "Crestmont Neighbors" dated June 15, 2006
- C. Letter from John Shively dated June 15, 2006
- D. Letter from Dorothy Bashnick dated June 15, 2006
- E. E mail from Pat Toprakhisar dated June 16, 2006
- F. Letter from Ralph Kanz dated June 16, 2006
- G. Email from Laura Baker of CNPS dated June 19, 2006
- H. Letter from EBMUD dated June 2, 2006
- I. Letter from East Bay Regional Park District dated June 16, 2006

APPENDICES

DEIR

- A. NOP, INITIAL STUDY AND CONDITIONS OF APPROVAL
- B. NOP COMMENT LETTERS AND SPECIFIC REPLIES
- C. CEQA GUIDELINES SECTION 15183
- D. BIOLOGICAL REPORTS
- E. SUPPLEMENTAL GEOTECHNICAL REPORTS
- F. TRAFFIC SAFETY REPORT

FEIR

- G. CURRICULAE VITAE OF JOHN TORREY
- H. TPM 7940

- I. INFORMATION ON CHRYSOTILE FORM OF ASBESTOS
- J. SOILS REPORT ON BORINGS ON LOTS 2, 3 & 4 DATED 8/1/06
- K. SUPPLEMENTAL LETTER from, WRA, INC. DATED SEPTEMBER 29, 2006
- L. SPONSORS AGREEMENT LETTER TO INCORPORATE THE STANDARD CONDITIONS OF APPROVAL (uniformly applied development standards) INTO MMRP.
- M. NOP COMMENT LETTER FROM EAST BAY REGIONAL PARK DISTRICT, DATED NOVEMBER 29, 2005

CHAPTER II

Changes to the Draft EIR

The changes presented in this chapter are initiated by Lead Agency staff or by comments on the DEIR made during the public comment period of May 2, - June 16, 2006.. Changes include supplemental text to the DEIR in cases where the existing text may be incomplete or allow for misinterpretation of the information. Throughout this chapter supplemental text is shown in underline format, and deleted text is shown in strike out format. Also included are additional documents which provide support for the analysis and conclusions made in the DEIR For changes initiated by written comments from the public on the DEIR, the alpha-numeric designator is indicated at the end of the revision in italics.

This Final EIR/Responses to Comments document, combined with the Draft EIR, constitutes the Final EIR.

A. Changes Resulting from Omissions from the DEIR:

1. The author of the DEIR, John Torrey, under the direction and control of the City of Oakland, was omitted from the DEIR (*Chapter IV, Written Comments C4 & F2*). The DEIR is therefore amended as follows:

Add: Appendix G- Curriculae Vitae of EIR preparer John Torrey

2. The Tentative Parcel Map 7940 is incorporated by reference into the DEIR at Appendix H (*Chapter III- Verbal Comment No. 1c*)

Add: Appendix H- TPM 7940

3. The DEIR, Section VII. Para. C. Alternative 3: Reduced 3 Lot Alternative is corrected to refer to "Alternative 2: Reduced 3 Lot Alternative"

B. Changes resulting from Supplements to the DEIR:

3. Asbestos Mitigation Measures: With respect to the comment about the need for more investigation for construction caused impacts creating airborne asbestos fibers (*Chapter IV- Written comment F-8*) the following information is provided (see also pg 10, 18, and pp 70-71 of the IS)

-Construction procedures can cause naturally occurring asbestos fibers to become airborne.

-The California Air Resources Board has the following best management practices described on its website

<http://www.arb.ca.gov/toxics/asbestos/asbestos.htm>. Areas of one acre or less meeting the criteria in Subsections (b)(1) or (b)(2)¹: No person shall engage in any construction or grading operation on property where the area to be disturbed is one (1.0) acre or less unless all of the following dust mitigation measures are initiated at the start and maintained throughout the duration of the construction or grading activity:

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

(BAAQMD Final Regulation Order, Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations, California Code of Regulations, Title 17, Section 93105)

These same mitigation measures, enforced as conditions of approval by the City of Oakland and consistent with the measures required by the Bay Area Air Quality Management District,² were listed on p. 10 of the Air Quality section of the Crestmont Project Initial Study and are repeated here for clarity. Because of the extreme difficulty of accurately measuring microscopic naturally occurring asbestos fibers and the lack of current test methods for soil sampling, ARB advises that emphasis be placed on having a geologist do a site investigation (this has been done) and establishing an effective mitigation and monitoring program for controlling release of asbestos fibers into the atmosphere during construction activities (personal communication with Steven Yee, Calif Air Resources Board, August 1, 2006). See Supplemental documentation regarding the “chrysotile” form of asbestos occurring on the project site at App. I.

4. Revisions to Visual Impacts: The IS determined that there would be no impact to “Scenic Vistas” or “Scenic Corridors” (See IS, pg. 7). Nevertheless, because there has

¹ Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit

² Asbestos airborne toxic control measure for construction, grading, quarrying, and surface mining operations.

been a comment from the owner of the private dwelling at 538 Crestmont, which borders the project on the right-or South side, the following amendment is made to the Initial Study, and incorporated herein by reference;

1. AESTHETICS—Would the project:

Comments to Questions 1.a) ,b), c) and d):

There will be no obstruction of any private “protected view” by the construction of the homes planned for each of the four lots. The homes above the proposed project, on Colgett, are generally at an elevation of about 980 feet, whereas the roofs of the proposed homes will be at approximately a 780-790 elevation. The homes across Crestmont to the West, while they have their entrances on Crestmont facing East, have their views from the rear, west facing elevations. There are no homes on Crestmont to the north of the project. The only residence that will be impacted in any way is the one located at 538 Crestmont. However, only the view from the side rear window of this residence will be affected. This view is not within a protected “view corridor”, as it is from a side rear window of a single level home out towards the front of the dwelling, and not from an “upper level side facing elevation,” on a “Cross-slope lot steeper than 20% and a change in elevation between abutting residences of at least 10 feet (about one story).” For the same reason the oblique west view from the side front window is not a “view corridor” protected under the Design Review Manual of the City of Oakland. Nevertheless the “significant” portion of this view-towards San Francisco will not be obstructed as the proposed home on the adjacent lot will be set back 30 feet, whereas the side window of the neighboring property is located 25-30 feet from the curb. The West view from the front of the home is a protected view, and will not be obstructed. In addition, impacts to private views are not considered significant impacts under CEQA (see FEIR Chapter III 3a and Chapter IV D1).

5. Supplemental soils tests were conducted on proposed Lots 1, 2 and 3, at the request of several members of the public (*Verbal comment No. 4, and written comment C-1*) and those test results are included and incorporated by reference into the DEIR at - Appendix J

Add Appendix J

6. Letter from Sponsor Agreeing to incorporate the standard conditions into MMRP is attached at Appendix L. (*Written comment F-6*)

Add: Appendix L

7. Letter from East Bay Regional Park District, dated November 29, 2005

Add. Appendix M

APPENDICES:

- G. CURRICULAE VITAE OF JOHN TORREY
- H. TPM 7940
- I. INFORMATION ON CHRYSOTILE FORM OF ASBESTOS
- J. SOILS REPORT ON BORINGS ON LOTS 2, 3 & 4 DATED 8/1/06
- K. SUPPLEMENTAL LETTER from, WRA, INC. DATED
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- L. SPONSORS AGREEMENT LETTER TO INCORPORATE THE
STANDARD CONDITIONS OF APPROVAL (uniformly applied
development standards) INTO MMRP.
- M. NOP COMMENT LETTER FROM EAST BAY REGIONAL
PARK DISTRICT, DATED NOVEMBER 29, 2005

CHAPTER III

During the public review period for the Crestmont Project EIR, a total of 5 members of the public verbally commented at the Public Hearing before the Planning Commission on June 7, 2006. In addition to the comments from the public, four Commissioners made comments and requests. The following is a list of all commenters:

1. John R Shively
2. Terry Hansford
3. Elizabeth Bashnick
4. Pat Toprakhisar
5. Frank Lovsin
6. Commissioner Michael Lighty
7. Commissioner Douglas Boxer
8. Commissioner Suzie Lee
9. Commissioner Colland Jang.

These comments are summarized and responded to in the following pages.

RESPONSES TO COMMENTS AT THE PLANNING COMMISSION PUBLIC HEARING ON THE DRAFT EIR.

The Planning Commission held a public hearing on the Draft EIR (DEIR) on June 7, 2006. The following is a summary of comments received at the hearing and the City's responses.

1. Comments by Mr. John Shively.

1a. Who prepared the DEIR?

John Torrey prepared the EIR, with appropriate oversight by the City. Mr. Torrey has been listed as the EIR preparer in Chapter II(a)(1), "Changes to DEIR." His CV is attached at Appendix G.

1b. The TPM was not included in the DEIR.

TPM 7940 is included FEIR App. H. The TPM was presented at the public hearing and was, and is, in the project case file, which has been, and is, available for public review.

1c. There were some landslides in the area of the site at Crestmont drive near Butters Dr.

As stated in the DEIR at page 47 "There is no evidence of instability on the site slope since it was created by grading in Crestmont Drive in 1956." There have been several mud slides, foundation failures, landslides, and cases of settling- some minor and some severe, in the general area of the Crestmont Subdivision during the period 1956- 1978. Each of the incidents has been annotated on the Monument Map sections where they occurred to show general location of incident. (Maps 192, 193, and 212- Building Department City of Oakland). The supporting records of these incidents show that they were caused by blocked drainage systems, deep fill, or a combination of these factors. There have been no incidents of slides or settling on the project site, even though it is relatively steep and un-retained (See DEIR p. 48)

As explained in the letter from the projects geotechnical engineer the water draining at the bottom of the site slope is "a common occurrence, and it should not be confused with an aquifer or waterway", and that "... the efficiency of the proposed retaining wall drains will be far greater than the relatively small hydrauger that is presently intercepting this water." (DEIR App. E. 9)

According to the Peer Review performed by Dr. Pyke, geo-technical engineer, the slope configuration has been maintained because it is "underlain by massive serpentinite bedrock that does not exhibit a loss of strength during earthquakes" (DEIR. App. E. 8, letter dated June 16, 2005; see also DEIR, Geology, "Site Geology", "Subsurface Conditions". "Slope Stability", Seismicity, Faults and Ground Rupture". "Seismicity, Ground Shaking" "Seismicity, Landslides"- pp. 45-48). There is no evidence of instability on the site slope since it was created by grading in Crestmont Drive in 1956 when the "Crestmont" subdivision was created (DEIR "Seismicity, Landslides" p. 47). The slope exhibited the same strength and stability throughout the winter of 2006 which was one of the wettest in a hundred years-evidencing no slippage, or slides.

Id. Feels that soils testing by borings on each lot is necessary to ascertain site conditions.

The Engineering Services Division's review of the 5 lot plan in 2004 stated that because geotechnical inspection will be required at the time of excavation and building of foundations that "additional reports and analyses won't contribute anything of substance at this time." (DEIR App. E 10, p 5).

The peer review done by Dr. Robert Pyke Geotechnical Engineer, (DEIR App. E.8) addressed this claim in the review of Henry Justiniano's Geo-Tech Report. Dr. Pyke stated that "the site is underlain by massive serpentinite bedrock that does not exhibit a loss of strength during earthquake", and that "static and seismic factors of safety most likely exceed 3 and that any displacements under or on the nearby Hayward fault would be negligible."

The supervising engineer, Dominic Ma of the City of Oakland's Engineering Services Division waived further soils investigations of the strength of the Peer Review (See email from Mr. Ma to case planner, DEIR App. E. 12). Nevertheless, the developer has obtained soil borings, substantially similar to the testing done in the area of what is now lot 1 on the TPM 7940, for each of the lots-2,3, and 4. These borings are consistent with the findings and conclusions of the Geo-technical report on the overall site (See App. J).

1e. Wants more investigation of construction caused Asbestos airborne fibers

The Initial Study determined that the existence of asbestos fibers in the serpentine rock and possible air borne fibers during excavation are adequately dealt with the standard grading dust control measures (IS p 18, DEIR App. A.; see further response to concerns about asbestos stated during the public response period on the DEIR, at p. 70-71.). While there are measurements of the percentage of asbestos containing fibers in the serpentinite (See Micro-Analytical Labs Report App. E. 5) there are no measurements of the amount of airborne asbestos as this is not feasible or necessary according to the California Air Resources Board (See DEIR, "Hazardous Material P. 70-71). The "chrysotile" form of asbestos found in the serpentinite rock on this site is common and widely distributed- found in nearly two thirds of the Earth's crust. Chrysotile is far less toxic than the other form called "amphiboles". It is this latter form that is banned from all products whereas the chrysotile form is used in many industrial products (See FEIR App. I. as well as see further response to written comment F-8, Chapter IV).

2. Comments by Mrs. Terry Hanford

2a. Concerned about water drainage from bottom of lot 3 onto Crestmont.

According to the geo-technical engineer the drainage is a "common occurrence and it should not be confused with an aquifer or waterway. Obviously the efficiency of the proposed retaining wall drains will be far greater than the relatively small hydrauger that is presently intercepting the water" (DEIR. App. E. 9, and Pipe Pros Report at App. E. 6).

2b. Concerns about how retaining wall construction will affect drainage.

See response to No. 2a above.

2c. Question of whether the cracks in the ground on McKinley Road, in the Fruitvale District, 3 miles away were possibly due to aquifer.

It would be extremely difficult to evaluate the causation of that event at this time. According to the Engineering Services Division's Supervisor, Dominic Ma, there has been no determination as of July 28 as to the source of subterranean water that caused this event. However, the area has an EBMUD reservoir created by a dam and the area has been landslide active since 1920 according to the Engineering Services Division records.

There is no similarity between the project site and area where this incident occurred. There is no dam or reservoir above or near the project site- and there have been no earth movements of the site precipitated by water or seismic activity since it was created by the grading which created Crestmont Road in 1956. (DEIR p. 47) The following facts further clearly establish the lack of relevance of the McKinley Road incident to the site of the proposed project:

- A. The site of the proposed project is comprised of massive serpentinite several hundred feet deep (DEIR, Letter Report Dr. Robert Pyke dated July 12, 2005-App. E 8);
- B. The recent winter (unusually wet) had no effect on the site;
- C. The drainage from the bottom of the site is a "common occurrence" and will be actually improved by the proposed retaining wall drainage over the existing two relatively small hydraulics that are presently intercepting the water (DEIR App. E 9);
- D. That "...when built, the homes themselves will act as retaining walls and slide buffers at the bottom of the hill." (DEIR App. E 10, p 5 and Response No. 5)

3. Comments by Mrs. Judy Bashnick

3a. Concerned that a private view will be obstructed and DEIR does not contain overall assessment of view blockage issue.

An EIR includes within its scope "public views." The IS determined that there was "no impact" on any "scenic vista." (See IS "1. Aesthetics" DEIR App. 1,p,7). Private view issues are reviewed in the Design Review phase in accordance with the Design Review Manual Guidelines and Criterion. Please also see response to written comments on same issue at Chapter IV. D1.

3b. Concerned that air quality will be affected due to prevailing westerly winds across project sites well as claims that the DEIR does not mention level of asbestos that is hazardous.

See response to No. 1e above.

4. Comments by Mrs. Pat Toprakhisar

4a. Concerned about motorists speeding on Crestmont Drive and the impact of additional driveways and curb cuts accessing Crestmont Drive.

There is no official record of speeding or speed related accidents on Crestmont (DEIR App. B. Pp 72-73). The stopping sight distances to the proposed driveways in the North bound direction (up hill) is 190 feet, which correlates to an adequate stopping distance for cars traveling 30 mph. The stopping sight distance for cars going South bound (downhill) is 300

feet, which provides sufficient stopping distance for cars traveling 40 mph (See Response to Comments in DEIR at App B. paragraph 8, p. 72, and Letter Report from traffic engineer at DEIR App. F. 1). Also, as a mitigation measure the City of Oakland requires that the project sponsor conduct a speed survey and to implement additional safety measures if speeds exceed sight distance limits stated above.

4b. How large will the homes be?

Homes will be up to 3800 square feet of living space per agreement with the Crestmont Homeowners Association. The retaining walls behind the garages will be from 10-15 feet tall and it is anticipated that the height of the exposed walls will be from 6-8 feet, depending on excavation and how much of the surface is removed to lower the retaining walls. Grading and excavation is greatly reduced as the result of stipulation in the Conservation Easement that no grading be done outside the building site envelopes. The total cut per lot is estimated at 350 cubic yards and about 40 yards of fill in the front set back portions of each home, behind the retaining walls bordering the sidewalk.

4c. A Child was killed in landslide directly above the project site. There have been 4 homes destroyed by landslides in area since the creation of the subdivision.

This tragedy occurred over 40 years ago when a mudslide originating above Kimberlin Heights (above and 7 lots to the North of the project site), inundated a home on Kimberlin Heights Drive and buried the child. The conditions that caused this tragedy, construction on fill and blocked drainage; do not exist on or above this project site. The homes that were lost were built on fill and or also involved improper or blocked drainage on or above the home site (See supporting records to landslide annotations to the Monument Maps 192, 193, and 212 maintained by the Building Services Division of CEDA).

5. Comments by Mr. Frank Lovsin

5a. The garage floor levels will have to be adjusted so that the driveway slope meets code and this will cause extra excavation.

The garage floors on the concept site plans included in the TPM are set at a specific elevation to minimize the height of the retaining walls and minimize the setbacks from the street. As explained in the Response to comments in the DEIR (App. B, page 70) adjustments to site conditions will be made without any adverse effects at the building permit stage as per standard practice when detailed design drawings are prepared and submitted for City review.

6. Comments from Planning Commissioner Michael Lighty

6a. Would like additional comment on any relation between possible slide activity on project site and the recent incident on McKinley Ave.

There is no relationship as the sites are completely separate with different geologic circumstances. Please see response to comment No. 2c above.

7. Comments from Planning Commissioner Douglas Boxer

7a. I would like comparison between 5 lot plan and current 4 lot plan with respect to impact on protected flowers.

Please see comparisons made in the Technical Report (DEIR App. D.1 Table 1, p. 9) of the reduced impact of the 4 lot plan with Conservation Easement, on the protected flowers as opposed to the 5 lot plan. The Presidio clarkia, a Federal and State Endangered Species and the most endangered of the three protected species on the site would have lost 67% of its total on-site population under the previous plan, but will lose only 7- 10% under the 4 lot plan. Cumulative impact analysis of the impact of this development on the total populations of the three listed species is set forth in Table 2, at page 13 of the Technical Report. The projects' impact on the Bay Area populations (which is equivalent to their world populations) is for the Presidio Clarkia-less than 0.8%, for the Most Beautiful Jewel Flower, less than 0.003%, and for the Tiburon Buckwheat less than .001% (i.e. 1/1000th of one percent).

8. Comments from Planning Commissioner Suzie Lee

8a. As the 5 lot plan was approved more than 2 years ago have there been any major changes in the site should be evaluated.

The DEIR is a current document completed after 23 months of research and drafting during period May 04-May 06. It addresses all the latest information and conditions including the runoff of water. See various reports on site conditions and geology at App. E, 5, 6, 7, 8, and 9. The entire biological assessment and the development of the conservation plan occurred since the protected species were discovered in May 2004- after the approval of the TTM on the 5 lot plan.

9. Comments from Planning Commissioner Colland Jang

9a. Wants evaluation of any recent slide activity in general that is relevant to this site.

Please see response to comment No 8 above which distinguishes the project site from other areas in Oakland that have experienced slide activity, including the event on McKinley Road in the Fruitvale district mentioned at the Public hearing. There has never been any slide on the project building sites. There have not been any slides or earth movement problems in the Crestmont hills area since the 70's. The winter of 2005-2006 was one of the wettest winters in the last 100 years and had no apparent effect on the site.

CHAPTER IV

Written Comments

During the public review period for the Crestmont Project EIR, a total of 9 written comments were submitted. The authors and the dates of the written comments are listed below.

<u>Identity</u>	<u>Dates of Receipt of written comments.</u>
A. Homeowners of Crestmont Association	May 17, 2006
B. "Crestmont Neighbors"	June 15, 2006
C. John Shively	June 15, 2006
D. Dorothy Bashnick	June 15, 2006
E. Pat Toprakhisar	June 16, 2006
F. Ralph Kanz	June 16, 2006
G. Laura Baker of the California Native Plant Society	June 19, 2006

The following response was received from a Public Agency:

H. EBMUD	June 2, 2006
I. East Bay Regional Park District	June 16, 2006



City of Oakland Planning Commission
C/O Planning and Zoning,
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA

May 17, 2006

RE: Crestmont 4 Lot Project - TPM 7940

Dear Planning Commission:

You are hereby advised that the 4 lot subdivision of property located on Crestmont Drive as proposed under TPM 7940 was approved by the Board of Directors of the Homeowners of Crestmont Association through an agreement dated September 1, 2003.

Sincerely,

Joe DeCredico
President, Homeowners of Crestmont Association

Cc: Cris Carrigan, Attorney at Law
Art Twain, Vice President HCA

COMMENT LETTER A – Homeowners of Crestmont Association

A1. The Homeowner's of the Crestmont Associations Board of Directors entered into an agreement with the Sponsor in September 2003, in which the Sponsor agreed to redesign the subdivision to place up to 5 homes along Crestmont with minimum set backs. Under the terms of that Agreement the Homeowners Board of Directors has submitted its support and approval of the current 4 lot plan.

CRESTMONT NEIGHBORS
2 Van Cleave Way
Oakland, CA 94619-2340

June 15, 2006

Facsimile: 510-238-4730 ; 510-238-6538
Email: rmerkamp@oaklandnet.com

HAND DELIVERED

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

Re: Notice of Preparation of Draft Environmental Impact Report
Case Number ER 05-0007, TPM 7940

Dear Mr. Merkamp:

On behalf of the undersigned -- a concerned group of neighbors residing in the Crestmont Drive area -- we submit the following comments on the "Draft Environmental Impact Report" (dated May 2, 2006) ("DEIR") issued in connection with the above-referenced case number ("the Proposed Project"), and request that the DEIR be rejected as inadequate and erroneous. CEQA requires the DEIR to be the product of the City's *independent judgment* that the DEIR is accurate and complete. Pub. Res. C. § 21082.1(a). This DEIR is neither accurate nor complete. Nor is it the result of the independent analysis and judgment of the City.

RECEIVED

JUN 16 2006

CITY PLANNING COMMISSION
ZONING DIVISION

I. NOTICE ISSUES¹

A. Biased DEIR

The DEIR exhibits a grave and fundamental flaw -- it is not the product of the City's independent analysis and judgment, as required by CEQA Pub. Res. C. § 21082.1. Indeed, no author is even identified on the document. This document appears to be prepared by the applicant himself and reviewed, if at all, by a "captive head agency" in violation of CEQA and does not reflect any independent analysis by the City or any other independent party. This DEIR should be rejected outright as inadequate and biased.

B 1

B. Biological Resources

There is no evidence that there will be adequate measures to maintain the conservation easement over time or to protect this area from fire hazards.

B 2

¹ We objected to the Division's decision to limit the issues that will be analyzed pursuant to CEQA in our letter dated November 2, 2005. In particular, we believe that the Proposed Project raises very significant issues with regard to its impact on traffic beyond the "driveway design feature only" to which the Notice has been limited. In addition, we believe there is no adequate basis for eliminating from consideration the Proposed Project's impact on Hydrology, Air Quality and Hazardous Materials -- all CEQA issues -- from further analysis and from public comment. By submitting these comments on the DEIR, we do not waive the objections we made to the Division's decision to limit the issues.

C. Geology/Soils

The area surrounding and including the proposed subdivision on Crestmont Drive has an extensive history of hillside instability. Numerous landslides have occurred within a quarter of a mile of the proposed site during the 1950's and 1960's. Some were disastrous and one included a fatality. There is obvious evidence of serpentine soil on the site.

Underlying this soil is an aquifer. The site is unusually steep all the way down to the street curb, with some areas of the site approaching 70 percent grade steepness. Unlike the development of sites on the downhill side of a street, the development of lots on this steep uphill site will require unusually deep destabilizing excavations for garages, driveways and house foundations. Even the DEIR concedes that unraveling erosion and sloughing will occur "if cutting into the hillsides reduces lateral support." DEIR at 46.

To our knowledge, there has been no thorough soils investigations for *all four lots* of the proposed tentative plan. The soils conditions of this site can be observed to vary significantly between the proposed lots within the site. To our knowledge, site-specific borings have been done only on proposed Lot 2, and even there with only two borings to the shallow depths of one foot and 4.5 feet respectively. No borings have been done on proposed Lots 1, 3 or 4. The submitted geotechnical investigation report dated September 2000, attached to the July 14, 2003 letter from

B 3

Henry Justiniano & Associates to Mr. Dennis Woodruff, was apparently ordered by a previous owner for a different proposal, is too limited (see Figure 2, B(7) and B(6) respectively of the report), and is inadequate for the current proposal.

There is no known record of any additional subsequent site-specific soils investigations. All subsequent reports submitted by the applicant are based on the boring data set forth in the 2000 report -- data which are clearly inadequate. Borings should be done on each lot to the maximum depth of anticipated excavation. Moreover, the reports submitted by the applicant purport to address only the seismic risks presented by the underlying soil. They do not address the risk of mudslides -- a very serious risk in this area. They contain no evidence, independent or otherwise, to support the conclusory opinion in the DEIR that there is no aquifer underlying the site.

Moreover, Justiniano's argument that the excavation will expose stronger bedrock is pure speculation and not based on fact. Indeed, the primary geologic map for the area-- Radbruch (1969)—indicates that serpentine bedrock is intensely sheared making the depth of weathering indiscernible. Unlike other formations, the strength properties of serpentinite remain about the same with depth.

B 3

The City must require a current and adequate soils investigation by an independent expert for each of the varying proposed lots, to prove that each lot is independently safe for development. That soils investigation must be done to the depth and setback of the proposed excavation which could be as deep as 20 feet-- not the shallow depth done for the two borings in 2000. Such soils investigations should also be subject to peer reviews.

D. Setback

The Proposed Project's ten-foot garage setback violates the City Code with respect to its setback adequacy and driveway designs which requires a minimum of a twenty feet setback from the curb.

B 4

II. OTHER CEQA AREAS OF CONCERN

The Division's decision to limit the environmental impact analysis to only three issues ignores the serious nature of at least three other areas of serious concern under CEQA discussed below. The Initial Study provides no basis to justify the Division's decision to eliminate those issues from further analysis.

B 5

A. Hazardous Material

The soil underlying the Proposed Project is serpentine and, according to the report of MICRO Analytical Laboratories (attached to the DEIR), chrysotile asbestos will be released during construction into the air of a residential area where people of all ages live whose health could be adversely affected by

B 6

breathing in this hazardous material. The DEIR does not even address whether the level of asbestos released will be hazardous.

B. Air Quality

As discussed above, the excavation conducted in connection with the Proposed Project will release asbestos into the air presenting the health hazard described above. Building on this serpentine rock will also violate the Open Space, Conservation and Recreation Element Policy.

C. Hydrology

There is positive evidence of water on the site of the Proposed Project at all times of the year from lot 3 throughout the hillside extending to 542 Crestmont Drive indicating that there may be an aquifer feeding the site year round. The Proposed Project will adversely and substantially affect site stability and neighboring properties, causing dangerous landslides as tragically illustrated recently in the Fruitvale area. Moreover, the map attached to the December 5, 2005 letter (included in the DEIR) identifying recent landslides in the immediate area belies the statement in the DEIR (DEIR at 47) that there is no evidence of instability on the site slope since 1956. A detailed analysis of the area's hydrology conditions should be conducted as required by CEQA.

B 7

III. CONCLUSION

The City should require the applicant to demonstrate that, consistent with CEQA, development on each of the four proposed lots can be done safely without risking the stability of the site or of the adjoining properties. Second, the City

should require the applicant to demonstrate, consistent with CEQA [plant issue].
Finally, the City should require the applicant to conform to the City Building
Code with respect to garage setbacks.

The DEIR is inaccurate, incomplete and clearly biased. We hereby
request the City to reject it. Moreover, if foreseeable hillside failures occur
causing damage to persons or property, without an adequate and complete prior
environmental impact analysis, the City should be held responsible and liable for
the damages caused to others by such hillside failures.

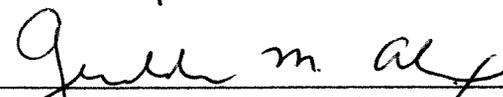
Thank you.

Sincerely,


John Shively, 2 Van Cleave Way


Terri Hansford, 150 Colgett Drive


Kimberly Hicks, 145 Colgett Drive


Geraldine M. Alexis, 158 Colgett Drive


Marcus Alexis, 158 Colgett Drive

COMMENT LETTER B – Crestmont Neighbors

B1. John Torrey prepared the EIR with appropriate oversight by the City. Mr. Torrey has been listed as the EIR preparer in Chapter II and his CV is attached at App. G. The Combined Notice of Availability of the DEIR expressly stated the City finds the DEIR “to be accurate and complete and ready for public review.” Similarly, the Notice of Availability of the FEIR expressly states that “the EIR document represent(s) the independent conclusions and recommendations of the City.” Finally, the City Planning Commission, if it chooses to certify the EIR, must make findings that it has independently reviewed and considered the EIR.

B2. The amount of funding of the conservation easement oversight program will be determined, according to the DEIR, by the Easement holder. Said amounts, in two parts, the first to pay expenses for the first 10 years, the second to fund an endowment that will yield sufficient interest in perpetuity, will be paid up front by the developer and any shortfalls over time will be assessed to the Homeowners Association. (See “Funding” DEIR p. 39).

B3. See Responses to verbal comments in Chapter III, No. 1c, 1d, 2a, 2c, 4c, and 8a; the discussion of the geology and soils in the DEIR’s “Geology and Soils” Section V, at pp. 45-48, and discussion in DEIR App. B. p. 69-70 to written comments regarding Geology received during the DEIR phase.

B4. All garages are set back a minimum of 20 feet from curb as required by code. Sec. 17.108.050. See Figure 2 at page 11 of DEIR for site plan. This issue would be addressed thoroughly in the Design Review stage and the applicant would be required to meet the zoning regulations or else request a Variance from the regulations which would be subject to public review.

B5. The Initial Study addressed Hazardous Materials, Air Quality and Hydrology and other areas according to the CEQA thresholds of significance and determined that the impact of the development in these areas would be less than significant either with or without the standard conditions of approval (uniformly applied development standards). According to CEQA Section 15179.5 a focused EIR prepared pursuant to this section shall be limited to discussion of potentially significant effects on the environment specific to the project. The City decided that based on the Initial Study & supported by environmental experts that the EIR should focus on Biology, Geology, and Traffic issues (DEIR pp.2-3). Nevertheless these issues were adequately studied and concerns of the commenter were addressed.

B6. Please see response to Public Hearing Comments No. 1e in Chapter III.

B7. Please see response to Public Hearing Comments, No. 2a, in Chapter III and DEIR “Hydrology” p. 71.

COMMENT LETTER



John R. Shively, P.E.
Mechanical Engineer
Post Office Box 7136
Berkeley, California 94707-0136

JUN 16 2006

CITY PLANNING COMMISSION
ZONING DIVISION

June 15, 2006

3:48 PM
LBK

Planning Division,
Community & Economic Development Agency
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, California 94612

Attention: Mr. Robert Merkamp, Planner

Subject: Draft Environmental Impact Report dated May 2, 2006
Proposed Crestmont Residential Subdivision Project
Case No. TPM 7940; ER050007

Dear Mr. Merkamp:

This is written in response to the City's May 2006 invitation for written comments in regards to the subject Draft Environmental Impact Report (DEIR) concerning a proposed four lot subdivision development project located on the hillside above the intersection of Crestmont Drive with Westfield Way, as applied for by the current owner, Andalucia Properties, LLC/ Dennis Woodruff.

Following my review of the DEIR for its potential environmental impacts and other engineering implications I wish to offer the following critique of the proposed project, its related DEIR and the application for subdivision approval.

Although the DEIR refers to the Tentative Parcel Map 7940 (TPM 7940) in numerous places, nowhere in the DEIR is a copy of the current version of that map to be found. The inclusion of such a tentative parcel map is an absolute essential to the description of the proposed subdivision and yet it is omitted. Without that map the DEIR is seriously incomplete and is a basis its rejection.

The proposed subdivision is on the steep uphill side of Crestmont Drive immediately above the intersection with Westfield Way. The site is surrounded by an area that has an extensive history of nearby landslides that have damaged or destroyed nearly a half dozen homes. Currently there is an active slide on Crestmont Drive just above the intersection with Butters Drive.



Attached is a historical map of the Crestmont area hill slides surrounding proposed subdivision site. These landslides demonstrate the highly variable soil conditions in this area, indicating that the area soil conditions are not uniform and can vary significantly within a few feet, such as the Van Cleave Way slides that damaged or destroyed four homes, yet 93 Van Cleave Way stands undisturbed immediately adjacent and south of that major slide site.

Although there is an obvious need for soils investigations to the full depth, and at the full setback of the anticipated excavations for the foundations on all four proposed subdivision lots, only a few shallow core samples have been taken, and not on all four proposed lots. No map of those soils investigations can be found in the DEIR. There is no substitute for complete soils investigations in this highly problematic area.

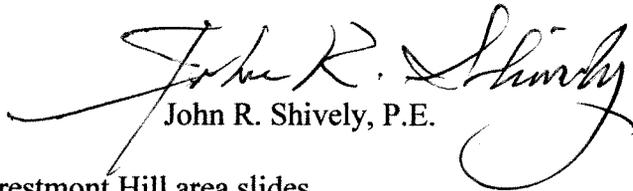
There is evidence of an underground aquifer located within the proposed subdivision site that produces water year around, even in dry weather. Underground water, and not surface water, is usually the primary lubricant that degrades soil strength and thus is the principle cause of landslides. Nonetheless this underground aquifer within the proposed subdivision site is not cited in the DEIR and remains uninvestigated.

The DEIR does not address the problem of construction excavation that will disturb soil and rock and will probably generate cancer causing asbestos dust in the area.

Finally the DEIR fails to indicate who its actual author is, the author's qualifications for impartiality, and author's relationship to the developer.

I hereby request the City to reject the DEIR and the development applicant's request for a 4 lot subdivision approval, for the preceding cited DEIR deficiencies. Accordingly I recommend the City to not process this DEIR into a final EIR form, but instead to return it to the applicant unapproved, with no further City action on it.

Respectfully submitted,


John R. Shively, P.E.

Attachment: Map of Crestmont Hill area slides

C 2

C 3

C 4

COMMENT LETTER C – John Shively

C1. See Responses to Public Hearing comments above at Nos. 1d and 2c, in Chapter III, and Response to similar concerns addressed in DEIR at App. B, p. 69-70.

C2. See response verbal Comment No. 2a, in Chap III, and to Written Comment No. B3 above.

C3. See Response to No. 1e Public Hearing Comment in Chapter III.

C4. See Response to 1a, in Chapter III.

COMMENT LETTER



June 15, 2006

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

RECEIVED

JUN 16 2006

CITY PLANNING COMMISSION
ZONING DIVISION

Attention: Robert Merkamp, Planner

Re: Notice of Preparation of Draft Environmental Impact Report
Case #ER05-0007, TPM 7940

Dear Mr. Merkamp:

As the homeowner next to the proposed site mentioned above, I am submitting my comments as to the biased and inadequate findings of the Draft Environmental Impact Report (DEIR) dated May 2, 2006. I am fully supporting the commentary of my fellow neighbors but need to mention a few of my personal concerns of the DEIR, which by CEQA standards should be rejected by the City of Oakland.

Specifically, in response to one of my concerns, the site observer directly negates my comment regarding the elimination of my bay views on page 73 of the DEIR. I am enclosing photos of the affected view with before and after assessments according to the tentative parcel map specifications within the DEIR. The post in the before picture is set 25 ft from the curb, 5 feet from my property line, and is at a height of 15 feet from the slope of the hill. As you will probably agree, there is a significant impact to my views, which only shows that this observer's finding and stated result is completely incomprehensive and insufficient.

As well as this large flaw in the DEIR, I am surprised at the little attention paid to the City's building codes. According to city code 17.108.080 (listed below) the 5 foot set back at the side yard is not adequate.

17.108.080 Minimum side yard opposite living room windows.

On each lot containing Residential Facilities with a total of two or more living units, except in the case of a One-Family Dwelling with Secondary Unit, a side yard with the minimum width prescribed hereinafter shall be provided opposite any legally required window of a living room in a Residential Facility wherever such window faces any interior side lot line of such lot, other than a lot line abutting an alley, path, or public park. The side yard prescribed by this section is not required on other lots or in other situations. Such yard shall have a minimum width of eight feet, plus two feet for each story at or above the level of the aforesaid window; provided, however, that such side yard width shall not be required to exceed twelve (12) percent of the lot width in the R-70, R-80, R-90, C-25, C-30, C-35, C-40, C-45, C-51, C-55, S-1, S-2, and S-15 zones and twenty (20) percent of the lot width in all other zones, except that in no case shall such side yard width be less than five feet. The side yard required by this section shall be provided opposite the legally required window and opposite that portion of the wall containing such window, or of any extension of such wall on the same lot, for a distance of not less than ten feet in both directions from the centerline of such legally required window, and at and above finished grade or the floor level of the



lowest story containing such a window, whichever level is higher. Such yard shall be provided unobstructed except for the accessory structures or the other facilities allowed therein by Section 17.108.130. (Ord. 11892 § 7, 1996: prior planning code § 7082).

According to these guidelines, a minimum of 12 feet would be necessary for the proposed building on lot #4, which would limit the capabilities of building on this particular lot.

Secondly, the observer stated that there would be a minimal impact on the issue of speed and traffic along Crestmont. He stated there is a 25 MPH sign posted, suggesting that traffic abides by this sign. However, as several of the residents in the surrounding area can confirm, the speed at which the traffic actually moves is considerably higher than that of the posted sign. He also stated that no traffic report has ever been done on this area and uses national statistics to assume the affects of additional cars and traffic on the street. It is pertinent that the statistics reported within the DEIR be of the specified locale in order for this DEIR to be a complete document. A simple radar posting sign with memory would be able to give the appropriate data to make a reliable determination on the affects of traffic and speed at this particular location.

D 2

Finally, one of the most serious concerns regarding the results reported in the DEIR is the lack of information provided regarding the asbestos released into the air. A report was included in the DEIR showing that there are asbestos quantities within the serpentine soil. However, scientifically, an assessment of the hazardous affects of such a release would need to be compared to the stated amounts presently found in the soil to what historically known data of such releases have been, which is not included within this DEIR. And the method of limiting such exposure to carcinogenic materials is also incomplete in the exact nature, the specific parameters that will be applied and adhered to and the overall effectiveness of only wetting the serpentine soil.

D 3

Since these concerns and comments towards them have been insufficiently addressed within the DEIR, I request that the City of Oakland reject this document. A more accurate, thorough, and unbiased assessment of the Environmental Impact of this proposed development should be obtained prior to the approval of such a development due to the safety issues brought to your attention. Otherwise, in the event that there are any damaging or harmful situations that occur to me or my property due to the City's lack of response to these safety concerns, I will not only hold the developer responsible but the City of Oakland responsible as well. I look forward to a positive response from you once all commentary has been evaluated.

Sincerely,



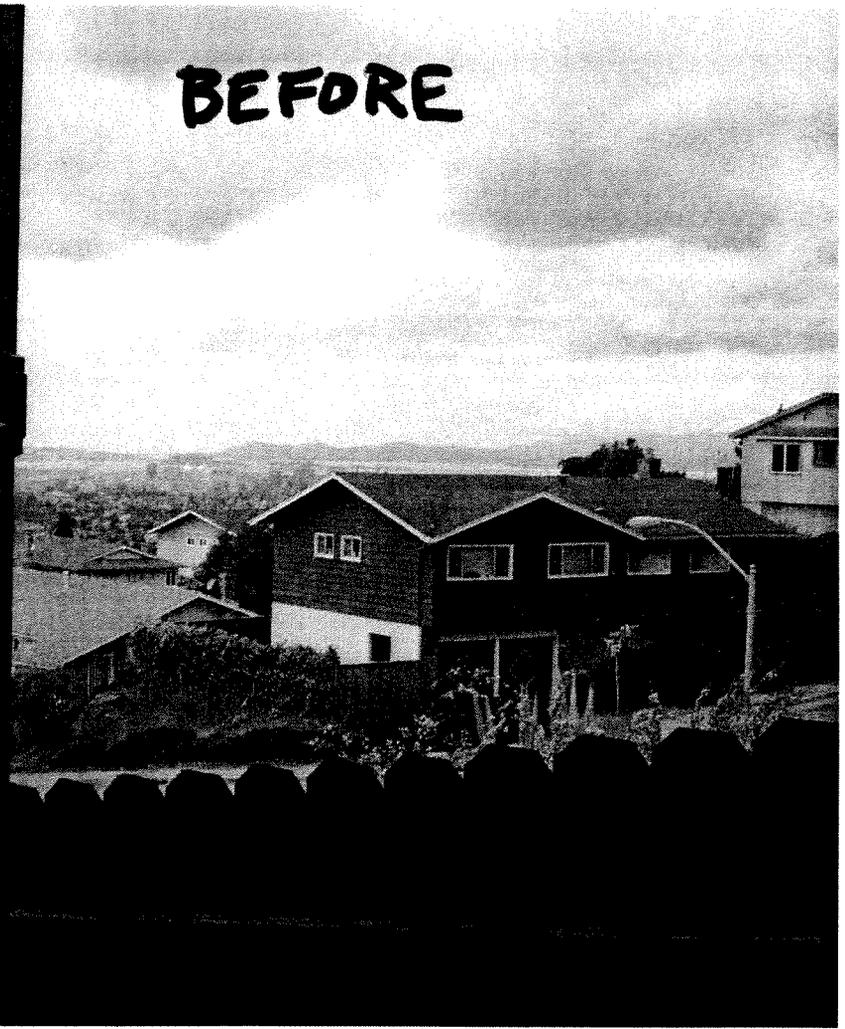
Elizabeth Bashnick
538 Crestmont Dr.
Oakland California 94619

FRONT ROOM

MARKING POST



BEFORE



AFTER



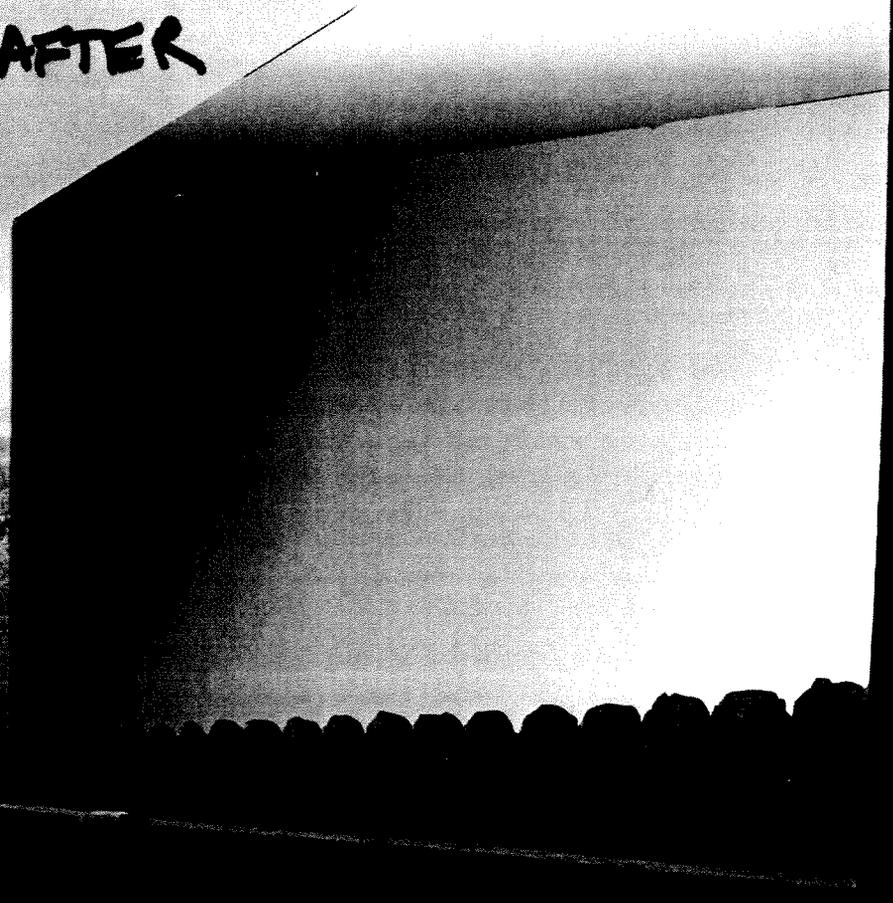
BACK ROOM

BEFORE

MARKING POST



AFTER



COMMENT LETTER D – Elizabeth Bashnick

D1. Please see response to Mrs. Basnick’s verbal comment at the Planning Commission Hearing at Chapter III, 9. There will be no obstruction of any private “protected view” by the construction of the homes planned for each of the four lots. The homes above the proposed project, on Colgett Drive, are generally at an elevation of about 980 feet, whereas the roofs of the proposed homes will be at approximately 780-790 elevation. The homes across Crestmont to the West have their views from the rear and will not be impacted. There are no homes on Crestmont to the north of the project.

The only residence that will be impacted in any way is the one located at 538 Crestmont. However, only the view from the side rear window of this residence will be affected. This view is not within a protected “view corridor”, as it is from a side rear window of a single level home out towards the front of the dwelling, and not from an “upper level side facing elevation,” on a “Cross-slope lot steeper than 20% and a change in elevation between abutting residences of at least 10 feet (about one story).” (Interim Design Review Manual for One –and-Two-Unit Residences Adopted by Oakland City Planning Commission on 6/15/05, Guidelines 1.1 C 3 page 1-1) For the same reason the oblique west view from the side front window is not a “view corridor” protected under the Design Review Manual of the City of Oakland. Nevertheless the “significant” portion of this view-towards San Francisco will not be obstructed as the proposed home on the adjacent lot will be set back 30 feet, whereas the side window of the neighboring property is located 25-30 feet from the curb. The West view from the front of the home is a protected view, and will not be obstructed. There will be no obstruction of any private “protected view” by the construction of the homes planned for each of the four lots. In addition, impacts to private views are not considered significant impacts under CEQA (see FEIR Chapter III 3a and Chapter IV D1). If the project is approved the City of Oakland will review the designs of the new structures to ensure they are in compliance will all regulations and applicable guidelines.

The letter also raises a question about whether additional setbacks beyond the 5 foot side yard are required. The letter references section 17.108.080 which deals with minimum side yard setbacks opposite living room windows and in some cases stipulates increasing the setbacks over and above that of the base zone. However this regulation does not apply in this case as that is designed to deal with multi-family residential buildings and this project will create four single family detached units.

D2. A traffic Speed Survey, and appropriate mitigations in event of findings of excess speeds is a condition of the filing of the Final Map. DEIR. VI. “Mitigation Measure 3.1” p 56.

D3. See Response to Verbal Comment No. 1e, Chapter III, above and Chapter II Supplemental information regarding asbestos mitigation measures at paragraph 3.

COMMENT LETTER



Merkamp, Robert

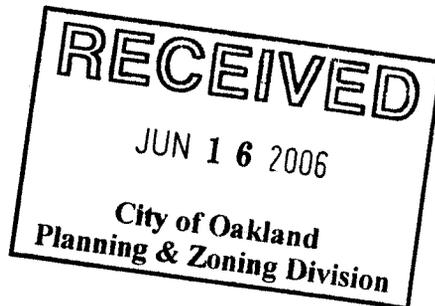
From: Pat Toprakhisar [erdal.toprakhisar@sbcglobal.net]
Sent: Friday, June 16, 2006 3:36 PM
To: Rmerkamp@oaklandnet.com
Subject: Re: Case File # TPM-7940/ER05-007

Dear Mr. Merkamp:

If the City of Oakland insists on building on the site, disregarding the landslide of 1963 (Mr. Lovsin's map on page 10 of the neighborhood protest section of the DEIR - 4 homes lost, 1 child killed) and is prepared for the liability that may ensue, PLEASE consider the 3-home "environmentally superior alternative" (Reduced Density Alternative) described on pages 60 and 61 of the DEIR.

Sincerely,

Pat Toprakhisar



COMMENT LETTER E – Pat Toprakhisar

E1. The construction of the homes will improve slope stability as they will “act as retaining walls and slide buffers at the bottom of the hill” according to analysis of the City of Oakland’s Engineering Services Division (Staff Report on 5 lot project, DEIR App. E.10. pg. 5). Four homes would be more effective at ameliorating concerns about slope stability than three homes would however this is but one factor in determining the “environmentally superior alternative” which is discussed more thoroughly in the DEIR (Ch. 7D, pg. 60).

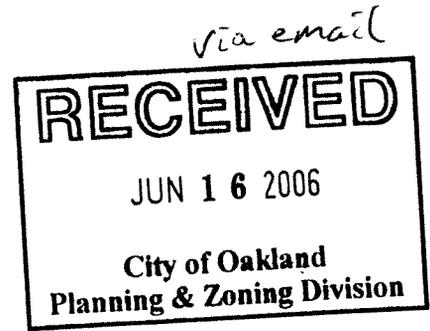
COMMENT LETTER

F

Ralph Kanz
4808 Congress Ave.
Oakland, CA 94601

June 16, 2006

Mr. Robert Merkamp, Planner
City of Oakland
CEDA, Planning Division
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612



RE: Crestmont Residential Subdivision Project

Dear Mr. Merkamp:

Most of the comments I submitted in response to the Notice of Preparation for this proposed project have gone unanswered. No Scoping Meeting was held. Noticing was deficient. Supporting reports were not available for public review. The contracts with consultants should provide for full disclosure of communication with the applicant. Full transparency should be provided.

On May 21 I submitted a public records request to the City to inspect documents related to the analysis of the Draft Environmental Impact Report ("DEIR"). The initial request was supplemented in May 24 with a request for one additional set of records. I requested that the comment period be extended to allow for the review of these documents. To date I have not received a response to any of my requests.

F 1

The Draft Environmental Impact Report ("DEIR") never identifies who prepared the document. CEQA Guidelines Section 15129 requires that "the EIR shall identify ... the persons, firm, or agency preparing the draft EIR, by contract or other authorization."

F 2

I. SUMMARY OF DRAFT EIR

A. INTRODUCTION

The proposed project would subdivide two lots into four lots. Most of the technical studies and reference materials were unavailable for public review at the time the Initial Study ("IS") was released. The City could not have analyzed the accuracy of the IS without possessing the supporting materials. This also prevented the public from commenting fully on the conclusions of the IS.

F 3

The requirement for an appointment to view the documents violates the California Public Records Act. Government Code Section 6253(a) provides that "public records are open to inspection at all times during the office hours of the state or local agency and every

person has a right to inspect any public record.” Later references in the DEIR do not contain this stipulation and specify different office hours.

B. PROJECT HISTORY

As explained in my comments to the IS, the project history fails to disclose the entire history of the project. From the March 3, 2004 Staff report for the withdrawn proposal:

“The subject property is part of what was originally an approximately 8 acre remainder parcel created in October of 1956, as a part of Tract 1710, a 178-lot subdivision which was subsequently developed by Oddstad Homes with single-family ranch-style homes, and is now commonly referred to as the Crestmont neighborhood. The approximately 8 acre remainder parcel was originally designated as a city park, however the City of Oakland never accepted the dedication of this land, and therefore its ownership reverted back to the original subdivider, who subsequently sold the land to a private developer. The approximately 8 acre remainder parcel has gone through several resubdivisions by several different owners, and now consists of 10 parcels, 7 of which have been developed with single-family homes, with the subject property consisting of two of the three remaining parcels.”

The two lots are part of a subdivision of a 1.61-acre parcel into three lots in 2000. The environmental review for that subdivision included an Initial Study dated June 15, 2000 and a Negative Declaration. The applicant purchased the lots shortly after the completion of the subdivision and immediately sold one of the lots. This proposal concerns the two remaining lots.

The Initial Study for the 2000 subdivision stated the project would have no impact on special status species and that the soils on the site are characterized as Maymen loam. “The site does not have more than a 15 percent slope nor a history of landslide problems.”

The statement that the five lot plan “was approved by the Planning Commission on March 3, 2004 when the project was determined to qualify for a Categorical Exemption pursuant to CEQA Guidelines section 15332 (Infill Development Projects)” fails to acknowledge that this project **never** “qualified” for a CEQA exemption. Further on “certain flowers on the Federal List of Protected species were identified on the project site. As a consequence of this discovery...” Presidio clarkia, most beautiful jewelflower, and Tiburon buckwheat were identified on the site in 1991 and reported to the California Natural Diversity Database (CNDDDB) by Brad Olson. The Open Space, Conservation and Recreation (OSCAR) Element of the Oakland General Plan (June 1996), page 3-43, **Table 6: Rare, Threatened and Endangered Vascular Plants Potentially Present in Oakland** lists Presidio clarkia as being observed in the Skyline/Redwood area and most beautiful jewelflower in the Crestmont area. Tiburon buckwheat is also listed on Table 6 but no location is noted. The five-lot plan is irrelevant to the current proposal. All references to the five-lot plan should be removed

F 4

from the document. The five-lot plan was a violation of CEQA and State and federal Endangered Species Acts.

Neither the DEIR or the IS contained a map of the existing two lots. Inclusion of maps and references to previous proposals for this site prejudices the assessment of the current proposal. Any reference to previous proposals that violated State and federal law should be removed from the document.

The memo from Andrew Smith to Eric Angstadt states: "basically this is the 9th iteration and the 3rd application for this subdivision, and it should have been denied when it came back in 2002, but unfortunately Building and Fire didn't assert themselves against the applicant like they should have." If this was a complete history of the project it would show the nine iterations and three applications in the history of this project and explain why the subdivision "should have been denied."

C. PROJECT PROPOSAL

The proposed project is inconsistent with the following portions of the Open Space, Conservation and Recreation (OSCAR) element of the General Plan:

Policy OS-1.2: Open Space Protection Priorities for Private Land: Conserve privately-owned areas with important natural resource values through a combination of land acquisition and development controls. Use the following criteria when developing priorities for acquisition or protection: (b) parcels with significant biological resources, including endangered species habitat and native plant communities.

Policy OS-1.3: Development of Hillside Sites: On large sites with subdivision potential, generally conserve ridges, knolls, and other visually prominent features as open space. Maintain development regulations which consider environmental and open space factors such as land stability, plant and animal resources, earthquake and fire hazards, and visual impacts, in the determination of allowable density. Where hillside development does occur, encourage creative architecture and site planning which minimizes grading and protects the natural character of the hills.

Policy CO-2.2: Unstable Geologic Features: Retain geologic features known to be unstable, including serpentine rock, areas of known landsliding, and fault lines, as open space. Where feasible, allow such lands to be used for low-intensity recreational activities.

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

Policy CO-7.2: Native Plant Restoration: Encourage efforts should to restore native plant communities in areas where they have been compromised by development or

F S

invasive species, provided that such efforts do not increase an area's susceptibility to wildfire.

Objective CO-9: Rare, Endangered, and Threatened Species: To protect rare, endangered, and threatened species from the impact of urbanization.

The City's failure to implement the following sections of the OSCAR when approving prior projects has allowed the present proposal to move forward:

Policy CO-9.1: Habitat Protection: Protect rare, endangered, and threatened species by conserving and enhancing their habitat and requiring mitigation of potential adverse impacts when development occurs within habitat areas.

Action OS-1.3.3: Conservation Easements: Establish a Standard Operating Procedure in the Office of Planning and Building which encourages the use of conservation easements on portions of privately owned properties which have significant aesthetic or environmental value.

Action CO-7.1.3: Use of Conservation Easements: Establish an Office of Planning and Building Standard Operating Procedure which encourages the use of conservation easements to protect native plant communities on private lands where development may be proposed in the future.

Action CO-9.1.3: Preparation of Habitat Conservation Plan: Support a collaborative effort between Oakland, County, State and federal agencies, adjacent cities, the East Bay Regional Park District, and local environmental groups, to develop a long-term multi-species habitat conservation plan (HCP) for the East Bay Hills.

The Oakland General Plan Land Use and Transportation Element (LUTE) refers to Special Status Species in "Impact H.3: Development consistent with the Land Use and Transportation Element could affect the habitat of certain special status plants and result in the loss of special status plants species, and could result in the loss of mature trees on new development sites. This is a less-than-significant impact due to existing policies in the OSCAR Element." The mitigation for this Impact is dependent on the implementation of all the policies and actions of the OSCAR. OSCAR policies and actions have not been implemented. The mitigations have not been implemented. This project does "conflict with applicable land use plan, policy, or regulation of an agency with jurisdiction over the project...adopted for the purpose of avoiding or mitigating an environmental effect." When combined with past failures to mitigate, including the previous actions of the applicant for this proposed project, the City of Oakland cannot approve this proposed project until the mitigation measures for the LUTE have been implemented.

F S

D. ENVIRONMENTAL REVIEW PROCESS

The IS process was compromised by failing to have supporting documents available for public review. The City as lead agency could not have determined the adequacy of the IS since it did not have in its possession the reports and supporting documents for the IS. How could the City assess the proposed projects potential impacts in all the areas without those documents in its possession? "CEQA Guidelines Section 15020 General: Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish. For example, a Lead Agency is responsible for the adequacy of its environmental documents. The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document." In this case the Lead Agency knowingly released an Initial Study without evaluating its adequacy.

F 3

Page 2 of the DEIR states "the applicant requested that the environmental review proceed in the form of a focused EIR..." Further on page 2 of the DEIR: "the applicant has agreed to voluntarily add all such conditions to the Mitigation Monitoring and Reporting Program ("MMRP") developed for the EIR." Nothing in the record supports these statements attributed to the applicant.

F 6

Land Use and Planning cannot be excluded from analysis in the DEIR. As detailed in my comments to the IS, implementation of the OSCAR is mitigation for the LUTE. The OSCAR has never been fully implemented. Two IS sections (III. Air Quality and VII. Hazards and Hazardous Materials) make a conclusion about the asbestos found in the soils at the site, but fail to provide an explanation for the conclusion. What was the basis for determining that these two items should not be included in the DEIR? The Lab Report from Micro Analytical Laboratories only lists the amount of chrysotile found in the soils, and fails to explain what levels of chrysotile would represent a health hazard. How did the City determine that these were not potentially significant environmental impacts of the project? Has the Lead Agency addressed the asbestos issue on other serpentine soil sites in Oakland? If so what were the results of those findings?

E. SUMMARY OF ENVIRONMENTAL EFFECTS

The IS fails to properly address Air Quality and Hazards and Hazardous Materials as they relate to the asbestos in the soils on the proposed project site. The Land Use and Planning section of the IS does not adequately address the OSCAR and LUTE elements of the General Plan. The potentially significant effects of the proposed project cannot be avoided or reduced to less than significant levels with the mitigation measures identified in the DEIR.

F 7

F. ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The No Project Alternative would have no negative effects. City regulation currently requires the clearing of properties for fire safety. Clearing of the proposed project site would still be required, and properly timed it would benefit the special status species on the site. The City's goal of increasing housing is not the only goal of the General Plan. The OSCAR element also requires protection of the special status species on the site. A reduced density alternative of one house would be more appropriate alternative to analyze.

F 8

The DEIR must look at off-site alternatives. No other site has the special status species in such significant numbers, while other sites would provide space for houses without the significant impacts of this proposed project. Currently there are lots being offered for sale on Westfield Way that could be developed without the significant impacts that will occur with the proposed project site.

G. AREAS OF CONTROVERSY

"All other potential environmental effects were found to be at a less-than- significant level with the application of the City's standard Conditions of Approval that have been agreed to by the project sponsor and which will be incorporated in the MMRP and adoption of proposed mitigation measures." (DEIR at page 4). Nothing in the record supports the assertion that the project sponsor has reached such an agreement. This also implies that the City's standard Conditions of Approval are in fact mitigation measures that must be a part of the DEIR analysis. CEQA does not allow for the deferral of mitigation measures to a point after analysis in the environmental review process. All environmental impacts identified as needing Conditions of Approval must be analyzed by the DEIR.

F 9

Air Quality/Hazardous Materials were raised as areas of concern, but the City chose not to evaluate these concerns even though it did not have in its possession the documents to make an informed decision. Land Use and Planning was identified as an area of controversy in comments to the IS. The DEIR fails to acknowledge Land Use and Planning as an area of controversy, and there is no analysis of why it is not included in the DEIR.

II. THE ENVIRONMENTAL REVIEW PROCESS

A. THE INITIAL STUDY

The IS failed to completely address the issues of Air Quality, Hazards and Hazardous Materials, and Land Use and Planning. The City had no way to evaluate the conclusions of the applicant's consultant because the City did not have in its possession the supporting documents for the IS. Without these supporting documents the City could not

have determined the adequacy of the determinations in the IS. The IS does not reflect the lead agency's independent judgment and analysis.

B. THE DRAFT FOCUSED EIR

2. Procedures for Reviewing the Draft EIR

A records request was made to the City on May 21, 2006 for documents relevant to the analysis of the DEIR. Without these records complete responses to the DEIR cannot be supplied. The comment period for the DEIR must be extended to allow adequate time to review the requested records.

The DEIR should not assume certification of the EIR.

The first bullet point on page 8 completely mischaracterizes the language of CEQA Guidelines Section 15091(a):

No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

The term "feasibility" appears nowhere in CEQA Guidelines Section 15091(a).

The second bullet point on page 8 fails to provide a mechanism for guaranteeing the implementation and enforcements of the MMRP if the project would be approved. At the Chabot Space and Science Center 10 of the 21 pallid manzanita (*Arctostaphylos pallida*) have died as a result of the failure to enforce the MMRP for the project. The City has failed to enforce the required elements of the MMRP for the Leona Quarry project.

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The bullet point on page 9 states that “the Project Sponsors Specific Replies to those comments are also provided at App.B.” Appendix B presents the comments by the project sponsor as if they were prepared by the lead agency. The final line states that Air Quality/Hazardous Materials have been addressed by the DEIR, when in fact they are not as explained previously. The City decided not to include these issues even though it lacked the information needed to inform the Lead Agency's independent judgment and analysis.

III. PROJECT DESCRIPTION AND OBJECTIVES

B. PROJECT DESCRIPTION

Page 21: The statement that wet-weather grading could be approved conflicts with the prohibitions on such activity in the biology section at page 37. The Technical Report suggests prohibitions on grading during the blooming season for the special status species.

F 11

Page 22: The landscaping plans must include limitation on species that can be planted to prevent the introduction of invasive species, and trees should be prohibited as they can produce organic materials that could spread onto the neighboring conservation easement.

F 12

Page 23: The plants described for Wildland Fire Protection should be limited to non-invasive native species and prohibit trees.

Page 24: “In most cases, active management of the land is necessary to maintain and enhance the habitat values for serpentine soil species.” This statement mischaracterizes the Recovery Plan that states under Habitat Management: “In most cases, active management of the land is necessary to maintain and enhance habitat values for the species covered by this plan. However, management strategies have not been investigated for most species. Management research (element #3) may take many years to complete, and few management plans have been developed for protected species. The only practical approach is adaptive management, where management is applied, population responses are monitored, the outcome is evaluated, and management is readjusted accordingly.”

Page 25: Geotechnical stabilization of the site is not a needed objective of the project.

The applicant's profits appear to be the highest priority objective of the project.

IV. BIOLOGICAL RESOURCES

The biological impacts of the proposed project are clearly the most critical in the City's analysis. Peer review of the biological report by WRA has not occurred. Peer review of the geology has been provided. There are serious questions about the conclusions of

F 13

WRA and the failure to address the critical issues of buffers, and habitat assessment. There must be peer review of the WRA Technical Report by a biologist possessing expertise and experience with serpentine soil special status plant species in Oakland.

Population counts from an individual year are not an accurate way to assess the importance of a site to annual special status plant species. As noted in the IS comments Brad Olson stated: "Like any annual, plant populations can fluctuate dramatically from year to year, so one year's worth of data is hardly sufficient to determine the approximate size of the impact or relative significance. I've found that five continuous years is truly necessary to capture the range of variability." My personal observation of the Presidio clarkia population on the site in 2006 found changes in the distribution reported by WRA.

A more accurate measurement of the impacts to annual species is to analyze the occupied habitat. This method acknowledges natural fluctuations in populations, and would determine which areas of habitat are most valuable, and how to best protect them. No such analysis has occurred. How many acres of occupied Presidio clarkia habitat exist in the East Bay? How many in San Francisco? How significant are the genetic differences between the San Francisco and Oakland populations? Making comparisons to regional and statewide serpentine habitats ignores the habitat requirements of the species in question.

With regard to the plant counts for the site, it must be remembered that the 1991 counts by Brad Olson took place before the construction at 538 Crestmont. Presidio clarkia were found on the property at 538 Crestmont in 2006. How much occupied special status species habitat was taken by the construction? Where is the highest quality habitat, and how do you determine what constitutes high quality habitat?

These same concerns apply to the Oakland populations of most beautiful jewelflower and Tiburon buckwheat. How much occupied habitat exists in Oakland for these species?

Page 30: "There are a number of Monterey Pines within the conservation area which will remain unless the Biological Monitor determines that some or all should be removed for the benefit of the special status species." The trees must be removed. These trees will impact special status plant species. Mitigation measures cannot be delayed to after the EIR process, they must be included in the analysis of the effects of the project.

The plant community on the site represents possibly the most diverse assemblage of serpentine soil species found at any site in Oakland. No analysis was done of this native plant diversity to determine how truly unique the site is. The proposed project could eliminate a plant community on the site that is found nowhere else. The DEIR also failed to address impacts to serpentine bunchgrass grasslands.

On page 34 the DEIR again mischaracterizes the conclusions of the Recovery Plan when it states: "however that Plan also recognizes that sites with smaller than a minimum 2000 population, such as the Crestmont site, have low viability caused by harmful genetic changes which result from inbreeding in small populations and may lead to population

F14

extirpation (Recovery Plan II-64 App. D).” What the Recovery Plan does say is: “until research show otherwise, recovery should target securing populations containing a minimum of 2,000 plants each (but preferably more). The probability of population persistence over the long-term is expected to be higher for larger populations because large size decreases the likelihood of reduced viability or population extirpations due to random demographic or genetic events.”

There is no analysis of the failure to have buffer areas around the populations of special status species plants. Most alarming is the population adjacent to Lot 1. Will this population persist without any buffer and the shading that will occur from the adjacent structure? The Recovery Plan stresses the importance of buffers, but the DEIR fails to address the issue in a meaningful way.

The WRA Report makes statements about “suitable serpentine habitat” but this term is never defined or explained. The assessment of “suitable serpentine habitat” appears to be arbitrary and without any rational or objective basis. What is suitable habitat for *Presidio clarkia*? What is suitable habitat for most beautiful jewelflower? What is suitable habitat for Tiburon buckwheat?

Page 37 speaks to fines for violations, but fails to identify who would be responsible for paying the fines.

There is nothing in the record that supports the contention that collecting seed and spreading it on the conservation easement would increase the population to an extent that would mitigate for the take of habitat. When I discussed this issue with Sue Fritzke, Supervisory Plant Ecologist for the Golden Gate National Recreation Area, she stated that they have been seeding to expand populations of *Presidio clarkia*, but they are still not sure if it is effective. Habitat restoration allowing for natural expansion of populations may be more effective. There is no basis for the statement on page 38 of the DEIR that “the number of individual plants is expected to exceed pre-project levels as a result of reseeding efforts and habitat management.”

Annual Monitoring Reports should be submitted to the easement holder, the City, and CDFG. The DEIR only requires that CDFG receive the annual monitoring report...

The statement on page 41 that “the combined conservation and management actions will promote the recovery of these three special status species” is without merit. The project does not meet any of the standards for population size or buffering that would be consistent with the Recovery Plan. There would be no attempt to increase the population on the site to the 2000 individual goal of the Recovery Plan.

The City’s vegetation management program continues to take *Presidio clarkia*. For the second consecutive year, the Colgett Drive, Kimberlin Heights, and Old Redwood Road populations have been impacted. The Old Redwood Road population was taken on June 12, 2006. *Presidio clarkia* were taken on the lot adjacent to the proposed project site

F 15

during 2006. All these activities took place before seed set, preventing regeneration of the species.

Observations of the site indicate the impacts of water from uphill properties may be causing rilling and erosion. How does this impact on-site special status species habitat? Will this impact increase with time and have negative impacts through time? How would the water flow impact special status species plant populations?

V. GEOLOGY AND SOILS

Page 51 refers to potentially allowing wet weather grading, an action that is prohibited by the Biological section.

VII. ALTERNIATIVES

As explained previously, the alternatives analysis fails to address an off-site alternative.

Invasives would not overtake the special status species given the requirements of the City's vegetation management program.

One City goal is to increase housing, but there are equally important objectives that the City must adhere to, including conserving and enhancing the habitat of special status species.

VIII. OTHER CEQA CONSIDERATIONS

B. CUMULATIVE IMPACTS

CEQA Guidelines Section 15130 and case law define the process and procedures to follow in the preparation of a cumulative impacts analysis. The DEIR fails on all counts.

"A proper cumulative impact analysis must not be conclusionary; it must be supported by references to specific scientific and empirical evidence." *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043

"It is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79,

The cumulative impacts analysis must attempt to map the original habitat for the three special status species plants identified in the DEIR, and to show how much of that habitat has been impacted by "other closely related past, present, and reasonably foreseeable probable future projects." CEQA Guidelines Section 15355.

F16

The proposed project at 600 Crestmont Drive, impacting most beautiful jewelflower is not analyzed. According to the CNDDDB, the Alta Villa project off Redwood Road had Presidio clarkia nearby, plus there is a population of most beautiful jewelflower near that site. The cumulative impact analysis must look at all projects in Oakland that have impacted the three special status species.

“A proper cumulative impact analysis must not be conclusionary; it must be supported by references to specific scientific and empirical evidence.” *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

The references to annual grasslands in the cumulative impacts analysis are irrelevant to the proposed project.

COMMENT LETTERS AND SPECIFIC REPLIES

As noted earlier, the Specific Replies were prepared by the applicant. The DEIR should identify them as such. The Specific Replies do not represent the Lead Agency's independent judgment and analysis.

The NOP comments of the East Bay Regional Park District were not included.

CONCLUSION

Due to the deficiencies and inadequacies in the process and documents associated with this project, the City should reject the applicant's DEIR. The City must prove that the documents produced represent the Lead Agency's independent judgment and analysis of the proposed project.

Sincerely yours,

Ralph Kanz

COMMENT LETTER F – Ralph Kanz

F1. All available documents were provided to Mr. Kanz as of August 3, 2006.

F2. Please see Response B1 to Crestmont Neighbors letter, above.

F3. The City did have all relevant documents upon which to evaluate the Initial Study and they were available to the Public, at the latest, during the DEIR Public Comment Period. An appointment is not necessary but may lessen the wait time as the commenter has previously expressed concerns with such. The Planning and Zoning Division which maintains the files and documents related to this matter is open to the public Monday through Friday, 8:00 a.m. to 4:00 p.m.

F4. The relevant history of the “project” is disclosed. DEIR “Project History”, p. 1. See also Staff Report on 5 lot project (DEIR App. E. 10 pg. 3). The concerns of the commenter are noted.

F5. The DEIR sets forth an affirmative response to the question of whether the project is consistent with the General Plan Open Space Conservation and Recreation Element policies OS-1.3 Development of Hillside Sites; CO7.1 Protection of Native Plants; CO 7.1.3 Use of Conservation Easement; CO7.2 Native Plant Restoration; and CO 9.1 Habitat Protection. See responses to Kanz e mail dated January 20, 2006, at DEIR App. B, pp.73- 76 Regarding Policy “Impact H.3: Development Consistent with Land Use and Transportation Element”. See response to this item in DEIR under Section “land Use and Planning” at pages 74-75

In addition to the above OSCAR and LUTE issues, Mr. Kanz has asserted that the project is inconsistent with certain additional policies in his June 16, letter in response to the DEIR.

Policy OS-1.2: Open Space Protection

Priorities for Private Land.

This policy provides for the conservation of privately owned land through “a combination of land acquisition and development control.” The only available conservation control in this case is through “development controls.” The CEQA process and the sponsor’s willingness to eliminate one build-able lot ensures a reasonable balance between the public’s interest in protecting the special status species on the site and the sponsor’s rights to development of this privately owned property. They are responded to as follows:

Policy CO-2.2: Unstable Geologic Features:

There are no unstable geologic features on this site which is composed of massive bedrock the seismic stability of which has been estimated by a seismic engineer, Dr. Robert Pyke, to be 3 (3 times the average stability). (DEIR App. E. 8, letter dated June 16, 2005).

Objective CO-9: Rare, Endangered, and Threatened Species:

The project sponsor has set aside a conservation easement on .85 acres (66% of the entire site), which includes the vast majority of the plant species of concern as described in the Biology Section of the EIR and which protects these species with various mitigations aimed at preventing development that would adversely impact the species.

Action OS-1.3.3: Conservation Easements:

The project sponsor has established a conservation easement on a portion of a privately owned property having a significant environmental value and thus has responded affirmatively to Action OS-1.3.3.

Action CO-9.1.3: Preparation of Habitat Conservation Plan

Supporting a collaborative effort between Oakland, County, State and federal agencies, adjacent cities, the East Bay Regional Park District, and local environmental groups, to develop a long-term multi-species habitat conservation plan (HCP) for the East Bay Hills is beyond the scope of this EIR. However, the sponsor has shown through his actions that the conservation easement proposed for the project site responds affirmatively to the intent of CO-9.1.3.

The Oakland General Plan establishes comprehensive, long-term land use policy for the City. As required by state law, the General Plan includes the following elements: Land Use and Transportation, Housing, Environmental Hazards (seismic safety and other hazards), Noise, Historic Resources, and the Open Space, Conservation, and Recreation Element (OSCAR).

The project site is located on a west facing slope in the South Hills Planning Area of Oakland. The land use designation is Hillside Residential which seeks to create neighborhoods of single family detached structures on larger lots. The site is moderately steep to steep with slopes ranging from 2:1 (horizontal: vertical) to 1.5:1. The Land Use and Transportation Element and Open Space, Conservation, and Recreation Element (OSCAR) are directly applicable to this project.

Land Use and Transportation Element

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

The three key policies listed below of the Land Use and Transportation Element that are important in this regard have been discussed and the project shown to be compatible with these policies in the DEIR at pp. 75-76.

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

“Policy N7.2. Defining Compatibility. Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining “compatibility.” These factors should be balanced with the citywide need for additional housing;” and

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

Open Space Conservation and Recreation Elements (OSCAR)

Conformity with OSCAR was discussed in the DEIR at pp. 76-77.

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

“Policy OS-1.3: Development of Hillside Sites. On large sites with subdivision potential, generally conserve ridges, knolls, and other prominent features as open space. Maintain development regulations which consider environmental and open space factors such as land stability, plant and animal resources, earthquake and fire hazards, and visual impacts, in the determination of allowable density. Where hillside development does occur, encourage creative architecture and site planning which minimizes grading and protects the natural character of the hills.”

The project site’s ridges and other prominent features are protected by the conservation easement on the upper slope and ridge of the site as well as the location of the proposed 4 units along Crestmont on the lower portion of the site. These two features of the proposed development also serve to protect plant and animal resources, and protect against earthquake and fire hazards and visual impact. Because of the location of the proposed 4 units on the lower portion of the site and their proposed split level design grading is minimized and the natural character of the hillside is preserved.

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

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

F6. The applicant's agreement is recited in the DEIR at p. 2 and such agreement is a condition of approval. Applicant has also submitted a letter dated July 27, 2006, agreeing to such. See Appendix L.

F7. The IS determined that there would be a less than significant impact from airborne fibers released from the chrysotile in the serpentine rock by utilization of BAAQMD fugitive dust control measures. See DEIR App A, Section III, and VII. See also Response to verbal comment No.5, Chapter III., additional information regarding Standard Asbestos mitigation measures in Chapter II, paragraph 3, and Information on the Chrysotile form of Asbestos at App. I.

F8. The project will result in a conservation easement area of .85 acres over four proposed lots constraining special status species plants. Currently these plants are not monitored on the site and are vulnerable to encroachment from non-native species, fire, trespass, and general brush clearing for fire safety. Given that the project will create this conservation easement the cumulative impact of the project should be positive as it will both allow new plantings of members of the special species plants as well as provide for the regular monitoring of the health of those populations, factors that would be lacking if the project did not go ahead.

F9. See response F5.

F10. The DEIR is complete and complies with all relevant CEQA requirements. See Responses 4, 5, and 8 above. The claim that the DEIR inappropriately employs the term "feasibility" when discussing findings on mitigations is incorrect (See DEIR pp. 8). The concerns over implementation and enforcement of the Mitigation Monitoring and Reporting Program (MMRP) are noted. Air Quality/Hazardous Materials issues are addressed in the DEIR App. B. III. A "Hazardous Material-Airborne Asbestos fibers", p. 70 and in the FEIR in Chapter III Response 1e.

F11. Grading during the wet weather season is acceptable to the Biological Consultant so long as the standard measures of wet weather grading plans are approved by Director of CEDA and the Project Geologist (DEIR p. 21). See confirmation from Biological Consultant, Tom Fraser of WRA, Inc that there is no problem with wet weather grading as long as safeguards in place (FEIR App. K).

F12. Landscaping will be appropriate to the success of the Conservation Easement as required. See DEIR "Conservation Easement"- "Easement shall specify....types of landscaping" at p. 38. Also, the plan will be subject to review and approval by City and California Department of Fish & Game. Comments are noted with respect to "no need" for geotechnical stabilization, and profits.

F13. The WRA Technical Report was prepared at the request of the City of Oakland and comports with all CEQA Thresholds/Criteria of Significance Guideline. (Technical Report P.6 DEIR App. D. 1). There has been no objection to the DEIR from the California Department of Fish & Game. Moreover, there is no legal requirement for peer review of the Technical Report on biological impacts.

F14. While it may be true that multiple year assessments provide an accurate picture of population dynamics and locations, such information would not change the proposed plan. California Fish and Game has already said that it approved the present plan of taking the original lot 1, where the Biological Survey Map shows a concentration of the Presidio Clarkia and placing it in a preserve and limiting the development to the 4 lots with minimum setbacks on an area of

approximately .35 acres which contains serpentine soils, but very few of the special status species, is the alternative analyzed in the DEIR.

Whether or not there may be some change in the numbers of special status species on this area from year to year would not change the proposal- which balances the rights of the private owner with the goal of protecting special status species. As stated in the U.S. Fish and Wild Life "Recovery Plan for Serpentine Soils Species in the Bay Area" "Management research (element # 3) may take many years to complete, and few management plans have been developed for protected areas. The only practical approach is adaptive management, where management is applied, population responses are monitored, the outcome is evaluated, and management is readjusted accordingly." (DEIR App. D.3.p vii). This is the approach used in the proposed Conservation Plan. For further detailed information on the efficacy of the conservation plans, and Cumulative Impacts analysis, see new material at Responses F-15, F-16, and appendix K.

F15. The WRA Technical Report prepared by expert plant biologists states that the combination of protection measures and replacement measures for impacted individuals, will reduce the impacts to special status species to less than significance for the 9 reasons set forth on p. 14 of the Technical Report (DEIR App. D.1, p.14). Moreover the Conservation Plan closely follows the recommendations contained in the "Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area" of the U.S. Fish and Wildlife Service (DEIR App. D.3, "Habitat Management" p.vii; and chapter on "Reasons for Decline and Threats to Survival" p.II-59, and "Recovery Strategy" II-62-64).

With respect to "adequate buffers" WRA further stated in a letter dated January 9, 2006 (DEIR App. D.2) that the projects conservation easement site is "contiguous on its north and south sides with undeveloped and undevelopable serpentine slopes identical to the subject site....these adjacent areas, approximating two acres in size provide additional habitat buffers." WRA also stated in this letter that "The presence of these plants in great numbers on specific portions of the overall site is perhaps the best indicator of which land is most suitable for preservation of these populations."

As shown on the Biological Survey Map, at Figure 2 of Chap. III of the DEIR, the vast majority (over 90%) of the Presidio Clarkia was found on the area of Lot 1, and behind the building sites of lots 2, 3, and 4, which is within the proposed conservation easement area.

The "Re-seeding" portion of the Conservation of Special Status Plants and Habitat Mitigation Measure 1.2, p 38 of the DEIR, in combination with the Weed Removal and Control plan, provides disbursement of the seeds harvested from the plants from the actual construction sites into improved serpentine habitat. This will, in the opinion of WRA result in a greater number of plants then grow today in the existing habitat (See WRA Inc. Letter Dated January 9, 2006, DEIR App. D.2).

The potential of the reseeded in the improved habitat areas is demonstrated by the success of the weed removal and seeding program at the Presidio during the 1990's which resulted in an increase population of about 1000 Presidio clarkia in the 1980s to more than 8,500. in 1994 (Technical Report D.1.p.5). "The species is apparently easy to grow" (Recovery Plan at DEIR App.D.3,p11 62).

Similar success has been experienced on the project site. Since the removal of a large stand of approximately 20 Eucalyptus trees and some Monterey Pines on the project site in 2001 the

population of Presidio clarkia increased from the 30 plants reported in 1991 (Recovery Plan p.11-61) to the 700-1000 reported in 2004.

F16. The immediate cumulative impact on the World populations of the three listed species would be: Presidio clarkia- less than $8/10^{\text{th}}$ of 1%; Most Beautiful Jewel Flower-less than $3/1000^{\text{th}}$ of 1%; Tiburon buckwheat-less than $1/1000^{\text{th}}$ of 1% (Technical Report, Table 2 at DEIR App. D.1. p.13). The immediate impact on the marginal serpentine soil habitat would be to remove approximately .35 acre. The long term cumulative impact on the habitat of these special status species would be positive.

Approximately .85 acres, will be restored, preserved, and monitored, resulting in an increase in population as experienced in the Presidio of San Francisco, and on the project site itself after clearance of weeds and non native species. (See Response 15, above)

While serpentine soils are known in the eight Bay Area counties, (Recovery Plan App. D.3. p I-1) and support a wide variety of plants endemic to such soils such as the Most beautiful jewel flower, and Tiburon buckwheat, the Presidio clarkia is found only in the Presidio of San Francisco, the Redwood Regional Park of Alameda county, and in certain fragmented pockets in the Oakland Hills:

-Crestmont Drive and Westfield Way (Project site)	-700-1000
-Colgett Drive	-200
-Kimberlin Heights	-150-200
-Tennis club	-250-300

None of these sites may be developed due to size, deed and CC& R restrictions.

The Redwood Regional park “serpentine prairie” estimated at between 12-16 acres, (DEIR App. B. p 78), supports a current population (as of 2004) of 3,500 Presidio Clarkia. This is “Protected Habitat” and is being improved by measures taken by the East Bay Regional Park District, including removal of Monterey Pines, pampas grass, French broom, and acacias (Recovery Plan-DEIR App. D.3. II-61). These measures will also be taken pursuant to the terms of the Conservation Easement mitigation plan only if this project is approved (DEIR pp. 37-40).

In the last 8 years several developments took place in areas with or potentially with serpentine soils. A 21-home PUD, known as Alta Villa, was completed in 2003 on land which borders Redwood road approximately 1/3 mile from the project site. While there may have been serpentinite soils present on part of this project, whether or not it supported any of the special status species involved in this case is unknown. Two remainder parcels adjacent to the Alta Villa development have been developed in the past years or are presently under construction.

In addition there is a 10 unit town-home project on a site below and contiguous with the Alta Villa site mentioned above, that has been under construction for 5 years on a parcel next to 600 Crestmont mentioned above. According City Records on the development of these contiguous sites, they contain “Serpentine Grassland,” however no populations of rare or endangered plants were found.

There are no reports of the existence of any special status species on this site, or the contiguous site of the Alta Villa project, either in the California Natural Diversity Data Base, the California Native Plant Society, The “Recovery Plan”, or by Martha Lowe in her survey reported in her Technical Memorandum dated May 3, 2004 (DEIR App. D.1 and App. E).

Currently there two applications on file for development in the Oakland hills area with a known serpentine soil habitat. The first is parcel Lot No. 4 of Parcel Map 7336, and known as “600 Crestmont.” This parcel fronts on Crestmont about 200 yards to the East of the Project site. There have been no Presidio clarkia discovered there but there is a population of Most Beautiful Jewel Flower-mainly on a steep slope at the rear of the lot-which will not be impacted by the development of a single family home. The application is currently undergoing review.

The second project is DRC06-315 which was an application for the construction of a single family dwelling on Crestmont Drive. This project was administratively approved on September 13, 2006 and a revised/corrected environmental determination was issued on September 21, 2006. After it was discovered that the property contained serpentine soils, the City of Oakland required the applicant to prepare a biology report. The report concluded that this site did not contain special species status plants or suitable habitat for special species status plants.

Commenter’s concerns about interpretation of the “Recovery Plan”, and the City’s vegetation management program noted.

F17 Please see Response B1 to Crestmont Neighbors letter, above..

F18 The NOP comment letter by East Bay Regional Park District was inadvertently left out of the DEIR but was considered during the preparation of the DEIR and FEIR and is included as Appendix M.



Merkamp, Robert

From: Lbake66@aol.com
Sent: Monday, June 19, 2006 10:35 AM
To: rmerkamp@oaklandnet.com
Subject: CNPS Comments on DEIR for Crestmont/Westfield subdivision

Dear Mr. Merkamp:

I have included in this e-mail the comments of the East Bay Chapter of the California Native Plant Society on the DEIR for the proposed subdivision at Crestmont and Westfield (TPM 7940; ER 050007). I regret that the attachment sent on Friday was garbled. Please contact me if for any reason there are any further problems (510-849-1409). Thank you.

Sincerely,
 Laura Baker
 Conservation Committee Chair
 East Bay Chapter of the California Native Plant Society

California Native Plant Society
 East Bay Chapter
 P.O. Box 5597, Elmwood Station
 Berkeley, CA 94705
 June 16, 2006

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

Re: Minor Subdivision at Crestmont and Westfield-City File #ER05-0007

Dear Mr. Merkamp:

The East Bay Chapter of the California Native Plant Society (EBCNPS) appreciates the opportunity to comment on the Draft Environmental Impact Report on the proposed subdivision of the property at Crestmont and Westfield. The California Native Plant Society is a non-profit organization of more than 10,000 laypersons, professional botanists, and academics in 32 chapters throughout California. The Society's mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

As we indicated in our previous letter of 12/6/05, EBCNPS is chiefly concerned with the protection of the native plants found on the serpentine soils of the property proposed for development. These include, most notably, the federally listed Presidio clarkia (*Clarkia franciscana*) and the federal species of concern Most beautiful jewel flower (*Streptanthus albidus* ssp. *peramoenus*), and Tiburon buckwheat (*Eriogonum luteolum* var. *caninum*). Several important points have not been addressed or well understood in the DEIR about the nature of this site and its native plant species. However, first we note here several observations about the preparation and presentation of the DEIR.

Nowhere on the document does it indicate who has prepared and compiled this DEIR. While there are numerous technical reports from various sources that have been included, it is impossible to tell whether a professional, independent consultant with the requisite credentials has prepared this DEIR. The document is poorly organized and difficult to read-the titling of sections and pagination are not designed for clarity and ease of use, and therefore it is extremely difficult to find one's way around and through the document. We request that, before any certification of this report take place, the relevant information be supplied and the Final EIR be better organized.



Impacts and Mitigations to Biological Resources

With respect to the analysis of impacts to the listed plant species, nearly all mitigation (with the exception of measures to be taken during construction) hinges upon the creation of a conservation easement. We recognize that CDFG has suggested this mitigation, whether formally or informally, as a condition of development. In reviewing the DEIR, EBCNPS wishes to make clear some of the limitations and unknowns of such mitigation so that the project alternatives may be more properly weighed within a factual context.

First, it is important to remember that, despite the fact that these sensitive plant populations remain in an urban environment, they are not horticultural in nature. Rather, they are wild populations, remnants of a larger population that once extended throughout the Crestmont serpentine. The significance of this fact is that, unlike garden plants, their cultural requirements are largely unknown. We do not know what impacts the changes to the site during grading, construction, and the future occupation of the houses will have upon the plant populations found there. We do not know what impact the reduction and further fragmentation of the area will have upon the plant populations. The notion that re-seeding of the proposed conservation easement area will actually increase the populations of these plant species is largely conjectural (pg. 43 under Biological Resources, pg 77 under Responses to Comments). Although one might hope and plan for such an outcome, there are no scientific data to support such a statement.

We also cannot be sure that the present distribution of plants on the overall site is what would be found in any given year. Since the largest amount of serpentine on the site is actually designated for development, we cannot be sure that in another year under different environmental conditions, the distribution of blooming plants would not be different and possibly occurring where houses are planned. Generally, data are collected over a series of years to determine patterns of distribution for any given site. The sole plant distribution map provided by WRA entitled, Figure 2, Proposed Project Plans, Special Status Plant Species Locations and Habitats presumably represents one year's surveying (though the year is not indicated). It would be important to note the outcome of plant surveys for 2006 for all three species in the Final EIR so that comparisons may be made as to whether the distribution is similar.

The DEIR makes an interesting but incorrect interpretation of the CEQA requirement to document and mitigate cumulative impacts (pp. 40, 78). This provision means that the impact of a particular project to a specific biological resource must be weighed in light of overall impacts to this resource from other projects. Precise calculations of the loss of individual plant species are impossible to make; however, it is not impossible to calculate the amount of Crestmont serpentine habitat which includes both known and potential habitat for Presidio clarkia that has been lost to development. Citing the number of square miles of serpentine soils in California is irrelevant to the issue at hand, not only because much of this land has already been lost to development, but also because Presidio clarkia is not found on them.

In addition to these special status species, there are populations of other serpentine species of note which help comprise the community and are an integral part of the habitat. It is impossible to separate the health of the individual plant species from the overall health of the habitat. While we acknowledge that removing invasive species such as French broom and pampas grass would be an improvement, intelligent management of a conservation easement on the site would be based upon a better understanding of the plant community as a whole.

In response to WRA's letter responding to our earlier comments, we want to clarify that though most of the protected plant species would be uphill from the houses (and therefore not subject to flooding), if the drainage in the hillside is considerably altered, there may well be unforeseen impacts to the plants, particularly if there is subsidence. Second, our request to have adjacent sites included to enlarge the protected area was not a reference to re-uniting the larger fragmented meta-population, but to including portions of private property from neighboring lots that cannot be legally subdivided and which contain viable serpentine habitat with known populations of listed plant species. Some incentive might be given these property owners for having portions of their property included in a proposed conservation easement.

The proposed conservation easement in the DEIR, which constitutes the main portion of the mitigation, is the applicant's suggested design, not a fait accompli. There is some confusion about the process to be followed in creating the conservation easement, at least with respect to the intentions of the California Native Plant Society. In previous correspondence with the applicant, the East Bay Chapter has made clear that no prior agreement or promise exists as to holding a conservation easement. We believe that a thorough environmental review of impacts must go forward and not be short-circuited by the notion that a conservation easement is a certainty. Depending upon the City's findings and the approval of the TPM, the California Native Plant Society might then undertake to craft a conservation easement according to our own criteria in conjunction with legal counsel.

Perhaps the most under appreciated fact about the proposal for a conservation easement is the social context in which it occurs. Just as the serpentine soils on site are a part of a larger formation, the proposed subdivision is part of a neighborhood. A conservation easement's long-term viability and success in a neighborhood environment is highly dependent upon the goodwill and cooperation, not only of the homeowners named in the CE's agreement, but also of the surrounding neighbors. Considerable neighborhood opposition to this development has been expressed in letters to the City. Any organization undertaking the responsibility of a conservation easement must be cognizant of how a preserve fits into the overall fabric of a community-whether it is supported, ignored, or resented by homeowners directly responsible for obeying the covenant of the easement or by the larger neighborhood. Should the City decide to go forward with approving any development on this site, a key ingredient to its success will be neighborhood participation and support. The creation of a binding agreement with on-going responsibilities brings a level of complexity to this mitigation which has not been explored in the DEIR.

Alternatives

Under Section VII, Alternatives, we note considerable confusion in the discussion in this text. First, the introduction states that the DEIR will evaluate two alternatives. The next two ensuing sections are entitled **B. Alternative 1: No Project** and then **Alternative 3: Reduced Density 3 Lot Alternative C**. We did not find an alternative listed as Alternative 2.

The final sentence in the section states, "Since CEQA requires designation of an alternative other than the "no project" if the "no-project alternative is the environmentally superior alternative, the Reduced Density becomes the environmentally superior alternative." Although we recognize that the DEIR's findings as to the best alternative is a critical issue-perhaps the most important in the entire document, it is impossible to know what that statement means.

Finally, it is clear that the City is faced with the challenge of what to do about this and other projects on serpentine soils that have previously been exempted from the legal requirements of CEQA by being classified as urban infill. The City has long known about the presence of protected plant species on its serpentine soils-specifically on this site-- and previously refused the offer of this property as open space. We suggest that the burden of finding a fair resolution to this challenge must be shared by the City in its obligation to protect both the rights of private property owners and the natural resources that are entitled to protection under law. We also suggest that local neighbors help share in the determination of the issue. We strongly recommend that the City enlist the help of those local experts, such as Brad Olson, Ralph Kanz, and Martha Lowe who are extremely knowledgeable about the Crestmont serpentine, its' native plant resources, and the legal issues attending them. EBCNPS will continue to participate as an interested stakeholder in this issue.

Sincerely,

Laura Baker
 Conservation Committee Chair
 East Bay Chapter of the California Native Plant Society

cc: Claudia Cappio, Development Director, CEDA, City of Oakland
 Jean Quan, Councilmember District 4
 Brad Olson, East Bay Regional Parks District
 Harry Pollack, Attorney
 Ralph Kanz
 Brad Jenkins, California Native Plant Society
 Amanda Jorgenson, California Native Plant Society

Lech Naumovich, Conservation Analyst, EBCNPS
 Charli Danielsen, California Native Plant Society

COMMENT LETTER G – California Native Plant Society

G1 See Response to B 1.

G2. Comments acknowledged. When and if the CNPS agrees to be the Conservation Easement Holder its plans and approach to the conservation of the special status species may be carried out.

G3. The WRA Technical Report, prepared by qualified biologists based on biotic surveys performed in the Spring and Summer of 2004, and Spring of 2005, (Technical Report DEIR App. D.1, p. 1), states otherwise. See Response No. 14 above concerning efficacy of habitat management and reseeded programs.

G 4. The project will result in a conservation easement area of .85 acres over four proposed lots constraining special status species plants. Currently these plants are not monitored on the site and are vulnerable to encroachment from non-native species, fire, trespass, and general brush clearing for fire safety. Given that the project will create this conservation easement the cumulative impact of the project should be positive as it will both allow new plantings of members of the special species plants as well as provide for the regular monitoring of the health of those populations, factors that would be lacking if the project did not go ahead.

G5. The drainage of the upper slope and the area of the Easement within Lot 1, on the lower slope will not be altered. The drainage from these areas will remain the same. There will be no impact of the development on the drainage patterns of the area within the Conservation easement. Drainage will be altered and improved over the building sites with installation of drains, and holding basins as required by the building plans.

All of the special species plants that will remain shall remain behind and above the houses to be constructed on lots 2, 3, and 4. Those on lot 1 will generally be to the northwesterly side of the proposed residence however due to grading activity that house will be sunk into the hill and thus the plants will be at a higher elevation. Therefore none of the existing special species plants that are to remain as a part of this project should be subject to runoff or flooding from the homes of this proposal.

G6. The project sponsor has indicated that he has been informed and understands that the CNPS has not committed to act as the holder of the conservation easement, and unless and until it does it will not engage in further efforts to craft a conservation easement.

G7. The commenter's concerns, which are beyond the scope of this EIR, are noted and will be considered by the City during the project review process of the Conservation Easement and its holder. (DEIR App. D.1.p 10)



June 2, 2006

Robert Merkamp, Planner
City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Draft Environmental Impact Report – Crestmont Residential Subdivision
Project, Oakland

Dear Mr. Smith

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report for the Crestmont Residential Subdivision Project located in the City of Oakland. EBMUD has the following comments.

WATER SERVICE

EBMUD's Joaquin Miller Pressure Zone, with a service elevation range between 675 and 875 feet, will serve the proposed development. Once the property is subdivided, a separate service for each lot will be required. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing water service to the proposed development. Engineering and installation of water services requires substantial lead time which should be provided for in the project sponsor's development schedule.

WATER CONSERVATION

The proposed project presents an opportunity to incorporate water conservation measures. EBMUD would request that the City of Oakland include in its conditions of approval a requirement that the project sponsor comply with the Landscape Water Conservation Section, Article 10 of Chapter 7 of the Oakland Municipal Code.

Robert Merkamp, Planner
June 2, 2006
Page 2

If you have any questions concerning this response, please contact David J. Rehnstrom,
Senior Civil Engineer, Water Service Planning at (510) 287-1365.

Sincerely,

A handwritten signature in black ink, appearing to read 'WRK. Kirkpatrick', with a large, stylized flourish at the end.

William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:JAJ:sb
sb06_157.doc

cc: Dennis Woodruff
Andalucia Properties, LLC
866 Longridge Road
Oakland, CA 94610

COMMENT LETTER H – East Bay Municipal Utility District

H1. Confirmation of water supply acknowledged.

EAST BAY REGIONAL PARK DISTRICT



June 16, 2006

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

Subject: Minor Subdivision at Crestmont & Westfield -- City File #ER05-0007
Redwood Regional Park

Dear Mr. Merkamp,

Thank you for providing the East Bay Regional Park District ("District") with a copy of the draft Environmental Impact Report (DEIR) on the proposed minor subdivision at the corner of Crestmont and Westfield in Oakland. The following are the District's comments on this project.

The District is commenting on this DEIR because we have a long-term interest in the conservation and management of the Presidio clarkia (*Clarkia franciscana*), most beautiful jewel flower (*Streptanthus albidus* ssp. *peramoenus*), and Tiburon buckwheat (*Eriogonum luteolum* var. *caninum*). The District submitted extensive comments on the "Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area" in 1998. The plan was subsequently adopted by the Fish and Wildlife Service (FWS) in September 1998. It calls for the conservation of existing populations of these rare plants, including those on private property.

The proposed project area contains all three rare serpentine endemic plants. They are also found at the Skyline Prairie at Redwood Regional Park and on other undeveloped lots below Skyline Boulevard in the Oakland Hills. Most of the remaining habitat outside Redwood Regional Park has been developed over the past twenty years, including the tennis club and numerous minor subdivisions along Redwood Road. It's unclear if any mitigation has been required or implemented for these developments. The cumulative loss of these habitats has significantly impacted the long-term viability of the endangered Presidio clarkia in the East Bay.

The DEIR considers a number of mitigation measures for the proposed subdivision. These include avoidance of the impact; minimization of the impact; on-site conservation and restoration; but does not consider off-site conservation and restoration. The proposal to reduce the number of units and to record a conservation easement over the property

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help to reduce the impact and may conserve remaining individual plants, however, they do not fully mitigate the loss in individual plants, nor do they guarantee the long-term viability on remaining individual plants on-site.

The discussion of construction-related avoidance and minimization measures provides some useful restrictions, however, it may allow for an impact larger than is identified in the DEIR. For example, temporary fencing and retaining walls should be replaced with permanent fencing and retaining walls. The applicant should provide a grading plan which clearly identifies the full limits of grading and the retaining walls and fences should be placed within the development footprint. The future easement holder will not want to incur the liability associated with management of graded lands which may fail into the adjacent developed areas downslope, potentially resulting in litigation between the future homeowners and the conservation easement holder. Alternatively, the City could consider creating a geological hazard abatement district (GHAD) which would have the responsibility for slope stabilization and would solely incur liability for potential slope failures, erosion, etc. The GHAD and/or future homeowners need to indemnify the future easement holder from any liability for their management of the conservation easement area.

I2

Collection of seed from impacted areas for later replanting within the conservation easement area should at best be considered an experiment. The DEIR provides no evidence that such an approach has been successful elsewhere for these specific species. Has any experimentation been conducted to determine if collected seed needs to be stratified or scarified prior to application? What percentage of collected seed must be certified live seed capable of germination? Serpentine habitats are especially difficult to work within due to their very poor nutrient levels and general lack of organic soil horizons for moisture retention. Plus the slopes in this area are steep and erosive, which will also create problems for plant establishment.

I3

Currently, the City of Oakland prohibits the use of herbicide on lands it owns or manages. If the City were to become the conservation easement holder, would the City still be bound by the herbicide restriction? In this particular instance, judicious application of herbicides for the control of non-native shrubs and trees may be necessary to eradicate such plants and to minimize disturbance from repeated control efforts. If the City is bound by its own herbicide restrictions, then another entity should be selected to hold the conservation easement.

I4

The endowment is proposed to run for a ten year period with residual expenses to be funded by future homeowners. The DEIR provides no information on how such fees would be exacted from the homeowners or how the City would enforce such provisions. Instead, we suggest that the City require the applicant to create a perpetual endowment to be held by the easement holder to fund their long-term management of the conservation easement area. This would relieve the burden on future homeowners and would provide financial certainty for the easement holder. If the easement is to be held by the Department of Fish and Game it would need to be based upon their current investment yield which is about 2.3%, considerably below the 4.2% rate proposed in the DEIR.

I5

There is no certainty that implementation on the on-site mitigation measures will be successful in conserving species on-site and reducing impacts to a less-than-significant level. Therefore, the City should require the applicant to provide additional funds for off-site conservation of the impacted species. This could include acquisition and restoration of other suitable serpentine habitats in the area. We encourage the City to contact other local organizations with expertise in conserving the impacted species, including the East Bay Chapter of the Native Plant Society and the Butters Canyon Conservancy to determine if there are other suitable properties in the area that could be acquired and restored to fully mitigate the impacts of this development on rare plants.

16

Please call me should you have any questions regarding our letter. I can be reached at (510) 544-2622. Please include my name on any future mailings for this project.

Sincerely,



Brad Olson
Environmental Programs Manager

cc. Cay Goude, FWS
John Krause, DFG
Charlice Danielson, CNPS
Laura Baker, CNPS
Ralph Kanz

COMMENT LETTER I – East Bay Regional Park District

- I1 The introductory remarks of the commenter relating to the project and DEIR are acknowledged and detailed responses are below.
- I2 The EIR and project contain conditions of approval prohibiting grading within the easement area and figure 2 of the DEIR clearly shows that no retaining walls will be constructed outside the easement. A final grading plan will be submitted to the City of Oakland for review and approval with the building permits, which will include measures to ensure no access to the conservation areas. The geotechnical investigations performed do not indicate a history of land instability on the site (see DEIR at p. 46-48, Responses to B3 and E1) and a geologic hazard abatement district does not appear warranted.
- I3 See responses to F15 & G3 with respect to the reseeding program. Mitigation measures require a qualified biologist approved by the CDFG, the holder of the Conservation Easement, and the City of Oakland to monitor the site on an annual basis (see DEIR at p. 39).
- I4 The City of Oakland will **not** become the easement holder. The Conservation Easement Holder and qualified biologist will ensure appropriate monitoring and weed abatement of the site.
- I5 Please see responses to B2. The owner or successor will contribute a sum that is predicted to be sufficient to cover the cost of the ten year period (see DEIR p. 39). If the annual yield were to fall below the 4.2% rate proposed the shortfalls would be made up in assessments to the Homeowner's association, or other arrangements made between the Owner and the Conservation Easement Holder. Other comments related to strategies to fund the maintenance of this easement are acknowledged and may be considered by the City Planning Commission in its review of the project.
- I6 Please see responses to F8, F15 and G4. The City of Oakland believes the mitigation measures and conditions attached to the project, including the creation of a conservation easement, the reseeding of the conservation easement with seeds collected from plants to be removed by the construction of the 4 homes, annual review and monitoring of the site by a qualified biologist and funding of these efforts is sufficient to protect and preserve the special status species located on the property. Therefore, funding off-site conservation of other unidentified serpentine grasslands beyond the project site does not appear warranted.

JOHN M. TORREY AICP
Contract Planner/Project Manager
P.O. Box 372
Forest Knolls, California 94933
Tel (415) 488-0534 / Fax (415) 488-1567
email: johntorrey@cs.com

Professional Objective

To utilize my comprehensive skills in urban planning and environmental review

Summary of Qualifications

- *Proven ability to analyze complex land development projects*
- *Experience in establishing and managing project teams*
- *Knowledge of project development procedures*
- *Ability to work with local and regional approving authorities*
- *Precise and effective report writing*
- *Ability to present projects for public approval*

Management Skills & Accomplishments

- ▶ **MANAGEMENT-** Managed a wide variety of land development projects, including total architecture/engineering design and construction management
- ▶ **MASTER PLANNING & PERMITTING-** Completed master planning and permitting for several California mixed use and residential projects, including several waterfront projects
- ▶ **CEQA & NEPA-** Managed numerous environmental baseline surveys and over 200 EIRs and EISs
- ▶ **GENERAL PLANS-** Managed General Plans for several California communities
- ▶ **SPECIFIC PLANS-** Managed Specific Plans for several California communities
- ▶ **URBAN DESIGN PLANS-** Managed Urban Design Plans for two major California cities
- ▶ **REDEVELOPMENT PLANS-** Managed Redevelopment Plans for California cities
- ▶ **HIGHWAY & RAIL PROJECTS-** Managed several highway and rail transportation planning projects
- ▶ **NEW TOWNS-** Completed project development and planning for two major new towns
- ▶ **UTILITY PROJECTS-** Project development and environmental review of power generation projects
- ▶ **BROWNFIELD PROJECTS-** Managed project development phase for two major California brownfield sites

Employment History

1995 to Present	Contract Planner	PLANNING CONSULTANT, Forest Knolls, CA
1986 to 1995	Planning Director	RECON ENVIRONMENTAL CORP., Brisbane, CA
1985	Sr Project Manager	URS CORP., San Francisco, CA
1980 to 1983	Sr Project Manager	RALPH M. PARSONS CO., Yanbu, Saudi Arabia
1978 to 1980	Consultant Adviser	GOVERNMENT OF BAHRAIN, Manama, Bahrain
1977 to 1978	Principal Planner	BECHTEL, INC., San Francisco, CA
1973 to 1978	Vice President	TORREY & TORREY, INC., San Francisco, CA

Affiliations & Honors

Member, American Planning Association; Associate Member, American Institute of Architects; Member, Macro Engineering Society; Listed in the Fifteenth Edition of Who's Who in the West; Listed in the Seventeenth Edition of Who's Who in California; Listed at the International Biographical Centre, Cambridge; Award of Honor, Northern Section, California Chapter, American Institute of Planners - Richmond South Shoreline Plan; W.R. Merchant Memorial Award, University of California at Berkeley.

Publications/Speeches

Numerous publications and speeches to professional bodies on development planning and resource management

Education

M.A. Architecture, University of California, Berkeley

B.S. Economics, Wharton School of Finance, University of Pennsylvania



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Chrysotile ▾

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If there is asbestos in your home...

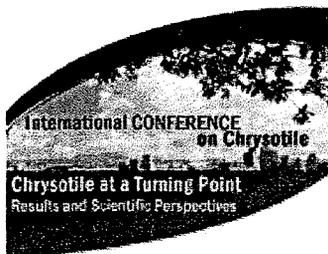
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9 questions and answers on chrysotile and health

Question 1

Is there evidence for a difference in biological potency between chrysotile asbestos and the amphibole fibres types?

Answer:

Yes, there is an overwhelming body of evidence, based on epidemiological studies on clinical findings, and on lung tissue mineral analysis in humans showing a definite difference in potency between chrysotile and the amphiboles.

Recently published data show that:

1. The morbidity and mortality experience of workers handling chrysotile only is much less severe than that of workers exposed to amphiboles (or to mixtures containing them).
2. The results of mineral contents of lung tissue by fibre type show that large amounts (100-fold) of amphiboles are found in the lungs of cases compared to controls. This is not so for chrysotile.

[<< Back to index](#)

[Question 2 >>](#)

References for Question 1:

Wagner JC, Moncrieff CF, Coles R, Griffiths DM and Munday, DE (1986). British Journal of Industrial Medicine 43:391-395

A study among naval dockyard workers showing increasing amounts of amphiboles in lung tissue and increasing severity of asbestosis, but no increase of chrysotile.

Wagner JC, Newhouse ML, Corrin B, Rossiter CER and Griffiths DM (1988). British Journal of Industrial Medicine 45(5):301-308

The lungs from 36 past workers of an asbestos factory using chrysotile, crocidolite and amosite were examined. Crocidolite and amosite lung contents were strongly associated with asbestosis and with mesothelioma, whereas no such correlation was evident with chrysotile and mullite.

Albin A, Pooley FD, Stromberg U, Attewell R, Mitha R and Welinder H (1994). Occup. Environ. Med. 51: 205-211



Chrysotile Asbestos

Fact Sheet

Canadian asbestos (chrysotile) can be used without undue risk (i.e. safely) in building materials, friction products, pipes and other industrial applications, provided it is manufactured and handled with care. Experts in Canada and in other countries, as well as the International Labour Organization, and the Organization for Economic Co-operation and Development concluded that current knowledge and modern technology can successfully control the potential for health and environmental harm posed by chrysotile asbestos.

Problems of the Past

Asbestos has long been used in construction and manufacturing, because it is incombustible, durable, versatile and resistant to chemicals. In the early 20th century, however, there was growing evidence that high concentrations of airborne asbestos fibres could cause serious health problems, including scarred lungs, asbestosis and cancer. Unfortunately, public health officials were slow to see the link, in part because illnesses could take 45 years to develop. By the mid-1900s, the association became evident, spurring researchers and policy-makers to action.

Asbestos has been the focus of extensive scientific and medical scrutiny. Among other things, scientists have discovered that not all asbestos is alike. Fibre length and type have an impact on human health, as does a person's exposure (dose and duration) to the substance. As a result of those findings, a potent class of the mineral, called amphiboles, is no longer used. Similarly, asbestos is no longer used in sprayed insulation and other products from which it can readily escape into the air.

On the other hand, chrysotile asbestos, the most common form of asbestos used in the world and the only kind mined in Canada, can be used safely in products such as building materials, brake linings, and water and sewer pipes. In those applications, the fibres are encased in a matrix such as cement or resin, and cannot disperse into the environment.

Did you know...

- **Asbestos is a fibrous mineral that is found naturally in nearly two-thirds of the Earth's crust.**
- **Because of its wide prevalence, we inhale small amounts of asbestos in every breath.**
- **More than 16 percent of the world's asbestos is produced in Canada.**

CanadaTM

Handle with Care

Even so, asbestos must be handled with caution at all times — from mining to disposal. In 1984, following one of the world's most authoritative analyses, Ontario's *Royal Commission on Matters of Health and Safety Arising From the Use of Asbestos* recommended a "safe-use" approach to asbestos. This involves strict controls over mining, milling, manufacturing, transportation, handling and disposal activities.

This approach was adopted by a federal-provincial working group on asbestos, which developed a "Current Approach to the Regulation of Asbestos in Canada." It was further expanded in 1996 when the Government of Canada adopted the safe-use principle in its Minerals and Metals Policy. As a global leader in the sustainable development of natural resources, Canada has a responsibility to promote the safe use of all minerals and metals, including chrysotile asbestos.

In practical terms, this means that if a resource can be managed responsibly and its potential risks contained, then minerals and metals can be produced, used, re-used, recycled and returned to the environment in a safe and sustainable way. Adverse effects associated with the use of hazardous materials must be mitigated by strict controls on exposure. However, where exposure cannot be controlled, such products must be removed from the marketplace. This happened in the early 1970s, when Canadian insulation manufacturers voluntarily stopped producing friable asbestos-based insulation, which was associated with much of the illness linked to the mineral.

Safe-use Principle

The provinces have passed regulations on the safe handling of asbestos in the construction industry. All products containing asbestos must now be labelled and workers are obliged to follow precautions to reduce asbestos dust exposure during renovations and demolitions. Canadian industries have also invested in processes and technologies to protect workers, consumers and the public. For example, plants using chrysotile asbestos now have enclosed processing and conveying equipment to control the emission of fibres, as well as state-of-the-art air quality monitoring and ventilation systems.

Backed by the scientific knowledge and technical innovations that permit the safe use of chrysotile asbestos, Canada is now challenging France's ban on the manufacture, import and sale of chrysotile asbestos products. Canada maintains that this prohibition is inconsistent with the rules of the World Trade Organization's agreements. While France is not the only nation to ban asbestos, it is the first to do so since the implementation of the new WTO dispute settlement procedures.

Canada's interest in the case extends well beyond chrysotile asbestos. As one of the world's foremost producers of minerals and metals, such as aluminum, copper, nickel and zinc, Canada has an interest in ensuring the safe and sustainable use of all natural resources.

Searching for Substitutes

While experts in Canada and around the world believe chrysotile asbestos can be used safely with appropriate precautions, users are hoping to find better alternatives.

However, substitutes that are technically equivalent to asbestos also tend to have similar physical properties. That means they're also fibrous, and may pose the same threats to health.

In fact, because of the long latency between exposure and the development of health problems, there is no scientific proof that new alternatives are any safer.

Retention patterns of asbestos fibres in lung tissue among asbestos cement workers. A study showing different kinetics for amphibole and chrysotile fibres in human lung tissue. Amphibole fibre concentrations increase with duration of exposure, whereas chrysotile concentrations do not. The authors indicate that their study supports a former finding of a possible adaptive clearance of chrysotile and conclude that their findings support the hypothesis that adverse effects are associated rather with the fibres that are retained (amphiboles), than with the ones being cleared (largely chrysotile).

McConnell EE, Chevalier HJ, Hesterberg TW, Hadley JG, Mast RW (1994). ILSI Monograph - Toxic and Carcinogenic Effects of Solid Particles in the Respiratory Tract. Eds. DL Dungworth, JL Mauderly and G. Oberdorster. ILSI Press, Washington, DC (pp. 461-467)

Following an inhalation study where the effects of crocidolite and chrysotile were compared, the authors conclude: crocidolite causes more inflammatory disease and at an earlier time than chrysotile asbestos.

▲ [TOP](#)

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info@chrysotile.com

Chrysotile "

From [Stacey Lloyd](#),
Your Guide to [Lung Diseases](#).
FREE Newsletter. [Sign Up Now!](#)

Definition: Chrysotile asbestos, the fibrous variety of the mineral serpentine, is by far the most important type of asbestos. It forms in metamorphic rock, that is, rock that has been altered by intense heat and pressure.

Chrysotile is a less dusty material and is more easily eliminated from the human body than [amphiboles](#). It is also the only type of asbestos used today. The industry now only markets dense and non-friable materials in which the chrysotile fibre is encapsulated in cement or resin.

90% of the world production of chrysotile is used in the manufacture of chrysotile-cement, in the form of pipes, sheets and shingles. These products are used in some sixty industrialized and developing countries.

According to a group of experts convened by the [World Health Organization \(WHO\)](#), chrysotile-cement products do not present risks of any significance to public health (e.g.

[asbestosis](#) and [mesothelioma](#)) or the environment. Moreover, workers in this industry, whether employed in the manufacture, installation or removal of materials, are not exposed to any detectable risk when effective prevention and control measures are applied.

Source: *Asbestos Institute*

HENRY JUSTINIANO & ASSOCIATES

GEOTECHNICAL ENGINEERING

August 1, 2006
Project No. S-103-02

Mr. Dennis Woodruff
Andalucia Properties LLC
886 Longridge Road
Oakland, CA 94610

SUBJECT: SUPPLEMENTAL EXPLORATIONS
Proposed Four Single Family Residences
Tentative Tract 7940
Crestmont Drive
Oakland, California

Dear Mr. Woodruff:

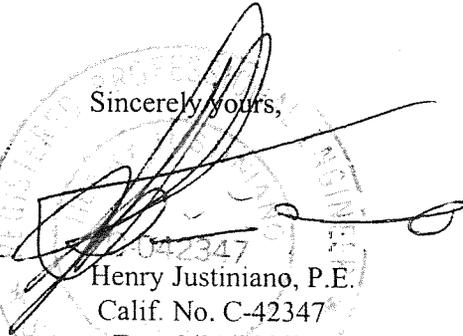
Per your request, attached please find the logs of additional exploratory borings and a "Site Plan" depicting their approximate locations, for the above subject project. In addition, we have included the logs of the borings that were provided as part of our initial explorations, which were included in our September 2000, Geotechnical Investigation Report.

The supplemental borings were conducted under the direction of our consulting Certified Engineering Geologist, on July 27, 2006. The recent borings were conducted manually, by advancing into the undisturbed surface, a standard penetration sampler, through the action of a 70-pound hammer free falling a distance of 30-inches.

Based on the data gathered, we are of the opinion that the findings, conclusions and recommendations presented in our September 2000, report, do not warrant revisions at this time.

If you should have any questions or need further assistance, please do not hesitate to contact this office.

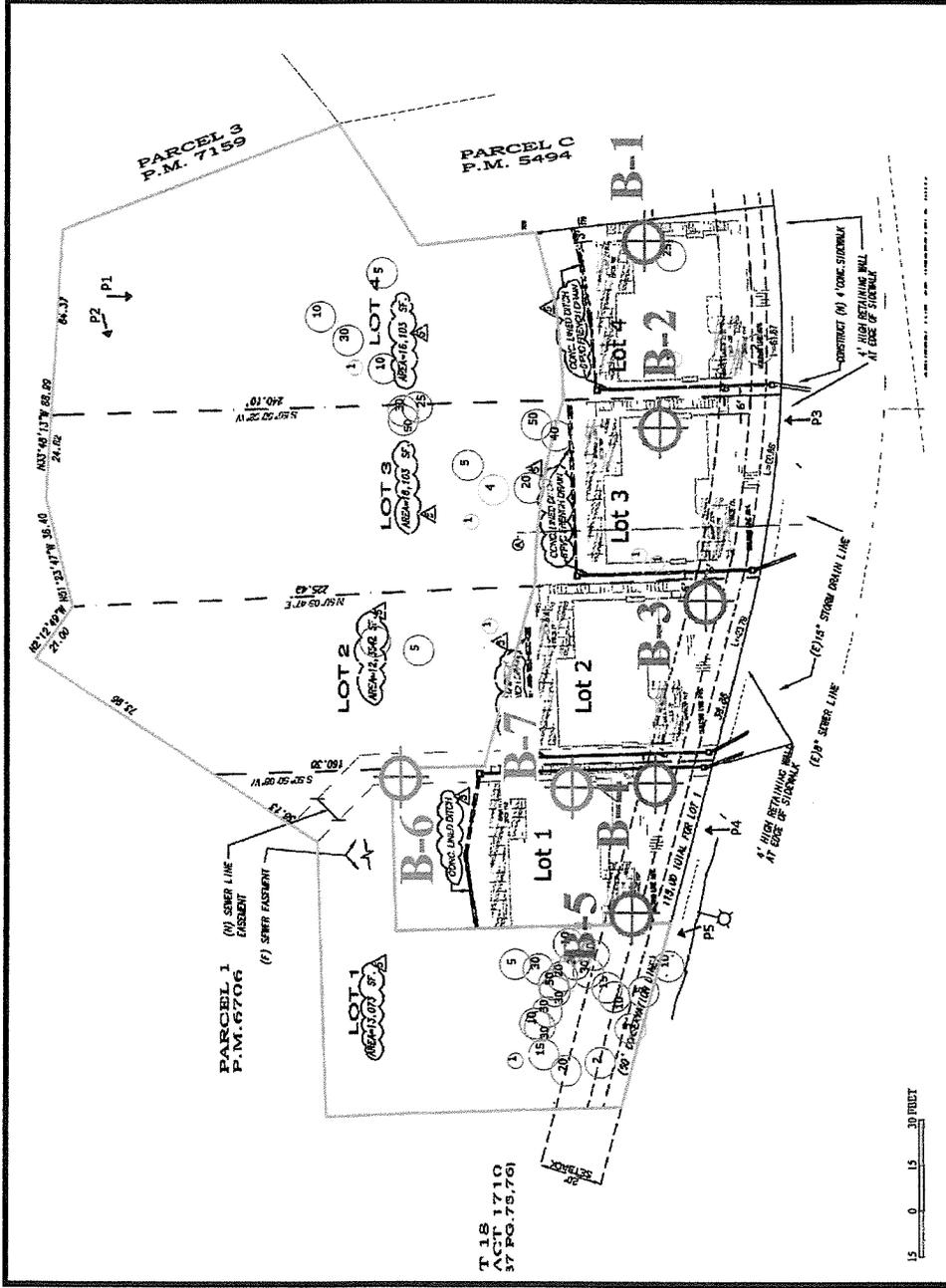
Sincerely yours,



C-42347
Henry Justiniano, P.E.
Calif. No. C-42347
Exp. 3/31/2008

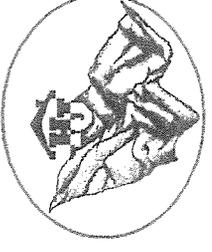


SITE PLAN

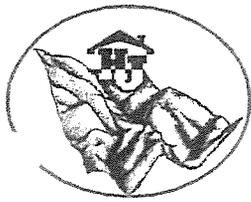


Explanation

-  Approximate Location of 7/27/06 Boreholes
-  Approximate Location of 9/5/00 Boreholes

Project No. : S-103-02	Date: 8-01-06	Scale: NTS
		
Henry Justiniano & Associates Soils and Foundation Engineering		
		Figure No. 1

Source: WRA, Environmental Consultants



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-1
 Project: Colget Dr.
 Client: Woodruff
 Date Drilled: 7/27/06

Equipment Used: Hand Sampling, 70Lb. Hammer,
 30 inch Drop

Location: East side of Lot 4

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 6 inch Drive	Sample Number & Type	Groundwater	Description of Material
1				4	SPT		Gray/Green Silty Gravel (Fill)
				10	SPT		Gray/Green Serpentine; deeply weathered; weak; very closely fractured to locally sheared
2				15	SPT		Becoming moderately strong
				50/3"	SPT		Moderately strong to strong; functional refusal
3							
4							
5							
6							
7							
8							
9							
10							

Figure No. 2



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-2

Project: Colget Dr.

Client: Woodruff

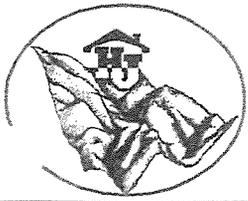
Date Drilled: 7/27/06

Equipment Used: Hand Sampling, 70Lb. Hammer,
 30 inch Drop

Location: East side of Lot 3

(in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 6 inch Drive	Sample Number & Type	G T O T A L F E E T	Description of Material
1				40/6"	SPT		Gray/Green Serpentinite; deeply weathered; weak; very closeley fractured to locally sheared
2				20/2"	SPT		Moderately strong to strong; functional refusal
3							
4							
5							
6							
7							
8							
9							
10							

Figure No. 3



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-3

Project: Colget Dr.

Client: Woodruff

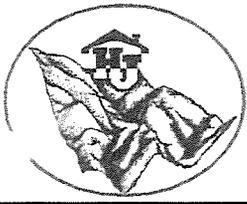
Date Drilled: 7/27/06

Equipment Used: Hand Sampling, 70 Lb. Hammer,
 30 inch Drop

Location: East side of Lot 2

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 6 inch Drive	Sample Number & Type	Groundwater	Description of Material
1				10	SPT		Gray/Green Silty Gravel; weathered rock
				12	SPT		Gray/Green Serpentine; deeply weathered; weak; very closely fractured to locally sheared
2				15	SPT		Becoming moderately strong
				23	SPT		Moderately strong to strong; functional refusal
3				26/4"	SPT		Strong; functional refusal
5							
6							
7							
8							
9							
10							

Figure No. 4



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-4

Project: Colget Dr.

Client: Woodruff

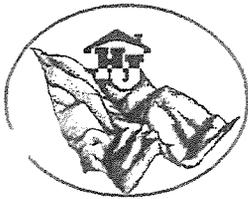
Date Drilled: 7/27/06

Equipment Used: Hand Sampling, 70Lb. Hammer,
 30 inch Drop

Location: East side of Lot 1

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 6 inch Drive	Sample Number & Type	G R O U N D W A T E R	Description of Material
1				4	SPT		Gray/Green Silty Gravel; weathered rock
				2	SPT		Gray/Green Serpentinite; deeply weathered; weak; very closeley fractured to locally sheared
2				3	SPT		Becoming slightly moist; friable; sheared
				8	SPT		Becoming weak
3				21	SPT		moderately strong
				23	SPT		Becoming strong
5							
6							
7							
8							
9							
10							

Figure No. 5



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-5
 Project: Colget Dr.
 Client: Woodruff
 Date Drilled: 7/27/06
 Equipment Used: Hand Sampling, 70 Lb. Hammer,
30 inch Drop
 Location: West side of Lot 1

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 6 inch Drive	Sample Number & Type	Groundwater	Description of Material
1				35/3"	SPT		Gray/Green Serpentinite; moderately strong to strong; functional refusal
2							
3							
4							
5							
6							
7							
8							
9							
10							

Figure No. 6



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-6
 Project: Colgett Dr.
 Client: Golden Stone Invest.
 Date Drilled: 9/05/00
 Equipment Used: Hand Sampling, 70Lb. Hammer,
30 inch Drop
 Location: Upper Parcel 1, in Swale, Trees

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 12 inch Drive	Sample Number & Type	G R O U N D W A T E R	Description of Material
1				47	B-6-A 3" MC		Large Angular Gravels, Minor Silt Matrix
2				39	B-6-B SPT		Highly weathered Serpentinized bedrock. Dense.
3				30	B-6-C SPT		
4							Borehole Terminated @ 4.5 Feet
5							
6							
7							
8							
9							
0							

Figure No. 11

Figure No. 7



Exploration Boring Log by:
**Henry Justiniano
 & Associates**

Boring Log No.: B-7
 Project: Colgett Dr.
 Client: GoldenStone Invest.
 Date Drilled: 9/05/00

Equipment Used: Hand Sampling, 70 Lb. Hammer,
 30 inch Drop
 Location: Lower Parcel 1, in Swale, Trees

Depth (in Feet)	Other Laboratory Tests	Dry Density (pcf)	Moisture Content %	Blow Count per 12 inch Drive	Sample Number & Type	G r o u n d w a t e r	Description of Material
1				50/3"	B-7-A 3" MC		Highly weathered Serpentinized bedrock. Dense.
2				50/3"	B-7-B SPT		Borehole Terminated @ 1.0 Feet
3							
4							
5							
6							
7							
8							
9							
10							

Figure No. 12

Figure No. 8



September 29, 2006

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

Re: #ER05-0007, response to comments on DFEIR

Dear Mr. Angstadt:

I am a principal biologist at WRA, Inc. the author of the Technical Report on the special status plant species on the project site for the proposed Four-Lot Crestmont Subdivision in Oakland, and am fully familiar with the site and our report.

I am writing to provide additional input regarding the responses to comments in the Final Environmental Impact Report, especially responses F8, F11, and F14-16 to Mr. Ralph Kanz. The draft response was prepared by John Torrey. WRA reviewed and adopted this draft as accurate on the issue of the sufficiency of the population counts and impacts analysis set forth in the WRA Technical Report. I would also iterate that the California Department of Fish and Game (CDFG) conducted two rounds of review of the Technical Report over the past two years, and revisions were made as requested to satisfy their concerns over the protection of the resources on this site. CDFG approved the final form of the Technical Report dated August 2005 (Revised March 1, 2006) that is part of the DEIR.

There was some concern that the importance of the site may have been downplayed due to the possibly relatively low number of plants seen in 2004. We were well aware that plant numbers would vary higher and lower from this number each year. However, typically the most suitable habitat areas will have some plants growing in them every year. We have observed this phenomenon in another large important serpentine preserve that we have monitored in the San Jose annually for the past six years. The area that was selected for preservation, contained the majority of the occupied habitat on the site, and included the elimination of one of the originally planned five developed lots on the site. CDFG staff agreed with this approach. It is expected that with additional weed removal and other adaptive management measures, the suitability of the preserved habitat for these two species will increase in the near term. This will result in the potential for increased occupied habitat within those portions of the preserve that are currently not supporting these three special status species.

Within the very limiting constraints found on this site, the increase in potentially colonized habitat that the commenter desires are being accomplished to the maximum feasible extent.

Additionally, there should be no restrictions necessary to prohibit grading within the development portion of the parcels either during the blooming season for these plants or the rainy season as long as the City approves the adequacy of site erosion control measures that have been installed. No grading or construction equipment shall be operated or stored within the preserved portion of the site at any time.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Fraser".

Thomas E. Fraser
Principal

cc: Dennis Woodruff, Andalucia Properties, LLC
John Torrey, Planning Consultant

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

(510) 625-9544

Fax: 891-2317

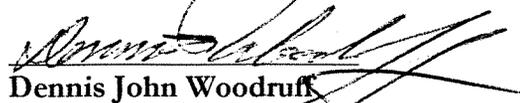
July 27, 2006

City of Oakland
CEDA- Planning Division
250 Frank Ogawa, Suite 3315,
Oakland, CA 94612

**RE: TPM 7940; ER 050007 Notice of Agreement To Add Standard
Conditions of Approval to the MMRP**

Dear Whomever it May Concern:

Please be advised that the applicant for the above referenced subdivision, Andalucia Properties, LLC, hereby agrees to include in the Mitigation Monitoring and Reporting Plan all "standard conditions of approval (uniformly applied development standards) identified in the Initial Study on the project.


Dennis John Woodruff
General Manager



November 29, 2005

Andrew M. Smith
 City of Oakland
 Community and Economic Development Agency
 250 Frank Ogawa Plaza, Suite 2114
 Oakland, CA 94612

Subject: Minor Subdivision at Crestmont & Westfield – City File #ER05-0007
 Scoping comments for Draft EIR
 Redwood Regional Park

Dear Mr. Smith,

Thank you for providing the East Bay Regional Park District (“District”) with a copy of the Notice of Preparation (NOP) for a draft Environmental Impact Report (DEIR) on the proposed minor subdivision at the corner of Crestmont and Westfield in Oakland. The following are the District’s scoping comments on this project.

The District is commenting on this NOP because we have a long-term interest in the conservation and management of the Presidio clarkia (*Clarkia franciscana*), most beautiful jewel flower (*Streptanthus albidus* ssp. *peramoenus*), and Tiburon buckwheat (*Eriogonum luteolum* var. *caninum*). The District submitted extensive comments on the “Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area” in 1998. The Recovery Plan was subsequently adopted by the Fish and Wildlife Service (FWS) in September 1998. The FWS Recovery Plan calls for the conservation of existing populations of these rare plants, including those of private property. Please see enclosed excerpt from the Recovery Plan. Unfortunately, the FWS has provided no funding for conservation or management of these species in the East Bay.

The proposed project area contains all three rare serpentine endemic plants. They are also found at the Skyline Prairie at Redwood Regional Park and on other undeveloped lots below Skyline Boulevard in the Oakland Hills. Most of the remaining habitat outside Redwood Regional Park has been developed over the past twenty years, including the tennis club and numerous minor subdivisions along Redwood Road. It’s unclear if any mitigation has been required or implemented for these developments. The cumulative loss of these habitats has greatly diminished the long-term viability of the endangered Presidio clarkia in the East Bay.

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The DEIR should consider a number of mitigation measures for the proposed subdivision. These should include first, avoidance of the impact; second, minimization of the impact; thirdly, on-site conservation and restoration; and as a last priority, off-site conservation and restoration. We encourage the applicant and the City of Oakland to contact the Department of Fish and Game, US Fish and Wildlife Service and the East Bay Chapter of the California Native Plant Society for assistance in developing suitable avoidance and mitigation measures for the proposed project.

Please call me should you have any questions regarding our scoping letter. I can be reached at (510) 544-2622. Please include my name on any future mailings for this project.

Sincerely,



Brad Olson
Environmental Programs Manager

Enclosures (Recovery Plan excerpts)

cc. Cay Goude, FWS w/out enclosures
John Krause, DFG w/out enclosures
Jessica Olson, CNPS w/ enclosures

