

**KENILWORTH ROAD RESIDENTIAL PLANNED UNIT DEVELOPMENT (PUD)****ADDENDUM TO APRIL 20, 2005 STAFF REPORT**

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

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

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

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

**CREEK PROTECTION PLAN**

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

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

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

Prepared by:

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Approved for forwarding to the City Planning  
Commission by:

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Gary V. Patton  
Deputy Director of Planning and Zoning

Attachments: April 20, 2005 Staff Report