

Gary Patton  
Deputy Director of Planning and Zoning  
City of Oakland  
250 Frank Ogawa Plaza, Suite 3300  
Oakland, California 94612

### Request for Modified General Plan Confirmation

Dear Gary:

By letter dated May 17, 2006, SunCal Oak Knoll, LLC (SunCal) sought and obtained confirmation from the City of Oakland planning director that the adjusted land use designations shown in our May 2006 preferred concept plan (developed by SunCal in a series of public meetings) "are in conformance with the Oakland General Plan." The May 2006 SunCal preferred concept plan for Oak Knoll is attached as Exhibit 1 to this letter. Since May, SunCal has continued to work with Oak Knoll neighbors, community groups and the City to further refine our proposal for Oak Knoll and we have begun the formal application process to the City seeking entitlements for the plan we have crafted during this collaborative effort.

In finalizing our development plans, we have become aware of two areas in which we require additional land use map conformity determinations and we submit these currently with the request that the City confirm that the attached land use map conforms with the LUTE. Refinements to the preferred concept plan are shown in Exhibit 2 to this letter.

As we have prepared these plans, we have adhered to the LUTE's implicit goal of providing a plan for the entirety of Oak Knoll, one that works for Oak Knoll as a whole and not as a series of individual units of land with artificially assigned land uses. This intention is described in the LUTE EIR which states that "Land Use Diagram changes could facilitate the redevelopment of large parts of the City, including military bases..."<sup>1</sup> In addition, the EIR states that although "the designation at Oak Knoll would change from 'Institutional' to a combination of 'Institutional,' 'Commercial,' 'Hillside Residential,' 'Urban Park,' and 'Resource Conservation Area.' Designations would match the proposed master plan for the site."<sup>2</sup> [emphasis added]

<sup>1</sup> Attached as Exhibit 3 are the three pages of the LUTE EIR referenced herein. See LUTE EIR, page III.A.13

<sup>2</sup> LUTE EIR, page III.A.23

We now request that pursuant to sections 17.01.070 and 17.01/120.C<sup>3</sup> of the Oakland Municipal Code, you confirm that the land use plan attached as Exhibit 2 and the land use classifications shown on Exhibit 4 depicting the original conceptual plan designations as modified by the two changes described in greater detail below remains in conformity with the LUTE land use diagram.

### Eastern Open Space Refinement

1. Regulatory Framework and Existing Condition. SunCal has developed its community development plan for Oak Knoll based upon the conceptual development pattern proposed in the Final Reuse Plan (“Reuse Plan” herein) as elaborated by the goals and the land use designations contained in the LUTE. Both the 1998 LUTE and the 1996 Reuse Plan are developed from open space goals and concepts first developed in the 1996 Open Space, Conservation and Recreation Element of the General Plan (OSCAR)<sup>4</sup>. The Reuse Plan envisioned a mixture of housing and publicly usable open space along the eastern boundaries of the site. The open space was intended to be linked to other recreational components of the site and to also link to the existing EBRPD Leona Canyon Preserve to the north east.

The City’s goals for its citywide open space system are specified at OSCAR Goal OS-1:

“A Citywide Open Space system accessible to every Oakland resident which provides land for recreation, natural resource management, the protection of public health and safety, and visual enjoyment (see figure 3: Open Space Plan).”

OSCAR includes a number of Policies intended to implement this Goal. OSCAR Policy OS-1.2 pertains to “Open Space Protection Priorities for Private Land” and includes as one of the criteria to be used when developing priorities for acquisition or protection “(c) *parcels which can potentially link together or expand existing open space areas*”.<sup>5</sup>

Although OSCAR and the Reuse Plan envisioned highly useable and connected open space, as mapped in the LUTE land use diagram, the eastern open space of Oak Knoll does not meet these requirements. Similar to the manner in which the LUTE mapped Rifle Range Creek, the

<sup>3</sup> OMC §17.01.120. C. provides “. . . It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning.”

Page 143 of the LUTE notes that in many instances the Diagram was intended to reflect existing land use patterns and applying this concept to Oak Knoll, it is logical that the LUTE intended that future development would reflect historic development patterns and disturbed areas of the site.

<sup>4</sup> We have attached relevant portions of OSCAR and Figure 3 of OSCAR (the City’s Open Space Plan) as Exhibit 5 to this letter.

<sup>5</sup> The other priorities of Policy OS-1.2 are “(a) steep hillside parcels over ten acres in size; (b) parcels with significant biological resources, including endangered species habitat and native plant communities; (d) visually prominent properties, including ridgelines and other areas with high scenic value; and (e) properties where the use of eminent domain is not required.”

LUTE open space mapping ignores actual site constraints and topography.<sup>6</sup> As mapped, the proposed open space does not provide linkages to other recreational amenities of the site, including Rifle Range Creek, and does not provide connectivity to trails on adjacent properties. If the open space is developed literally where it is shown on the land use diagram, an open space user would have a short walk part way across the site commencing and terminating on the Keller Avenue sidewalk.

OSCAR figure 3 (see Exhibit 5) illustrates the Open Space Plan for Oakland. It shows that the City's Open Space Plan for Oak Knoll is centered upon the restoration, conservation and access to Rifle Range Creek. OSCAR envisioned open space trails at Oak Knoll that would diagonally traverse the site from where Rifle Range Creek crosses Keller, down to Club Knoll, with the goal of connecting the Leona Open Space to Knowland Park via Oak Knoll and Mountain Blvd. OSCAR further envisioned that open space trails including those at Oak Knoll would be connected to other recreational amenities on and off site, would be easily traversed, and would be safe<sup>7</sup>. OSCAR, when read as a whole, has specific goals to be achieved with the redevelopment of Oak Knoll: useable and connected urban open space, a system of safe trails, and the restoration of Rifle Range Creek.

Although the OSCAR Open Space Plan shows no open space on the eastern ridge, the LUTE land use diagram<sup>8</sup> located a substantial portion of the Oak Knoll open space on the remaining portion of a steep and non-traversable grassy slope that was partially graded and over steepened with the construction of Keller Avenue (see Exhibit 8, being sheets 3 and 4 of the City's construction drawings for this section of Keller Avenue together with photos of this slope taken prior to the Keller Avenue grading). By so doing, the LUTE land use diagram failed to implement OSCAR's goals for the site. Like most of Oak Knoll, the eastern ridge of Oak Knoll is highly disturbed from Navy grading and the City's Keller Road construction, and from the construction and maintenance of water tanks and access roads that flanked the ridge. Although viewable from discrete points above and to the side of Oak Knoll, the ridge is neither prominent nor a "feature" when looking towards Oak Knoll from the flatlands.<sup>9</sup> The seasonal grasses that

<sup>6</sup>Please see our May 17, 2006 letter to you explaining how the LUTE diagram mapped the location of Rifle Range Creek in error and other information explaining the imprecise nature of the LUTE diagram. Your May 25, 2006 determination confirmed this shortcoming of the original mapping effort.

<sup>7</sup>OSCAR: Policy OS-5.3: Trail Design Guidelines; Chapter 5. Planning Area Strategies; South Hills; OS-5: Linear Parks and Trails; Chapter 4. Recreation. The connectivity goals of OSCAR are illustrated by OSCAR Action OS-1.2.3 which seeks the expansion of the Leona Open Space, and directs the City to "work with the landowner and the East Bay Regional Park District to maximize open space opportunities on the west facing hills below Ridgemont, possibly including this area in the Leona Regional Open Space."

<sup>8</sup> To assist in your review we have attached as Exhibit 6 to this letter a 1998 version of the LUTE land use diagram and attached as Exhibit 7, a 2005 version of the LUTE Land Use Diagram.

<sup>9</sup> The LUTE EIR acknowledged that the most visually prominent feature at Oak Knoll is the existing hospital building and its hillside setting; it further notes that for the most part, the Oakland hillsides when viewed from the west present a monolithic "wall" from the flatlands, rather than as a discrete landmark. Although OSCAR Policy OS-1.3 seeks to generally conserve ridges and knolls and other visually prominent features of a large site with the goal of preserving visually prominent features of a site; this policy is tempered by the requirement that in doing so the City first consider land stability, plant and animal resources, earthquake and fire hazards, and visual impacts. The generally applicable provisions of Policy OS-1.3, when read in the context of and harmonized with Oak Knoll

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the steep slope supports are a fire hazard in summer and fall and will require on-going fire maintenance (likely goat grazing or its equivalent due to the steepness of the slope) if retained. The narrow peak of this slope is dangerously steep and, if retained, much of the hill likely would need to be cordoned off from public use.

2. Refined SunCal Plan. As depicted on our current submission, and in compliance with the OSCAR policies described above, SunCal's proposed project includes open space in the easterly portion of the site extending from north to south across the site connecting on the north to Keller and to the nearby Leona Canyon Preserve; it provides views to the west and it allows pedestrian connections between the upper and lower portions of the site, including the restored Rifle Range Creek. As shown on the attached Exhibit 4, the relocation of open space will result in a swap of certain property now shown as Hillside Residential in the LUTE land use diagram for open space, while areas previously shown as Open Space will now be shown as Hillside Residential. This will result in a greater amount of connected and protected oak woodland especially in the south eastern area of the site currently designated Hillside Residential. By locating the open space where it provides greater connectivity to both off site and on site neighborhoods, the opportunities for public use of the open space are greatly enhanced. The proposed location of the open space and integral trail system will further OSCAR's goal of connecting the Leona Open Space with Rifle Range Creek and on to Knowland Park while retaining safely maintainable slopes and large areas of mature oak woodland.

During an early consultation with the Oakland Fire Department, SunCal was asked to provide a loop road from the easternmost neighborhood to the more westerly neighborhoods. This roadway will be constructed by widening existing roadways that have long flanked either side of the eastern ridge that provided Navy access to water tanks and other facilities once maintained on the upper ridge area and by widening a roadway carved out of the upper ridge when Keller Avenue was constructed. The loop road will provide access to the continuous swath of highly useable and connected open space that will be established just below the eastern boundary and on either side of the loop road in one of the few areas of the site that has seen relatively little disturbance. It also allows for the construction of homes along the eastern boundary that will compliment the open space, shield it from Keller and create a greater margin of safety for open space users. Homes built above the open space will be consistent with the predominant uses on the opposite side of Keller, the single family homes of the Sequoyah Hills subdivision lining Keller Avenue to the east. By relocating portions of the eastern open space, the plan improves connectivity, usability and safety of the open space and its trail system.

This plan honors the Fire Department's request that SunCal build a loop road and reduce the incidence of hard to control and hazardous vegetation. It furthers OSCAR's open space and connectivity goals for Oak Knoll while protecting hillsides when and where doing so does not jeopardize human health and safety and balances this general policy with OSCAR's Oak Knoll specific policies and goals. The total number of units of residential housing proposed to be developed under this plan is not modified from the prior proposal.<sup>10</sup> SunCal proposes that the

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specific goals and the topography, grading history and general lack of visibility of the eastern edge of the site, were not intended to supplant or thwart the achievement of OSCAR's specific and achievable goals for Oak Knoll.

<sup>10</sup> See Exhibit 9, "LUTE and Reuse Plan Acreage Assignment and SunCal Proposal Usage Table."

eastern edge of the site be developed with single family residential uses. This is consistent with the maximum capacity alternative studied in the 1998 FEIR (see Exhibit 10) and the underlying R-30 zoning and results in greater compatibility with the existing residential development on the east side of Keller. The relocation of open space as described above also does not affect the overall provision of 50 + acres of open space on the site.

#### Village Center Refinement/Institutionally Designated Lands

SunCal is currently in negotiations with the Seneca Center, the owner of the largest parcel assigned the Institutional classification at Oak Knoll. It is possible that SunCal and Seneca will, in essence, agree to a land swap, with SunCal coming into ownership of the 7+ acre parcel of land adjacent to the Village Center that is owned by Seneca and shown as Institutional on the LUTE land use diagram; Seneca would become the owner of a somewhat smaller parcel of land on the northwest edge of the property, in an area shown as Community Commercial on the 1998 LUTE map. The parcel to be acquired by Seneca would be created with the approval of the tentative map application. In advance of this transaction, SunCal is seeking the City's confirmation that in the event of such swap, the Institutional classification would be relocated along with the owner of the property to the northwestern portion of the property, and the Community Commercial mapped to that portion of the property in 1998 would be relocated to the parcel to be acquired by SunCal. In support of this request we note the following:

The 1996 Reuse Plan divided Oak Knoll into three distinct use areas: residential, recreational and mixed use. The Reuse Plan assigned 143 acres to residential and recreational uses, and 40 acres to mixed use. Mixed use was assigned to most of the area west of Rifle Range Creek. Mixed use was envisioned to include three segments: 1) commercial and retail, 2) high density housing, and 3) cultural, social and community uses. The Reuse Plan explains that "[t]he Mixed Use Area will provide the land use flexibility that is needed to respond to changes in market conditions." Between 1996 and 1998, Sea West Federal Credit Union and Seneca Center applied for and the Navy agreed to the transfer of approximately 9 of the 40 acres set aside by the Reuse Plan for mixed use to these entities.

In discussing Oak Knoll, the 1998 LUTE text acknowledges that the "site has received federal approval of a reuse plan which identifies a mixture of uses including housing, recreation, small scale commercial, and public services. The City is currently seeking proposals for a master developer to implement the community reuse plan for the site." The LUTE text manifests that the City did not intend to impose a land use scheme on the site that would be in conflict with the planning efforts of the Reuse Plan and the LUTE text does not mention Institutional as one of the assigned uses at Oak Knoll. Similarly, the maximum capacity alternative (Exhibit 10) prepared for the 1998 EIR/EIS does not include Institutional use as a land use category, but instead shows the area immediately west of Rifle Range Creek as entirely mixed use. But when the City prepared the LUTE land use diagram, finding the Seneca and Sea West properties moving into institutional ownership, the City applied the Institutional land use designation to the two parcels. The remainder of the Reuse Plan's mixed use area was appropriately mapped as Community Commercial.

The LUTE explains that the Institutional classification "is intended to create, maintain, and enhance areas appropriate for educational facilities, cultural and institutional uses, health services and medical uses as well as other uses of similar character." When discussing Institutional uses located in the South Hills area, the LUTE mentions Merritt College, Knowland

Park/Zoo and the Dunsmuir House. It states that the Institutional classification has been assigned to these properties because the "Maintenance and enhancement of these assets are important to the surrounding neighborhood and the wider community." The City did not follow this same guidance in assigning the classification to the two parcels at Oak Knoll since the uses were, at that time, still in the development stages and did not require Institutional designation to maintain or enhance or even implement the then planned uses for those parcels. Rather, the City assigned this classification based solely on anticipated future ownership of the parcels. Absent the Navy's transfer of land to the Seneca Center and Sea West, there would have been no institutional use at Oak Knoll and instead, and in full consistency both with the Reuse Plan and the LUTE text, the land use diagram would have designated the entire 40 acres as community commercial.

Notwithstanding the current assignment of the Institutional classification to the Sea West and Seneca owned lands, a key component to the Reuse Plan's Mixed Use component was land use flexibility needed to respond to changes in market conditions. The City's goal has always been to have Oak Knoll master planned by a builder of master planned communities. Due to the limited types and users of land who can make legitimate use of Institutionally designated land, the classification prevents areas so designated within Oak Knoll from being incorporated into any such master plan. Because (a) the LUTE intended to incorporate the land use concepts of the Reuse Plan into both the LUTE and the land use diagram, (b) land use flexibility and master planning were and are key components of the Reuse Plan and the LUTE text, and (c) the Institutional designation was applied in anticipation of the Navy transfers of title and not in fulfillment of any policy found in the LUTE text, we think that the proper interpretation of both the LUTE text and the land use diagram is to allow the Institutional designation within Oak Knoll to follow the institutional use in the event the institutional use relocates within the site and to be assigned to the institutional use's new parcel, and to allow the current designation of the parcel receiving the relocated institutional use to replace the Institutional designation at the sending site. We believe this concept furthers the decision to map the Institutional classification to then extant institutional uses where they were then found on site not because the area was one where Institutional use was considered the most appropriate land use, but instead for the simple reason that the area in question was then occupied any an Institutional use. As Exhibit 9 demonstrates, this change has no effect on the acreage that will be devoted to open space, recreational and residential uses and the project remains fully conforming with those land use classifications.

By this letter, we seek your concurrence that the swap of Open Space and Hillside Residential land uses as and where shown on Exhibit 4 conform to the 1998 LUTE Land Use Diagram. We further ask that you confirm our understanding with regard to the lands designated as Institutional on the land use diagram.

Sincerely,



Pat Keliher  
Vice President  
SunCal Companies for SunCal Oak Knoll LLC

## Exhibits

- 1: May 2006 SunCal Preferred Concept Plan
- 2: November refinements to the preferred concept plan
- 3: Excerpts from LUTE EIR
- 4: LUTE Land Use Diagram with Proposed Adjustments to Designated Boundaries
- 5: OSCAR Oak Knoll related provisions Exhibit 5 prt 2
- 6: Existing LUTE Land Use Diagram, 1998
- 7: Existing LUTE Land Use Diagram, 2005
- 8: City of Oakland Keller Avenue construction documents and photos
- 9: LUTE and Reuse Plan Acreage Assignment and SunCal Proposal Usage Table
- 10: Base Reuse Plan Maximum Capacity Alternative