

A05-100 (Appeal of TPM8392)

April 5, 2006

<b>Location:</b>	9241 Golf Links Road (See map on reverse)
<b>Assessors Parcel Numbers:</b>	043A-4758-028-06
<b>Proposal:</b>	Appeal of the Zoning Administrator's denial of a Tentative Parcel Map to subdivide a 22,633square foot lot into three lots.
<b>Appellant:</b>	David Claydon
<b>Applicant:</b>	David Claydon
<b>Owner:</b>	Tanya J. Garibaldi
<b>Planning Permits Required:</b>	Appeal of the Zoning Administrator's denial of a Tentative Parcel Map to subdivide a 22,633 square foot lot improved with a single-family into three lots to provide for the construct of two single-family dwellings.
<b>General Plan:</b>	Detached Unit Residential
<b>Zoning:</b>	R-30 One Family Residential Zone
<b>Environmental Determination:</b>	No Determination, Section 15270 of the State CEQA Guidelines
<b>Historic Status:</b>	Not a Potentially Designated Historic Property, Survey Rating D3
<b>Service Delivery District:</b>	VI
<b>City Council District:</b>	7
<b>Date Filed:</b>	March 4, 2005
<b>Staff recommendation:</b>	Uphold Zoning Administrator's Decision and deny appeal.
<b>For further information:</b>	Contact case planner <b>Leigh McCullen</b> at 510-238-4977 or <a href="mailto:lmccullen@oaklandnet.com">lmccullen@oaklandnet.com</a> .

## SUMMARY

This report addresses an appeal of the Zoning Administrator's denial of a Tentative Parcel Map to subdivide a 22,633 square foot lot improved with a single-family into three lots to provide for the construct of two single-family dwellings. The proposed lots are located entire in the creek bank of Arroyo Viejo Creek. The Environmental Services Division of the Public Works Agency and the Building Services Division has recommended denial of the project (Attachment C). The Zoning Administrator, determining that the proposal did not meet all of the findings required for approval, denied the application on February 24, 2005. An appeal of that decision was submitted on January 20, 2005.

Staff recommends that the Planning Commission uphold the Zoning Administrator's approval based on this report, which details the basis for denying the tentative parcel map and responds to the issues raised in the appeal.

## PROJECT DESCRIPTION

The proposed tentative map would provide for the subdivision of a 22,633 square foot lot, currently improved with a single-family dwelling, into three lots. These lots are intended to provide for two additional single-family dwellings and the existing single-family dwelling. The proposed lots are located entirely within the creek bank and riparian zone of Arroyo Viejo Creek.

# #12

**GENERAL PLAN ANALYSIS**

The Oakland General Plan designation for the site is Detached Unit Residential. This designation is intended for areas characterized by detached, single-unit structures. The subject site is currently improved with a detached single-family dwelling.

The proposed development is inconsistent with the following Policies and Objectives outlined in the Open Space Conservation and Recreation Element of the Oakland General Plan (OSCAR) and the Safety Element of the Oakland General Plan:

Policy OS-9.1 of the Open Space Conservation and Recreation Element of the Oakland General Plan (OSCAR) states that new subdivisions and buildings shall be designed to preserve natural topography and terrain. The proposed map and the resulting construction of new buildings within the creek bank and riparian zone would not preserve the natural topography and terrain of Arroyo Viejo Creek.

Policy CO-7.1 of the OSCAR states that native plant communities, especially oak woodlands, and riparian woodlands shall be protected from adverse impacts of development. The proposed development would result in a loss of riparian habitat along Arroyo Viejo creek.

Policy CO-6.1 of the Open OSCAR states that Oakland's remaining natural creek segments shall be protected by retaining creek vegetation, maintaining creek setbacks, and controlling bank erosion. The proposed subdivision would contradict this Policy since even minimal construction on these lots would result in the loss of riparian corridor and creek bank which results in erosion and loss of vegetation.

Objective C0-1 of the OSCAR is intended to protect and preserve soil as a resource for healthy plant, animal, and human life. The proposed subdivision and subsequent construction would remove vegetation from creek bank and increase impervious surface. When vegetation is removed and impervious area is added to the creek bank stormwater runoff flows across soils in greater volumes and at higher velocities increasing the rate of erosion and results in higher slide hazards, silting of streams, blocking stream channels, fish kills, and reduced water quality. These hydrologic impacts created by project could not be mitigated since they are created by the increase of impervious surfaces in the creek bank.

Objective CO-5 of the OSCAR is intended to minimize the adverse effect of urbanization on Oakland's groundwater, creeks, lakes, and nearshore water. Policy C05.1 is intended to promote groundwater recharge through property management of development in high recharge areas by maintaining setbacks along creeks, limiting impervious surfaces, and retaining natural drainage patterns. The proposed subdivision would be inconsistent with this Policy by resulting in the construction of structures within the creek bank and not setback from the creek bank. The increase in impervious surface area created by the project would alter the natural drainage pattern of the creek.

Action FL-1.5 of the Safety Element of the Oakland General Plan states that the city should continue to enforce provision under the creek protection, storm water management and discharge control ordinance designed to keep watercourses free of obstructions and protect drainage facilities. The proposed subdivision requires a Creek Protection Permit. The Division of Environmental Services

has recommended denial of a Creek Protect Permit for the subdivision on the basis that any new building on the proposed lots would not meet the criteria of the Creek Protection Ordinance. The subdivision does not meet this criterion because it would result in the loss of riparian corridor and creek bank, hydrologic impacts that could not be mitigated due to new impervious surfaces in the creek bank, and that the new structures would be at a risk from natural changes in creek flows.

## **ZONING ANALYSIS**

The subject site is located in the R-30 One-Family Residential Zone. The C-31 zone is intended to create, preserve, and enhance areas for single-family dwellings in desirable settings for urban living, and is typically appropriate to already developed lower density dwelling areas of the city. The subject site is currently improved with a single-family dwelling constructed in approximately 1947. Since the proposed lots are located in the bank of a creek it can not physically accommodate the construction of two new single-family dwellings. Denial of this parcel map will not deny the property owner the right to continue to use the existing single-family dwelling located on the site.

## **ENVIRONMENTAL DETERMINATION**

California Environmental Quality Act (CEQA) does not apply to projects that have been denied by a public agency (Section 15270).

## **BASIS FOR DENIAL**

Approval of a tentative parcel map relies on the project's compliance with all tentative parcel map findings. If even one finding can not be met the map must be denied. The Zoning Administrator has found that the proposed map does not meet a number of the findings required for approval (see Attachment D), therefore the map was denied.

To approve a tentative parcel map it must be found that the site is physically suitable for the proposed development. The proposed lots are located entirely within the creek bank and riparian zone of Arroyo Viejo Creek. The Division of Environmental Services has reviewed the proposed subdivision and has recommended denial of the tentative map on the basis that any new building on the proposed lots would not meet the criteria of the Creek Protection Ordinance (see Attachment C). This criterion includes loss of riparian corridor and creek bank, hydrologic impacts that could not be mitigated due to new impervious surfaces in the creek bank, and that the new structures would be at a risk from natural changes in creek flows.

In order to meet the purpose and intent of the Creek Protection Ordinance and Creek Protection Permit requirements, the City as standard practice requires that new development be setback a minimum of 20 feet from the top of a creek bank. Any development on the proposed lots could not be setback 20 feet from the top of bank since the lots are entirely within the creek bank. Essentially, there would be no area on the lots to build a dwelling that would meet the permit requirements. Since the City would not be able to issue permits for any development on the proposed lots approval of the subdivision is futile.

## **BASIS FOR THE APPEAL**

On March 4, 2005 an appeal of the denial was filed by the project applicant (see Attachment B, Appeal request and supporting documentation).

The following discussion combines related appeal issues where appropriate for efficiency and clarity of the report. Staff summarizes each key point of the appeal in *underlined italics* and responds to each point immediately following in regular text.

1. *The appellant claims that the topography and terrain of the lots will remain unchanged because the proposed houses will be on pier and grade beam foundations.*

**Staff Response:**

The proposed map and the resulting construction of new buildings within the creek bank and riparian zone would not preserve the natural topography and terrain of Arroyo Viejo Creek.

2. *The appellant claims that the project will improve the riparian habitat because plant species in the riparian corridor are either dead or non-native.*

**Staff Response:**

The proposed development would result in a loss of a portion the riparian corridor of Arroyo Viejo Creek. A riparian corridor is defined as a corridor of vegetation roughly parallel to the creek channel, or soil conditions that would support native riparian vegetation. Riparian vegetation is sometimes missing due to landscaping or vegetation removal practices, landslide, or fire. The lack of native species does not negate the importance of the riparian corridor, given that it can support future growth of native species. Placing structures in the riparian corridor will result in a loss of potential habitat for native riparian vegetation.

3. *The appellant claims that the project is consistent with General and Specific Plans because the development will not result in the loss of riparian habitat or result in soil erosion.*

**Staff Response:**

The proposed subdivision would contradict numerous policies outlined in the Open Space Conservation and Recreation Element of the Oakland General Plan (OSCAR) and the Safety Element of the Oakland General Plan since even minimal construction on these lots would result in the loss of riparian corridor and creek bank which results in erosion and loss of vegetation.

Policy CO-6.1 of the OSCAR states that Oakland's remaining natural creek segments shall be protected by retaining creek vegetation, maintaining creek setbacks, and controlling bank erosion. The proposed development would be contradictory to this policy because the structures would be located in the riparian corridor and not setback from the creek bank.

Objective C0-1 of the OSCAR is intended to protect and preserve soil as a resource for healthy plant, animal, and human life. The proposed subdivision and subsequent construction would remove vegetation from creek bank and increase impervious surface. When vegetation is removed and impervious area is added to the creek bank stormwater runoff flows across soils in greater volumes and at higher velocities increasing the rate of erosion and results in higher slide hazards, silting of streams, blocking stream channels, fish kills, and reduced water quality. These hydrologic impacts created by project could not be mitigated since they are created by the increase of impervious surfaces in the creek bank.

Objective CO-5 of the OSCAR is intended to minimize the adverse effect of urbanization on Oakland's groundwater, creeks, lakes, and nearshore water. Policy C05.1 is intended to promote groundwater recharge through property management of development in high recharge areas by maintaining setbacks along creeks, limiting impervious surfaces, and retaining natural drainage patterns. The proposed subdivision would be inconsistent with this Policy by resulting in the

construction of structures within the creek bank and not setback from the creek bank. The increase in impervious surface area created by the project would alter the natural drainage pattern of the creek.

Action FL-1.5 of the Safety Element of the Oakland General Plan states that the city should continue to enforce provision under the creek protection, storm water management and discharge control ordinance designed to keep watercourses free of obstructions and protect drainage facilities. The proposed subdivision requires a Creek Protection Permit. The Division of Environmental Services has recommended denial of a Creek Protect Permit for the subdivision on the basis that any new building on the proposed lots would not meet the criteria of the Creek Protection Ordinance. The subdivision does not this criterion because it would result in the loss of riparian corridor and creek bank, hydrologic impacts that could not be mitigated due to new impervious surfaces in the creek bank, and that the new structures would be at a risk from natural changes in creek flows.

In order to minimize storm-induced flooding hazards, Action FL-2.2 of the Safety Elements states that the City should maintain efforts to keep storm drains and creeks free of obstructions and retain vegetation in the channel to allow for the free flow of water. In direct violation of Safety Element, the proposed lots are located entirely within the creek bank and riparian zone of Arroyo Viejo creek. New structures on these lots would obstruct the creek and remove vegetation from the channel which would increase storm-induced hazards.

4. *The appellant claims that the development is consistent with Objective CO-1 of the OSCAR because the increase in runoff from the proposed impervious areas will not result in silting of streams, blocking stream channels, kill fish or reduce water quality.*

**Staff Response:**

Objective C0-1 of the OSCAR is intended to protect and preserve soil as a resource for healthy plant, animal, and human life. The proposed subdivision and subsequent construction would remove vegetation from creek bank and increase impervious surface area in the creek band. When vegetation is removed and impervious area is added to the creek bank stormwater runoff flows across soils in greater volumes and at higher velocities increasing the rate of erosion and results in higher slide hazards, silting of streams, blocking stream channels, fish kills, and reduced water quality. These hydrologic impacts created by project could not be mitigated since they are created by the increase of impervious surfaces in the creek bank.

5. *The appellant claims that the project is consistent with Policy C0-5 of the OSCAR because the proposed development will not alter the natural drainage pattern of the creek.*

**Staff Response:**

Objective CO-5 of the OSCAR is intended to minimize the adverse effect of urbanization on Oakland's groundwater, creeks, lakes, and nearshore water. Policy C05.1 is intended to

promote groundwater recharge through property management of development in high recharge areas by maintaining setbacks along creeks, limiting impervious surfaces, and retaining natural drainage patterns. The proposed subdivision would be inconsistent with this Policy by resulting in the construction of structures within the creek bank and not setback from the creek bank. The increase in impervious surface area created by the project would alter the natural drainage pattern of the creek.

6. The appellant claims that it is not possible that the storm water from the proposed houses could result in the loss of creek bank, obstruct creek flow or increase storm induced hazards.

**Staff Response:**

By increasing the impervious surface area in the creek bank, the proposed development would result in an increase in the volume and velocity of stormwater runoff which results in higher landslide hazards, silting of streams, blocking stream channels, fish kills, reduced water quality and flooding. These impacts not only affect the site but also have significant negative impacts to the surrounding properties and downstream. Further, new structures and foundations in the creek bank would be at risk from natural changes in creek flow which could result in flooding or sliding of the structures.

6. The appellant claims that the project is consistent with Action FL-2.2 of the Safety Element of the Oakland General Plan because the free flow of water along the creek will not be obstructed.

**Staff Response:**

In order to minimize storm-induced flooding hazards, Action FL-2.2 of the Safety Elements states that the City should maintain efforts to keep storm drains and creeks free of obstructions and retain vegetation in the channel to allow for the free flow of water. In direct violation of Safety Element, the proposed lots are located entirely within the creek bank and riparian zone of Arroyo Viejo creek. New structures on these lots would obstruct the creek and remove vegetation from the channel which would increase storm-induced hazards.

7. The appellant claims that site is physically suitable for the type of proposed development.

**Staff Response:**

The proposed subdivision would create three lots located entirely within the creek bank and riparian zone of Arroyo Viejo Creek. These lots are intended to provide for two new single-family dwellings, with one of the proposed lots containing an existing single-family dwelling. By increasing the impervious surface area in the creek bank, the proposed development would result in an increase in the volume and velocity of stormwater runoff which results in higher landslide hazards, silting of streams, blocking stream channels, fish kills, reduced water quality and flooding. These impacts not only effect the site but also have significant negative impacts to the surrounding properties and downstream. Further, new structures and foundations in the creek bank would be at risk from natural changes in creek flow which could result in flooding or sliding of the structures.

The Division of Environmental Services has reviewed the proposed subdivision and has recommended denial of a Creek Protection Permit on the basis that any new building on the proposed lots would not meet the criteria of the Creek Protection Ordinance. These criteria

include loss of riparian corridor and creek banks, hydrologic impacts that could not be mitigated due to new impervious surfaces in the creek bank, and that the new structures would be at a risk from natural changes in creek flows.

8. The appellant claims that site is physically suitable for the proposed density of the development.

**Staff Response:**

Since the proposed lots are located in the bank of a creek it can not physically accommodate the construction of two new single-family dwellings. The Division of Environmental Services has reviewed the proposed subdivision and has recommended denial of a Creek Protection Permit on the basis that any new building on the proposed lots would not meet the criteria of the Creek Protection Ordinance.

9. *The appellant claims that the proposed development will not cause substantial environmental damage.*

**Staff Response:**

The proposed subdivision and future construction would cause substantial environmental damage and substantially and unavoidably injure fish or wildlife and their habitat. Policy CO-7.1 of the OSCAR states that native plant communities, especially oak woodlands, and riparian woodlands shall be protected from adverse impacts of development. The proposed structures would result in a loss of riparian corridor along Arroyo Viejo creek. At least 11 trees, including oak trees ranging in diameter between 6" and 20", would have to be removed to provide for the construction of the proposed dwellings. Riparian woodlands and creeks provide important habitat areas for plants and animals. The proposed tree removal and loss of riparian habitat due to the proposed development would have a substantial negative impact upon wildlife and wildlife habitat. Placing impervious surfaces in the creek bank would increase the volume and velocity of stormwater runoff, block the stream channel and reduce water quality which would likely cause injury to fish and other animals. The increase in stormwater runoff is also likely to cause a higher risk of land slides which would have negative effects upon wildlife and humans. The increase in impervious surface area created by the project would also alter the natural drainage pattern of the creek and reduced groundwater recharge areas.

10. *The appellant claims that the proposed development will not create serious health or safety problems.*

**Staff Response:**

By increasing the impervious surface area in the creek bank, the proposed development would result in an increase in the volume and velocity of stormwater runoff which results in higher landslide hazards, silting of streams, blocking stream channels, fish kills, reduced water quality and flooding. These impacts not only affect the site but also have significant negative impacts to the surrounding properties and properties downstream. Further, new structures and foundations in the creek bank would be at risk from natural changes in creek flow which could result in flooding or sliding of the structures.

**CONCLUSION**

The Zoning Administrator has found that the proposed project is inconsistent Tentative Parcel Map findings required by the Subdivision Regulations as stated in the attached findings contained in the February 24, 2005 decision letter. The appellant has failed to demonstrate where the Zoning Administrator abused his discretion in denying the tentative map.

**RECOMMENDATION:**

Deny the Appeal and uphold the Zoning Administrator's denial of the Tentative Parcel Map based on the attached findings from the decision letter dated February 24, 2005 (Attachment D).

Prepared by:

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Leigh A. McCullen  
Planner III

Approved for forwarding to the  
City Planning Commission:

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GARY PATTON  
Deputy Director of Planning and Zoning

**ATTACHMENTS:**

- A. Plans and Elevations
- B. Appeal request and supporting documentation
- C. Memoranda from Environmental Services and Engineering
- D. February 24, 2005 Decision Letter