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Northern Alameda County Group

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October 1, 2009

Re: Implementation of Shepherd Canyon Creek Trail

Dear Members of the Oakland City Council,
Dear Community and Economic Development Agency (CEDA),

The Sierra Club supports the recommendation of the Oakland Bicycle and Pedestrian Advisory Committee from July 16, 2009 to apply money saved from the parcel swap with East Bay Regional Park District towards implementation of the Shepherd Canyon Creek Trail and to furthermore apply for outside funding to create public access to this unique piece of property for public use. The Shepherd Canyon Creek Trail will complement the existing “railroad trail” along the railroad right of way next to Shepherd Canyon Road, forming a pedestrian loop to Montclair Village, and provide an important regional connection as well. Oakland ownership presents a new opportunity for Oakland to show its sense of stewardship for both trails, and to make a significant improvement to pedestrian and bicycle access in and around Montclair at minimal cost.

The City of Oakland September 11, 2007 staff report indicates that Oakland will save about \$32,000 per year from the Oakland-EBRPD parcel swap, from consolidated maintenance, and that the only parcels coming into Oakland ownership in the swap are those in Shepherd Canyon. We strongly recommend these savings be applied to the shepherd canyon parcel, APN 048D-7244-12-03, where the Shepherd Creek Trail was to be located. As the staff report indicates, Oakland already maintains other Shepherd Canyon parcels along the railroad trail. Any new funding that becomes available through the land swap should be dedicated to building the new trail first. Easements that will be required to access the new trail should also be obtained by the City, with the rationale that the original intent of the land acquisition in 1975 was to develop this trail for public use.

It is important to note that the 1975 Shepherd Canyon Corridor Plan and Environmental Impact Report (EIR) required various development controls in Shepherd Canyon and also required “the acquisition of the few most critical parcels of undeveloped land for trail purposes” as a condition for the development of the rest of Shepherd Canyon. This resulted in about 12.8 acres being set aside along the former railroad right of way for a pedestrian and bicycle trail, and 5.4 acres along Shepherd Creek for ‘the pedestrian trail which would connect Shepherd Canyon Park, with Scout Road” (SCP EIR Pag3). (See other EIR citations attached)

After public comment and hearings, (including comment by the Sierra Club) the EIR was adopted unanimously by the Oakland Planning Commission and City Council in August 1975, thus including pedestrian and bicycle accessibility into the neighborhood approval. As a result of the EIR, this parcel was set aside for public use as trails, rather than residential development. Under special legislation, AB 431, that allowed it to bypass its normal land auction procedures, CALTRANS agreed to sell the parcel to

EBRPD with a “trail use” covenant and 50 year deed restriction through the year 2025. EBRPD’s board approved funds to purchase the land “for trail use” subject to a written agreement with Oakland that the City would actually build and maintain the trail. However, this trail was never built, the land is still zoned for residential use, and this canyon parcel is not generally accessible to the public (because of the lack of an access trail).

Further, as part of the 2009 parcel swap we understand that EBRPD has placed a new deed restriction that the creek trail parcel be restricted to “open space, *trail*, park, and related purposes *in perpetuity*”. (emphasis added) This restriction was recorded in the deed and accepted by Oakland and creates new obligations beyond those in the 1975 O&M agreement between Oakland and EBRPD.

Especially since Oakland was the Lead Agency in the original EIR, we encourage Oakland to take a leadership role in taking actions necessary to ensure the Shepherd Creek Trail is completed, to honor the intentions of the EIR. Also, since Oakland is now the fee title owner of this parcel, and is directly responsible for implementing deed restrictions and covenants, we urge Oakland to make implementation of the Shepherd Creek Trail a priority.

Although the City of Oakland is short on cash, we encourage the City to think strategically about how to make use of available resources to complete this trail and fulfill the terms of its agreement with the EBRPD as part of the land swap. For instance, the City could apply for outside funding to complement its own investment in the trail planning and construction. This project seems like a suitable candidate for federal stimulus funding. The City could also work with neighborhood associations to implement this trail.

In the end, investment of some limited taxpayer dollars on a “shovel ready” project as this will produce measurable benefits, not only to the general public in terms of better access to walking trails, but also in terms of the land value of the surrounding residential properties. This trail will provide an important pedestrian connection, and will provide public access the last remaining stretch of Shepherd Creek, and also connect with other regional trails.

We urge support for funding creation of the Shepherd Creek Trail and following the intent of the original EIR and land acquisition, as agreed between the City of Oakland, EBRPD and CALTRANS in the mid 1970s.

Sincerely,

Kent Lewandowski
Chair, Sierra Club Northern Alameda County Group

cc: East Bay Regional Park District
California Department of Transportation

Shepherd Canyon Corridor Plan and Environmental Impact Report (EIR) Relevant Excerpts and Comments

The final EIR is composed of the draft EIR circulated in July 1975, including the Shepherd Canyon Corridor Plan itself, as well as a staff report reflecting response to comments and corrections. The Final EIR was certified August 27th, 1975. Below are relevant excerpts from the EIR that make clear Oakland's original intention to build a trail in this area.

- During the development of the Shepherd Canyon Corridor Plan and EIR, Oakland implemented a building moratorium on the study area (page 5)
- “the moratorium ordinance was adopted on December 10th, 1974, for a four month period, and then extended by council until September 9th 1975. The council then authorized an additional two-month extension to the above date so that the major recommendations ...could be accomplished” (page 7)
- “there are two pieces of land of state owned property in Shepherd canyon that are superlative for trail use: the former Sacramento Northern right-of-way...and the Shepherd Creek Woodland on Scout Road” (page 20)
- “The Scout Road parcel provides a unique chance to create a streamside trail along the only remaining stretch of Shepherd Creek, and a pedestrian connection between Shepherd Canyon Residences and the local elementary and junior high school...the proposed trail is physically separated from vehicular traffic as recommended by the Circulation Element of the Oakland Comprehensive Plan.” (page 20)
- “at the lower end of the canyon, a branch of the pedestrian trail traverses shepherd canyon park, and winds its way along Shepherd Creek to arrive at the school district property via woodland and meadow.” (page 22)
- “It will also be necessary to acquire trail easements along the creek between the park property and Scout road parcel” (page 22)
- “Negotiations currently underway between the State and EBRPD to acquire the former Sacramento Northern Right of Way” and the Scout Road parcel for pedestrian and bicycle trail use should be vigorously supported by the city...the city should develop the proposed pedestrian and bicycle trails. (page 28)

Staff Report Comments reflected in the Final EIR

- “The Shepherd Canyon Corridor Plan is designed to preserve the predominant character of open space by ...and even the acquisition of the most critical parcels of undeveloped land for trail

purposes”... “the intent of the plan to minimize loss of open space in the face of substantial change in property ownership..cannot be easily misinterpreted.” (Final EIR staff report page 2).

- The location of the pedestrian trail which would connect Shepherd Canyon Park with the Scout Road parcel, along the southerly side of the creek by acquisition of easements from private property owners has been questioned as disturbing to wildlife and to nearby homeowners. Staff agrees that the location of the proposed trail in this section should be changed to the northerly side of the creek..” (Final EIR staff report page 3).
- Appendix I “List of Corrections in Sequential Order” “On the illustrative Land use map redraw the proposed trail link from Shepherd Canyon Park to the Scout Road parcel on the northerly side of the creek” (Final EIR staff report page 13).
- “the ‘project’ is a proposed area plan for the Shepherd Canyon Corridor” (Final EIR staff report page 39).

Under “Mitigation Measures” ...

- “one of the primary recommendations of the plan is to **implement a link in the Oakland pedestrian and bicycle trail system**. By providing a convenient and attractive facility for local residents to reach the commercial district, schools, and parks, and public transportation, use of alternatives to automobiles is effectively encouraged (Final EIR staff report page 41).
- “In accordance with the California Environmental Quality Act (CEQA) a draft EIR was prepared for the proposed Shepherd Canyon Corridor Plan. This staff report and its appendices, in conjunction with the draft EIR on the plan, constitute the final EIR.” (Final EIR staff report page 7).
- The Shepherd Canyon Corridor Plan and EIR was adopted as the Specific Plan for Shepherd Canyon and remains in effect through today.