

CITY OF OAKLAND

AGENDA REPORT

2011 JUN -9 . PM 12: 33

TO: Office of the City Administrator
ATTN: P. Lamont Ewell, Interim City Administrator
FROM: Community and Economic Development Agency
DATE: June 21, 2011

RE: Conduct A Public Hearing And Upon Conclusion Consider Adopting A Resolution Denying The Appeals And Upholding The Decisions Of The City Planning Commission And Parks And Recreation Advisory Commission Approving The Amendment To The Oakland Zoo Master Plan And Related Tree Permit For Phase One Of The Amended Master Plan, Respectively, Located At 9777 Golf Links Road (Case File Numbers CM09-085; CP09-078; ER09-005; And T09-019)

SUMMARY

The East Bay Zoological Society ("EBZS") seeks City approval to amend the Master Plan for the expansion of the Oakland Zoo. The proposed amendment to the Master Plan would revise certain elements of the Master Plan previously approved by the City in 1998.

The Friends of Knowland Park, California Native Plant Society, and California Native Grasslands Association (the "Appellants") appealed the Planning Commission's decision to approve the environmental analysis and development permits for the project and appealed the Parks and Recreation Advisory Committee's decision to approve the tree permit for phase one of the project.

Staff recommends that the City Council adopt a resolution to deny the appeals thereby approving the Master Plan amendment and tree permit for phase one of the project.

FISCAL IMPACT

The City provides an annual subsidy of at least \$172,414 to EBZS for operating the Zoo and managing Knowland Park in accordance with the management agreement between the City and EBZS. The agreement allows EBZS to request additional funding from the City with approval from the City Council. This additional subsidy varies annually. (In FY 2010-11, the subsidy amount is roughly \$634,000. In FY 2011-13, the subsidy would range from \$170,000 under Budget Option A, \$539,895 under Budget Option B, to \$635,170 under Budget Option C).

Implementation of the amended Master Plan would cost approximately \$72 million. Funding would come from a variety of sources including private donations, Measure G (a City bond measure), and Measure WW (an East Bay Regional Park District bond measure). At this time,

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EBZS is not seeking additional funding from the City to implement the amended Master Plan. Therefore, approval of the Master Plan amendment would not result in a direct negative fiscal impact to the City beyond the annual City subsidy.

The 1998 Master Plan and the amended Master Plan both have the potential to result in an indirect negative fiscal impact to the City. The expansion of the Zoo would increase demand for City infrastructure, such as sanitary sewer service and storm drainage service, and could increase demand for public safety services, such as fire protection and police service, however, these potential increases are expected to result in minimal fiscal impacts to the City. EBZS would be required to fund any necessary improvements to the City's sanitary sewer and storm drain systems to serve the expanded Zoo, and EBZS maintains an on-site security staff and an emergency response plan to reduce demand on City public safety services. Approval of the Master Plan amendment would not result in additional indirect fiscal impacts to the City compared to the 1998 Master Plan.

The 1998 Master Plan and the amended Master Plan also both have the potential to result in an indirect fiscal benefit to the City. The expansion of the Zoo would result in an increase in taxable sales at the Zoo thereby increasing sales tax revenue to the City. Approval of the Master Plan amendment would not result in additional fiscal benefits to the City compared to the 1998 Master Plan.

EBZS and/or its successor would be responsible for implementation of all conditions of approval and mitigation measures for the amended Master Plan. However, the City, as the owner of the Zoo and Knowland Park, could be held responsible for the conditions of approval and mitigation measures if EBZS and/or its successor is unable to meet these obligations. The Appellants have raised concerns about this, particularly the ability of EBZS to implement certain mitigation measures related to the Alameda whipsnake and native grasslands. Staff believes that such concerns, while legitimate, have been adequately addressed. Moreover, the same issues are present if the 1998 Master Plan is implemented. See further discussion below in the "Key Issues and Impacts: Mitigation Funding and Enforcement" section of this report (page 13).

BACKGROUND

1998 Master Plan

In 1998 the City Council approved a master plan to upgrade and expand the Zoo. Certain elements of the 1998 Master Plan have already been completed, including the new Center for Science and Environmental Education, improvements to the Children's Zoo, restoration of Arroyo Viejo Creek, and various upgrades to existing Zoo facilities. The 1998 Master Plan also includes other proposed elements which have not yet been built, most notably the proposed new animal exhibit area previously called "Cahfomia 1820" which would feature native California species present in California prior to the Gold Rush and be located to the east of the existing Zoo

in an undeveloped portion of Knowland Park. A perimeter fence to enclose the California 1820 exhibit was also approved and not built. Figure 1 shows the site plan for the 1998 Master Plan.

Proposed Amendment to Master Plan

EBZS seeks approval to amend the previously approved Master Plan to revise certain elements of the plan. The amended Master Plan would still include a new animal exhibit area featuring native California species (now called the "California Trail") still proposed to be located to the east of the existing Zoo in an undeveloped portion of Knowland Park. By featuring native California species, many of which are now extinct in the state, the new exhibit would provide educational opportunities concerning ecology and conservation. The California exhibit area would also include a California Interpretive Center with indoor educational exhibits and programs. The proposed Master Plan amendment includes some new elements not previously included in the 1998 Master Plan, such as a new Veterinary Medical Hospital located immediately east of the existing Zoo parking lot that would replace the existing veterinary hospital, and a new overnight camping area located to the east of the existing Zoo in an undeveloped portion of Knowland Park. The primary elements of the proposed Master Plan amendment are listed below. Figure 2 shows the site plan for the amended Master Plan. The complete set of project drawings for the amended Master Plan is also attached (see *Attachment A*).

Proposed Revisions to Master Plan

1. Reduction in the size of the Zoo expansion area, as calculated by the area enclosed in the proposed perimeter fence, by six acres, from approximately 62 acres (1998 Master Plan) to approximately 56 acres (amended Master Plan).
2. Replacement of the previously approved loop road and shuttle bus system to transport Zoo visitors from the existing Zoo to the California exhibit with an electric aerial gondola system;
3. Reconfiguration of the previously approved animal exhibits within the California exhibit;
4. Relocation of the previously approved California Interpretive Center within the California exhibit area to a site approximately 300 feet northwest of the previously approved location, and redesign of the Center;
5. Elimination of the previously approved off-site breeding area, with incorporation of this area into the California exhibit;
6. Replacement of the existing veterinary hospital with the construction of a proposed new Veterinary Medical Hospital located immediately to the east of the existing Zoo parking lot on a portion of the previously approved California exhibit area;

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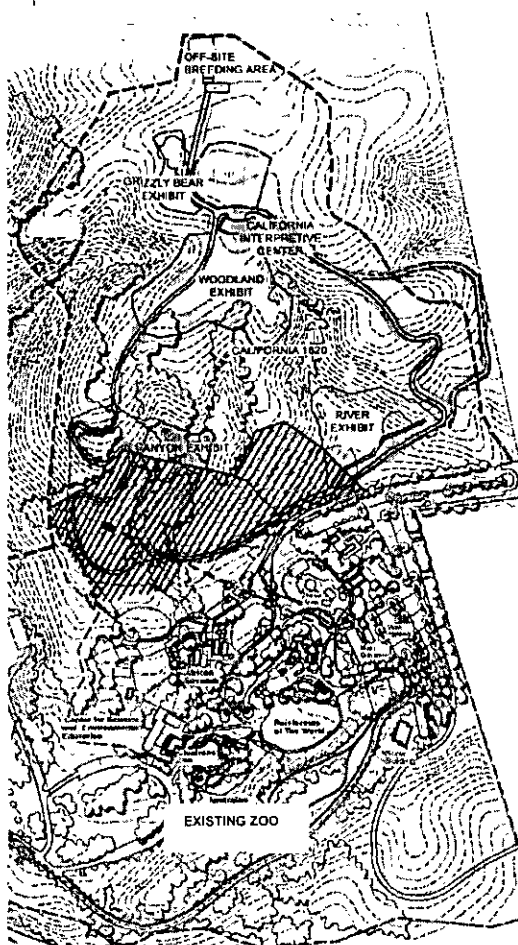


FIGURE 1
1998 Master Plan

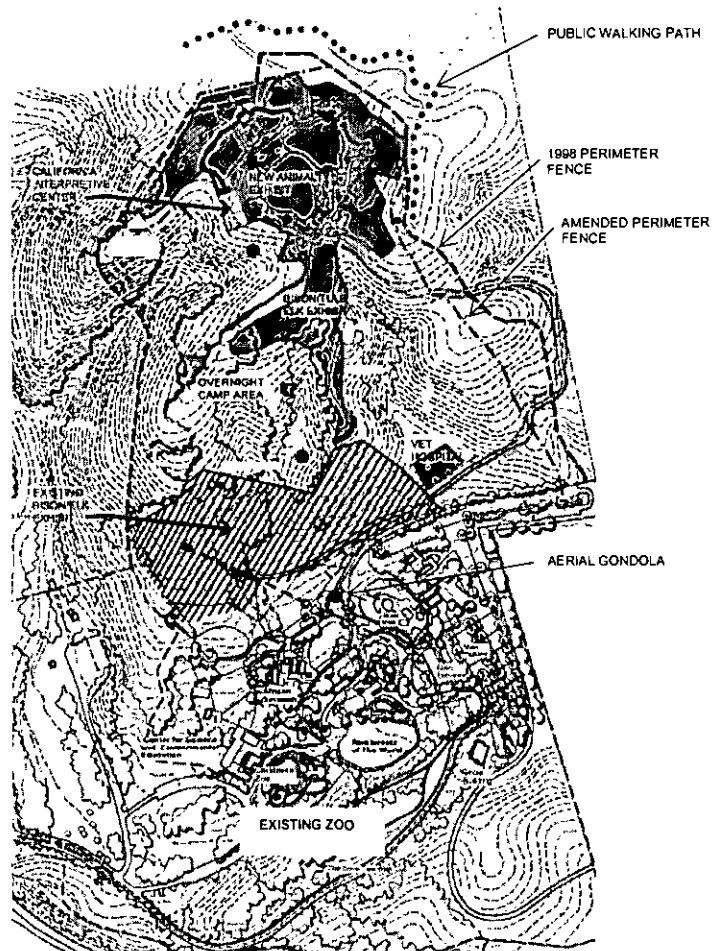


FIGURE 2
Proposed Master Plan Amendment

7. Establishment of a new overnight camping area located to the northwest of the California exhibit area;
8. Establishment of the specific location of the proposed perimeter fence with modifications from the previously approved general location;
9. Improvement of the existing emergency vehicle access road off Snowdown Avenue; and
10. Provision of a public walking path located to the southeast and outside of the California exhibit to provide public access between existing fire roads and knolls in Knowland Park.

The project would be constructed in five phases over a total of approximately 42 months, with the Veterinary Medical Hospital, perimeter fence, and improvements to the service road to the

California exhibit area being constructed first. The California exhibit, gondola, and overnight camping area would be constructed in future phases.

EBZS is also proposing to implement a Habitat Enhancement Plan for the California exhibit area and Knowland Park. The Habitat Enhancement Plan contains activities to control and eradicate target invasive plant species such as French broom, revegetate areas where invasive species have been removed, protect and enhance grassland and trees, and protect and enhance habitat for notable native plant and animal species.

Previous City Hearings and Decisions on Master Plan Amendment

On March 14, 2011, the Parks and Recreation Advisory Committee voted unanimously to recommend approval of the Master Plan amendment. On March 16, 2011, the Planning Commission conducted a public hearing on the proposal and, at the conclusion of the meeting, closed the public hearing on the proposal and continued the item to allow staff time to respond to public comments. The staff report for the March 16, 2011, Planning Commission meeting is attached (see ***Attachment B***). At its meeting on April 27, 2011, (adjourned from April 20, 2011), the Planning Commission voted 3-1 to approve the environmental analysis (contained in a document called a "Subsequent Mitigated Negative Declaration/Addendum" or "SMND/A")¹ and development permits for the Master Plan amendment. The staff report for the April 27, 2011, Planning Commission meeting and the Planning Commission approval are attached (see ***Attachments C and D***).

Tree Permit

On April 28, 2011, the Public Works Agency approved a tree permit to remove seven protected trees (one almond tree and six Escallonia shrubs) in conjunction with constructing phase one of the amended Master Plan. The Friends of Knowland Park appealed the tree permit approval to the Parks and Recreation Advisory Commission. On May 11, 2011, the Parks and Recreation Advisory Commission denied the appeal thereby approving the tree permit. The pertinent background documents concerning the tree permit are attached (see ***Attachment E***).

Appeals of Planning Commission and Parks and Recreation Advisory Commission

The Appellants have appealed both the Planning Commission's decision to approve the environmental analysis and development permits for the Master Plan amendment and the Park and Recreation Advisory Commission's decision to approve the tree permit. These appeals are now before the City Council. The Appellants' appeal letters are attached (see ***Attachments F and G***).

¹ The Draft SMND/A was previously distributed to the City Council when it was published on February 22, 2011. The document is also available in the City Clerk's office (1 Frank H. Ogawa Plaza, 1st floor), at the City's Planning and Zoning Division (250 Frank H. Ogawa Plaza, Suite 3315), and on the City's website at <http://www2.oaklandnet.com/Government/o/CEDA/o/PlanningZoning/s/Application/DOWD009157>.

KEY ISSUES AND IMPACTS

Basis for Appeal

Below are the primary arguments presented by the Appellants in their appeal letters and staff's response to each argument.

1. The Planning Commission's decision did not comply with the California Environmental Quality Act ("CEQA") in analyzing the environmental impacts of the project because the City did not prepare an environmental impact report ("EIR") despite new and substantially more severe impacts than the original plan.

Staff Response: The Planning Commission's decision complied with CEQA. The City adopted a Mitigated Negative Declaration ("MND") when it approved the 1998 Master Plan. In adopting the 1998 MND the City found that the 1998 Master Plan would not result in a significant impact on the environment with the identified mitigation measures. The 1998 MND and 1998 Master Plan were not legally challenged. CEQA Guidelines sections 15162 and 15164 preclude the preparation of an EIR when a previously adopted CEQA document was not legally challenged, except under certain specific circumstances which are not applicable here.

Rather, the City has prepared a combined CEQA document (an Addendum together with a Subsequent Mitigated Negative Declaration, called an "SMND/A"), which independently and collectively satisfy the City's obligations under CEQA.

CEQA Guidelines section 15162 states that an EIR would only be required if (a) there are substantial changes in the project, substantial changes have occurred with respect to the circumstances surrounding the project, or new information of substantial importance has become available and (b) there are (i) new significant environmental effects or a substantial increase in the severity of environmental effects already identified in the 1998 MND or (ii) mitigation measures which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 1998 MND, and which would substantially reduce significant effects of the project but the project applicant declines to adopt them.

Here, the proposed amendment to the Master Plan (i) would not result in new significant environmental effects or a substantial increase in the severity of significant environmental effects already identified in the 1998 MND and (ii) there are no mitigation measures which were previously determined not to be feasible that would in fact now be feasible, or which are considerably different from those recommended in the 1998 MND, which would substantially reduce significant effects of the project but the project applicant declines to adopt them. All potentially significant impacts

would be reduced to a less-than-significant level with the identified mitigation measures and the City's standard conditions of approval. Therefore, an EIR is not required and an addendum to the 1998 MND is the appropriate CEQA document.

Although an addendum is the appropriate CEQA document for the Master Plan amendment, in the interest of being conservative and providing additional opportunity for public review, the City also, as a separate and independent basis, followed the requirements under CEQA for a Subsequent MND. Under CEQA, an addendum does not require a public review period or responses to public comments. The City provided a 30-day public review period for the Draft SMND/A, reviewed and considered all public comments submitted through April 27, 2011, and responded to certain comments, as appropriate. Thus, no further environmental review is required.

For more information concerning this issue, please see staff's additional responses contained in *Attachment C-1 (Response 1)* and *Attachment H (Responses 1 through 5)*.

2. The Planning Commission's decision is not supported by substantial evidence.

Staff Response: CEQA Guidelines section 15384 defines, in relevant part, Substantial Evidence as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached... Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

The Planning Commission's decision is supported by substantial evidence in the administrative record, including evidence found in the project file, project application materials, Draft SMND/A, staff report for the March 16, 2011, Planning Commission meeting, staff report for the April 27, 2011, Planning Commission meeting, staff report for the May 11, 2011, Parks and Recreation Advisory Commission meeting, and this report.

Such substantial evidence was developed by qualified technical experts and professional staff, who undertook a detailed and thorough analysis of all CEQA-related environmental topics in the SMND/A and staff reports.

3. The Planning Commission abused its discretion by failing to require an EIR as mandated by CEQA and the rules and regulations of the U.S. Environmental Protection Agency.

Staff Response: As stated above in the response to item no. 1, an EIR is not legally required. Indeed, requiring an EIR would not comply with CEQA and would constitute an abuse of discretion because CEQA precludes an EIR in this case. The rules and

regulations of the U.S. Environmental Protection Agency do not govern the City's decision on the project.

4. The Planning Commission's decision was based on misstatements and misrepresentations because staff stated in its presentation at the April 27, 2011, Planning Commission meeting that "An EIR would not result in additional or better analysis, different mitigations, or different conclusions."

Staff Response: As stated above, an EIR is not legally required. Staff's quoted statement was meant to inform the Planning Commission that the detailed, thorough, and technical expert analysis contained in the SMND/A (and staff reports) would not necessarily be improved just because a document is labeled an EIR. One must look to the contents of the document, not its title. In its presentation, staff acknowledged both the procedural and substantive differences between the SMND/A and an EIR and did not state that the SMND/A is the functional equivalent of an EIR. The Planning Commission based its decision on the legally required findings, as detailed in the staff reports for the March 16, 2011, and April 27, 2011, Planning Commission meetings.

5. The Parks and Recreation Advisory Commission recommended approval despite declarations by its members at a public hearing that it had neither the time nor expertise to conduct a meaningful review of the project.

Staff Response: Statements by individual members of a hearing body, such as the Parks and Recreation Advisory Commission, do not inherently represent the hearing body as a whole. Regardless of statements of individual members, the Parks and Recreation Advisory Commission decided it had sufficient information to take an action and voted unanimously to recommend approval of the project. Moreover, the Parks and Recreation Advisory Commission is merely an advisory body to the Planning Commission (the initial decision-making body) and the City Council (the final decision-making body). As stated above, the Planning Commission based its decision on the legally required findings, as detailed in the staff reports for the March 16, 2011, and April 27, 2011, Planning Commission meetings.

6. The Friends of Knowland Park were falsely accused of willfully doctoring a photograph submitted in support of their opposition to the project.

Staff's Response: The photograph in question was discussed in the staff report for the April 27, 2011, Planning Commission meeting. The report stated that the Friends of Knowland Park "manipulated" a visual simulation from the Draft SMND/A by "expanding and cropping the image." The purpose of the discussion was to clarify for the Planning Commission and the public that the image presented by the Friends of Knowland Park was not the same as the image in the Draft SMND/A, and that the viewpoint in the image presented could also not be seen by a Park visitor or someone

outside of the Park. In using the term “manipulated” staff did not intend to suggest that the Friends of Knowland Park were trying to deceive the Planning Commission or the public, only that the Friends of Knowland Park had altered the image so that it was clear that the image presented at the meeting was different than the image in the Draft SMND/A. The Planning Commission based its decision on the legally required findings, as detailed in the staff reports for the March 16, 2011, and April 27, 2011, Planning Commission meetings. See *Attachment H (Responses 10 through 12)* for further discussion concerning the visual simulations.

7. The project is inconsistent with the fundamental elements of the Oakland General Plan.

Staff Response: The Planning Commission found that the project is consistent with the fundamental elements of the Oakland General Plan, based upon detailed analysis in the Draft SMND/A (Section 3.8, Land Use, Recreation and Planning), staff report for the March 16, 2011, Planning Commission meeting (*Attachment B, pages 5 and 6*), and staff report for the April 27, 2011, Planning Commission meeting (*Attachment C-1, Responses 30 through 35*). Essentially, the Zoo expansion would be located in the area of Knowland Park where more intensive recreational activities are allowed, is substantially consistent with the Zoo expansion acknowledged in the Open Space, Conservation and Recreation (OSCAR) Element of the General Plan, would not significantly impact wildlife migratory corridors identified in OSCAR, and would be consistent with the view policies in OSCAR. See also *Attachment H, Responses 28 and 29*.

8. The Planning Commission failed to comply with mandatory procedures of CEQA because it did not make all documents referenced in the SMND/A available for public viewing.

Staff Response: The Appellants were not deprived of a meaningful opportunity to review and comment on the Draft SMND/A and were, thus, not prejudiced. To the best of staff's knowledge, the Appellants themselves did not request to see documents referenced in the Draft SMND/A. However, staff is aware that one person, Mr. Ralph Kanz, who is not known to be a member of the Appellant organizations, requested to view documents referenced in the Draft SMND/A on March 11, 2011, was promptly provided such documents that day, and later on March 14, 2011 (the final day of the public comment period), identified seven additional documents that were not located with the other reference documents presented to him. Although these seven documents only provide general background information unrelated to the Zoo project, and are not necessary for evaluating whether the analysis contained within the Draft SMND/A is adequate, staff retrieved the seven documents, notified Mr. Kanz on March 24, 2011, of such, and made them available to Mr. Kanz on March 29, 2011. Staff also extended the public comment period for Mr. Kanz to give Mr. Kanz additional time to review/comment on the documents. To the best of staff's knowledge, Mr. Kanz did not come to review the additional background documents.

9. The Friends of Knowland Park were unfairly and improperly held by City staff to an unreasonable standard for failing to formally critique the professional document commissioned by EBZS to rebut the alternative design concepts developed by the Friends of Knowland Park.

Staff Response: Neither City staff nor the Planning Commission held the Friends of Knowland Park to any standard regarding commenting on the EBZS response to the alternative design concepts developed by the Friends of Knowland Park. For informational purposes, staff informed the Planning Commission at the April 27, 2011, Planning Commission meeting that the Friends of Knowland Park had not, despite having an opportunity to do so, responded to the EBZS response. The Planning Commission based its decision on the legally required findings, as detailed in the staff reports for the March 16, 2011, and April 27, 2011, Planning Commission meetings.

10. Other bases for the appeal are detailed in the public record, including but not limited to, the letters attached to the appeal.

Staff Response: The Appellants attached 13 previously submitted comment letters to their appeal. These previous letters were considered by the Planning Commission when it made its decision. Staff provided written responses to comment letters in the staff report for the April 27, 2011, Planning Commission meeting (see *Attachment C-1*). Detailed responses to comments not previously responded to in writing are attached to this report (see *Attachment H*).

11. The CEQA Notice of Determination (“NOD”) filed by the City is invalid and must be immediately revoked because the City has not yet approved the project.

Staff Response: The City filed a NOD after the Planning Commission’s decision as required by CEQA and per standard practice. CEQA Guidelines section 15075 states that the lead agency must file a NOD within five working days after deciding to carry out or approve a project. However, since an appeal has been filed, the NOD is not operative and, if the City Council votes to approve the project, a new NOD would be filed. This was confirmed by the City Attorney’s Office in a telephone discussion and email to the Appellants’ attorneys.

12. The tree permit approval was inappropriate, arbitrary, and unreasonable because the Master Plan amendment has not been approved.

Staff Response: It is not required for the Master Plan amendment to be approved prior to the tree permit being approved. Approval of the tree permit does not authorize EBZS to proceed with tree removals. Pursuant to the City’s Tree Protection Ordinance, an approved tree permit is held until determinations are made regarding other permit

applications affecting the project in question. Furthermore, tree permit condition of approval no. 15 states that the tree permit will not become effective unless the amendment to the Zoo Master Plan is approved by the City Council. Once all permit applications for a particular project have been approved, including City Council approval, the tree permit will be issued.

The Public Works Agency's approval of the tree permit complied with CEQA. On April 27, 2011, the Planning Commission adopted/approved the SMND/A and made the appropriate CEQA-related findings. The Public Works Agency, based upon its independent review, consideration, and the exercise of its independent judgment, relied upon, and adopted, the Planning Commission's CEQA-related findings in approving the tree permit.

In any event, the entire project is now before the City Council including amendments to the Master Plan, the tree permit for phase one of the amended Master Plan, and the CEQA review of both. This is not inappropriate, arbitrary, or unreasonable. Rather, it makes sense for the City Council as the final decision-making body to have all the issues before it at the same time, so it can make a fully informed decision on the matter.

Alameda Whipsnake

The Alameda whipsnake is a State- and federal-listed threatened species. Alameda whipsnake habitat is located in Knowland Park and the potential for loss of its habitat was identified as an impact requiring mitigation in the 1998 MND as well as the amended Master Plan SMND/A. The 1998 Master Plan would permanently impact approximately 36 acres of Alameda whipsnake habitat while the amended Master Plan would permanently impact approximately 21 acres of Alameda whipsnake habitat (approximately 15 acres or 42 percent less compared to the 1998 Master Plan). EBZS would be required to prepare a Mitigation and Monitoring Plan ("MMP") and obtain the required regulatory permits from the California Department of Fish and Game and U.S. Fish and Wildlife Service. A Draft MMP has been prepared for the amended Master Plan and is attached (see *Attachment I*). The Draft MMP proposes compensatory mitigation for impacted habitat with the compensatory ratio ranging from 1:1 (one acre for every impacted acre) for areas of temporary impact to 3:1 (three acres for every impacted acre) for areas of greatest impact (e.g., buildings, walkways, roadways, certain animal exhibits) resulting in a total maximum mitigation acreage of approximately 45 acres.

Accordingly, a maximum of approximately 45 acres would need to be permanently preserved in a conservation easement in Knowland Park, at an off-site location, or through the purchase of mitigation credits at an approved mitigation bank. EBZS would decide at a later date, after further discussions with the regulatory agencies, which option to elect.

If a conservation easement is created in Knowland Park, the Draft MMP identifies a potential 45-acre area that would be suitable for the easement with approximately 30 acres located within the

undeveloped area of the proposed Zoo perimeter fence and approximately 15 acres located outside of the perimeter fence to the north in an area of steep slopes and dense vegetation, plus other suitable acreage in other areas of Knowland Park. As required by the State and federal agencies, no new roads, trails, or structures would be allowed within the easement area and EBZS would be required to establish an endowment to fund ongoing habitat management in the easement area. Since the City owns the Zoo and Knowland Park, it would need to grant, through an ordinance adopted by the City Council in a separately noticed action at a later date, the conservation easement if that option is pursued. In any event, the City has an interest in the outcome of the State and federal regulatory permitting processes. Implementation of the City's standard conditions of approval, specifically revised SCA-BIO-10 (listed in *Attachment J*), would involve the City in the permitting processes to ensure that the outcome of the processes is consistent with the intent of the approval of the amended Master Plan.

Native Grasslands

Native grasslands present in Knowland Park are considered sensitive natural communities under CEQA and the potential for loss of native grasslands was identified as an impact requiring mitigation in the 1998 MND as well as the amended Master Plan. The 1998 Master Plan would impact approximately 11 total acres of grasslands (with no differentiation between native and non-native grasslands). The amended Master Plan would potentially impact approximately 14 total acres of grasslands, of which four acres are native grasslands. Under CEQA, only impacts to native grasslands need to be considered and mitigated. EBZS would be required to enhance native grasslands in Knowland Park, consistent with the Habitat Enhancement Plan, at a compensatory ratio of 3:1 (three acres for every impacted area) up to a total of approximately 13 acres, although this total amount may be reduced if further refinements of the detailed plans for the California exhibit can be made during the construction permitting process to reduce the amount of impacted acreage. A preliminary assessment found that there is a significant amount of area within Knowland Park suitable for grassland enhancement, including approximately 10.5 acres within the proposed Zoo perimeter fence and an additional three acres immediately outside the perimeter fence, plus other suitable acreage in other areas of Knowland Park (see *Attachment K*).

The Appellants question the feasibility of the required grassland mitigation citing a letter in their appeal from the California Native Plant Society (CNPS) dated April 26, 2011. An environmental consulting firm with experience in habitat restoration projects reviewed the Habitat Enhancement Plan and CNPS letter and believes the Habitat Enhancement Plan, including the required native grassland enhancement, is feasible from technical, geographic, and economic perspectives. The consulting firm's letter is attached (see *Attachment K*). Moreover, the study and cost estimates cited in the April 26, 2011, CNPS letter are not relevant in this instance, and, contrary to the Appellants' claims, an academic study cites numerous instances of habitat restoration projects, thus further demonstrating feasibility. For further information concerning grassland enhancement feasibility, see staff's attached detailed responses (*Attachment H, Response 18*).

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Mitigation Funding and Enforcement

EBZS and/or its successor would be responsible for implementation of all conditions of approval and mitigation measures for the amended Master Plan. The Appellants argue that the required mitigation measures are meaningless without the requirement for an endowment to provide funding for the mitigation. An endowment was not required for the 1998 Master Plan.

As stated above, the regulatory permits that would be required to mitigate impacts to the Alameda whipsnake would require a conservation easement in Knowland Park, at an off-site location, through the purchase of mitigation credits at an approved mitigation bank, or some combination of these options. Under the conservation easement option, an endowment to fund ongoing management of Alameda whipsnake habitat in the conservation easement area would be required by the State and federal regulators. Thus, the State and federal regulators would not issue the requisite permits, and work on the California exhibit that affects Alameda whipsnake habitat, could not commence unless EBZS satisfied the endowment and other requirements. Purchase of mitigation credits at an approved mitigation bank would not require creation of an endowment. Based upon a preliminary assessment by an environmental consulting firm with experience in environmental regulatory compliance issues, mitigation credits at an approved conservation bank would cost roughly \$20,000 per acre or roughly \$900,000 total. Under the on- or off-site conservation easement option, total costs, including the endowment, would range from roughly \$435,500 to \$1,137,000 depending upon the required mitigation and management activities established by the regulatory permits (see ***Attachment L***).

Implementation of the Habitat Enhancement Plan, including native grassland enhancement activities, is expected to cost roughly (a) \$20,000 to \$25,000 for an initial assessment, (b) \$60,000 to \$85,000 annually, depending upon the activities required each year, for years one through five, and (c) \$40,000 to \$60,000 for years six through 10, and then (d) stabilize at \$15,000 to \$30,000 annually on an ongoing basis for monitoring and maintenance activities (see ***Attachment K***).

EBZS states that it has raised approximately \$1.4 million during the past four years, including approximately \$500,000 during the past year alone, for management and enhancement activities in Knowland Park and that it can and will be able to implement all required conditions of approval and mitigation measures, including the Habitat Enhancement Plan and those for the Alameda whipsnake (see ***Attachment M***). Staff believes EBZS has demonstrated that it is financially capable of implementing the conditions of approval and mitigation measures. To further ensure that EBZS meets its habitat enhancement obligations, staff developed a project-specific condition of approval that requires EBZS to demonstrate it has the funding necessary to implement actions of the Habitat Enhancement Plan before the City issues construction-related permits for the California exhibit and other activities at the Zoo unrelated to California (see ***Appendix J, condition of approval no. 31***).

EBZS Stewardship of Knowland Park

Under the management agreement between EBZS and the City, EBZS manages all of Knowland Park. The Appellants have raised concerns about EBZS' stewardship of Knowland Park. EBZS responds that it has responsibly managed Knowland Park (see *Appendix M*). EBZS participated in an approximately \$800,000 restoration project at Arroyo Viejo Creek in 2007 and has spent nearly \$80,000 since 2006 removing invasive French broom.

The Appellants argue that there is no evidence that the City has taken monitoring or enforcement actions to ensure implementation of the 1998 mitigation measures concerning invasive plant removal. However, as detailed in the EBZS letter (*Attachment M*), these mitigation measures were required to mitigate the impact of the California exhibit. Since the California exhibit has not yet been built, the mitigation measures are not yet required. Nevertheless, as discussed above, EBZS has voluntarily undertaken efforts to remove invasive plant species in Knowland Park, including the restoration project at Arroyo Viejo Creek and ongoing French broom removal.

The Appellants also argue that Zoo-related construction debris and animal waste has been dumped in Knowland Park. In its letter, EBZS responds that there has been no Zoo-related dumping in Knowland Park since EBZS assumed management responsibilities for the Zoo and Knowland Park. Refer to staff's additional responses (*Attachment H, Response 37*) for more discussion of Zoo-related dumping in Knowland Park.

Open Space

The Appellants have expressed concern regarding the effect of the Zoo expansion on open space in Knowland Park. The perimeter fence associated with the Zoo expansion in the 1998 Master Plan would enclose approximately 62 acres of Knowland Park. The perimeter fence in the amended Master Plan would enclose approximately 56 acres of Knowland Park. (The new animal exhibits in the California exhibit would occupy approximately 18 acres within the enclosed 56 acres; the remaining area within the perimeter fence would be primarily open space.) The proposed modifications to the location of the perimeter fence in the amended Master Plan would enhance public access to open space in Knowland Park compared to the 1998 Master Plan. The amended Master Plan would allow continued public access in Knowland Park to one segment of an existing fire road used by park users and would allow continued public access to one of the knolls containing scenic views located in the southwestern portion of the park. Access to the fire road and the knoll by Knowland Park users is restricted under the 1998 Master Plan. The amended Master Plan also includes a proposed public walking path that would connect existing fire roads to increase public hiking opportunities compared to the 1998 Master Plan. With the implementation of the amended Master Plan, approximately 355 acres of undeveloped area would remain outside of the Zoo facility with multiple locations suitable for hiking and multiple scenic viewpoints. Since 1998 the City has acquired approximately 24 acres of new urban parkland and an additional approximately 116 acres of open space designated for resource

conservation. Also, just east of Knowland Park is Chabot Regional Park which provides an additional approximately 5,000 acres of open space. For more information concerning the relationship between the project and open space, see the Draft SMND/A (Subsection 3.3.8).

Amended Master Plan Compared to 1998 Master Plan

In approving the Master Plan amendment, the Planning Commission determined that the amended Master Plan would be superior to the 1998 Master Plan for the following reasons:

1. Expansion Area: The proposed Master Plan amendment would result in a Zoo expansion area of 56 acres compared to 62 acres under the approved 1998 Master Plan.
2. Aerial Gondola: The proposed aerial gondola system for transporting Zoo visitors to the California exhibit would be superior to the previously approved shuttle bus system because the gondola system would require significantly less hillside grading, thereby reducing the environmental impact and the visual impact on the neighboring houses and park visitors. Additionally, the gondola would be located further away from nearby residents compared to the previously approved shuttle bus system and would not result in significant visual impacts.
3. Veterinary Medical Hospital: The proposed Veterinary Medical Hospital would replace the existing undersized and aging veterinary facility at the Zoo with a modern veterinary facility. The new Veterinary Medical Hospital would be developed using “green” building principles. EBZS intends for the Hospital to be the first Leadership in Energy and Environmental Design (“LEED”)-certified facility of its kind in California. In addition to providing an improved environment for animal diagnosis and treatment, the new Hospital would enhance the Zoo’s research and education programs.
4. Overnight Camping Area: The proposed overnight camping area would supplement and enhance existing overnight camping programs at the Zoo by providing a unique recreational and educational experience for organized groups (youth, student, and family groups) facilitated and supervised by Zoo staff.
5. Perimeter Fence: The proposed perimeter fence in the Master Plan amendment would be superior to the perimeter fence in the approved Master Plan. The fence in the Master Plan amendment has been adjusted to reduce encroachment into valuable chaparral habitat and to provide continued public access to one segment of an existing fire road and one knoll containing scenic views located in the southwestern portion of Knowland Park.
6. Public Walking Path: The proposed public walking path would connect existing fire roads thereby increasing public hiking opportunities compared to the 1998 Master Plan.

7. Emergency Vehicle Access Road: The existing dirt fire road in Knowland Park located at the end of Snowdown Avenue would be improved (widened and surfaced with gravel) to provide enhanced emergency vehicle access to and from areas of Knowland Park.

SUSTAINABLE OPPORTUNITIES

Economic: Implementation of the amended Master Plan is an approximately \$72 million project. A study by the East Bay Economic Development Alliance estimated that the project's total economic benefit (both direct and indirect) to the region would be approximately \$111 million (see *Attachment M*). In addition to temporary construction jobs, the project is also expected to create 30 new permanent jobs.

Environmental: The CEQA analysis for the project found that the project would not result in a significant impact on the environment with the incorporation of the City's standard conditions of approval and identified mitigation measures.

Social Equity: The Oakland Zoo is a major cultural institution in East Oakland. Implementation of the amended Master Plan would provide additional recreational, educational, and economic opportunities for Oakland youth and adults. The project would introduce substantial numbers of people to the natural areas of Knowland Park, provide a convenient opportunity for Oakland and East Bay residents to learn about conservation in California and experience overnight camping in a natural setting, and would provide employment opportunities for Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

The project would comply with the Americans with Disabilities Act ("ADA") to ensure equal access to the facility. In addition, the amended Master Plan would result in superior access compared to the 1998 Master Plan because the proposed aerial gondola would be more convenient than the shuttle bus system in the 1998 Master Plan and the animal exhibits in the amended Master Plan are located in a compact and contiguous area compared to the discontinuous animal exhibits of the 1998 Master Plan.

RECOMMENDATION AND RATIONALE

In approving the 1998 Master Plan, the City made a policy decision that it is appropriate for the Zoo to expand into the eastern undeveloped area of Knowland Park, which was consistent with the 1996 adopted OSCAR element of the General Plan. The question posed by the current proposal is whether the proposed amendment to the Master Plan is appropriate. The proposed Master Plan amendment would improve the previously approved Master Plan for the reasons stated above. The development of the amended Master Plan would further enhance a City-owned facility by providing

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a unique and valuable recreational and educational opportunity for visitors. The amended Master Plan is consistent with applicable General Plan policies and zoning regulations, and there have been no new City regulations or policies adopted since the approval of the 1998 Master Plan that would conflict with the amended Master Plan. The development of the amended Master Plan complies with CEQA and would not result in new significant environmental impacts, or a substantial increase in the severity of previously identified significant impacts, and the public would continue to have access to a substantial amount of open space in Knowland Park and the surrounding area.

Furthermore, many potential impacts would be reduced with the amended Master Plan as compared to the 1998 Master Plan, including visual impacts concerning the eliminated shuttle bus system, impacts to Alameda whipsnake habitat, impacts to protected trees, and land use impacts concerning the reduction of the perimeter fence.

Staff recommends that the City Council deny the appeals and uphold the decision of the Planning Commission to approve the amendment to the Master Plan and the decision of the Parks and Recreation Advisory Commission to approve the tree permit for phase one of the project, and adopt the CEQA-related findings. The Appellants have not demonstrated that the Planning Commission or Parks and Recreation Advisory Commission erred or abused their discretion, or that their decisions are not supported by substantial evidence.

ALTERNATIVE RECOMMENDATIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold one or both of the appeals and reverse the decision of the Planning Commission and/or Parks and Recreation Advisory Commission thereby denying the project. This option would require the City Council to continue the item to a future hearing so that staff could prepare and the Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the decisions of the Planning Commission and Parks and Recreation Advisory Commission, but impose additional and/or revised conditions on the project and/or modify the project, solely related to the appellate issues.
3. Continue the item to a future meeting for further information or clarification, solely related to the appellate issues.
4. Refer the matter back to the Planning Commission and/or Parks and Recreation Advisory Commission for further consideration on specific issues/concerns of the City Council, solely related to the appellate issues. Under this option, the item would be forwarded back to the City Council for decision.

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ACTION REQUESTED OF THE CITY COUNCIL

Adopt the attached resolution denying the appeals and upholding the decision of the Planning Commission to approve the amendment to the Master Plan and the decision of the Parks and Recreation Advisory Commission to approve the tree permit for phase one of the project and adopting the CEQA-related findings.

Respectfully submitted,

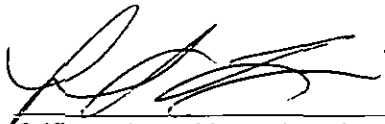


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Eric Angstadt, Deputy Director

Prepared by:
Darin Ranelletti, Planner III
Planning and Zoning Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Project Drawings for Master Plan Amendment, March 8, 2011
- B. Planning Commission Staff Report, March 16, 2011 (without attachments)
- C. Planning Commission Staff Report, April 27, 2011 (with listed attachments below)
 1. Responses to Public Comments (including attached memorandum regarding supplemental grasslands mapping)
 2. Clarifying Revisions to Draft SMND/A
 3. Revised Conditions of Approval/Mitigation Measures
- D. Planning Commission Approval Letter, April 28, 2011 (with findings and conditions of approval/mitigation measures adopted by the Planning Commission)

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- E. Tree Permit Background Documents
 - 1. Tree Permit Approval Letter, April 28, 2011
 - 2. Appeal to Parks and Recreational Advisory Commission
 - 3. Parks and Recreation Advisory Commission Staff Report, May 11, 2011 (without attachments)
- F. Appeal of Planning Commission Decision Concerning Master Plan Amendment
- G. Appeal of Parks and Recreation Advisory Commission Decision Concerning Tree Permit
- H. Additional Responses to Public Comments Raised in Appeals (including attached evaluation for Sudden Oak Death)
- I. Draft Alameda Whipsnake Mitigation and Monitoring Plan
- J. Further Revised Conditions of Approval/Mitigation Measures
- K. Letter from WRA Environmental Consultants, Re: Oakland Zoo Habitat Enhancement Plan Feasibility and Cost Estimates
- L. Letter from WRA Environmental Consultants, Re: Alameda Whipsnake Mitigation Cost Estimates
- M. Letter from Oakland Zoo, Re: Responses to Certain Issues Raised in the Appeals to City Council

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION DENYING THE APPEALS AND UPHOLDING THE DECISIONS OF THE CITY PLANNING COMMISSION AND PARKS AND RECREATION ADVISORY COMMISSION APPROVING THE AMENDMENT TO THE OAKLAND ZOO MASTER PLAN AND RELATED TREE PERMIT FOR PHASE ONE OF THE AMENDED MASTER PLAN, RESPECTIVELY, LOCATED AT 9777 GOLF LINKS ROAD (CASE FILE NUMBERS CM09-085; CP09-078; ER09-005; AND T09-019)

WHEREAS, a Master Plan for the Oakland Zoo ("Zoo") was prepared in 1990 ("1990 Master Plan"); and

WHEREAS, the City Council adopted the Open Space, Conservation, and Recreation ("OSCAR") Element of the General Plan in 1996; and

WHEREAS, the OSCAR acknowledges the 1990 Master Plan; and

WHEREAS, the City Council adopted a Mitigated Negative Declaration ("MND") pursuant to the California Environmental Quality Act ("CEQA") in 1998 ("1998 MND") and approved a Master Plan for the Zoo in 1998 ("1998 Master Plan"); and

WHEREAS, the 1998 Master Plan is similar to the 1990 Master Plan and is consistent with OSCAR; and

WHEREAS, the 1998 MND and 1998 Master Plan approval were not legally challenged and thus are presumed valid; and

WHEREAS, CEQA Guidelines sections 15162 and 15164 preclude the preparation of an environmental impact report, when a previously adopted CEQA document was not legally challenged, except under certain specific circumstances not applicable here; and

WHEREAS, the City Council adopted Uniformly Applied Development Standards pursuant to CEQA Guidelines section 15183, applied as Standard Conditions of Approval, on November 3, 2008, via Ordinance No. 12899 C.M.S., finding, in relevant part, that the Standard

Conditions of Approval are designed to and will mitigate environmental impacts of future projects, and this ordinance was not legally challenged; and

WHEREAS, the East Bay Zoological Society (“Applicant”) filed applications for a major conditional use permit and creek protection permit (“Development Permits”) to amend the 1998 Master Plan (“Project”) on April 20, 2009; and

WHEREAS, the Applicant also filed an application for a tree permit for the Project on April 20, 2009, which was subsequently revised (which together with the application for the Development Permits is hereafter referred to as the “Applications”); and

WHEREAS, the City, commencing in 2009, began preparing a combined CEQA document (an Addendum together with a Subsequent Mitigated Negative Declaration, hereafter referred to as a “SMND/A”), which independently and collectively satisfy the City’s obligations under CEQA, and issued a Notice of Intent to Adopt a SMND/A for the Project, in accordance with CEQA, on February 11, 2011; and

WHEREAS, the City received comments on the Draft SMND/A and the City believes the issues raised in the comment letters have been adequately addressed and do not change the conclusions of the SMND/A; and

WHEREAS, the Parks and Recreation Advisory Commission (“PRAC”) conducted a duly noticed public hearing on the Project on March 9, 2011, which was continued until March 14, 2011, and voted to recommend approval of the Project at the close of said public hearing; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on the SMND/A and the Project on March 16, 2011, at which time the public hearing on the SMND/A and Project were closed; and

WHEREAS, the matter was continued and properly noticed for April 20, 2011, to provide time for City staff to respond to the public comments submitted up to and including March 16, 2011, but the meeting was adjourned, due to a lack of a quorum, and properly noticed for April 27, 2011; and

WHEREAS, the Planning Commission adopted/approved, and made appropriate CEQA findings for, the SMND/A and approved the Development Permits for the Project on April 27, 2011, subject to findings and conditions of approval; and

WHEREAS, the Planning Commission found, in part, that the Project would improve the 1998 Master Plan, would further enhance a City-owned facility by providing a unique and valuable recreational and educational opportunity for visitors, is consistent with applicable General Plan policies and zoning regulations, would not result in new significant environmental impacts or the substantial increase in previously identified significant impacts, and would continue to allow public access to a substantial amount of open space in Knowland Park and the surrounding area; and

WHEREAS, the Public Works Agency, on April 28, 2011, based upon its independent review and consideration, and the exercise of its independent judgment, relied upon and adopted

the Planning Commission's CEQA-related findings, and approved the tree permit for phase one of the Project finding that the tree permit is necessary for the construction of the Project and complies with the applicable criteria of the Oakland Municipal Code; and

WHEREAS, the Friends of Knowland Park filed an appeal to the PRAC of the Public Works Agency's approval of the tree permit on May 5, 2011; and

WHEREAS, the Friends of Knowland Park, California Native Plant Society, and California Native Grasslands Association ("Appellants"), filed an appeal to the City Council of the Planning Commission's decision on May 6, 2011; and

WHEREAS, the PRAC, on May 11, 2011, conducted a duly noticed public hearing on the appeal of the tree permit and denied said appeal, thereby sustaining the decision of the Public Works Agency, determining that the tree permit complies with CEQA and conforms to the applicable criteria of the Oakland Municipal Code; and

WHEREAS, the Appellants filed an appeal to the City Council of the PRAC's decision on the tree permit on May 16, 2011 (which together with the appeal of the Planning Commission's decision is hereafter referred to as the "Appeals"); and

WHEREAS, the City Council conducted a duly noticed public hearing on the Appeals on June 21, 2011; and

WHEREAS, all interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the Appeals before the City Council are not de novo, but rather limited to the issues and/or evidence presented to the Planning Commission and/or PRAC prior to the close of the public hearings before those bodies, as stated in the notices, decision letters, Oakland Planning Code section 17.134.070A, and Oakland Municipal Code section 12.36.120, and as determined by *Mashoon v. City of Oakland* (Appeal No. A077608; filed December 9, 1997; First Appellate District, Division Five); and

WHEREAS, the City responses to public comments on the SMND/A in the staff report for the April 27, 2011, Planning Commission meeting and the June 21, 2011, City Council Agenda Report were prepared by the technical experts that prepared the SMND/A and constitute substantial evidence that adequately address the issues raised by Appellants;

WHEREAS, the public hearing was closed by the City Council on June 21, 2011; now, therefore, be it

RESOLVED: The City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Applications, SMND/A, the decisions of the Planning Commission, Public Works Agency, and PRAC (collectively called "City Decisions" and/or "City Decisionmakers"), and the Appeals, hereby finds and determines that the Appellants have not shown, by reliance on evidence in the record, that the City Decisions were made in error, that there was an abuse of discretion by the

City Decisionmakers, and/or that the City Decisions were not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the June 21, 2011, City Council Agenda Report, the March 16, 2011, and April 27, 2011, Planning Commission staff reports, the May 11, 2011, PRAC staff report, and the SMND/A, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the City Decisions to adopt the above-referenced CEQA findings and approve the Project are upheld, and the Project and the applications therefore are approved; and be it

FURTHER RESOLVED: That, in further support of the City Council's decision to deny the Appeals and approve the Project, the City Council affirms and adopts as its own findings and determinations (i) the June 21, 2011, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCAMMRP")) (each of which is hereby separately and independently adopted by this Council in full); (ii) the March 16, 2011, and April 27, 2011, Planning Commission staff reports, including without limitation the discussion, findings, conclusions, conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full); and (iii) the May 11, 2011, PRAC staff report, including without limitation the discussion, findings, conclusions, specified conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: The City Administrator, or designee, is hereby authorized to take any and all steps necessary to implement and/or effectuate this Resolution, including without limitation, negotiating and executing agreements with State and federal Resource Agencies, determining and requiring appropriate financial assurances, and the like, which are consistent with the basic purposes and intent of this Resolution; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; and be it

FURTHER RESOLVED: The City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: The record before this Council relating to this Resolution includes, without limitation, the following:

1. the Applications, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. all staff reports, decision letters, and other documentation and information produced by or on behalf of the City, including without limitation the SMND/A and supporting technical studies, all related and/or supporting materials, and all notices relating to the Applications and attendant hearings;

4. all oral and written evidence received by City staff, the PRAC, the Planning Commission, and the City Council before and during the public hearings on the Applications;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable State and federal laws, rules and regulations; and be it

FURTHER RESOLVED: The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are (a) the Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, (b) the Public Works Agency, Tree Section, 7101 Edgewater Drive, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: The recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE: This action of the City Council is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision was announced, unless a different date applies.