

2014 OCT 30 PM 2:41

*Mark P. Wald*  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

### ORDINANCE NO. 13277 C.M.S.

---

**AN ORDINANCE, WHICH WAS CONSIDERED BY THE PARKS AND RECREATION ADVISORY COMMISSION, GRANTING A 53-ACRE CONSERVATION EASEMENT IN KNOWLAND PARK, LOCATED AT 9777 GOLF LINKS ROAD, TO PROTECT THE ALAMEDA WHIPSNAKE, WHICH FURTHER IMPLEMENTS THE JUNE 2011 CALIFORNIA TRAIL EXHIBIT PROJECT APPROVALS, CONDITIONS OF APPROVAL AND MITIGATION MEASURES AND AUTHORIZING THE CITY ADMINISTRATOR TO TAKE ANY AND ALL ACTIONS NECESSARY TO IMPLEMENT THE CONSERVATION EASEMENT WITHOUT RETURNING TO COUNCIL (CEQA DETERMINATION: RELIANCE ON PREVIOUSLY APPROVED 2011 SUBSEQUENT MITIGATED NEGATIVE DECLARATION/ADDENDUM)**

**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 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**, on June 21, 2011, the City Council adopted the SMND/A and approved the Project, which included a conservation easement in Knowland Park (“Conservation Easement”), as well as mitigation measure 14 (c) (requiring the Zoo to obtain permits from the federal and state resource agencies and provide compensatory mitigation for impacts to whipsnake habitat) and the City’s Standard Condition of Approval BIO-10 (likewise requiring the Zoo to obtain the permits from the state and federal resource agencies and also requiring the Zoo to “comply with all conditions issued by applicable agencies”), after hearings before the Parks and Recreation Advisory Commission (“PRAC”) and City Planning Commission; and

**WHEREAS**, the City Council 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 Friends of Knowland Park and California Native Plant Society filed a lawsuit challenging the Project approvals on CEQA and other grounds, which was eventually rejected by the Alameda Superior Court and no appeal was taken, thus upholding/validating the City’s June 2011 Project approvals; and

**WHEREAS**, over the past three years, the Zoo has taken steps to implement the approved Project, including constructing the new Veterinary Hospital (now complete), submitting various applications to regional, state, and federal resource agencies, including the Regional Water Quality Control Board, California Department of Fish & Wildlife (“CDFW”) and United States Fish and Wildlife Service (“USFWS”), to obtain their approvals, responding to questions/concerns from those agencies, and coordinating with City staff; and

**WHEREAS**, the Zoo has submitted a Draft Conservation Easement to the City and intends to also submit such to CDFW and USFWS; and

**WHEREAS**, the CDFW has issued a Draft Incidental Take Permit and is about to issue a Final Incidental Take Permit and the USFWS has issued a Biological Opinion, which includes conservation measures for construction and operation of the Project designed to protect whipsnake habitat, including requirements for a Conservation Easement, endowment, and long-term management plan; and

**WHEREAS**, on October 22, 2014, the PRAC conducted a duly noticed public hearing to consider the grant of the Conservation Easement but was unable to provide a recommendation to the City Council because the motion recommending the Conservation Easement failed, with a 5-2 vote, to achieve the requisite six (6) affirmative votes for adoption; and

**WHEREAS**, on November 12, 2014, the City Council's Community and Economic Development Committee held a duly noticed public meeting to consider the grant of the Conservation Easement and recommended approval of such to the City Council; and

**WHEREAS**, on November 18, 2014, the City Council conducted a duly noticed public hearing to consider the grant of the Conservation Easement; 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 public hearing was closed by the City Council on November 18, 2014;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** 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 Project, Conservation Easement and PRAC consideration of the matter, hereby grants a Conservation Easement of approximately 53 acres to any approved and qualified, third-party easement holder, as determined by the City Administrator or designee, which currently is contemplated to be the Wildlife Heritage Foundation, and authorizes the City Administrator or designee to negotiate and execute the Conservation Easement, in substantial conformity with Attachment D to the November 12, 2014, City Council Community and Economic Development Committee Agenda Report, and any and all necessary and related documents, without returning to the City Council, for the reasons stated in the November 12, 2014, City Council Community and Economic Development Committee Agenda Report, attachments thereto, any Agenda-Related Materials and elsewhere in the record (which are hereby incorporated by reference as if fully set forth herein).

**Section 2. a.** The City Council independently finds and determines that it can rely on the previously adopted 2011 SDMND/A and that no further environmental review is required because there are (i) no significant changes to the project, (ii) no significant new information (which was not known or could not have been known at the time of the June 2011 approvals) and/or (iii) no significant changes in circumstances, which results in new significant impacts or a

substantial increase in the severity of previously identified significant impacts for the reasons stated in the November 12, 2014, City Council Community and Economic Development Committee Agenda Report, attachments thereto, any Agenda-Related Materials and elsewhere in the record (which are hereby incorporated by reference as if fully set forth herein).

b. The City Council further independently finds and determines that there are no feasible mitigation measures available to mitigate the impacts to the Alameda whipsnake and its habitat, other than the Conservation Easement, for the reasons stated in the November 12, 2014, City Council Community and Economic Development Committee Agenda Report, attachments thereto, any Agenda-Related Materials and elsewhere in the record (which are hereby incorporated by reference as if fully set forth herein).

**Section 3.** The City Administrator, or designee, is hereby authorized to take any and all steps necessary to implement and/or effectuate this Ordinance, including without limitation, negotiating and executing agreements with State and federal Resource Agencies, third party easement holders, determining and requiring appropriate financial assurances, and the like, which are consistent with the basic purposes and intent of this Ordinance without returning to the City Council; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney.

**Section 4.** The City Council finds and determines that this Ordinance complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**Section 5.** The record before this Council relating to this Ordinance includes, without limitation, the following:

1. the Conservation Easement, 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, and the City Council before and during the public hearings, including without limitation communications between the Applicant and the federal and state resource agencies; and
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.

**Section 6.** 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 Department of

Planning & Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, California.

**Section 7.** The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 09 2014


**PASSED BY THE FOLLOWING VOTE:**

AYES - ~~BROOKS~~, GALLO, GIBSON MCELHANEY, ~~KALB~~, ~~KAPLAN~~, REID, SCHAAF and PRESIDENT KERNIGHAN - 5

NOES- Kalb, Kaplan - 2

ABSENT- Brooks - 1

ABSTENTION- Ø

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

Introduction Date  
NOV 18 2014

12/12/14  
Date of Attestation

**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.

**NOTICE AND DIGEST**

**An Ordinance, Which was Considered by the Parks & Recreation Advisory Commission, (a) Granting a 53-acre Conservation Easement in Knowland Park, located at 9777 Golf Links Road, to Protect the Alameda Whipsnake, Which Further Implements the June 2011 California Exhibit Project Approvals, Conditions of Approval and Mitigation Measures and (b) Authorizing the City Administrator to Take Any and All Actions Necessary to Implement the Conservation Easement Without Returning to Council (CEQA Determination: Reliance on Previously Approved 2011 Subsequent Mitigated Negative Declaration/Addendum).**

Adoption of the proposed ordinance would grant a conservation easement of approximately 53 acres in Knowland Park for the protection of the Alameda whipsnake and authorize the City Administrator or designee to negotiate and execute the conservation easement and take any and all other actions necessary to implement the conservation easement without returning to City Council. Granting and executing the conservation easement would implement a portion of the June 2011 approvals, conditions of approval, and mitigation measures for the Oakland Zoo California Exhibit Project.