

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

CATHERINE C. ENGBERG
Attorney
engberg@smwlaw.com

March 14, 2011

Via Electronic Mail

Darin Ranelletti, Planner III
City of Oakland, Community and
Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315,
Oakland, California, 94612,

E-Mail: dranelletti@oaklandnet.com

Re: Subsequent Mitigated Negative Declaration/Addendum for the
Proposed Amendment to the Oakland Zoo Master Plan

Dear Mr. Ranelletti:

On behalf of Friends of Knowland Park, I am writing to inform the City that the proposed Amendment to the Oakland Zoo Master Plan ("the project") is inconsistent with the City of Oakland's General Plan in violation of State Planning and Zoning Law, Govt. Code § 65000 *et seq.* In addition, the City has failed to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.*, and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 *et seq.* ("CEQA Guidelines") by (1) failing to prepare a new or subsequent environmental impact report; (2) failing to adequately analyze the impacts of the project; and (3) failing to require mitigation measures adequate to ensure the impacts are reduced to less than significant levels.

I. Approval of the Project Would Violate California Planning and Zoning Law.

The State Planning and Zoning Law requires that development decisions be consistent with the jurisdiction's general plan. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336. It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Gov't v. Napa County* (2001) 91

Cal.App.4th 342, 379. The project need not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan’s goals and policies.” *Napa Citizens*, 91 Cal.App.4th at 379.

Here, the project conflicts with the Open Space Conservation and Recreation (“OSCAR”) element of the City’s General Plan. Specifically, OSCAR policy “REC-1.3: Siting of Buildings in Parks” flatly prohibits the placement of the Interpretive Center and the new veterinary hospital within the Knowland Park boundary. This policy states: “Strongly discourage new *non-recreational* buildings in City parks unless their construction is a matter of public necessity and the use cannot be reasonably accommodated in another location.” OSCAR at 4-29. The three story Interpretive Center, which is filled with office uses, and the veterinary hospital are clearly not recreational uses. Subsequent Mitigated Negative Declaration/Addendum (“SMND/A” or “Addendum”) at 2-16 and 2-24. The Zoo has failed to make any showing that these structures are necessary or cannot be accommodated elsewhere.

Furthermore, the proposed project cannot meet the three exceptions in the policy that would allow such construction. The policy specifies the following:

Exceptions to this policy may be made in cases where there are (a) no feasible alternatives to placing buildings in parks; (b) the buildings are being developed in accordance with an overall Master Plan for the impacted park; and (c) replacement open space will be provided as specified in REC-1.2. OSCAR at 4-29.

All three exceptions must be met before a building may be placed in a park. *Id.*

The proposed project does not satisfy the criteria in sections (a) and (b) above and therefore fails to qualify for an exception. First, the Addendum fails to analyze feasible alternatives for locating office uses and the veterinary hospital at off-site locations or within the existing developed portions of the Oakland Zoo. Second, the project is *not* being developed in accordance with an overall Master Plan for the impacted park. Indeed, the original 1998 Master Plan did not include the veterinary hospital and the Interpretive Center was a modest one story structure. Furthermore, the OSCAR only intended to exempt development in Knowland Park that is consistent with an “already adopted master plan.” OSCAR at 4-29. Because the project proposes to amend the already adopted master plan, it is clearly not consistent with it.

As discussed below, by placing the massive Interpretive Center on the ridgeline without considering scaled down alternatives, the project is also inconsistent with OSCAR Policy OS-10.1 regarding preservation of scenic views. The project's inconsistency with the City's General Plan also results in significant environmental impacts under CEQA. *See Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903.

II. The City Should Have Prepared a Subsequent or New EIR.

The City has failed to prepare the proper environmental document. CEQA requires agencies to prepare subsequent environmental impact report ("SEIR") where (1) substantial changes are proposed to the project; (2) substantial changes occur in the circumstances under which the project is to be undertaken; or (3) new information of substantial importance emerges. Pub. Res. Code § 21166; Guidelines § 15162; *Mira Monte Homeowners Ass'n v. County of Ventura* (1985) 165 Cal.App.3d 357, 363-66. Where the agency previously certified a negative declaration, as was the case here, an addendum is only appropriate where "minor technical changes or additions are necessary." *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1400.

Here, all three criteria for a SEIR are met. First, the new project elements represent a substantial departure from the previously approved project. Indeed, the Zoo seeks to incorporate the following components, none of which were included in the original Master Plan: (1) an aerial gondola people-moving system; (2) substantial redesign and relocation of the California Interpretive Center; (3) a new veterinary medical hospital; and (4) a new overnight camping area. SMND/A at 2. For example, the Interpretive Center approved in the 1998 Master Plan was a single story building encompassing approximately 7,500 square feet. SMND/A at 2-47. The redesign of the California Interpretive Center would result in a three-story building that is 34,305 square feet--more than *four times* larger than the approved structure. *Id.* at 2-16. In addition, the veterinary medical hospital, gondola, and the overnight camping area will disturb habitat and disrupt views not contemplated in the 1998 MND.

Second, changed circumstances that lead to "new significant environmental effects or a substantial increase in the severity of previously identified significant effects" also compel a subsequent EIR. CEQA Guidelines § 15162(a)(2). In the thirteen years that have passed since the 1998 MND was adopted, the regulatory landscape has changed substantially. For example, the prior Master Plan was approved before the City's Open Space, Conservation, and Recreation Element of the General Plan was adopted.

SMND/A at 3.8-4. Indeed, it appears that the 1998 Initial Study/Mitigated Negative Declaration analyzed the prior project's consistency with the 1995 version of the OSCAR. IS/MND at 38. As discussed below, the project's inconsistency with several of these OSCAR policies results in new significant environmental impacts.

Third, the City must prepare a SEIR if new information, "which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR [or MND] was certified," shows that the project will have impacts missing from the previous MND or that any impacts will be more severe than stated in the previous MND. CEQA Guidelines § 15162. As detailed below, recent studies reveal a host of previously unknown environmental impacts of the project. For example, while no state and federally protected Alameda whipsnakes were encountered at the project site in 1998, recent protocol surveys revealed that one or more whipsnakes are in fact present on site. SMND/A at 3.3-21. In addition, two previously undetected special status plant species, the Oakland star tulip and bristly leptosiphon, were located during 2009 and 2010 surveys. As discussed below, both species will be directly or indirectly impacted as a result of the project.

III. The Addendum Fails to Adequately Analyze and Mitigate Impacts of the Project.

After carefully reviewing the Addendum for the Project, we have concluded that it fails in numerous respects to comply with the requirements of CEQA. As described below, the MND violates CEQA because it fails: (1) to provide an adequate project description; and (2) to adequately analyze the significant environmental impacts of the Project or propose adequate mitigation measures to address those impacts.

A. The Addendum's Project Description Is Inadequate.

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a "truncated project concept" violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal.App.4th at 729-30. Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *Id.* at 730) Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

1. Projected Attendance at the Oakland Zoo Is Misleading.

The project's traffic, air quality, greenhouse gas and noise impacts depend largely on how many Zoo visitors the project will attract. The Addendum projects the new California exhibit will cause an increase in visitors from 630,000 (current) to 700,000 (year 2035). This modest increase, however, defies common sense and contradicts actual attendance figures.

The Addendum explains that the Zoo has experienced a marked increase in attendance between 2004 and 2009. Addendum App. D at 3. In fact, the only documented *decline* in attendance experienced in the past seven years took place in 2010. *Id.*; (attendance declined from 670,700 in 2009 to 629,300 in 2010.) The report goes on to explain that Oakland Zoo visitor satisfaction is generally high, initial opening of the new exhibits is expected to result in a substantial increase in attendance, and that attendance is anticipated to stabilize at a higher level than prior to the exhibit. *Id.* at 4, 6, 7 and 9. Moreover, the document explains that the summer of 2010 was particularly cold and rainy, and that the nearby San Francisco Zoo also experienced lower attendance that year. *Id.* at 8.

Despite the data presented suggesting that the Zoo can expect increased attendance, both in the short- and long- term, the Addendum extrapolates from just one year of lower attendance to conclude that base attendance will decline to 600,000 guests per year. *See id.*, Table 3 at 12. This assumption is not explained and seems implausible. The attendance analysis ignores robust attendance figures with yearly increases for the preceding six years. *See id.*, Table 2 at 3. It inexplicably applies the decline in attendance experienced in one particular year (2010) to the following five years. This assumption artificially deflates the base attendance figures, which in turn results in low attendance projections at build-out and beyond. The analysis must be redone to include projections that accurately reflect historic attendance at the Oakland Zoo.

2. The Document Fails to Describe the Project's Gondola System.

The Addendum states that the support structures for the aerial gondola passenger movement system, which spans a length of approximately 1,850 feet and a vertical rise of approximately 331 feet, would *not* include night lighting. SMND/A at 2-13. The document also states that the California Interpretive Center "may occasionally

be used in the evenings for events that currently occur at the zoo, such as zoo-related business meetings, fundraisers, lectures, the Zoo Lights holiday light show, and the annual members' night." *Id.* Presumably, nighttime visitors of the new facilities would be transported using the gondola system since no additional parking is proposed for the project. The SMND/A does not elaborate on the necessity for night lighting in the gondola cars themselves or at the gondola receiving area at the California Interpretive Center where passengers disembark. Thus, the project description fails to provide a complete and stable description of key project components and, as a result, understates the project's visual impacts.

B. The Addendum Fails to Adequately Analyze and Mitigate Impacts to Biological Resources.

The project would be located in Upper Knowland Park, a known botanical hotspot in the Oakland hills and one of the few places where large stands of native grassland, oak woodland, coastal scrub, and chaparral co-exist in relatively intact condition. It is also known for its large number of locally rare species. Upper Knowland Park is zoned as a Resource Conservation Area, indicating that this open space is resource-rich and an area identified by the City to be preserved.

The project proposes to place structures, roads and animal exhibits either on top of or in close proximity to these important biological resources. The Addendum recognizes that significant impacts will result and largely relies on the Habitat Enhancement Plan and Mitigation and Monitoring Plans to be prepared in the future to mitigate these impacts to sensitive habitats and special status plant and animal species. Details of these plans, however, are unknown and the City has failed to make them enforceable though legally binding instruments. Moreover, as detailed in the letter submitted by Friends of Knowland Park under separate cover, the Zoo's record of stewardship over these open spaces lands is questionable at best. Accordingly, there is simply no basis to support the Addendum's conclusion that this project's impacts will be reduced to less than significant levels.

1. The Project Will Result in Significant Impacts to Sensitive Plant Species.

The project will result in direct and indirect impacts to two sensitive plant species: the Oakland star tulip and the bristly leptosiphon. SMND/A at 3.3-30. These plants are both maintained on the List 4.2 of the California Native Plant Society Inventory. The List 4.2 category indicates that these plants are of limited distribution and that they are uncommon enough that their status should be monitored regularly. *See*

<http://www.cnps.org/cnps/rareplants/ranking.php>, attached as Exhibit A. In addition, these plants are designated as “fairly threatened in California,” which indicates a moderate degree and immediacy of threat to these species. *Id.*

Despite the Addendum’s acknowledgment that these sensitive plant species warrant protection, the document completely fails to adequately analyze and mitigate potential impacts to them. As for the Oakland star tulip, while the Addendum evaluates potential *direct* impacts to this flower species, it fails to consider *indirect* impacts. Instead, the document notes that the known occurrence of Oakland star tulip is approximately 500 feet outside the proposed perimeter and concludes that the Project would not result in direct disturbance or impacts. However, fuel modification activities such as managed grazing and mowing, in the area outside of the perimeter fence could result in significant impacts. Knowland Park is located in an area susceptible to wildland fires. SMND/A at 3.6-12. State law requires that a defensible space be maintained around all structures. Pub. Res. Code § 4291. Thus, with implementation of the Project, which will locate structures in undeveloped areas currently in open space, fuel modification activities will likely be intensified. This in turn would result in impacts to sensitive species outside of the perimeter fence. This, and any other indirect impacts resulting from construction of the Project must be analyzed in a new or SEIR.

The Addendum’s treatment of the bristly leptosiphon is no better; in fact, it proposes a plan to obliterate onsite occurrences of the species. The bristly leptosiphon is located on the portion of the site slated for the wolf exhibit. The document recognizes that the species “could be affected by trampling, den digging, and other activities of wolves within the enclosures.” SMND/A at 3.3-31. However, the document is dismissive of potential impacts to this species and propose to let the wolves trample the species, monitor the species but once a year, and if needed put fencing around the species. *Id.* at 3.3-32. It is impossible to imagine a scenario where the wolves would not impact the species, the Zoo should redesign the project to avoid the species altogether. Barring that, at the very least the fencing should be required as part of the project. Furthermore, the City should impose specific mitigation for this impact as follows: (1) the frequency of the monitoring should be increased to quarterly; (2) members of the public should be invited to attend the monitoring events; and (3) monitoring reports should be provided to not only the City but also to Friends of Knowland Park and the California Native Plant Society.

The bristly leptosiphons listing on the CNPS Inventory means that conditions still exist to make the plant a species of concern. *See* Exhibit A. Therefore, the Addendum is obligated to evaluate impacts to this species under CEQA. Yet the document fails to consider the locality of this List 4 plant and how the specific locality

may affect the level of threat for this species. For example, the Addendum should have evaluated whether this population is located at the periphery of the species' range or in area where the species has sustained heavy losses, whether it exhibits unusual morphology or occurs on unusual substrates. *Id.*

2. Proposed Mitigation for the Alameda Whipsnake is Inadequate.

The project will result in a substantial reduction (15.7 acres) of state and federally threatened Alameda whipsnake habitat. SMND/A at 3.3-34. The Addendum recognizes that this impact is significant but fails to impose mitigation that will ensure that these impacts are reduced to less than significant levels.

Mitigation Measure 14c, as revised, requires compensatory mitigation for the AWS at a minimum of a 1:1 ratio. SMND/A at 3.3-4. Yet the Addendum fails to provide any specifics about how this mitigation is to be achieved, deferring the details to some future "Mitigation and Monitoring Plan." To ensure that this mitigation can be achieved, City should require that the mitigation habitat be preserved in perpetuity by placement in a conservation easement or other such binding instrument. See Guidelines 15126.4(a)(2) (requiring that mitigation measures be fully enforceable through legally binding instruments). Indeed, the 1998 MND required that AWS replacement habitat be preserved in perpetuity. There is no reason why the mitigation measure was watered down to exclude this requirement, particularly in light of the Zoo's history of questionable park stewardship. Absent stronger mitigation requirements, the Addendum's conclusion that impacts to the AWS are mitigated to less than significant levels is misplaced.

3. The City Has Failed to Adequately Mitigate Impacts to Seasonal Wetlands.

The project will pave over a 950-square-foot seasonal wetland that has formed at the crossroads of the fire road. The Addendum provides only conditional mitigation for this impact since it asserts that the water feature has "limited habitat value." SMND/A at 3.3-42. Specifically, Mitigation Measure BIO-1 requires the Zoo to mitigate this impact by providing a minimum of 1:1 replacement for this seasonal wetland, but only if the Regional Water Quality Control Board takes jurisdiction over it. To the extent the wetland's habitat value is diminished, however, it is due to the Zoo's careless grading of the fire road. These grading activities are described in greater detail in the letter submitted by Friends of Knowland Park under separate cover. In any event, because the wetlands habitat value would likely be greatly enhanced had the Zoo been a

better steward of this resource, the Zoo should, at the very least, commit to 1:1 mitigation regardless of whether the Regional Board determines that it is subject to regulation under state law.

4. The City Has Failed to Adequately Mitigate Impacts to Native Grasslands.

The project would result in adverse impacts to approximately 8.5 acres of native grasslands, which are considered sensitive habitat. SMND/A at 3.3-40. The Addendum recognizes that this impact is significant but fails to impose mitigation that will ensure that these impacts are reduced to less than significant levels.

The Addendum relies on Mitigation Measure 13a, which calls for future preparation of a Habitat Enhancement Plan ("HEP"). Specific measures in the HEP describe the identification of historic grasslands in Knowland Park and their enhancement through the removal of invasive species and planting with native species. *Id.* However, the Addendum fails to provide any specifics about how this mitigation is to be achieved, deferring the details to an undisclosed future date. To ensure that this mitigation can be achieved, the document should have specified whether there is an adequate amount of historic grassland within Knowland Park to accommodate the 17-acre mitigation area on-site. Plus, the mitigation measure will still result in a net loss of grasslands; the Addendum fails to explain how preserving 17 acres of existing grasslands that are currently used for habitat purposes will actually result in mitigation. Furthermore, the mitigation area should be protected from future fuel management activities and preserved in perpetuity by placement in a conservation easement or other such binding instrument. Absent that, the Addendum's conclusion that impacts to the native grasslands are mitigated to less than significant levels is incorrect.

5. The Addendum Fails to Analyze Impacts from Overnight Camping.

The Addendum completely overlooks impacts to oak woodlands and other biological resources that would result from implementing the overnight camping component of the project. The new overnight camping area would be located in a wooded area dominated by oaks. SMND/A at Figure 2-5. The camping area would entail canvas tents on wooden platforms and would accommodate up to 100 people. SMND/A at 2-22. The document appears to assume that because no oaks would be removed in this area, there would be no impact. Not so. For example, construction and installation of the platforms, composting toilets and fire rings would result in disturbances to the understory, which could encourage establishment of non-native

species. In addition, the introduction of large groups of campers to this habitat would likely result in trampling that could damage root systems, which in turn renders the trees vulnerable to disease. The project would therefore result in a much higher loss of trees than identified by the Addendum. The SEIR must include analysis of these significant impacts.

6. The Addendum Fails to Analyze and Mitigate Impacts Related to Sudden Oak Death.

Sudden Oak Death is a forest disease which is responsible for the deaths of millions of oaks and tanoaks in California. SOD has recently been reported in Knowland Park and is affecting bay laurel leaves. *See* Letter from Matteo Garbelloto, UC Berkeley, dated March 13, 2011, submitted under separate cover. Construction and operation of the proposed Master Plan would result in movement of soil and heavy equipment that could spread SOD to the Park's oaks. The Addendum fails to mention, let alone analyze or mitigate, these potentially adverse impacts.

C. The Addendum Fails to Adequately Analyze Visual Impacts.

From an aesthetic perspective, the proposed project represents a vast departure from the 1998 Master Plan. The California Interpretive Center will be two stories taller and four times larger than the approved structure. The Addendum's visual simulations indicate that the Interpretive Center will protrude above the ridgeline significantly altering views from the trails and fire road in Knowland Park above the project site. Addendum, Figure 3.1-3a. Furthermore, in contrast to the 1998 Plan, most of the animal exhibits and visitor areas have been moved up the hill so that they are visible to neighbors and Knowland Park users.

The document attempts to minimize these changes to the visual character and concludes only that the project "would reduce the extent of visible open grasslands." *Id.* at 3.1-7. However, as made clear by the visual simulations, park users would experience prominent views of the massive Interpretive Center structure, roadways and fencing in lieu of the existing undeveloped open space. The result of these changes are a significant change to the visual character of the area, which would be a significant impact to the public using Knowland Park for recreation. The Addendum suggests that these views, because they are not scenic vistas, do not warrant protection. Quite the contrary, an adverse impact on scenic views enjoyed by the public is a significant impact under CEQA. *See Ocean View Estates v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.

The proposed design also conflicts with OSCAR Policy OS-10.1, which “protects existing scenic views in Oakland, paying particular attention to (a) views of the Oakland Hills from the flatlands; ... and (d) panoramic views from . . . hillside locations.” OSCAR at 2-65. No amount of screening can disguise the fact that the project will alter the existing ridgeline and degrade the existing views from the Oakland flatlands and hillsides. The OSCAR policy explains that these views should be protected by a combination of height limitations and proper management of park and open space. *Id.* Here, the OSCAR clearly calls for a scaling back of the Interpretive Center and other large hillside structures. Because the City ignores this admonition, the project is inconsistent with this policy and represents new, significant impacts to views from public parklands.

The gondola system will be visible from surrounding neighborhoods and the 580 freeway. Yet, as discussed above, the Addendum fails to analyze impacts from lighting in the gondola cars and corresponding receiving area at the California Interpretive Center during night time use of the system. Addendum at 3.1-28. Therefore, the document fails to analyze impacts to views and adjacent uses from night lighting and glare.

Finally, the visual simulations fail to capture all aspects of the project. The new emergency plan, for example, calls for grading and constructing a 20- to 30-foot wide fire road from Snowdown Avenue. Yet these “improvements” are not shown on the simulations. Furthermore, although the Addendum concedes that the project would “reduce the extent of visible grasslands,” the visual simulations fail to show what this loss of grasslands would actually look like.

D. Traffic, Air Quality, and Noise Analyses Are Inadequate.

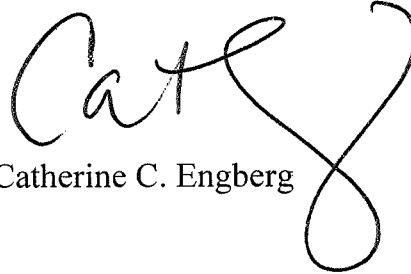
The artificially low base attendance figures used to project future Zoo attendance after Master Plan build-out also implicate other analyses in the MND. The analysis of air quality, greenhouse gas emissions, traffic and noise are all based on base attendance figures and related attendance projections. Inasmuch as the baseline attendance figures are distorted, related analyses also underestimate project-related impacts. For this reason, any revised documentation must include a revised analysis of project-related air quality, greenhouse gas emissions, traffic and noise.

IV. Conclusion

For all of the foregoing reasons, we respectfully submit that the Planning Commission cannot lawfully approve the Project as currently proposed. The Project should be redesigned in a manner that is consistent with the City General Plan. Moreover, before the City may lawfully approve the project, it must prepare a new EIR or SEIR that analyzes, mitigates and proposes alternatives to reduce the project's significant environmental impacts.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

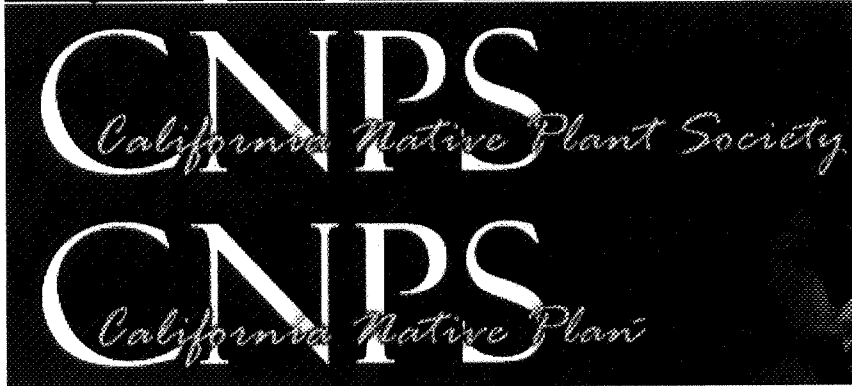
A handwritten signature in black ink, appearing to read "Cate", followed by a large, stylized loop that extends downwards and to the right.

Catherine C. Engberg

cc: Ruth Malone, Friends of Knowland Park

\\Smw01\vol1_data\ZOO\Comment Letter 3-14-11.doc

[Message Board](#) [Careers](#) [Admin](#) [Search Home](#)



Rare Plant Program

- [About the Program](#)
- [Rare Plant Inventory](#)
- [CNPS Ranking System](#)
- [Rare Plant Data](#)
- [Status Review Process](#)
- [Rare Plant Forum](#)
- [Rare Plant Photos](#)
- [Locally Rare Plants](#)
- [Botanical Survey Guidelines](#)
- [Rare Plant Treasure Hunt](#)
 - [Get Involved](#)
 - [Project Background](#)
 - [Funding and Support Opportunities](#)
 - [Rare Plant Maps](#)
 - [Data Collection & Reporting](#)
 - [Treasure Hunt Events](#)
 - [2010 Prize Winners!](#)

The CNPS Ranking System

CNPS Lists

CNPS has created five "lists" in an effort to categorize degrees of concern. Please see the Online Inventory for information about the number of plant taxa in each category and for more information about the species tracked as rare by CNPS. The CNPS lists are described as follows:

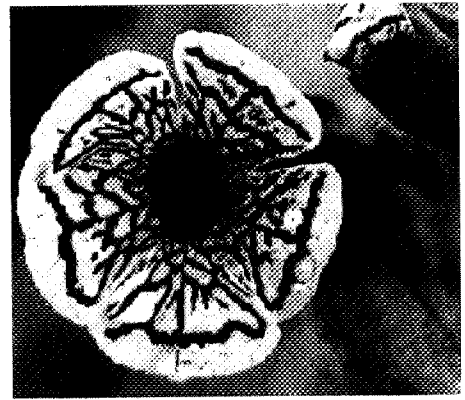
List 1A: Plants Presumed Extinct in California



Astragalus pycnostachyus var. *lanosissimus* (Rediscovered in 1997- now on List 1B.1), photo by Nick Jensen 2006

EXHIBIT **A**

The plants of List 1A (less than 30 taxa) are presumed extinct because they have not been seen or collected in the wild in California for many years. This list includes plants that are both presumed extinct in California, as well as those plants which are presumed extirpated in California. A plant is extinct in California if it no longer occurs in or outside of California. A plant that is extirpated from California has been eliminated from California, but may still occur elsewhere in its range.



Mimulus pictus (List 1B.2), photo by Lara Hartley 2006

Plants are placed on List 1A in an effort to highlight their plight and encourage field work to relocate extant populations. Since the publication of the fifth edition (1994), eight plants thought to be extinct in California have been rediscovered. These are Ventura marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*), San Fernando Valley spineflower (*Chorizanthe parryi* var. *fernandina*), diamond-petaled California poppy (*Eschscholzia rhombipetala*), Mojave tarplant (*Hemizonia mohavensis*), water howellia (*Howellia aquatilis*), Howell's montia (*Montia howellii*), northern adder's-tongue (*Ophioglossum pusillum*), and Shasta orthocarpus (*Orthocarpus pachystachyus*). The successful rediscovery of several List 1A plants is encouraging and CNPS hopes that it will motivate professional and amateur botanists alike to search for and rediscover more List 1A species.

All of the plants constituting List 1A meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. Should these taxa be rediscovered, it is mandatory that they be fully considered during preparation of environmental documents relating to the California Environmental Quality Act (CEQA).

List 1B: Plants Rare, Threatened, or Endangered in California and Elsewhere

The plants of List 1B are rare throughout their range with the majority of them endemic to California. Most of the plants of List 1B have declined significantly over the last century. List 1B plants constitute the majority of the plants in CNPS' Inventory with more than 1,000 plants assigned to this category of rarity.

All of the plants constituting List 1B meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067

(California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA.

List 2: Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere



Penstemon janishiae (List 2.2),
photo by Cheryl Beyer

Except for being common beyond the boundaries of California, the plants of List 2 would have appeared on List 1B. From the federal perspective, plants common in other states or countries are not eligible for consideration under the provisions of the Endangered Species Act. Until 1979, a similar policy was followed in California. However, after the passage of the Native Plant Protection Act, plants were considered for protection

without regard to their distribution outside the state.

With List 2, we recognize the importance of protecting the geographic range of widespread species. In this way we protect the diversity of our own state's flora and help maintain evolutionary process and genetic diversity within species. All of the plants constituting List 2 meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA.

List 3: Plants About Which We Need More Information - A Review List

The plants that comprise List 3 are united by one common theme - we lack the necessary information to assign them to one of the other lists or to reject them. Nearly all of the plants remaining on List 3 are taxonomically problematic. For each List 3 plant we have provided the known information and then indicated in the "Notes" section of the Inventory record where assistance is needed. Data regarding distribution, endangerment, ecology, and taxonomic validity will be gratefully received by e-mailing the Rare Plant Botanist at asims@cnps.org or (916) 324-3816.



Salvia dorrii var. *incana* (list 3),
photo by Steve Matson 2006

Some of the plants constituting List 3 meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. We strongly recommend that List 3 plants be evaluated for consideration during preparation of environmental documents relating to CEQA.

List 4: Plants of Limited Distribution - A Watch List



Phacelia exilis (List 4.3), photo by Lara Hartley 2005

The plants in this category are of limited distribution or infrequent throughout a broader area in California, and their vulnerability or susceptibility to threat appears relatively low at this time. While we cannot call these plants "rare" from a statewide perspective, they are uncommon enough that their status should be monitored regularly. Should the degree of endangerment or rarity of a List 4 plant change, we will transfer it to a more appropriate list.

Very few of the plants constituting List 4 meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and few, if any, are eligible for state listing. Nevertheless, many of them are significant locally, and we strongly recommend that List 4 plants be evaluated for consideration during preparation of environmental documents relating to CEQA. This may be particularly appropriate for the type locality of a List 4 plant, for populations at the periphery of a species' range or in areas where the taxon is especially uncommon or has sustained heavy losses, or for populations exhibiting unusual morphology or occurring on unusual substrates.

Threat Ranks

The CNPS Threat Rank is an extension added onto the CNPS List and designates the level of endangerment by a 1 to 3 ranking, with 1 being the most endangered and 3 being the least endangered. A Threat Rank is present for all List 1B's, List 2's and the majority of List 3's and List 4's. List 4's may contain a Threat Rank of 0.2 or 0.3; however an instance in which a Threat Rank of 0.1 is assigned to a List 4 plant has not yet been encountered. List 4 plants generally have large enough populations to not have significant threats to their continued existence in California; however, certain conditions still exist to make the plant a species of concern and hence be placed on a CNPS List. In addition, all List 1A (presumed extinct in California), and some List 3 (need more

information) and List 4 (limited distribution) plants, which lack threat information, do not have a Threat Rank extension.

Threat Ranks

- 0.1-Seriously threatened in California (high degree/immediacy of threat)
- 0.2-Fairly threatened in California (moderate degree/immediacy of threat)
- 0.3-Not very threatened in California (low degree/immediacy of threats or no current threats known)

Where did the RED Code go?

Dedicated to the Preservation of California Native Flora

of California Native Flora

California Native Plant Society 2707 K Street, Suite 1 • Sacramento, CA 95816-5113

(916) 447-2677 • fax (916) 447-2727 • cnps@cnps.org

Copyright © 1999-2011 California Native Plant Society. All rights reserved.

Copyright © 1999-2011 California Native Plant Society. All rights reserved. [Contact Us](#)

Dedicated to the Preservation